

## A POINT TO PONDER OVER IN THE POCSO BILL

Relevant for: Developmental Issues | Topic: Rights & Welfare of Children - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

There has been much development recently with respect to the Protection of Children from Sexual Offences (POCSO) Act, 2012. With an objective of stopping the rampant sexual abuse of children, the Protection of Children from Sexual Offences (Amendment) Bill, 2019 was introduced in the Rajya Sabha in July, and later passed by both Houses of Parliament. It is all set to become the 'law of the land'. The present bill is welcome in certain respects as it specifically defines what 'child pornography' is; 'using a child for pornographic purposes' and for 'possessing or storing pornography involving a child' is punishable. It has also widened the ambit of 'Aggravated sexual assault'.

The highlight of the Bill is the introduction of the death penalty for the rape of minors. The Bill, in its object clause, justifies this by referring to the judgments of the Supreme Court in *Machhi Singh* (1983) and *Devender Pal Singh* (2002) in which the court has held that the death penalty can be awarded only in rarest of rare cases. Thus the intention of the Bill is to have a deterrent effect; but it can be argued that the introduction of the death penalty may backfire in cases of child sexual abuse and even have a catastrophic effect. Often, the perpetrators of abuse are family members and having such penalty in the statute book may discourage the registration of the crime itself. Also, it may threaten the life of the minor as the maximum punishment for murder is also the death sentence.

The Justice J.S. Verma Committee, which was constituted in 2013 in the aftermath of the Nirbhaya case, after due deliberations found itself against the imposition of death penalty in rape cases. The 262nd Report of the Law Commission of India, 2015, also provides for abolition of the death penalty except in terror cases.

Today, the death penalty has become a prominent tool of symbolic legislation — a political statement indeed. Many a time, the Government, by introducing the death penalty, portrays itself to be strict and serious with regard to such offences. It largely diverts attention from the core issues of infrastructural apathy, procedural lapses and trial delays and conveniently evades the fact that 'it is the certainty of punishment rather than its severity which has deterrence in real sense'. It is pertinent to note here that even a year-and-a-half after the passage of the Criminal Law (Amendment) Bill, 2018, which introduced the death penalty for rape of a minor girl, such incidents have not been under check. The debate here is not about retaining or abolishing the death penalty but the probable ramifications of its provision in the Act.

The deterrent effect of capital punishment appears to be on the wane. Globally, there is research to support the view that despite stringent punishments, there is no fall in the rate of commission of crimes. Robin Conley in his book, *Confronting the Death Penalty*, has observed that the death penalty may seem just and appropriate in abstract but once you are privy to its practicality, it becomes less appealing. Deterrence has its own limitations and it has to be supplemented by exhaustive measures that includes an overhaul of the criminal justice administration.

The Supreme Court has recently taken cognisance of the sexual abuse of children, directing its registry to file a case as writ petition with cause title "In-re Alarming Rise in The Number of Reported Child Rape Incidents". The court has also observed that it intends having a 'zero tolerance policy' toward child rape. As data on sexual crimes against children collected by the court show, 24,212 FIRs were filed across India from January to June this year. According to

National Crime Records Bureau data of 2016, the conviction rate in POCSO cases is 29.6% while pendency is as high as 89%. The prescribed time period of two months for trial in such cases is hardly complied with.

The court has also taken note of the delay in trials, in turn directing the Central Government to set up special courts within 60 days of the order in each district having more than 100 pending cases under the Act. It is to be seen how long it takes to comply with the order. The Criminal Law (Amendment) Act, 2018 introduced the death penalty for rape of girls below the age of 12. At the same time, the POCSO Act, under Section 42, provides that where the same act constitutes an offence under the said Act and any other law, then the offender will be punished under the Act or such law, whichever provides for greater punishment. This has created an issue as the effect of such an amendment was death penalty for rape of minor girls but not for assault against minor boys.

The proposed Bill does away with such a discrepancy. It is gender neutral and provides for the death penalty for “aggravated penetrative sexual assault of a child”, thus bringing both these pieces of legislation on a par with each other in this respect. With these amendments and with the Supreme Court considering child abuse “intolerable”, there seems to be reasonable hope now that vulnerable children could be safer. The Bill is a step forward in preventing child abuse but the consequences of providing for the death penalty need to be closely observed.

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