

Death Penalty For Raping Children Doesn't Translate Into Swifter, Better Justice

MUMBAI: About 90 per cent of child rape cases were pending trial in India in 2016, no more than 28 per cent of such cases ended in conviction, and there is a 20-year backlog in bringing cases to trial, the latest available national crime data show.

These data indicate the government move to prioritise a change to legislation that allows courts to grant the death penalty to rapists of children younger than 12 will not bring quicker or better justice because there is no plan to address conviction failures and court delays.

The new ordinance also adds a minimum punishment of 20 years to anyone who rapes a woman below 16.

Of 39,068 rape victims -- including women and girls -- in 2016, 43 per cent (16,863) of the girls raped were minor, below the age of 18, while, five per cent (2,116) were less than 12 years old, according to National Crime Records Bureau (NCRB) data.

The Union cabinet on April 21 approved an ordinance to the Indian Penal Code (IPC), Indian Evidence Act, Code of Criminal Procedure and the Protection of Children from Sexual Offences Act (POCSO), allowing for harsher punishments to those committing sexual crimes against women and children.

The amendments, known as the Criminal Law Ordinance 2018, come during a period of national uproar. April 2018 was a month where the high-profile rape cases of an eight-year-old in Jammu and Kashmir's Kathua district, and the alleged rape of a minor in Unnao, Uttar Pradesh, allegedly by a Bharatiya Janata Party (BJP) legislator, dominated the national media and fuelled much politicised debate along religious and ethnic lines.

There were 19,765 reported child rapes in India in 2016, or 54 every day, under section 376 of the IPC and section 4 and 6 of the POCSO Act -- an increase of almost six per cent compared to 2014 when 18,661 cases were reported.

It may be noted that child rape cases in 2016 were recorded under section 376 of the IPC and section 4 and 6 of the POCSO Act. In 2014 and 2015, these cases were recorded separately under IPC crimes and POCSO Act. Cases reported in 2012 and 2013 were only under section 376 of the IPC.

Madhya Pradesh reported the most 13 per cent (2,467) child rapes nationwide in 2016, followed by Maharashtra (12 per cent, 2,292 cases) and Uttar Pradesh (11 per cent, 2,115 cases).

Sikkim reported the highest rate of rape, 32.5 rapes per 100,000 children, followed by Mizoram (26.7) and Delhi (14.5), as against the national average of 4.4 child rapes.

About 18-20 per cent of child rapes occur in the family and 50 per cent in an institutionalised setting, according to a 2013 paper published in the journal Psychological Studies.

Offenders were known to the victims -- including both women and girl child -- in 94 per cent of the rape cases reported in 2016, NCRB data show. Most of them (29 per cent) were neighbours, followed by "known persons on promise to marry the victim" (27 per cent) and relatives (six per cent); 30 per cent were other known people.

The introduction of a death penalty for those accused of raping a child under 12 years could have a negative effect on reporting, as families fear ostracisation and legal consequence for family members.

"The introduction of the death penalty is not a great move. In the family these cases will not be reported, so many of these things happen by known people, the



community will protect them," Flavia Agnes, a women's rights lawyer and co-founder of MAJLIS, a Mumbai-based organisation that provides legal initiatives for women, told IndiaSpend. "Reporting rates were definitely increasing, but now I be-

lieve more people will not report (rapes) for fear of the consequences," she said.

Up to 90 per cent of rape cases reported were pending trial at the end of 2016. The conviction rate for child rape was 28 per cent -- inclusive of cases reported under

section 376 of IPC and section 4 and 6 of POCSO Act -- in 2016, compared to 34 per cent in the previous year under section 376 of IPC, and 41 per cent and 32 per cent under section 4 and 6 of the POCSO act in 2015, respectively.

"Expedited trials are just not happening in India, it will take 20-30 years to improve the system," said Agnes. "Just one or two special courts is not enough; this is why so many cases are pending. Plus trials take too long."

Six fast-track courts were set up in Delhi in 2013 after the gang rape of 23-year-old paramedic student "Nirbhaya", to address the high rate of unfinished investigations and encourage swifter convictions. However, in 2012, regular courts resolved 500 cases compared to 400 in fast track courts, which failed to serve their inherent purpose.

The last person to receive capital punishment in India for reasons other than terrorism was Dhananjay Chatterjee who raped and murdered 14-year-old schoolgirl. Chatterjee was hanged in August 2004.

(By arrangement with IndiaSpend.org, a data-driven, non-profit, public interest journal)



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