

What is mandatory minimum sentencing?

January 26, 2023

In news— Recently, a Chief Justice of India led bench of the Supreme Court decided to examine a petition challenging the constitutional validity of Section 376 DB of the Indian Penal Code (that prescribes a 'minimum mandatory sentence').

About minimum mandatory sentence-

- Section 376 DB of the Indian Penal Code describes the punishment for gangrape of a minor under 12 years of age, to the extent that it prescribes a 'minimum mandatory sentence' of life imprisonment for the remainder of the convict's life and even death.
- **The concept of mandatory minimum sentencing refers to a sentence which must be imposed without leaving any discretion to the court.** It means a quantum of punishment which cannot be reduced below the period fixed (the Apex court held in its 2016 ruling in 'Mohd Hashim vs State Of UP And Others').
- Essentially, **this predetermines the minimum punishment or sentence for certain offenses which are considered to be more serious than others**, with a view to ensure justice and not let the perpetrator of such an offense go unpunished.
- No matter what the unique, individual circumstances of the offender or the offense might be, the court must mandatorily award this minimum period of sentencing for the offenses which prescribe it. **What provisions award a mandatory sentence?**
- **A concept that comes primarily from the Canadian and American legal systems; in India, such sentences are prescribed for all sexual offenses under the Prevention of Children from Sexual Offences (POCSO) Act** except the

offense of sexual harassment.

- Under **Section 8 of the POCSO Act**, a punishment of 3-5 years has been prescribed for offenses under Section 7 which deals with offenses of sexual assault against children.
- However, imposing the minimum punishment in such cases is mandatory.
- The Supreme Court reiterated in its 2019 ruling in 'State Of Madhya Pradesh vs Vikram Das' that when the legislature has prescribed a minimum sentence without discretion, the same cannot be reduced by the courts.
- In such cases, imposition of minimum sentence, be it imprisonment or fine, is mandatory and leaves no discretion to the court.
- **Similarly, in the State of J&K vs. Vinay Nanda', the Court said that even if it were to consider the mitigating circumstances, it cannot shy away from giving the minimum sentence as prescribed in the statute.**
- However, **it was first in the year 1983**, following nationwide protests in the wake of the **Supreme Court's 1978 ruling acquitting two policemen for the rape of a 16-year-old Adivasi girl in 'Tukaram And Ors v. State Of Maharashtra'** that the **Criminal Law Amendment Act Of 1983 was passed.**
- **The 1983 amendment was the first instance of 'mandatory minimum punishment' being prescribed, with seven years for general rapes and ten years for aggravated cases which could include rapes of minors below 12 years, and pregnant women**, while the maximum punishment or life imprisonment for both was stipulated as 14 years.
- **In 2012, following the brutal gangrape and death of a medical student in Delhi**, the demand for more stringent rape laws with stricter punishments gained widespread momentum. This resulted in the **Criminal Law (Amendment) Act, of 2013**, which **expanded the definition of 'rape' beyond penetration to include insertion of objects, anal**

sex, and oral sex.

- **The 2013 reforms also updated the definition of 'life imprisonment' to mean the entire remainder of the convict's life** and introduced a minimum sentence of 20 years for gang rape.
- Following this, even the death penalty could be meted out to those repeatedly indulging in such offenses.

The arguments for and against to it-

- The proponents of minimum mandatory sentencing say that it limits the scope for judicial discretion and arbitrariness, thereby enhancing the cause of justice.
- It is also believed that it acts as a deterrent for serious or harsh offenses by ensuring that the perpetrator doesn't go unpunished.
- On the other hand, critics say that this leads to overcrowding of prisons and is unfair as the convict's mitigating circumstances, such as if they are a first-time offender or the sole breadwinner in the family, are often overlooked.
- Moreover, such provisions can often have unintended consequences as judges might feel the prescribed punishment to be excessively stringent in such cases and acquit the accused altogether.
- Such a situation was witnessed in the 2021 ruling of the Nagpur Bench of the Bombay High Court in the case of 'Satish S/O Bandu Ragde vs State Of Maharashtra, where the court acquitted a man accused of sexually assaulting a 12-year-old girl under the POCSO.
- Instead, the court convicted him under Section 354 of the Indian Penal Code (Outraging the Modesty of a Woman), for which minimum punishment is one year, on account of the allegations lacking adequate 'seriousness'.