Handling Child Rape Cases

What is the issue?

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- With the recent Kathua and Unnao rape incidents, the demand for death penalty for rape convicts is back.
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- However, the decision on death penalty needs a thorough view through the social and legal lenses of the nation.
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What are the two recent cases?

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- **Kathua** - It involves an 8-year-old girl from Kathua, J&K.
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- She was abducted, drugged, raped and killed.
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- The accused are identified and arrested.
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- Notably, the deceased is a Muslim girl and the accused are Hindus.
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- These identities have made it an issue of communal politics.
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- **Unnao** - A minor girl was allegedly lured by promise of patronage and was raped by the local MLA from the current ruling party.
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- Her family had to struggle to get a complaint registered.
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- She then went missing, and a case of abduction was registered.
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- She was recovered and gave a statement that did not implicate the MLA.
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- She and her family persisted in alleging rape and began to protest outside the CM’s residence in Lucknow, UP.
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- Her father is said to have been beaten up by the MLA’s brother and then, picked up by the local police.
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- He was sent to jail, where he eventually died in judicial custody.
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- The government interfered and the policemen involved in the arrest of the father were suspended.
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- The case was transferred to the CBI and the MLA was arrested.
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- The charges of rape may or may not be established, but the abuse of power is evident.
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Why are child rape cases complex?

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- **Nature** - Child sex abuse is a complex crime unlike murder.
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- There is an attitude of equating family ‘honour’ with such incidents.
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- Societal taboo, under-reporting and hostility to the victim make it more complicated.
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- **Underreporting** - In 95% cases, the perpetrator is known to the child.
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- In such cases, the child is under severe pressure to not report the abuse.
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- In most cases, the child victim turns hostile.
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- Apparently, only a lesser percentage of them actually testify against the accused.
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- The severity of punishment holds children (family) back from reporting and testifying.
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- This, along with poor investigation, results in low conviction rates.
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- **POCSO** - The POCSO Act has provisions for special, child-friendly courts.
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- It calls for in-camera testimony, child psychologists, protection officers and educators.
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- However, these are rarely implemented in states.
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- This results in hostile questioning by defence lawyers, threats by the perpetrators, and delays in registering of cases.
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- In the present case, owing to its special status, J&K does not even have a POCSO law.
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- So the perpetrators must be tried under the Indian Penal Code.
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Is the call for death penalty valid?

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- **Rationale** - The demand for death penalty arises from disgust and society's need for revenge.
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- This alone could not certainly be the basis for deciding on death penalty.
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- **Effect** - Death penalty is already a provision in most cases.
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- Evidently, it has not been an effective deterrent against crime.
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- It will only aggravate the problem of under-reporting of child sex abuse cases.
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- **Judicial system** - There is a legitimate concern that the country's judicial system has not been consistent in awarding death penalty.
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- The Law Commission earlier recommended abolition of death penalty, except in terrorism-related cases.
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- It however observed that it is difficult to operate the 'rarest of rare cases' principle without a hint of arbitrariness.
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- It is wrong to force judges to compare the relative 'merits' of rape victims based on age and choose between death sentence and life.
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What is the way forward?

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- **Legislation** - Public sentiments do matter in a democracy.
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- But it cannot replace sensible policies and the rule of law.
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- Legislation thus ought to be a well-considered exercise.
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- It should not be a response to popular outrage in particular incidents.
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- **Policing** - The issue of lack of public trust in the police should be addressed.
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- It must be ensured that the police serve without fear or favour.
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- They must abide by due process, and devote enough time and resources to handling heinous cases.
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- They must be allowed to carry out investigations without undue pressures and influence.
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- **Social** - Besides these, the social attitudes towards women and children ought to change.
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- Sensitisation on gender matters and proper socio-psychological support are essential for the society in general and the potential perpetrators in particular.
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Source: The Hindu, Indian Express, Times of India

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