

## THE CRIMINAL LAW (AMENDMENT) ACT, 2018 – AN AFFECTIVE “OR” EFFECTIVE MOVE?

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### ABSTRACT

This paper gives an analytical view of recently passed The Criminal Law (Amendment) Act, 2018, which allows for death penalty as a maximum punishment to the culprits of raping girls below the age of twelve. This article comments upon the provision of death penalty looking at the various effects and consequences it leads to, in the Indian law enforcement system. This article tries to critically analyze the amendment. It further goes on to specifically investigate death penalty from the view point of the culprit as well as the victim and her family. The article brings out the various human right issues attached with the concept of death penalty and analyses whether death penalty is consistent with the modern criminal system or not. It also considers the importance to make this act gender neutral. It culminates with a conclusion that the provision of death penalty in the cases of girl child rape was passed majorly to appeal to the emotions of the outraging public ignoring the essential consideration of the present law enforcement system of India, the various obstructions before the victim and her family in reporting the case, and the human right violation of the culprit. This paper is an attempt to cater to the research gap created with the coming of the said act into force.

## INTRODUCTION

The two recent acts of barbarism and inhumanity in the “Kathua” and “Unnao” rape cases which brought about a great amount of public outrage and outcry amidst which the criminal law amendment act was passed by the government.

Provision number 5 of Chapter II of The Criminal Law (Amendment) Act, 2018 says that:

*‘After section 376A of the Penal Code, the following section shall be inserted, namely:*

*"376AB. Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:*

*Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:*

*Provided further that any fine imposed under this section shall be paid to the victim.".’*

In simpler terms, the cases where a person is held guilty of raping a minor girl below the age of twelve years shall be subjected to a minimum punishment of twenty years and can be awarded death penalty. He shall also be liable to pay fine which shall be given to the victim to meet the medical and rehabilitation expenses, she has to bear due to the crime she has been a victim to.

This provision came as a response from the government to the hue public outcry and protests against the showcasing of barbarism and inhumanity in the *Kathu Rape Case* and *Unnao Rape Case*. In both these cases there was a clear display of the level of human depravity a person can go to, to satisfy his desires. The public outcry was majorly focused on the fact that the present laws do not provide for sufficient and appropriate amount of punishment to these perpetrators whom the people believed to be least deserving to exist in the same land as other humans do. Everyone demanded a punishment of Death Penalty or something that was even worse than Death penalty. The term death penalty was introduced as a retributive and deterrent mode of punishment during ancient times. In other words, the sole objective of introducing the death penalty was to provide for vengeance to the victim and his/her family. This article will

look into the various issues and their aftermaths on the society. It further goes on to discuss the various debates upon death penalty.

Let us first look at what actually happened in these two cases to understand the reasons for this massive public outcry.

### ***Kathua Rape Case***

It is a case where an eight-year old girl from Rasana village in Kathua in Jammu & Kashmir, was abducted, raped and murdered. The dead body of the child was found a kilometer away from the village in a forest and the postmortem was conducted. The police arrested eight individuals including four police officers over the crime. The postmortem report revealed that she had been given a sedative before being raped consecutively for seven days and then murdered. Forensic evidence suggested that she was held by Sanji Ram the main accused in the crime.<sup>1</sup>

Sanji Ram the main accused is the priest of the family temple where the incident took place. This fact has also lead to communal tensions due to the allegations that the crime was conducted in order to threaten the local Muslim community, to which the victim belonged, in order to force them out of Rasana a Hindu dominated region. Four Police officers have also been charge-sheeted in the crime, they have been alleged to have taken 4 lac rupees for destroying the crucial evidences from the crime scene.<sup>2</sup>

The ghastly and gruesome act of inhumanity attracted huge protests. This incident also attracted reactions from various eminent personalities. Mehbooba Mufti stated that the perpetrators would be punished as early as possible and she also stated that death penalty would be made mandatory for the convicts of raping a minor.<sup>3</sup> Maneka Gandhi, the Indian Minister for Women and Child Development (then) also stated that death penalty would be the most appropriate

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<sup>1</sup> "Kathua Rape and Murder Case: Full Text of Chargesheet Filed by Jammu and Kashmir Police" *Firstpost*, Apr. 15, 2018, available at: <https://www.firstpost.com/india/kathua-rape-and-murder-case-full-text-of-chargesheet-filed-by-jammu-and-kashmir-police-4426853.html>. (Visited on February 1, 2019).

