Bombay HC Verdict on Sexual Assault - Mandatory Minimum Sentencing

What is the issue?

- The Bombay High Court has acquitted a man of sexual assault charges under the POCSO Act for groping a child; instead convicted him under the IPC for a lesser offence.
- Besides drawing criticism for its restricted interpretation of the offence, the ruling highlights the concept of mandatory minimum sentencing in legislation, including POCSO.

What is the case about?

- The convict was accused of luring the 12-year old prosecutrix to his house on the pretext of giving her a guava, and pressing her breast and attempting to remove her salwar.
- The sessions court had convicted the 39-year-old Bandu Ragde under Section 8 of the POCSO (Prevention of Children from Sexual Offences) Act.
    - Section 8 prescribes the punishment for the offence of sexual assault defined in Section 7 of the Act.
- It sentenced him to three years in jail.
- The Nagpur Bench of the Bombay High Court reversed the decision of the sessions court.
- The High Court acquitted the man of sexual assault charges under the POCSO Act.
    - The allegation was said to be not serious enough for the greater punishment prescribed under the law.
- It upheld the conviction under sections that carry a lesser minimum sentence of one year under the Indian Penal Code (IPC).

Why was he acquitted of charges under the POCSO Act?

- The offence under POCSO carried a higher punishment.
- So the court reasoned that a conviction under it would require a higher standard of proof and allegations that were more serious.
- Section 7 of the Act says –
    - “Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of

such person or any other person or does any other act with sexual intent…"

- The court said that since the convict groped the prosecutrix 'over her clothes', this indirect contact would not constitute sexual assault.

Is such a reading of the law unusual?

- Such restrictive reading is not uncommon, especially in POCSO cases.
- E.g. In State v Bijender (2014), a Delhi court acquitted a man under the POCSO Act and instead convicted him of IPC offences.
    - A seven-year-old girl had testified that the convict took her into the bathroom by force, slapped her, and tore her jeans.
    - The Special Court held that the act of tearing the clothes of the victim did not constitute physical contact even if sexual intent was present.
    - The court restrictively interpreted the lack of physical contact with sexual organs to mean that there was no physical contact.
- Section 7 of the POCSO Act however recognises "any other act with sexual intent which involves physical contact without penetration" to be sexual assault.

What is a mandatory minimum sentence?

- Section 8 of the POCSO Act carries a sentence of rigorous imprisonment of 3 to 5 years.
- However, imposing the minimum sentence is mandatory.
- Minimum sentences have been prescribed for all sexual offences under the POCSO Act barring the offence of sexual harassment.
- If a statute has prescribed a minimum sentence, courts do not have the discretion to pass lighter sentences.
    - This is irrespective of any specific circumstances that the case or the convict might present.
- In a 2001 ruling, the Supreme Court held the following:
    - where the mandate of the law is clear and unambiguous, the court has no option but to pass the sentence upon conviction as provided under the statute
    - the mitigating circumstances, if established, would authorise the court to pass a 'reasonable' sentence of imprisonment or fine but not less than the minimum prescribed

What is the need for a mandatory minimum sentence?

- A mandatory sentence is prescribed to underline the seriousness of the

offence.
- It is often claimed to act as a deterrent to crime.
- In 2013, criminal law reforms introduced in the aftermath of the 2012 Delhi gang rape prescribed mandatory minimum sentences.
    - It applied for criminal use of force and outraging the modesty of a woman, among other charges.
- Mandatory minimum sentences are also prescribed in some cases to remove the scope for arbitrariness by judges using their discretion.

What are the concerns with mandatory sentencing?

- Mandatory sentencing regimes are put in place to remove judicial discretion.
- But it is felt that the discretion is merely shifted within the system to the police, and is not removed.
- Studies have shown that mandatory sentencing in laws lead to fewer convictions.
- When judges perceive that the punishment for the offence is harsh, they might prefer to acquit the accused instead.
- To note, after conviction, a separate hearing is conducted to award sentence.
- In the process, certain factors such as the following are considered -
    i. the accused being a first-time offender with potential for reformation
    ii. the accused being the sole breadwinner of the family
    iii. the accused's age and social background
    iv. the seriousness of the offence, etc
- The absence of the opportunity to consider such factors, and instead prescribe a mandatory sentence, pushes judges in some cases towards acquitting the accused.
- Minimum sentences under the POCSO Act are also seen to be very high.
- Legal experts have argued that mandatory sentences are counterproductive to the aim of reducing crime or acting as a deterrent.

What is the way forward?

- Instead of harsher punishment, the judicial reform that makes the sentencing process more accountable and transparent is recommended.
- This would include holding transparent proceedings for sentencing, recording specific reasons for punishment in rulings, etc.

Source: The Indian Express

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