

## **Death Penalty to Child Rapist: A Critical Analysis**

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### ***INTRODUCTION:***

**Child sexual abuse**, also called **child molestation**, which is in a form of child abuse i.e. in physical, sexual and psychological treatment which an adult or older adolescent uses a child for sexual stimulation. Forms of child sexual abuse include engaging in sexual activities with a child whether by asking or pressuring a child of doing sexual activities or by any other means.

Biologically a child is a human being between the stage of birth and puberty. According to law "**child**" may refer to anyone below the age of majority or some other age limit. The United Nations Convention on the Rights of the Child defines *child* as "a human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier".

Under law there are various provisions which have been made for the protection and welfare of child, even the law makers have made certain separate acts for the child like POSCO act under which they have made certain sections which stated about the punishment to the rapist of the child, minimum punishment will not be less than 7 years of imprisonment. However, the punishment is granted according to the gravity of the act.

### ***ABOUT RECENT ORDINANCE:***

On April 21, 2018 in the wake of gruesome child rape cases, Central govt. has passed the ordinance to amend the POSCO Act and other criminal laws to grant a death

penalty for the rape of children under the age of 12. The Union Cabinet on Saturday i.e. 26<sup>th</sup> May, 2018 cleared an ordinance on POSCO act i.e. Protection of Children from Sexual Offences where by the death penalty will be given to those who have convicted of raping a child up to 12 years of age. POSCO act, Criminal law, Evidence act and Indian Penal Code will now stands to be amended. Death penalty to the child rapist took a centre stage after the three cases of gang rape which took place in Jammu Kashmir's Kathua District, Unnao in Uttar Pradesh and in Surat which leads to a massive outrage across the country.



***CASES: MAIN REASON BEHIND SUCH ORDINANCE***

***SURAT RAPE CASE: 9 year old girl dried tears tell a tale***

On April 6, 2018 a nine year old girl body was found lying in the bushes near Jeeva road in Surat. After the post-mortem it was found that the girl was physically harmed with a blade and brutally raped and not only this objects were inserted in her private parts and that too in her uterus and was tortured for many days before being strangled to death. It was shocking to know that on her body more than 86 injuries were found.

***UNNAO RAPE CASE: A minor girl was raped in the pretext of job.***

Yet another shameful incident happened in Unnao District, Uttar Pradesh. A minor girl was allegedly raped by four men on the pretext of getting a job. According to her complaint she was brutally raped by BJP-MLA Kuldeep Sengar along with his accomplices in June 2017. Police has registered a case against all accused including victim's father.

Her father was died under police custody. He was arrested on 8<sup>th</sup> April, 2018 after he along with his daughter tried to commit suicide in front of the Chief Minister's residence, Lucknow.

***KATHUA RAPE CASE: Case of abduction, rape and murder of an 8 year old child.***

In Rasana Village near Kathua District in the State of Jammu and Kashmir, on 10 January, 2018 an 8 year old girl named Asifa Bano was abducted, brutally raped by 8 men and killed by them. She was belonged to the nomad bakarwal community. She was disappeared and after a week her death was found by the villagers almost a kilometer away from a village on 17<sup>th</sup> January, 2018. A charge sheet was filed by the police against the accused. It was found that the motive of accused were to drove out the nomadic Muslim community of Bakarwals from Hiranagar Tehsil.



### ***ABOUT POSCO ACT***

POCSO Act i.e. The Protection of Children from Sexual Offences Act, 2012 was established to protect the children against offences like sexual abuse which includes penetrative and non-penetrative assault, sexual harassment and pornography. It was enacted to provide a child-friendly system for trial underneath which the perpetrators could be punished. The act received the assent from the President on June 19, 2012.

The Act defines a **child** as any person **below eighteen years of age**. The act also makes the provisions for avoiding the re-victimization of a child in the hands Of the judicial system.

Under certain special circumstances POCSO act states a sexual assault is to be considered “aggravated if the abused child is mentally tortured or when the abuse is committed by a member of the armed forces or security forces or a public servant or a person who is in a position of trust or authority of the child, like a family member, police officer, teacher, etc.

