

## Death Penalty For Child Rapists: Is This What The Nation Needs?



(Image source: <https://103.16.74.140/world/south-asia/india/india-clears-ordinance-introduce-death-penalty-child-rapists-1565698> )

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### Death Penalty For Child Rapists: Is This What The Nation Needs?

*The NCRB statistics on child rape cases in India indicate that over the past few years there has been a significant increase in the number of cases, the number which may only be rising in 2018. In the view of rising rape cases, the Union Cabinet has approved an ordinance to allow courts to award the death penalty to those convicted of raping children up to 12 years of age. Will this ordinance be able to solve the problem and reduce such incidents or will it cause India's children more harm? Only time will tell.*

#### The new Ordinance

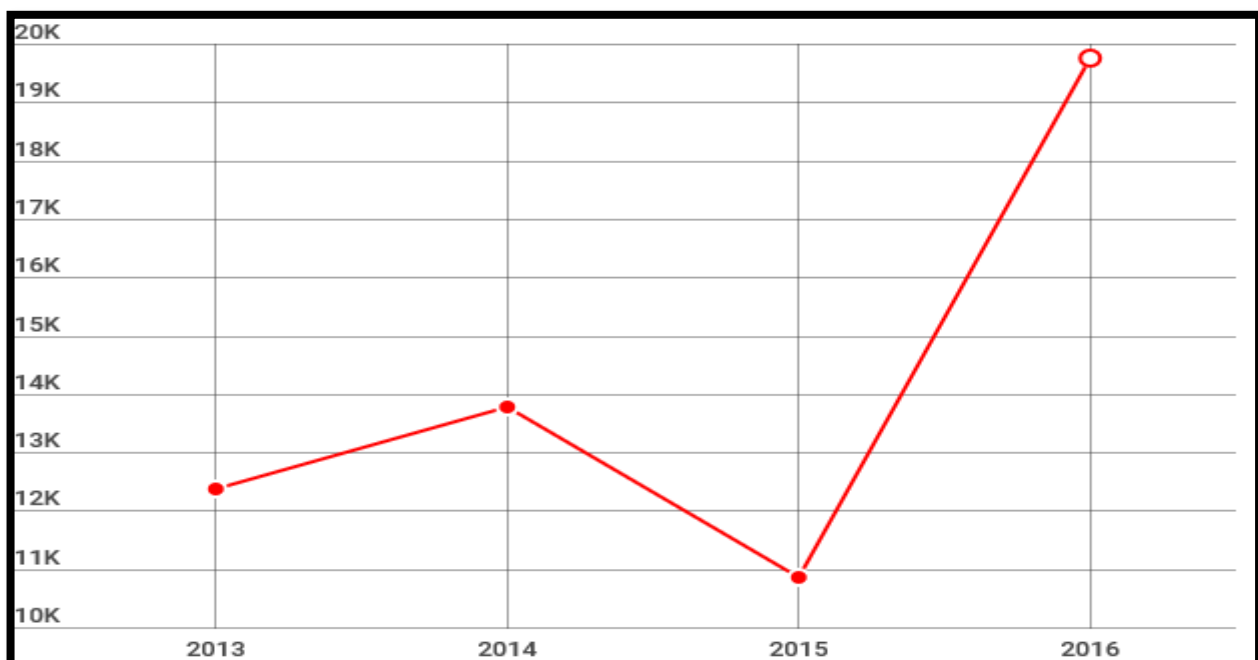
President Ram Nath Kovind on Monday 23<sup>rd</sup> April 2018 approved the ordinance sent by the Union government that strengthens the Protection of Children from Sexual Offences (POCSO) Act and allows courts to award death penalty to those convicted of raping children below 12 years of age. The ordinance comes in the wake of outrage over the brutal rape and murder cases involving a minor in places like Kathua, Jammu & Kashmir, Surat, Indore, Maharashtra and Delhi over the past few weeks. Existing provisions of the POCSO Act provide for life imprisonment, though after the Nirbhaya case in 2012 the Centre introduced death penalty in cases where a woman either dies or is left in a vegetative state after rape. The provisions of the new Ordinance are as follows:

