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

