What the death penalty for child rape overlooks

The focus should be on first building a robust protection system to ensure that children's vulnerabilities are not exploited

By: **Puja Marwaha** - 01 May 2018

The most simple and logical question that the increasing numbers of crimes against children lead us to is: what can we do to prevent these numbers from rising and how do we keep our children safe? Common sense would suggest that the answer lies in building a robust protection system by creating vigilant communities and institutional mechanisms to ensure that children's vulnerabilities are not exploited. Only when children slip through the cracks despite all measures for child protection should the aspect of strict and assured punitive action become relevant. The focus of the latest ordinance that has sought to further strengthen the legal construct in order to prevent cases of child rape has unfortunately overlooked the first crucial step and directly moved on to the second—and that too is not without its shortcomings.

In terms of budgetary provisions for ensuring child safety as reflected in the Union Budget 2018-19, there is just a marginal increase from Rs648 crore to Rs725 crore in the Integrated Child Protection Scheme (ICPS). With an investment less than 1% of the total budget for children and a cash-strapped system that lacks professionals addressing numerous aspects of child protection and safety at various executive, administrative and judicial levels, are we anywhere near addressing the core reasons of crimes against children?

We as a country have failed to create an environment where child protection is a top priority. We haven't done enough in awareness building and changing the narratives of deep-seated patriarchal belief systems. We haven't invested enough in challenging and transforming a culture which is, in its own ways, tolerant of sexual aggression as a means of exerting power and asserting dominance over the vulnerable.

Having completely ignored the importance of strengthening the child protection system, we have instead decided to bring in an ordinance to address rape against children after it has taken place. The

age of the child and the possibility of death penalty for the rapist of a child below the age of 12 have taken centre stage. While bringing in an ordinance, which has multiple layers related to the nature of crimes—proximity of the child to her perpetrators, duration of the crime—more time should have been given to the experts and stakeholders to express their views to make it more effective in addressing the core preventive aspects of child protection.

Coming to the content of the ordinance itself, two important changes have been aimed at—the introduction of punishment based on the age of the victim and the number of perpetrators. In the case of rape of girls under 16 years of age, the minimum punishment has been increased from 10 years to 20 years, which is extended to life imprisonment. In the case of gang rape of a girl under the age of 16, punishment would invariably be life imprisonment for the convicted. Insertion of a new Section, 376AB, states that punishment for rape of a child under the age of 12 is a minimum of 20 years extended to life imprisonment or death penalty, and under Section 376DB, which pertains to gang rape, each of the persons involved would be treated the same way.

However, going by age-segregated data for sexual crimes that most of the victims are in the age-group of 12-18, there is ambiguity in understanding the basis of determining 16 and 12 years as the sealing age. Any criminality with children should be ideally looked at with the same lens. Here, one is unable to fathom the reasoning behind bringing in differential ages of girls below 12 and 16 and the ensuing punishment.

The way crime against children is increasing, it is certain that the state had to come up with massive changes in the way we look at the issue of child protection. While stricter punishment and speeding up of court proceedings is indeed a welcome move, insertion of death penalty is retrograde as it may pose a threat to the judicial process. As countries across the world progressively reduce death penalty as a form of punishment, it is highly questionable when we go down this path now. Apart from the fact that the death penalty has principally been a huge human rights concern, data from across the globe proves the fact that it has not been a deterrent in reducing crimes.

The latest Crimes in India data reveals that in about 95% of the cases, children are assaulted by people known to them, which means that these people may be their family, relatives or neighbours.

Hence, there is a high chance that crimes committed by persons within the victim's proximity would be brushed under the carpet. In a highly patriarchal societal set-up with a backdrop of impoverished backgrounds and social realities, there is a high probability that the child victims would be increasingly pressurized to not report, or eventually will go back on their initial statements.

While this amendment would come into action after the criminal activity has already occurred, what is missing here is serious deliberation and decisive action to prevent crime against children, which requires enormous investment at all levels. We can have numerous legislation and amendments but all of this is bound to fail if we do not strengthen implementation of the same.

To cut a long story short, unless we address all of these on a war footing, we can hardly expect the story to change.

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