<sup>2</sup> "Drugged, Raped, Bashed to Death: Chargesheet Reveals Kathua Horror" *The Quint*, Apr. 12, 2018, available at: <https://www.thequint.com/news/india/lawyers-prevent-chargesheet-in-kathua-rape-and-murder-case> (Visited on February 1, 2019).

<sup>3</sup> "Jammu And Kashmir To Make Death Penalty Must For Rape Of Minors After Kathua Rape-Murder Case" *NDTV*, Apr.12, 2018, available at: <https://www.ndtv.com/india-news/jammu-and-kashmir-to-make-death-penalty-must-for-rape-of-minors-after-kathua-rape-murder-case-1836860> (Visited on February 1,2019).

punishment for child rapes.<sup>4</sup> The Prime Minister as well as the Supreme Court of India made statements condemning this act. The crime also received international attention with the UN secretary general Antonio Guterres stating "I think we've seen the media reports of this horrific case, of the abuse and murder of a young girl. We very much hope that the authorities will bring the perpetrators to justice so they can be held accountable for the murder of this young girl."<sup>5</sup>

This public outrage increased many-fold with another act of barbarism, where a young woman was raped in Unnao district of Uttar Pradesh.

### ***Unnao Rape Case***

It is a case of the alleged rape of a 17-year old girl from Unnao, Uttar Pradesh. The victim claims to have been lured by two women namely Shashi Singh, Nidhi Singh and Shubham Singh to move to Kanpur on the pretext that she would be given employment. She accordingly went with Shubham Singh and was allegedly raped multiple times by him and his driver and later on sold to one Brajesh Yadav for 60000 rupees on 11<sup>th</sup> July, 2017. Police traced her from a village Auriya and was sent for medical examination and FIR was filed.<sup>6</sup>

On 17<sup>th</sup> Aug., 2017 she wrote an open letter to the Chief Minister of Uttar Pradesh, stating that prior to the events of 11<sup>th</sup> July, 2017 she had been raped in the house of Kuldeep Singh Sengar on 4<sup>th</sup> June, 2017, a MLA of Uttar Pradesh assembly from the Unnao constituency and a member of BJP.<sup>7</sup> After the event her father was taken into judicial custody on a matter under Arms Act, after being allegedly beaten up by Atul Singh Sengar and his accomplice. Her father died in the judicial custody. Later on, the victim and her family tried to immolate themselves

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<sup>4</sup>Deepshikha Ghosh, "Kathua Rape Case: Maneka Gandhi To Ask For Death Penalty For Child Rape" NDTV, Apr. 13, 2018, *available at*: <https://www.ndtv.com/india-news/kathua-rape-case-maneka-gandhi-to-ask-for-death-penalty-for-child-rape-1836964> (Visited on February 1, 2019).

<sup>5</sup> Devika Bhattacharya, "Guilty Must be Held Accountable: UN Chief on Kathua Rape" *The Times of India*, Apr. 14, 2018, *available at*: <https://timesofindia.indiatimes.com/india/hope-authorities-bring-kathua-rape-perpetrators-to-justice-un-chief/articleshow/63758900.cms> (Visited on February 3, 2019).

<sup>6</sup> "All That Has Happened in Unnao Rape Case, a Timeline" *Hindustan Times*, Apr. 10, 2018, *available at*: <https://www.hindustantimes.com/india-news/all-that-has-happened-in-unnao-rape-case-a-timeline/story-mawXOV70RXnt74VNdiJ02I.html> (Visited on February 3, 2019).

