Validity of Child Gang-Rape Law

For Prelims: Supreme Court, Section 376-DB, Section 376-AB, Indian Penal Code, Article 21, Article 14.

For Mains: Reforms required for Life Imprisonment in Indian Penal System.

Why in News?

Recently, a petition was filed by a 29-year-old man, in the **Supreme Court**, who is serving a life sentence, for the gang rape of a nine-year-old in Maharashtra.

- The **Supreme Court** will examine the validity of a law which sends a guilty man either to a lifetime in prison or to the gallows for gangraping a child under 12 years without affording him a chance to atone for his crime or reform.

What are the Issues Highlighted in the Petition?

- **Restrict judge's options:**
  - It argued that **Section 376DB (gang rape of a child under 12 years of age)** of the **Indian Penal Code** restricted the trial judge's options to either a **sentence for the remainder of the person's natural life or the death penalty.**
    - However, Life imprisonment is the minimum, mandatory punishment under the provision.
- **Anomaly in 2018 Amendment:**
  - The petitioner further argued that there is **an anomaly in the sentencing system drafted through the criminal amendments carried out in August 2018.**
    - Section 376DB was introduced in 2018 when the penal code was **amended to provide harsher sentences for the offense of rape.**
- **Arbitrariness:**
  - While **Section 376-AB** provided for a **minimum sentence of 20 years for a person convicted of raping an under-12 girl.**
  - **Whereas, Section 376-DB provides for a mandatory minimum punishment of life imprisonment for each of the persons involved in the gang rape of an under-12 girl.**
  - Both sections provided the **death penalty as maximum punishment.**
    - This life sentence without remission could mean 60-70 years of jail for a person who is in his twenties.
- **Violates Right to Life:**
  - Section 376DB offered a trial court no option but a life sentence or the higher punishment of the death penalty.
  - The petition argued that Section 376DB violated **Articles 21** (Right to life) and **Article 14** (right to equality) of the Constitution.
- **Global Scenario:**
  - **Given** the global **context of this** issue, the **European Court of Human Rights** in the case of **Winter vs the United Kingdom** ruled that life **imprisonment** without a **real**

prospect of **parole** was a violation of Article 3 of the European Convention on Human Rights.
        - It held that life sentences cannot be considered just punishment as they provided the prisoner with no opportunity for atonement and such sentences were incompatible with respect for human dignity.
        - The U.S. Supreme Court had held that in extreme cases, a disproportionate sentence **violated the Eighth Amendment, which prohibits cruel and unusual punishment, of the U.S. Constitution.**

What's the View of the Supreme Court?

- The SC bench said that this question required consideration, as the SC has already quashed the provision imposing mandatory death sentence as unconstitutional.
    - Further, it asked an additional solicitor general, as well as the petitioner to submit written submissions and propositions on the issue.
- **Historical Perspective:**
    - Also, the SC in **'Mithu Vs Punjab' in 1983,** had ruled that **Section 303 of IPC was unconstitutional** to the extent it provided for the mandatory death penalty to a person who committed a murder while serving a life sentence in another case.
        - Section 303 had mandated that courts would impose no other punishment but the death penalty in such cases.

What are the Other Related Initiatives for Child Protection?

- **POSCO (Protection of Children from Sexual Offences).**
- **Child Abuse Prevention and Investigation Unit.**
- **Beti Bachao, Beti Padhao.**
- **Juvenile Justice Act/Care and Protection Act, 2000.**
- **Child Marriage Prohibition Act (2006).**
- **Child Labour Prohibition and Regulation Act, 2016.**

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