Child abuse and violence - Criminal law amendment bill - NCPCR (National commission for the protection of Child Rights)

Part of: GS-I- Social issue (PT-MAINS-PERSONALITY TEST)

336% increase in child rape cases from 2001 to 2011. Figures are under reported as majority of child rape cases are not reported to the police. 9/10 rapes and sexual assaults are carried out by people known to the victim. Insensitivity and unhelpful attitude of police, lawyers and untrained hospital staff makes prosecution and conviction difficult.

NOTE: 1 in 6 BOYS experience some form of sexual abuse/ 1 in 4 GIRLS experience some form of sexual abuse.

Why Child Rapes are Increasing?

- A rise in reporting due to lowering of the stigma attached + Rise of awareness mainly due to social media + celebrities opening up about being abused in their childhood also motivated parents to report
- POCSO in 2012 & Criminal Law (Amendment) Act in 2013 led to higher reporting of rape against children
- Definition of rape now includes many more sexual actions than were earlier classified as sexual assault
- Age of consent for girls has been raised from 16 to 18 years. This means boys who have consensual sex can be charged with rape.

- The Parliament recently passed the Criminal Law (Amendment) Bill 2018, which awards death penalty to convicts of child rapes in India.
- The Bill provides for death penalty as the maximum punishment in cases of rape of a child under 12.

What are the issues with Child Abuse in India?

- According to a report by child rights NGO CRY, sexual offence is committed against a child in India every 15 minutes and there has been an increase of more than 500 per cent over the past 10 years in crime against minors. The rising cases is a disturbing scenario.
- As per NCRB statistics on rape of women and children, 94% of the rapists are known to the victim, and almost half are a close relative, and neighbours.
- The conviction rate of these crimes is very low, only close to 3% of the total number of cases, according to the 2016 NCRB Report. One of the chief causes of low conviction rate is the lack of manpower and infrastructure in the criminal justice system.
- Previous Acts’ failure: In spite of the POCSO Act being enacted in 2012, there has been no reduction in the number of crimes committed against children. The new law enacted did not act as a deterrent.
- Justice Delay: Court cases typically last for years or even stretch to decades in many cases. One reason for this is the shortage of judges. Over six million cases are pending for more than ten years. Because of the pendency of cases and the lack of required
facilities, investigations are hardly completed on time, and recording of evidence, etc. do not happen on time.

- Attitude of the politicians – Senior political leader and Supremo of the Samajwadi Party commented on record in 2014 that rapes should not be punished with death since “boys are boys and they make mistakes”.
- A 2017 report titled “Everyone Blames Me” cited that survivors, especially from marginalised communities, find it hard to register police complaints.
- The survivors are often humiliated by the police personnel and at the hospital where they are subjected to degrading medical tests in the name of medical examination. They feel scared and intimidated when the case does reach the court. There are major obstacles to obtaining vital support services such as counseling, health care and legal aid.

Some incidents:

- The brutal gang rape and murder of an eight-year old girl Asifa Bano, who belonged to a Muslim nomadic tribe on 17 January near Kathua, a town in Kashmir shook the collective conscience of the nation and sparked outrage and anger across India.
- In the Nagaon district of Assam, an 11-year-old girl was raped and then burnt alive, and then an entire village came together to help the police catch the accused.
- It gets more disgusting. A four-month-old baby was raped and murdered in the historic Rajwada area of Indore. Hardened policemen were nearly moved to tears as they conducted a preliminary examination of the ravaged body.
- Seventeen men have been charged in India with the gang-rape of an 11-year-old deaf girl in the city of Chennai in July 2018.

Salient features of the Criminal Law (Amendment) Bill 2018

- The Bill seeks to replace the Criminal Law (Amendment) Ordinance promulgated on April 21, 2018 following an outcry over the rape and murder of a minor girl in Kathua in Jammu and Kashmir and the rape of another woman at Unnao in Uttar Pradesh.
- The Criminal Law (Amendment) Bill 2018 will amend relevant Sections of the Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC) and also the Protection of Children from Sexual Offences Act (POCSO Act) 2012.
- The Bill provides for a time-bound investigation in cases of rape of girl children. The investigation into the rape of a child must be completed within two months.
- The cases are to be tried in a fast track court. The Bill states that any appeal against a sentence by the trial court must be disposed of within six months.
- Under the new law, if the victim is under 12 years of age, the culprit faces a minimum sentence of 20 years. The maximum punishment is death. In the cases of gangrape of a child under 12, the minimum punishment is life sentence while the maximum is death penalty.
- In cases of children aged between 12 and 16, the offence of rape is punishable with the minimum sentence of 20 years. The maximum punishment in such cases is life imprisonment. If a girl aged between 12 and 16 is gangraped, the convicts face a
minimum punishment of life sentence.

- If the victim is aged between 16 and 18, the offence of rape is punishable with a minimum punishment of 10-year jail term and the maximum is life imprisonment. Repeat offenders will be punished with life imprisonment or death.
- However, the punishment for rape of boys has remained unchanged. This has resulted in greater difference in the quantum of punishment for rape of minor boys and girls.