<sup>7</sup> "Unnao Rape Case: Here's Everything You Need to Know" *The Indian Express*, Apr. 14, 2018, <https://indianexpress.com/article/india/unnao-rape-case-bjp-mla-kuldeep-singh-sengar-arrested-5137445/> (Visited on February 3, 2019).

in front of the house of Yogi Adityanath protesting the police inactions against the accused in the crime.<sup>8</sup>

The National Human Rights Commission (NHRC) directed the state authorities to give a detailed report about the victim's father's death and said that if the alleged act i.e. the victim's father as killed, was true it amounted to serious human rights violation of the victim's father.<sup>9</sup>

## MAJOR CONCERNS

The public outcry and protests mentioned above was the product of these two inhuman and abominable acts of human depravity. The government in order to deal with this huge public protest responded through The Criminal Law (Amendment) Act, 2018 which gave a for a death penalty for the child rapists of girls below twelve years of age. The act definitely appealed to the emotions of the masses and sedated the protests.

But, the question which gradually started emerging were:

- 1. Whether death penalty as a punishment can be justified with strong arguments against it being violative of human and fundamental rights?*
- 2. Whether the provision of death penalty in cases of rape of minor girls along with all its consequences and implications is a well thought of a provision? And,*
- 3. Whether the government by not including male children within the ambit of this amendment has displayed a disregard for the fundamental rights of the male minors who suffer similar kinds of sexual offences and has undermined the importance to save these minors from future sexual offences?*

We will try to look at addressing these questions one by one.

### **1. Whether death penalty as a punishment can be justified with strong arguments against it being violative of human and fundamental rights?**

When one talks about the facet or the quality which distinguishes man from animal? It is the attribute that humans consider themselves as civilised beings and thus to control a civilised society there was the formulation of state. Can a state which is the outcome of the mutual

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<sup>8</sup> Ibid.

<sup>9</sup> Ibid.



consensus of society at large sentence a prisoner for the death penalty? Or can state which cannot give life to its people has got the right to give them the death penalty?

Passing an amendment haphazardly to criminalise the culprits of child rapes under 12 years of age by sentencing them for death sentence shows the arbitrary nature of the state or policymakers.<sup>10</sup> Without delving into the impact of the death penalty in society how can a provision be made in that regard? How can the elected representatives or the so-called policy makers provide for such an evasive and draconian punishment i.e. the death penalty without doing the required brainstorming? How unreasonable it is that because of public outrage, which requires reconciliation of interests or fulfilling the requirements of the violent masses, an amendment for child rape cases is passed? How can the lawmakers or politicians instead of thinking for the infringements of the rights of death penalty prisoner think for seeking a public vote by bootlicking the demands of aggrieved people doing public outrage by swiftly passing an amendment having a huge impact?

Though a mode of punishment i.e. retributive punishment in earlier societies the question of capital punishment – its abolition or retention has been agitating the civilized world now. How can a mode of punishment where the involved objective is to take vengeance by ostracising or eliminating one from the society be justified? Death penalty or the Capital punishment is the punishment of death which is generally awarded to those guilty of heinous crimes, particularly murder. The provision of death penalty infringes one of the imperative fundamental rights granted by not only the Indian constitution but also Universal Declaration of Human rights, European commission, International commission against death penalty, Amnesty international organisation, etc.<sup>11</sup>

On one hand, there is article 21 of the Indian constitution which provides for the right to live with human dignity up to natural death while on the other hand there is article 3 of the Universal declaration of human rights states that life is a human right. This makes the death penalty a severe violation of our basic fundamental rights. In other words, the death penalty is

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<sup>10</sup> Eric Prokosch, “Human Rights v. The Death Penalty Abolition and Restriction in Law and Practice” Europe: A Death-Penalty-Free Zone, *available at*: <https://www.amnesty.org/download/documents/148000/act500131998en.pdf>. (Visited on February 5, 2019).

