

Legislative Brief

The Criminal Law (Amendment) Ordinance, 2018

The Criminal Law (Amendment) Ordinance, 2018 was promulgated on April 21, 2018.

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Highlights of the Ordinance

- ◆ The Ordinance amends the IPC, 1860 to increase the minimum punishment for rape of women from seven years to ten years.
- ◆ Rape and gang rape of girls below the age of 12 years will carry minimum imprisonment of twenty years and is extendable to life imprisonment *or* death.
- ◆ Rape of girls below the age of 16 years is punishable with imprisonment of twenty years or life imprisonment.

Key Issues and Analysis

- ◆ The Ordinance amends the IPC, 1860 to increase the punishment for rape of girls. However, punishment for rape of boys has remained unchanged. This has resulted in greater difference in the quantum of punishment for rape of minor boys and girls.
- ◆ The Ordinance imposes death penalty for rape of girls below the age of 12 years. There are differing views on death penalty for rape. Some argue that death penalty has a deterrence effect on the crime and therefore helps prevent it. Others argue that death penalty would be disproportionate punishment for rape.

PART A: HIGHLIGHTS OF THE ORDINANCE

Context

Rape of women and minor children is an offence under the Indian Penal Code (IPC), 1860, and the Protection of Children from Sexual Offences (POCSO) Act, 2012. In 2016, 21% of the total 39,068 cases of rape were against minor girls below the age of 16 years.¹ Over the last year, several states have introduced or passed Bills to allow death penalty for rape of girls below the age of 12 years.² On April 21, 2018, the government promulgated the Criminal Law (Amendment) Ordinance, 2018.

Key Features

The Ordinance amends the IPC, 1860, POCSO Act, 2012 and other laws related to rape of women. The POCSO, Act states that the punishment which is higher between the POCSO Act and the IPC will apply to rape of minors.

Table 1: Major changes proposed in Criminal Law (Amendment) Ordinance, 2018

Age of woman	Offence	Punishment under IPC, 1860	Criminal Law (Amendment) Ordinance, 2018
Below 12 years	Rape	<ul style="list-style-type: none"> ▪ Minimum: 10 years ▪ Maximum: life imprisonment 	<ul style="list-style-type: none"> ▪ Minimum: 20 years ▪ Maximum: life imprisonment <i>or</i> death
	Gang Rape	<ul style="list-style-type: none"> ▪ Minimum: 20 years ▪ Maximum: life imprisonment 	<ul style="list-style-type: none"> ▪ Minimum: life imprisonment ▪ Maximum: life imprisonment <i>or</i> death
Below 16 years	Rape	<ul style="list-style-type: none"> ▪ Minimum: 10 years ▪ Maximum: life imprisonment 	<ul style="list-style-type: none"> ▪ Minimum: 20 years ▪ Maximum: no change
	Gang Rape	<ul style="list-style-type: none"> ▪ Minimum: 20 years ▪ Maximum: life imprisonment 	<ul style="list-style-type: none"> ▪ Minimum: life imprisonment ▪ Maximum: no provision
16 years and above	Rape	<ul style="list-style-type: none"> ▪ Minimum: 7 years ▪ Maximum: life imprisonment 	<ul style="list-style-type: none"> ▪ Minimum: 10 years ▪ Maximum: no change

Sources: Indian Penal Code, 1860; The Criminal Law (Amendment) Ordinance, 2018; PRS.

- Under the Code of Criminal Procedure, 1973 investigation into the rape of a child must be completed within three months. The Ordinance reduces this time period to two months for all rape cases.
- The Ordinance bars anticipatory bail in cases of rape of minor girls below 16 years of age. Further, any appeal against a sentence for rape cases must be disposed of within six months.