- **Rape of girls below the age of 12:** The Ordinance provides for stringent punishment for rape of girls under the age of 12, with a minimum of 20 years' imprisonment or imprisonment for rest of life extending to death.
- **Gang rape case of girl below the age of 12:** In case of gang rape of a girl below 12 years, the minimum punishment will be imprisonment for the "rest of life" and the maximum, death sentence.
- **Rape of a girl between 12 and 16 years :** As per the ordinance, maximum punishment for rape of a child between 12 and 16 years could be from 10 years of rigorous imprisonment in prison to 20 years, "extendable to imprisonment for rest of life. As in case of gang rape of a girl between 12 and 16 years of age the punishment would be imprisonment for the rest of life of the convict.
- **Rape of girls below the age of 16:** For the offence of rape, of those above 16, minimum punishment has been increased from rigorous imprisonment of 7 years to 10 years, extendable to life imprisonment.
- **Ensuring speedy justice:** The proposed Ordinance sets a time-limit of two months for investigation and trial in rape cases to be completed and prescribes a time limit of six months for disposal of appeals in rape cases. It also set a deadline of three months to set up new fast-track courts in consultation with States and UTs and High Courts, create new posts of public prosecutors, ensure special forensic kits for rape cases at all police stations and hospitals, provide manpower for investigation of rape cases and set up special forensic labs in each State/UT exclusively for rape cases

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### Need for such an ordinance

According to the NCRB data, crime against children in India has increased by a sharp 11 per cent between 2015 and 2016 with 43.3% of the total female rape victims identified as minors out of which at least 13% of the minor female victims were of age 11 and below (In 2015, 10,854 cases of rape under section 376 of the IPC and under sections 4 and 6 of the Protection of Children against Sexual Offences were registered across the country, while 2016 saw total number of 19,765 such cases being registered from 8,541 registered in 2012).



Source: <https://www.thequint.com/voices/opinion/minor-rapes-in-india-data>

Further, despite specific data not available with respect to child rapes, NCRB data shows that in most cases the perpetrators are known to the victims; in 94.6% of the rape cases reported in 2016, the offenders were known to the victims (it should also be noted that the NCRB figures only reflect the number of crimes registered by the police. These may or may not reflect the actual situation on the ground). In fact as per the 2016 NCRB report, out of the 38,947 cases of rape/penetrative sexual assault registered under Section 376 IPC and Sections 4 and 6 of the POCSO Act, in 36,859 (94.6%) cases the accused was known to the rape survivor. In 630 cases, the accused was the father, brother, grand-father or son, while in 1,087 cases, the accused was a close family member; in 2,174 cases the accused was a relative while in 10,520 cases the accused was a neighbor. In such a scenario, the proximity of the abuser to the victim makes the task of reporting the crime difficult and traumatic for the victim. Even if she finds the courage to come out and complain about it, financial constraints and social stigma often result in the victim turning hostile. Further,

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insensitive and delayed methods of police investigation, destruction of crucial evidence, delayed forensic reports, insensitive counseling, uneven disbursement of compensation to rape survivors, under designed cross-examination process of the survivor and of her witnesses by defense lawyers, inadequate witness protection and prolonged ongoing court proceedings, all together disempowered rape complainants and often result in low conviction rates.

Low conviction of rape is also a serious issue. In 2016, out of the 26,898 cases of child rapes for investigation that also includes pending cases from the previous year, the police disposed of 18,439 cases while 8,459 (31.4%) cases are still pending and charge sheets were filed in 94.8% of the cases. When it comes to trials in court, trials related to child rape cases were completed only in 6626 cases and 57,454 (89.6%) cases are still pending. Moreover, as per a recent study by Kailash Satyarthi Children's Foundation, it would take the courts two decades to clear the backlog of cases related to child sex abuse. Under such a scenario, while the provision of capital punishment to rapists may help changing the scenario, but this alone is not sufficient without speedy action by police and the courts as it is only because of this that rapists are further emboldened.