<sup>11</sup> Abolish The Death Penalty, Report On Human Rights And The Death Penalty, *available at*: [https://www.theadvocatesforhumanrights.org/uploads/international\\_fact\\_sheet\\_2012.pdf](https://www.theadvocatesforhumanrights.org/uploads/international_fact_sheet_2012.pdf). (Visited on February 5, 2019).

inconsistent with our fundamental rights. The death penalty is a judicial killing of human life which is considered to be one of the most sacred things throughout the history. The proposers of human rights argue staunchly that the provision of death penalty has failed to protect the society as the number of executions is far less than the number of murders conducted worldwide.

Analysing death penalty from the human rights perspective it is apparent that giving a harsh punishment like death penalty not only violates the basic fundamental rights but also there cannot be any talk of providing all the facilities while a victim waits for the execution after being sentenced as it violates his/her right to live.<sup>12</sup> Death penalty entangles unavoidable element of suffering and humiliation. In particular, the prisoners of death penalty face gargantuan amount of torture as they are required to stay in solitary confinement where they face intimidation, degradation, humiliation and discrimination, punishment, control or destruction of a person. Living in a solitary confinement not only relinquishes one's right to meet with one's relatives, parents and siblings but also even the family members of the accused are required to confront the dehumanising conditions and thus face torture. This torture not only ends here, repeatedly coming within hours of execution makes one feel slave. Slave of state authorities and what an irony it is that the state which is formed or whose representatives are elected by people instead of providing security respect and health provisions for its citizens is prescribing punishments like the death penalty which has unhealthy ramifications. Like the slave, execution is also a mental and physical assault on a culprit who is already bound by the state authorities.<sup>13</sup>

Another major problem is legal representation. The massive discrimination present in our society is not unheard of and thus the provision of legal representation becomes a blur on account of the poor financial state of people with low castes, creed race and religious minority. These people are often represented by inexperienced lawyers and sometimes no lawyers at all.<sup>14</sup> The judicial authorities of many countries have done away with the death penalty as it is a war

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<sup>12</sup>Shodhganga, Report on Death Penalty Vis-a-Vis Human Rights, *available at*: [http://shodhganga.inflibnet.ac.in/bitstream/10603/39088/10/10\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/39088/10/10_chapter%204.pdf). (Visited on February 6, 2019).

<sup>13</sup> Richard C. Dieter, "The Death Penalty and Human Rights" U.S. Death Penalty and International Law, *available at*: <https://deathpenaltyinfo.org/Oxfordpaper.pdf>. (Visited on February 6, 2019).

<sup>14</sup>United Nations Human Rights Office Of The High Commissioner, Report on Death Penalty and the Victims (New York, 2016), *available at*: <https://www.ohchr.org/EN/newyork/Documents/Death-Penalty-and-the-Victims-web.pdf>. (Visited on February 3, 2019).

crime against humanity. For example, the countries in Americas that most recently abolished the death penalty are Suriname (2015), Argentina (2009), and Bolivia (2009).

## **2. Whether the provision of death penalty in cases of rape of minor girls along with all its consequences and implications is a well thought of a provision?**

In addition to being cruel and barbarous and violation of the right to live the punishment of the death penalty is expensive, arbitrary, racist and fallible. It is arbitrary and fallible as the design and implementation are not available with the state authorities in a streamlined manner.<sup>15</sup> How can a procedure which is threatening for life i.e. electric shock and mock execution be justified?

And the fact that during the period between sentencing and execution the culprit suffers from a remorseful and sorrowful state of mind where the thought of death always lingers in mind requires deliberation while deciding the punishment for accused. This is nothing else than the unjustifiable cruelty carried upon the prisoners sentenced for the death penalty.

The death penalty is not an act of defence against an immediate threat to life rather it is the gradual killing of a person for the sake of punishment which can even be fulfilled by other mode of punishments.