PART B: KEY ISSUES AND ANALYSIS

Gender-based differences in the definition of rape and punishment

Definition of rape is not gender neutral

IPC: Section 375

POCSO: Section 3

Ordinance: Clauses 4, 5, 6

In the case of rape of minors, according to the POCSO Act, the victim may either be male or female (and the offender could also be of either gender). However, in cases of adults under the IPC, rape is as an offence only if the offender is male and the victim is female. The Law Commission of India (2000) and the Justice Verma Committee (2013) had recommended that this definition of rape should be made gender neutral and should apply equally to both male and female victims.^{3,4} The Ordinance does not address this issue.

Widening difference in punishment between rape of girls and boys

POCSO: Sections 4, 42

IPC: Section 376(2)(i) Ordinance: Clause 4

The POCSO Act states that the higher punishment specified in it or in the IPC will apply for rape of minors. The POCSO Act has the same penalty for rape when the victim is a boy or a girl. However, the IPC provisions which apply only to rape of female victims carry a higher punishment. The Ordinance further widens this difference. Table 2 summarises the differences in punishment for rape of minor boys and girls.

Table 2: Differences in punishment for rape between minor boys and girls

Age (in years)	Boys	Girls (Before 2018 Ordinance)	Girls (After 2018 Ordinance)
Below 12	10 years to life imprisonment	10 years to life imprisonment	20 years to life imprisonment/death
12-16	7 years to life imprisonment	10 years to life imprisonment	20 years to life imprisonment
16-18	7 years to life imprisonment	7 years to life imprisonment	10 years to life imprisonment

Sources: POCSO, 2012; Indian Penal Code, 1860; The Criminal Law (Amendment) Ordinance, 2018; PRS.

Differing views on death penalty as punishment for rape

IPC: Section 376(2)(i), 376D

Ordinance: Clauses 5, 6

The Ordinance amends the IPC to allow for death penalty as punishment for rape of girls below the age of 12 years. While there is a larger question on allowing capital punishment, we discuss here the narrow question of introducing death penalty for the offence of rape.

While examining punishment for the offence of rape, the Justice Verma Committee (2013) deliberated on whether death penalty should be awarded.⁴ The Committee acknowledged that though rape was a violent crime, the punishment should be proportionate, as it was possible to rehabilitate the survivor. The Committee supported enhanced punishment extending up to life imprisonment for rape, but not death penalty.⁴ The Law Commission (2015) observed that in cases related to rape and murder of minor boys and girls, courts have differed in awarding death sentence.⁵ In March 2013, Parliament passed the Criminal Law (Amendment) Act, 2013 to amend the IPC to allow death penalty only in rape cases where the accompanying brutality leads to death or leaves the victim in a persistent vegetative state, and in cases of repeat offenders.

On the other hand, it has been argued that imposing death penalty for rape crimes could deter individuals from committing the offence and therefore help reduce its incidence.⁶ Further, awarding death penalty allows for retributive justice for the victims.⁶ Over the years, various court judgements have narrowed the application of death penalty to the 'rarest of rare' cases and issued criteria to determine whether the accused deserves a death sentence.⁷ This implies that courts can award death sentence for rape only in exceptional circumstances, which include where the reformation and rehabilitation of the convict is not possible.⁴

1. Crime in India – 2016, The National Crime Records Bureau, <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/Crime%20Statistics%20-%202016.pdf>.

2. These states include Haryana, Madhya Pradesh, Rajasthan, and Arunachal Pradesh, <https://www.thehindu.com/news/national/arunachal-prescribes-death-for-raping-girls-under-12/article23274886.ece>.

3. Report No. 172: Review of Rape Laws, Law Commission of India, March 2000.

4. Report of the Committee on Amendments to Criminal Law, 2013, January 23, 2013.

5. Report No. 262: The Death Penalty, Law Commission of India, August 2015.

6. Report No. 35: Capital Punishment, Law Commission of India, September 1967.

7. Bachan Singh vs. State of Punjab (1980) 2 SCC 684; Macchi Singh vs State of Punjab (1983) 3 SCC 470.

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