Death Penalty for Child Rape

What is the issue?

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- Rajasthan and Madhya Pradesh have passed Bills introducing death penalty for rape of a girl below the age of 12 years.
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- A legal backing for death penalty demand in child rape cases needs a relook on both social attitude and government's responsibility.
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What is the rationale behind the legislation?

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- Firstly, there is the belief that harsher punishments will deter people from committing child rape.
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- Also, justice for child survivors demands that the law provide for the death penalty.
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- Lastly, the disgust for the crime makes the perpetrator ‘deserving’ of death penalty.
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Why are the arguments flawed?

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- **Deterrence** - The deterrence argument puts forth that fear of harshest punishment will prevent individuals from committing child rape.
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- But social, economic, cultural, psychological and other factors in one's life interact in far more complex ways.
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- Various studies have proved the uncertainty of death penalty in being an effective deterrent.
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- Moreover, in the context of child rape, many preventive measures and policies do have a definitive impact on preventing child rape.
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- These may include risk assessment and management, cognitive behavioural treatment and community protection measures.
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- Diverting resources to the death penalty, is more like taking away from developing these strategies that have greater preventive potential.
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- **Justice** - The argument of death penalty as justice to the child survivor seeks to cover-up the real reasons preventing justice.
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- Notably, the conviction rates are low under the Protection of Children from Sexual Offences Act, 2012.
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- There are some grave concerns over the manner of investigations and criminal prosecutions under the POCSO Act.
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- There is lack of specialised investigators, prosecutors, judges, mental health professionals, doctors, forensic experts and social workers.
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- Inadequate child protection and rehabilitation services, lack of compliance with child-friendly legal procedures are some other concerns.
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- Furthermore no real system of positive measures to reduce vulnerabilities of children in this context has been developed.
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- Working on these shortfalls is the need of the hour to ensure justice for child survivors.
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- **Under-reporting** - A large proportion of perpetrators are family members or those close to or known to the family.
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- This results in massive underreporting of such crimes.
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- This concern will only intensify with death penalty, as the child's family risks sending a family member or a known person to the gallows.
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- **Attitude** - The abhorrence or disgust associated with the crime and perpetrators of such crimes lies at the core of this legislation.
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- This social attitude drives the sentiment that such individuals ‘deserve’ death penalty.
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- Ideas like 'human rights are meant for humans and not devils who are involved in heinous crimes' need assessments.
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- **Legal** - Under the Constitution, a legislation has to always give a sentencing judge the option to choose between life imprisonment and death penalty.
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- Death penalty cannot be declared as the only punishment for any crime.
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- The sentencing judges will have to make this choice in the context of child rape too.
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- **Arbitrariness** - Arbitrariness in imposing death sentences has been explicitly discussed in judgments of the Supreme Court.
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- It has also led the Law Commission to recommend the gradual abolition of the death penalty in one of its reports .
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- The arbitrariness concern will only worsen in child rape cases, when judges decide on death sentence based on the ‘rarest of rare’ standard.
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- It must be ensured that it does not become a judge-centric exercise with individual predilections of a judge taking over any rule of law.
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- Arriving at measures and standards to decide certain instances of child rape as worse than others is a questionable exercise.
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- **Vulnerability** - The arbitrariness of the death penalty in India also arises from the discriminatory impact of the choice of what constitutes ‘rarest of rare’.
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- The Death Penalty India Report of 2016 found that over 75% of death row prisoners were extremely poor.
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- They belong to marginalised groups with barely any meaningful access to legal representation.
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- Thus, in most cases, the weakest sections of the society bear the burden of the death penalty.
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- It is important to understand this implication, in the discussion on death penalty for child rape.

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What is the way forward?

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- Measures that the governments ought to take are different from steps meant to convey public abhorrence.
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- The social menace of child rape requires sustained planning, engagement, and investment of resources by the government.
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- Death penalty for child rape is a counterproductive diversion and an easy way out on the issue.
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Source: The Hindu

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