The Act also provides punishment against false complaints or untrue information.

It describes the strict action against the offender according to the gravity of the offence. It prescribes rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and also fine as punishment for aggravated penetrative sexual assault.

***PROVISIONS WHICH ARE AMENDED IN POSCO ACT AND IN OTHER CRIMINAL LAW AFTER ORDINANCE HAS BEEN PASSED:***

***PUNISHMENT FOR THE CHILD RAPISTS: DEATH PENALTY AND LIFE IMPRISONMENT***

- In case of gang-rape of a girl below the age of 12, the punishment will be death penalty or life imprisonment
- In case of rape of a girl below the age of 12, the punishment will be death penalty, life imprisonment or a minimum imprisonment of 20 years
- In case of gang-rape of a girl below the age of 16, the punishment will be imprisonment for the rest of life
- In case of rape of a girl below the age of 16, the punishment will be imprisonment for 20 years, earlier it was 10 years which is extendable for rest of life
- In case of rape of a woman, the minimum punishment has been provided to be 10 years; earlier it was 7 years which is extendable to life imprisonment.

***TIME LIMIT FOR INVESTIGATION AND TRIALS:***

- Investigation of all cases of rape should be completed within 2 months from the day it happened.
- The trial of all rape cases should be completed in 2 months.
- A time limit of 6 months has also been provided for disposal of appeals in the matter of rape cases.

***RESTRICTIONS ON BAIL:***

- There will be no such provision like anticipatory bail for a person who is accused in case of rape or gang rape of a girl under 16 years.
- Before deciding bail applications in case of rape of a girl under 16 years of age, the court has to give notice of 15 days to the public prosecutor and the representative of the victim.

***OTHER PROVISIONS OF THE AMENDMENT:***

- Special forensic labs will be set up in each State/UT exclusively for rape cases.
- Special forensic kits will be provided to all Police Stations and hospitals for rape cases.
- New Fast Track Courts will be set up in consultation with States/UTs and High Courts.
- Creation of new posts of public prosecutors in consultation with States/UTs.
- The present scheme of One Stop Centres for assistance to victim to be extended at all districts in the country.
- National Crime Records Bureau will maintain a national database and profile of sex offenders which will be shared with states/UTs to better track, monitor, investigate and verification of antecedents by police.

***IMPACT ON OTHER STATES:***

**1. MADHYA PRADESH:** Madhya Pradesh Assembly in December passed the bill against the rape of a girl below 12 which is an offence and punishable by death, and bill awaits the nod from the President. With this, Madhya Pradesh becomes the first State where those convicted of such rapes will face the gallows.

**2. HARYANA, KARNATAKA AND MAHARASHTRA:** After Madhya Pradesh, these states are thinking of following the footsteps of MP and make a bill under which, the rape of a women below certain age become an offence and which are punishable by death.

Haryana after seeing the rising of rape cases in the state is now thinking of doing the same as Madhya Pradesh did-“We will enact a law to provide for capital punishment for those who found guilty of raping girls aged up to 12 years or below to it. Besides, we will make a request for setting up fast-track courts for dealing with rape cases to ensure speedy justice to the victims,” Chief Minister Manohar Lal Khattar

**3. RAJASTHAN:** Passes the bill on Death Penalty for the rape of a girl up to or below the age of 12 years. The Rajasthan government took the step in view of the rising crimes against women and children. "We want to prevent rape against minors, and if it still happens, the accused should get the strictest punishment," said Home Minister Gulab Chand Kataria.

***PROVISIONS WHICH ARE GOING TO BE AMENED***

- Those who have been convicted for raping a girl under 12 years of age or below will be given death sentence, proposed a bill that was unanimously passed in the Rajasthan Assembly. Once the bill becomes a law, Rajasthan will be the second such state, after Madhya Pradesh, where the rapists will get a death penalty.
- The maximum punishment for the rape of a minor has also been extended from seven years to 14 years and life imprisonment.
- If a minor is gang-raped and the child dies, the convict will have to spend twenty years in jail.