### **So then will the Ordinance work?**

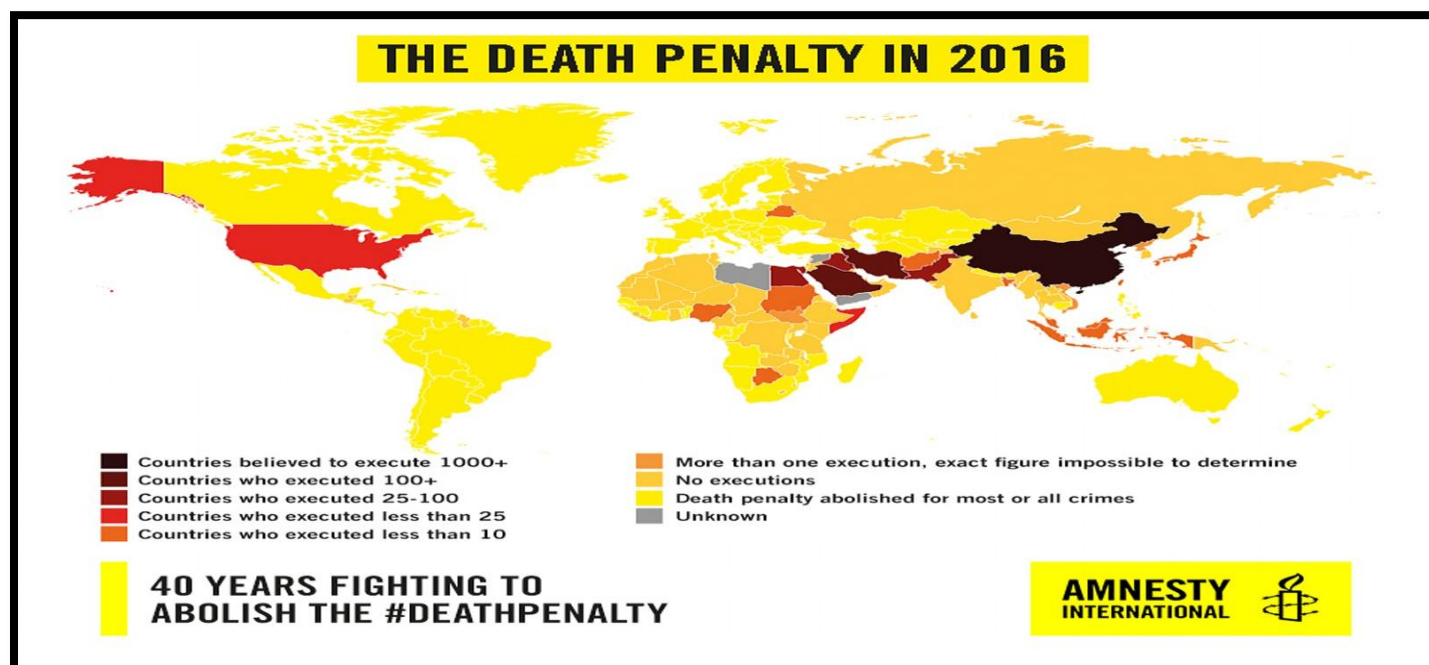
Since the ordinance has been made announced, public opinion seems to be divided on this decision. While some feel that capital punishment will act as a major deterrent others have questioned the government over the delay in proper execution of existing laws (POSCO) and also maintained that death penalty may instigate criminals to kill the rape survivors.

A major problem with the ordinance is that it is not victim centric and by introducing stringent punishment like death penalty, the government has not only tried to divert the attention from its failure to be able to control such crimes, despite laws like (POSCO, the Criminal Law (Amendment) Act, 2013 etc). Instead what it tries to portray is death penalty as a panacea for all evils. Apart from this, even if we leave leaving aside questions on the morality of capital punishment, there is little evidence that death sentence is a deterrent. Secondly, while the ordinance proposes setting up of fast track courts and also sets up a time limit for the investigation process, it needs to be pointed out that provision is also mentioned under the POSCO Act that already provides for appointment of special courts and special public prosecutors. Further it has been more than 5 years since the enactment of the Act, yet most of these special courts lack basic screen between the victim and the accused, waiting area, separate entrance and other basic infrastructural requirements for recording the evidence of a victim. No social audits have been conducted to ensure that 'one stop centers' for rape victims proposed under the Act are functioning properly. In addition to this, in many places, the Child welfare Committees hardly function. Thirdly, by amending the POSCO Act that recognizes that both boys and girls could be sexually assaulted and now to include death as a punishment for rapists of girls under 12, the ordinance not only dilutes the spirit of POSCO that sought to protect all children from sexual assault, regardless of their gender.

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Another question that arises here is whether death penalty would really help preventing such crimes. The JS Verma Committee report, after it examined the submissions of The Working Group on Human Rights in India and resolutions adopted by the UN Commission on Human Rights, pointed out that there was considerable evidence to prove death penalty does not really act as a deterrent for serious crimes and hence had suggested amending life imprisonment to always mean imprisonment for ‘the entire natural life of the convict’. In fact, even after the Supreme Court awarded death penalty in the 2012 gang rape case; rapes have not decreased in India (there was a marginal reduction in crime against women in 2015 as compared to 2014 as per NCRB).

Death penalty is an accepted form of punishment in many countries but international law advocates for the restrictive use of death penalty and policy direction not to further delay or prevent abolition of capital punishment. In fact there is no evidence to suggest that the threat of execution acts as a special deterrent which is reflected in a clear global trend moving towards the abolition of the death penalty.



