Amending Anti-Rape Laws

What is the issue?

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- The Criminal Law (Amendment) Ordinance, 2018, was passed by the Union Cabinet in response to current widespread outrage against rapes.
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- While the ordinance has enhanced punishments, there are glaring systemic deficiencies that need to be addressed to genuinely improve the situation.
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What were the major aspects of the ordinance?

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- **Provisions -** The ordinance enhances the punishment for rape by amending Section 376 (rape laws) of the Indian Penal Code (IPC).
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- The minimum punishment for rape has been increased from the existing 7 years to 10 years now (minimum for raping an ‘under 16’ is 20 years).
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- All convicts in a gang-rape case will be sentenced to life and the maximum punishment for raping an ‘under 12’ has been enhanced to include death.
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- **Gender Sensitive -** “Protection of Children from Sexual Offences (POCSO) Act” is a gender-neutral law and covers victims who are both boys and girls.
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- However, the recent ordinance approved by the Cabinet has been worded to be stringent only against sexual crimes against females.
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- This was probably due to their specific vulnerabilities, but “Ministry of Women and Child Development” has asked for making the ordinance gender neutral.
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Was there no capital punishment in the rape laws until now?

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- While many verdicts have granted the maximum punishment of death for ‘rape along with murder’, a death sentence wasn’t an option for ‘rape alone’.
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- In the aftermath of the December 2012 Delhi gang-rape and murder, the justice JS Verma committee had decried ‘Death Penalty for rape’.
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- The committee held that granting death for rapes would be disproportionate and regressive in the context of sentencing and reformation.
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- As the committee’s views created public discontent, the then government decided to include death as the maximum punishment in two specific cases.
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- Hence, death for rape was to be an option – for repeat offenders, and for rapes that cause the victim to go into a permanent vegetative state.
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- The current ordinance enhances the scope for granting death to rapists.
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- Notably, this development makes India the 14^{th} country that has death sentence as an option for convicts in rape cases.
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What are the arguments against the ordinance?

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- Capital punishment is all about retribution, disregards the reformative aspect of the criminal justice system.
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- Additionally, there is little evidence to support that it has a deterrent effect.
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- The primary argument against awarding capital punishment for rape has been that it would drive the accused to kill the victim to get rid of evidence.
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- The ordinance seems to disregard the fact that a majority of sexual assault cases go unreported due to the child’s silence or lack of family support.
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- Significantly, as per the statistics of “National Crime Records Bureau

(NCRB)" on rapes, 94% of the rapists are known to the victim.
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- Hence, critics feel that the incorporation of death penalty as an option will put the victims under pressure to suppress the matter and not pursue the case.
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- The new ordinance provides for fast-track courts, and a two-month time period each for police investigation and completion of trial of all rape cases.
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- But it is mum on the appointment of more judges to handle the burden or sensitising the judiciary and the police in dealing with such cases.
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- It is also silent on victim support and rehabilitation, despite the dire need for such actions being felt across the spectrum of the judicial process and further.
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Has anything been suggested as a way to deal with this?

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- Deterrence of the crime and the victim's access to justice require both better implementation of existing laws and systemic changes.
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- There is a huge pendency of cases – all of which needs to be fast-tracked through political will and coordinated action.
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- There are provisions for taking actions against police officers who dissuade complainants from filing cases by coercion (or persuasion).
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- But these are rarely invoked, although a number of victims complain of having been turned away at police stations.
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- There are also considerable biases in verdicts as most convicts seem to be from the poor sections of the society.
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- Notably, this is despite the fact that offenders are prevalent across the socio economic spectrum.
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Source: Indian Express

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