



drishti

## Protection of Children from Sexual Offences (Amendment) Bill, 2019 and related concerns

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The article is based on the recent Amendments in the POCSO Act, 2012 and the concerns related to the newly introduced death penalty in the law as pointed in the article **“A Point to Ponder Over in the POCSO Bill”** published in The Hindu on 12<sup>th</sup> August.

### Context

- Recently the **Protection of Children from Sexual Offences (Amendment) Bill, 2019** was passed by both Houses of Parliament with an objective of stopping the rampant sexual abuse of children.
- It seeks to provide more stringent punishment, including death penalty, for sexual crimes against children.
- 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’.

### Significance

- The amendment is expected to discourage the trend of child sexual abuse by acting as a deterrent due to strong penal provisions incorporated in the Act.
- It intends to protect the interest of vulnerable children in times of distress and ensures their safety and dignity.
- The amendment is aimed to establish clarity regarding the aspects of child abuse and punishment thereof.
- It is **gender-neutral** and thus looks into the sexual assault of both minor boys and girls.

### Introduction of Death Penalty

- The bill seeks for the death penalty for aggravated sexual assault on children to create deterrent effect.
- It refers to the judgments of the Supreme Court in ***Machhi Singh (1983)*** and ***Devender Pal Singh (2002)*** in which the court had held that the death penalty can be awarded only in rarest of rare cases.

## Concerns over death penalty

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- Often, the perpetrators of abuse are family members and having such penalty 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 ***262<sup>nd</sup> Report of the Law Commission of India, 2015***, also provides for abolition of the death penalty except in terror cases.
- 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'*.
- Research at the global level has shown that despite stringent punishments, there is no fall in the rate of commission of crimes, thus showing the limitation of the deterrent theory.

## Other Concerns

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- According to the **National Crime Records Bureau(NCRB) 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.
- As per the NCRB data of 2016, less than three per cent of child rape cases that came up before the courts ended in convictions.

## Way Forward

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- Problems related to implementation of POCSO Act such as lack of adequate special courts, lack of sensitization for investigators and prosecutors in dealing with child victims, poor rate of convictions etc. need to be resolved urgently.
- The Supreme Court direction to set up special courts within 60 days of the order in each district having more than 100 pending cases under the act must be complied with urgently.
- The provision of death penalty should be widely discussed and debated and should be used only for the rarest of the rare cases.

- Awareness and sensitization of people is equally important to prevent the crime itself.
- There needs to be an overhaul of the criminal justice system in the country rather than emphasising on the death penalty.

### ***Drishti Input***

Critically examine the provisions of “Protection of Children from Sexual Offences (Amendment) Bill, 2019”, alongwith gaps in criminal justice system of India, to effectively prevent child sexual abuse cases in India.