Source: <https://www.virgin.com/richard-branson/still-work-be-done-abolish-death-penalty>

### Way Forward

As per Asmita Basu, Programmes Director, Amnesty International India, “The government’s decision to introduce death penalty through an ordinance is a knee-jerk reaction that diverts attention from the poor implementation of laws on rape and child protection. Studies have shown that most perpetrators are “known” to child victims—introducing the death penalty in such circumstances will only silence and further endanger

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children. Both the Justice Verma Committee and India's Law Commission have questioned the deterrent value of death penalty in preventing crimes." "Instead, the government must allocate adequate resources for the effective implementation of existing laws, improve conviction rates and ensure that justice is done in all cases of child abuse. The President must not approve this regressive ordinance, as it does little to promote the best interests of children."

Before implementing such a harsh punishment as a solution to rising number sexual assaults/rape cases against children and women, the government should look into issues such as stigma, family and societal pressure, financial constraints that disempower the victims. Therefore the present insensitive criminal justice system in India needs urgent reform to allow victims to come forward more and for their rapists to face punishment for their crimes. As highlighted by data above that most perpetrators of child sexual abuse are known to the survivors; the death penalty in such a scenario may result in more under reporting, trials should certainly be time bound and justice denied. Thus the focus should be more on enhancing rape conviction rates and taking steps to rehabilitate and empower survivors. Only then, punishments like death penalty life imprisonment implemented as a law etc will help in creating a secure future of the children of this nation.

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## Headline

### **India, China account for over half of global deaths due to air pollution: Report**

(Jayashree Nandi, *The Economic Times*, April 11, 2018)

A study conducted by the US-based Health Effects Institute's State of Global Air study estimates that India and China together account for more than half of global deaths due to air pollution. The report also found that increasing exposure to air pollution combined with an ageing population has led to India rivalling China in health burden from bad air. Further, the report states that India and China could be experiencing a "double burden" due to combined exposure to outdoor air pollution and household air pollution. "India and China — with 43% and 30% of their populations, respectively, using solid fuels — had the largest numbers of people exposed to household air pollution in 2016: 560 million in India and 416 million in China," the report reads.

Read More: <https://economictimes.indiatimes.com/news/environment/pollution/india-china-account-for-over-half-of-global-deaths-due-to-air-pollution-report/articleshow/63822904.cms>

Date Accessed: 16.04.2018

## Governance and Development

### India highest recipient of remittances

(PTI, *The Hindu*, April 24, 2018)

The Indian diaspora sent back nearly \$69 billion home last year, making India the recipient of the highest remittances. In its latest Migration and Development Brief, the World Bank noted that reversing the previous year's sharp decline (8.9% in 2016, at \$62.7 billion), remittances to India in 2017 picked up by 9.9%, and was followed by China (\$64 billion), the Philippines (\$33 billion), Mexico (\$31 billion), Nigeria (\$22 billion) and Egypt (\$20 billion). The Bank estimated that officially recorded remittances to low- and middle-income countries reached \$466 billion in 2017. This was an increase of 8.5% over \$429 billion in 2016. While flows to Pakistan and Bangladesh were both largely flat in 2017, Sri Lanka saw a small decline (-0.9%). In 2018, remittances to the region will likely grow modestly by 2.5% to \$120 billion.

Read More: <http://www.thehindu.com/todays-paper/tp-business/india-highest-recipient-of-remittances/article23652057.ece>

Date Accessed: 24.04.2018

## Governance and Development

### GOVERNMENT

#### With over 30 million households yet to be electrified, Saubhagya Yojana way behind the target

(Kiran Pandey, *Down to Earth*, April 24, 2018)

According to data provided by the power ministry, as on April 23, 2018, only 46,83,000 households across the country have been electrified under the Saubhagya Yojana. Jharkhand is the slowest state to catch up where over 52 per cent of the households have not been electrified, followed by Uttar Pradesh, which has a backlog of close to 44 per cent. The Rs. 16,320-crore scheme was launched by the Prime Minister on September 25, 2017 with an aim of ensuring last-mile connectivity to willing households to help achieve the goal of giving every household the access to electricity by December 31, 2018. It had a target to complete the electrification of 36,991,617 un-electrified houses by December 2018. As per data available on the official website of Saubhagya Yojna, on an average 22,300 households are electrified per day. But to achieve its target, the government has to electrify 130, 802 houses each day till December 31, 2018

