Error Corrected on Interpreting POCSO Act

What is the issue?

The Supreme Court quashed a Bombay High Court decision to acquit a man charged with assault under the POCSO solely on the grounds that he groped the child over her clothes without 'skin-to-skin' contact.

What is POCSO act?

- The Protection of Children from Sexual Offences (POCSO) Act was enacted in 2012 especially to protect children aged less than 18 from sexual assault.
- It admitted that a number of sexual offences against children were neither specifically provided for in existing laws nor adequately penalised.
- Therefore an offence against children needs to be explicitly defined and countered through proportionate penalties so that it acts as an effective deterrence.
- The **UN Convention on the Rights of the Child** which was ratified by India in 1992 requires sexual exploitation and sexual abuse to be addressed as heinous crimes.

How does POCSO and IPC deal with sexual assault?

- In IPC the definition of assault or criminal force to woman with intent to outrage her modesty is very generic.
- In POCSO, the acts of sexual assault are explicitly mentioned such as touching various private parts or doing any other act which involves physical contact without penetration.
- However it excludes rape which requires penetration; otherwise the scope of 'sexual assault' under POCSO and 'outraging modesty of a woman' under the IPC is the same.
- IPC provides punishment for the offence irrespective of any age of the victim but POCSO is specific as it is for the protection of children.
- **Section 7 of the POCSO Act** says that whoever with sexual intent touches the private parts of the child is said to commit sexual assault & the Section 8 of Act provides minimum imprisonment of 3 years.
- Whereas Section 354 of the IPC lays down a minimum of one year

imprisonment for outraging the modesty of a woman.

What were the earlier judgements that stirred debates?

- **Nagpur Bench's judgement** - In 2020, the Bombay High Court's Nagpur bench acquitted a man under POCSO Act and held that an act against a minor would amount to groping or sexual assault **only** if there was "skin-to-skin" contact.
- The High Court had concluded that mere touching or pressing of a clothed body of a child did not amount to sexual assault.
- The accused was sentenced to minimum 3 years imprisonment under Section 8 of the POCSO Act but the High Court reduced his sentence to 1 year under Section 354 (assault of a women to outrage her modesty) of the Indian Penal Code.
- **Gadchiroli special court's judgement** – The special court convicted and sentenced the accused for offences punishable under IPC Section 448 and 354-A (1)(i) and Sections 8 and 10 read with Sections 9(m) and 12 of POCSO Act.
- But the court set aside his conviction under Sections 8 and 10 of POCSO Act.
- It took a lenient view that the act of holding the hands of the prosecutrix and opening the zip of the pant did not fit into the definition of sexual assault.

What is the Supreme Court's interpretation?

- The Supreme Court has set aside the two judgments that acquitted two offenders against children from the graver charge of sexual assault.
- The court has said that narrow interpretation of the words 'touch' or 'physical contact' to 'skin to skin contact' of Section 7 would frustrate the very object of the Act.
- The court ruled that the act of touching the sexual part of body or any other act involving physical contact, if done with sexual intent would amount to sexual assault within the meaning of Section 7 of POCSO Act.

Why is the judgement significant?

- The High Court's understanding was flawed and out of sync with the legislative intent behind the enactment of a stringent law to protect children.
- The Supreme Court judgment sets right the misinterpretation of the statute and underscores that the core ingredient of a sexual offence is the

"sexual intent" behind it.

- The Court's decision of holding such an accused guilty is in the spirit of the legislation enacted to protect a child's dignity and autonomy from undesirable intrusions.
- For a country that reported over 43,000 POCSO offences in the past one year and where the conviction rates are very low, the SC observation should accelerate things towards an unmistakably clear-cut and firm view of the situation.

Reference

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