Demerits of the Capital Punishment/ Arguments against the provisions:

Capital punishment is a debatable subject and criminologists, sociologists and the legal fraternity are always divided on this issue.

- **Justice P Bhagwati** while delivering a dissenting opinion in the case of Bachan Singh vs State of Punjab (1982) case held capital punishment to be unconstitutional.
- The Law Commission of India in its report on death penalty said that after many years of research and debate a view has emerged that there is no evidence to suggest that the death penalty has a deterrent effect over and above its alternative – life imprisonment.
- **The Justice JS Verma committee**, which was formed after the December 2012 Delhi gang rape and murder case, in its report concluded that death penalty would be a regressive step in the field of sentencing and reformation.
- Human Rights Watch opposes the use of the death penalty in all cases. Capital punishment for rape is the easiest and most convenient demand to raise, yet the most harmful one for rape survivors. It is all about retribution, disregards the reformatory aspect of the criminal justice system, and, most importantly, is said to have little deterrent effect.
- There are rapists who kill the victims, and there are rapists who don’t. Now, if the maximum punishment in either case is the same, the rapist would reason that by killing victim he/she may never be exposed. There are numerous instances of the perpetrators killing their victims, so stringent anti-rape laws are perceived not to be deterrents but measures that further instigate rapists to kill the victims.
- Rape is already underreported in India largely because of social stigma, victim-blaming, poor response by the criminal justice system, and lack of any national victim and witness protection law making them highly vulnerable to pressure from the accused as well as the police. Children are even more vulnerable due to pressure from family and society. Increase in punishment, including the death penalty may lead to a decrease in reporting of such crimes.

Other initiatives

**POCSO Act Significance**

- Gives exclusive definition to the crime of sexual offences against children
- Deal with sexual assault & sexual harassment against children while safeguarding the interests of the child at every stage of judicial process

However, the provisions of POCSO are not properly applied by the police and other parties. Consequently, child offenders get away despite a stringent law. There is a need for greater
awareness, training and familiarization of application of the law by police.

Child Pornography: SC Stand

- Centre to suggest ways and means to curb child pornography
- One needs to draw a distinct line between art and obscenity and child pornography cannot be justified in the name of freedom of speech and expression
- Parameters regarding pornography has to be decided as 19 (1)(a) of the Constitution is not “absolute” and is subject to reasonable restrictions
- Asked the Centre to seek advice from the experts and suggestions from NCW on banning of websites dealing with adult and child pornography

Government Stand

- Agencies like Interpol & CBI are taking necessary steps to block sites related to child pornography
- It is possible to ban child pornography but it is not possible to ban pornographic websites as they are not under any country’s jurisdiction. Moreover most servers are located outside India
- The method of blocking the URLs of such websites is usually ineffective as most such websites continue to operate by simply changing their URLs.

Aarambh Initiative – Country’s first ever hotline to curb sexual abuse of children through Internet & to remove child pornographic content online.

CBI

The Central Bureau of Investigation (CBI) has set up an Online Child Sexual Abuse and Exploitation (OCSAE) Prevention/Investigation Unit at its headquarter in New Delhi.

- The unit will function under the CBI’s Special Crime Zone.
- The unit’s territorial jurisdiction would be throughout the country.

Functions of the Unit

- It will probe offences covered under various provisions of the Indian Penal Code (IPC), the Protection of Children from Sexual Offences (POCSO) Act and the Information Technology (IT) Act, apart from other relevant laws.
- It will collect and disseminate information on online child sexual abuse and exploitation.

NCPCR
The Ministry has enacted the Commissions for Protection of Child Rights Act (CPCR), 2005, extending pan-India except the State of Jammu and Kashmir, under which National Commission for Protection of Child Rights (NCPCR) is mandated to function for protection and promotion of child rights. The Commission may inquire into complaints and take suo motu notice of matters relating to-

1. Deprivation and violation of child rights;
2. Non-implementation of laws providing for protection and development of children;
3. Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children;
4. Or take up the issues arising out of such matters with appropriate authorities.

Functions and Powers

The Commission shall perform all or any of the following functions, namely:

- Examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation.
- Present to be central government, annually and at such other intervals, as the commission may deem fit, reports upon working of those safeguards;
- Inquire into violation of child rights and recommend initiation of proceedings in such cases;
- Examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures;
- Look into matters relating to children in need of special care and protection, including children in distress, marginalised and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures.
- Study treaties and other international instruments and undertake periodic review of existing policies, programmes, and other activities on child rights and make recommendations for their effective implementation in the best interest of children.
- Undertake and promote research in the field of child rights.
- Spread child rights literacy among various sections of society and promote awareness of the safeguards available for protection of these rights through publications, media, seminars and other available means.
- Inspect or cause to be inspected any juvenile custodial home or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority including any institution run by a social organization, where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary.
- Inquire into complaints and take suo moto notice of matters related to:
  1. Deprivation and violation of child rights.
  2. Non implementation of laws providing for protection and development of children.
  3. Non compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such
children or take up the issues arising out of such matters with appropriate authorities.

- Such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.