In the modern era the phrase an eye for an eye should not find its place as the society now has become more rational than what it used to be. The provision like the death penalty is not in conformity with the modern criminal system.<sup>16</sup>

In various Supreme Court judgements, the death penalty and its proper execution has been criticised. The court in *Triveni Ben v State of Gujarat*<sup>17</sup> reached to the judgement that if there is undue delay in the execution of death penalty by the state authorities it will entitle the prisoner to reach the court for commutation of his/her death sentence into life imprisonment. Moreover, in such scenario, undue delay infringes a person's right to life as enshrined in article 21 of the Indian constitution. The court in the case of *Ranjit Singh v Union Territory of*

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<sup>15</sup> "Does the Death Penalty Bring Closure to a Victim's Family?" Nation, Apr. 25, 2017, *available at*: <https://www.pbs.org/newshour/nation/death-penalty-bring-closure-victims-family>. (Visited on February 6, 2019).

<sup>16</sup> National Law University Delhi, Death Penalty India Report, *available at*: <https://barandbench.com/wp-content/uploads/2016/05/Death-Penalty-India-Report-Volume-1.pdf>. (Visited on February 7, 2019).

<sup>17</sup> *Triveniben & Ors. v. State of Gujarat & Ors.*, AIR 1989 SC 1335.



Chandigarh<sup>18</sup> agreed to the contentions of the defendant's counsel and commuted the punishment from death penalty to life imprisonment.

The morality attached with the prisoner being liable for the death sentence is so much apparent that the same can affect the work of judges, prosecutors and other officials for they may face serious difficulties. For example, a judge may be in a confused state of mind while granting death as the sentence of the death penalty to a prisoner may conflict judge's own opinions.

### ***Fear in reporting of the case and family members***

It is quite reasonable that the accused of child rape will strive to erase all the pieces of evidence which includes the killing of the victim or the victim's family members. This is a major threat to society. In a society where peace and harmony are the prerequisites, how can families feeling ostracization be justified? Now it is quite evident that to inform someone or to make something public it is imperative that someone must initiate the dialogue. After contemplating over the above-mentioned fact that fear will reflect on the temperament of a victim of child rape and his/her family members the information regarding the deep-rooted problem of child rape cannot and will not be communicated. Thus, there will be under-reporting of the cases. The problem does not end here rather it is just the start, start which will end up into a conundrum, start which will turn the provision of death penalty an utter fiasco. The process will start from the non-reporting of cases then people will appreciate the measures of government for the death penalty prima facie but the point is what would be happening in reality is that the problem persists and keeps on growing. Thus, just because prima facie there are no cases of child rapes may not mean the status quo is as per the expected standards rather it may happen that the problem is not revealed and that is waiting for its persistent growth until it catches the sight of people in the form of a gargantuan and unprecedented devil.<sup>19</sup>

Now what if the scenario is like a family member indulging in the most unexpected task i.e. child rape the data for which is evident from the following report. According to the data of the National Crime Records Bureau, 95 per cent of the rapes are committed by family members. When a person whose job is to protect and think about the welfare of others, here the family members, betrays or does something which should never occupy a place in his/her thinking i.e.

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<sup>18</sup> *Ranjit Singh v. Union Territory of Chandigarh*, AIR 1991 SC 2296.

<sup>19</sup> "The Death Penalty Would Inflict Additional Pain on US" Death Penalty Information Centre, available at: <https://deathpenaltyinfo.org/new-voices-victims-families>. (Visited on February 7, 2019).

child rape. Then what comes first in the mind is why others should be blamed first if the root cause lies in the family itself<sup>20</sup>

Another major reason for the under-reporting of cases in particular girl child rape is the stigma. People in a society care more about their reputation or try to protect the dignity of their families by not disclosing the child rape cases to which these orthodox people call a stigma. What is the sense of the retributive punishment if there are people who themselves don't want to adapt to circumstances or come to the forefront and become the avant-gardes to raise their voice against the heinous crime like child rape. Thus, it becomes the duty of the government to take coherent steps in dealing with these kinds of grave issues, rather than taking a long step of granting death penalty in cases of child rape, that disturbs the balance and ultimately effects the effectiveness, it should first try to remove the social stigma attached to these kinds of cases thus strengthening the core and thus reaching the destination effectively with smaller steps.