Read More: <http://www.downtoearth.org.in/news/with-over-3-crore-households-yet-to-be-electrified-saubhagya-yojna-way-behind-the-target-60284>

Date Accessed: 24.04.2018

#### Maharashtra records highest sugar production, millers start distress sale

(Parthasarathi Biswas, *Indian Express*, April 24, 2018)

Maharashtra's greatest production of sugar has failed to lift the mood of the industry which is facing the brunt of low prices. With sugar commissioner stepping up action against millers that have failed to pay farmers, distress sale by mills is likely to further reduce the prices. Issuance of orders under Revenue Recovery Code combined with low commercial demand have resulted in prices dropping to a record low and experts predict it is unlikely to increase this season. Preparing for logistics have also given rise to panic amongst millers especially since the export quotas issued by the government seems unattainable.

Read more: <http://indianexpress.com/article/india/maharashtra-records-highest-sugar-production-millers-start-distress-sale-5149394/>

Date accessed: 24.04.2018

### HEALTH

#### More Younger, Educated Indian Women Giving Birth At Unsafe Intervals

(Vipul Vivek, *India Spend*, April 24, 2018)

An IndiaSpend analysis of health data has revealed that educated girls within the age group of 15-29 years give birth at shorter, more unsafe intervals. NFHS Reports have repeatedly stated that giving birth within a window period of 24 months can be unsafe for the health of the mother. However, according to the analysis, the median interval between two live births fell by 2.5 months to 22.5 months in 2015-16 from 25 months in 2005-06 for women aged 15-19 years and by 6 days to under 29 months from 29 months for women aged 20-29 years. While the overall median gap between successive live births rose by 27-28 days for women aged 15 to 49 years, women with highest education levels was the only group that saw birth intervals worsen. This was mainly attributed to patriarchy and families preferring a boy child over a girl. The ratio was also found to be higher in urban areas.

Read more: <http://www.indiaspend.com/cover-story/more-younger-educated-indian-women-giving-birth-at-unsafe-intervals-83892>

Date accessed: 24.04.2018

## Governance and Development

### **1 in 5 Multidrug-Resistant Patients Do Not Complete Treatment, Imperiling India's Battle Against TB**

(Swagata Yadavar, *Indiaspend*, April 10, 2018)

According to an analysis, nearly one in five multidrug-resistant tuberculosis (MDR TB) patients put on treatment in the public sector were lost to follow-up – implying that they either did not start treatment or their treatment was disrupted for more than two months. With approximately 2.8 million TB patients, India has about a quarter of the world's total TB cases. Of these, 5.4% are MDR TB cases, which are more difficult and expensive to treat. While the number of TB cases fell from 2015 to 2016, the number of MDR TB cases increased by 13% in November 2017. Of 24,354 MDR TB patients recorded in the treatment initiation register between 2014 and 2015, 20% died and 19% were lost to follow-up.

Read More: <http://www.indiaspend.com/cover-story/1-in-5-multidrug-resistant-patients-do-not-complete-treatment-imperiling-indias-battle-against-tb-51110>

Date Accessed: 23.04.2018

## **LAW AND JUSTICE**

### **Death Penalty for Child Rape Unlikely to Deter Traffickers, Says Campaigner**

(Roli Srivastava, *The Wire*, April 24, 2018)

A major criticism of the new ordinance on death penalty child rapes is that it is unlikely to be applied to child sex trafficking and will not deter crimes of trafficking. Reports of human trafficking rose by almost 20 percent in 2016 against the previous year to more than 8,000. More than 60% of nearly 24,000 victims rescued were children, according to government data. Sunitha Krishnan, noted humanitarian, has contended that for this order to be effective and reduce crimes against children, focus must equally be paid to victims of sex trafficking and that POCSO must be made applicable to such crimes.

Read more: <https://thewire.in/women/death-penalty-for-child-rape-unlikely-to-deter-traffickers-says-campaigner>

Date Accessed: 24.04.2018

## India and the World

### Nepal, India joint secretaries to discuss trade, transit

(The Indian Express, April 24, 2018)

The 2 day inter governmental subcommittee meeting between India and Nepal have listed trade, commerce and transit as their focus areas for the discussion. The meeting while covering the whole gamut of commerce will concentrate on controlling illegal border trade as well as sharing access to waterways. It will also aim to strengthen transit relationship and form a joint study team to conduct a feasibility study for operating water transport for Nepal via Indian seas.

Read more: <http://indianexpress.com/article/india/nepal-india-joint-secys-to-discuss-trade-transit-5150199/>

Date accessed: 24.04.2018

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