

## **Expanding the scope of POCSO Act**

### **What is the issue?**

- There is growing international jurisprudence around child sexual abuse issues.
- A fundamental defect of POCSO Act in India is its inability to deal with historical cases. It is time to revise the law in this context.

### **What is historical child sexual abuse?**

- Historical child sexual abuse refers to incidents that are reported late.
- Historical abuse is not just confined to institutions.
- It also includes intra-familial abuse.

### **Why is delayed reporting justified?**

- It is often difficult for the child to report the offence or offender at the earliest.
- It takes time for the child to recognise what has happened and become confident to report.
- The delay may be due to -
  - i. lack of awareness
  - ii. the trauma caused
  - iii. threats from the perpetrator
  - iv. fear of public humiliation
  - v. absence of trustworthy confidant
- Another reason is to do with the accommodation syndrome.
- [The child keeps the abuse as a secret because of the fear that no one will believe the abuse, leading to accommodative behaviour.]

### **What is the legal barrier involved?**

- The Criminal Procedure Code (CrPC) makes it clear that any delay in filing complaint dilutes the efficacy of the prosecution's case.
- It prohibits judicial magistrates from taking cognisance of criminal cases beyond a specific time period.
- Earlier, cases involving child sexual abuse not amounting to rape was defined under Section 376 of the Indian Penal Code (IPC).

- It was classified under the lesser offence of outraging the modesty of a woman (Section 354 of the IPC).
- Any reporting, under Section 354 of the IPC, more than 3 years after the date of incident would be barred by the CrPC.
- So, this renders historical reporting of child sexual offences which took place before 2012 legally implausible.
- [The Protection of Children from Sexual Offences Act (POCSO) came into place in 2012.
- POCSO is the law in India to protect children from offences of sexual assault, sexual harassment and pornography]

### **What is the need now?**

- The limitation provisions were incorporated into the CrPC to avert delayed prosecution.
- But child sexual abuse cannot be viewed in the same manner as other criminal offences.
- There is thus a compelling need to allow delayed reporting and prosecution in this.

### **What is the challenge though?**

- A major drawback of delayed reporting is the lack of evidence to advance prosecution.
- It is believed that there would be less than 5% chance for gathering direct physical and medical evidence in such cases.
- India, in particular, suffers from a lack of procedural guidance as to how to prosecute historical cases of child sexual abuse.
- In contrast, the U.K. has issued detailed Guidelines on Prosecuting Cases of Child Sexual Abuse.
- It is dealt with in detail under the Sexual Offences Act of 2003, to assist the police in such cases.

### **What is the way forward?**

- The POCSO Act must rightly be amended to balance the rights of the victims and the accused.
- The law should account for various developments such as historical reporting of child sexual abuse.
- Also, the Union government must frame guidelines to direct effective and purposeful prosecution in cases which are not covered by the POCSO.

**Source: The Hindu**