### ***Death penalty from the perspective of the effectiveness***

Even if the state imposes the burden of the death penalty on the prisoners it is of no relevance as practically the same is not considered an effective and efficient law enforcement tool to curb the prevalent heinous crimes or menaces in society. As mentioned above the proposers of human rights argue staunchly that the provision of death penalty has failed to protect the society as the number of executions is far less than the number of murders conducted worldwide. Majority of police chiefs state that the punishment is the least cost-effective method as cases without the death penalty cost \$740,000, while cases where the death penalty is sought cost \$1.26 million. Maintaining each death row prisoner costs taxpayers \$90,000 more per year than a prisoner in general population Google search

There is a need of creating a conducive environment between the sentencing and the execution of prisoner so that the basic fundamental rights or the right to live with dignity is not infringed.<sup>21</sup>

The delay in justice due to the overcrowded courts even adds insult to the injury. If the problem-solving mechanisms are not adequate to do justice with its people in a timely manner then what

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<sup>20</sup> Soniya Ahuja, "6 Survivors Of Child Sexual Abuse Share How It's A Never Ending Nightmare" Child Sexual Abuse Human Rights Specials, *available at*: <https://www.youthkiawaaz.com/2017/04/child-sexual-abuse-victims-narrate/>. (Visited on February 8, 2019).

<sup>21</sup> "Death Penalty Fast Facts" CNN Library, Sept. 4, 2018, *available at*: <https://edition.cnn.com/2013/07/19/us/death-penalty-fast-facts/index.html>. (Visited on February 9, 2019).

happens is the innocents suffer, the good people suffer, and the scapegoats suffer and suffer the benevolent chunk of the society.

The ramification of delay in justice leads to uncertainty regarding the execution of the accused. In other words, it should not be the case that the accused is died waiting for his/her execution. If so then there is no doubt in saying that state has become an arbitrary body violating the rights of its citizens as here right to live is being infringed.

The delay in justice due to the overcrowded courts even adds insult to the injury. If the problem-solving mechanisms are not adequate to do justice with its people in a timely manner then what happens is the innocents suffer, the good people suffer, the scapegoats suffer and suffer the benevolent chunk of the society.

It is often seen that the prisoners of the death penalty are from the lower strata of society which in most of the cases comes out as the reason of their being guilty of the death penalty. The law provides for free legal aid in the form of legal representation by a lawyer. But as these lawyers don't get hefty fees as other private lawyers it is often found that there is an element of complacency among them. This way justice is not delivered equally.

### **3. Whether The Government By Not Including Male Children Within The Ambit Of This Amendment Has Displayed A Disregard For The Fundamental Rights Of The Male Minors Who Suffer Similar Kinds Of Sexual Offences And Has Undermined The Importance To Save These Minors From Future Sexual Offences?**

The Government passed the Criminal Law (Amendment) Act, 2018 (Hereinafter, 'The Act') which provided for a maximum punishment of death penalty to the perpetrators who raped minor girls below twelve years of age. The amendment being made to Section 376 of the IPC, which uses the word 'women', extends the amended punishment only to the culprits of rape of a minor girl below twelve years, which essentially means that death penalty cannot be awarded in cases of rape of minor boys. While we have looked at various strong arguments against the very basic outcome of this act, i.e. 'Death Penalty' for the culprits of rape of minor girls below twelve years of age, this becomes another important aspect to look at this act.

## **VIOLATION OF FUNDAMENTAL RIGHTS**

The law ministry however claimed that it has brought in a proposal to make the 'Protection of Children from Sexual Offences Act, 2012 (POCSO Act)' gender neutral and also include cases of rape against minor boys qualified for death penalty.

We feel that The Act at the first place should have been passed considering the plight of the innocent minor boys who also face sexual exploitation almost equally as the girls do. According to the Study on Child Abuse: India 2007<sup>22</sup>, minor boys are more vulnerable to sexual offences than girls are, about 52.94% boys reported sexual abuse as compared to 47.06% girls. What needs to be made clear is that this comparison has not been brought out to undermine the importance to safeguard the innocent minor girls who become a victim of some inhuman and abominable minds, but it is to bring out the extreme importance of the same actions to be taken to safeguard the other part of the children who equally suffer the trauma and pain at a very tender age, which almost leaves a casting impact on their whole life.

It must be borne in mind that the failure of the government to take adequate actions for extending the similar treatment to safeguard both these sects, would essentially be a violation of the very fundamental rights of these children. It would amount a clear violation of 'Right to Equality' as well as the 'Right to Life' both of which are given to each and every citizen of this country by the Constitution of our country.

The government should work to give effects to its claims and bring further amendments in order to give equitable treatment to girls and boys, who have become equally vulnerable to the horrors of rape.

### **Patriarchy Adding to the Plight of Boys**

Also, another major reason for the plight of these minor boys being not addressed to the fullest is the patriarchy of the Indian society. According to an article by Reuters<sup>23</sup>, 'boys are not seen as victims'. According to the article, India being a patriarchal society, where girls are kept and grown in a more protective environment than the boys, boys get to spend more time outdoors,

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<sup>22</sup> Government of India, *Study on Child Abuse: India 2007* (Ministry of Women and Child Development, 2007).

<sup>23</sup> Krishna N. Das and Aditya Kalra, "In India, Boy Victims of Sex Crimes Don't Get Talked About" Reuters, May 8, 2018, available at: <https://www.reuters.com/article/us-india-rape-insight/in-india-boy-victims-of-sex-crimes-dont-get-talked-about-idUSKBN1I9146>. (Visited on February 9, 2019).

which makes it easier for sexual predators to target these young boys. According to some of the researchers, parents shy away from reporting these matters to the police just in a belief that the victim being a boy would come out of this trauma eventually. According to an article published by the Indian Journal of Psychiatry<sup>24</sup>, an unidentified father during an interview after his boy was raped, said, “He neither lost a hymen nor will get pregnant. He should behave like a man, not a sissy”, this statement itself depicts the attitude of the parents and how it is affected by the patriarchal setup of our society. One of the co-authors of this article Vyjayanthi K.S. Subramaniyan said in a response to this statement “Boys don’t fit into the image of a victim. In a patriarchal society they are expected to take it in their stride. They think (parents) that as he grows up, he is going to become invulnerable, without any need to work on his psyche. That’s ridiculous.”

We think this attitude of the parents really needs a change. They need to respect the fact that irrespective of the gender of the innocent child, he is in fact a “child”. They need to know that, fear or bravery both come from experiences and are not inherited just because of some chromosomes chose to fuse in a manner they wanted to.

## CONCLUSION

The passing of The Criminal Law (Amendment) Act, 2018 is not without problems. It brings with it various issues to be thought about. Although the assessment of death penalty is a difficult task it becomes important from the view point in its actual ability to deter rapes of children. Given that, the maximum number of rapes on these minors are committed by some family member itself, it creates an impediment in reporting of these acts by the victim and her family. Also, there are numerous human rights issues attached to the punishment of death penalty that it becomes very essential to be addressed. It is also concluded that the government has failed in its duty to cater to the needs of the boys who face greater amount of vulnerability to sexual crimes in a setting of patriarchal society by not including boys in the provisions of the bill. Finally, it is concluded that the provision of death penalty has failed in the past to meet its actual ability to deter crimes for which it is awarded and it fails in the given scenario on

<sup>24</sup> Vyjayanthi Kanugodu Srinivasa Subramaniyan, *et al.*, “Silence of Male Child Sexual Abuse in India: Qualitative Analysis of Barriers for Seeking Psychiatric Help in a Multidisciplinary Unit in a General Hospital” *Indian J Psychiatry* 202-207 (2017).



similar grounds along with other factors coming into picture specifically in a child rape in the Indian society.

