Legality of Watching Child Pornography

Why in news?

The Supreme Court will scrutinise a Madras High Court ruling deeming watching child pornography as non-offensive.

Child Pornography
• According to Ministry of Women and Child Development, child pornography is defined as "any visual depiction of sexually explicit conduct involving a child which includes photographs, videos, digital or computer generated image indistinguishable from an actual child and an image created, adapted or modified but appear to depict a child. • **POCSO Act 2012-**- It addresses several forms of abuse including showing pornography to children, and it also includes provisions for prosecuting sexual offenses against boys. • **Information Technology Act, 2000**- It defines child pornography as any representation through electronic media including computer generated images and animations of a child engaged in sexually explicit conduct. • The Act makes it illegal to produce, create, publish or possess child pornography in India. • **Indian Penal Code, 1860**- Section 292 makes it a criminal offence to sell, distribute, exhibit, circulate, import or export any obscene material including pictures, paintings, writings, books, pamphlets or drawings that are lustful or lewd or that deprave or corrupt another person.

What is the issue?

- **S. Harish vs. Inspector of Police and Another**- The Madras High Court stated that merely downloading and watching child pornography is not an offence under POCSO Act and Information Technology Act (IT), 2000.
- Two NGOs has filed plea in Supreme Court arguing that the Madras HC's ruling could negatively impact child welfare, they argued that the order was contrary to the established law in this regard.
- A three judge bench of Supreme Court has called the Madras HC order as atrocious and also sought a response from the Tamil Nadu government.

What did the Madras HC rule?

- The Court quashed criminal proceedings initiated against 28 year old man booked under POCSO and IT Acts for downloading child pornography videos from the internet.
- The materials that have been placed before this Court do not make out an offence under Section 67-B of IT Act, 2000 and Section 14(1) of POCSO Act.
- **Section 67-B of IT Act-** It does not cover cases where a person has merely downloaded child pornography on his electronic gadget and watched the same without doing anything more.
- It punishes the publishing, transmitting, or creating of material depicting children in

sexually explicit acts in electronic form with 5 to 7 years of imprisonment and a fine that can extend up to Rs 10 lakh.

- **Section 14 of POCSO Act-** It prescribes punishment for using a child for pornographic purposes.
    - Imprisonment for a term which shall not be less than 5 years and shall also be liable to fine.
    - In the event of second or subsequent conviction with imprisonment for a term which shall not be less than 7 years and also liable to fine.
- **Proper education**- The society must properly educate the *Generation Z children* who are grappling with porn addiction.

Generation Z is commonly refereed as Gen Z, the name given to the generation of people born between 1997 and 2012.

- **Attend counselling**- The Madras HC advised the accused to attend counselling if he is still afflicted with his addiction.
- **Kerala HC ruling-** The Court relied on Kerala HC ruling which said that watching pornography in private did not constitute an offence under Section 292 of IPC that pertains to the sale of obscene books, objects etc.,
- The order said that for something to be obscene it must be lustful or lewd or that deprave or corrupt another person, but these terms are not clearly defined hence there is interpretations by the courts.

What does the law say about viewing child pornography in India?

- **Section 67-B of IT Act**- It punishes all kinds of act pertaining to child pornography, including watching child pornography, a closer look at this provision punishes 5 categories of people involved in child pornography.
- **First category**- It involves publishing, transmitting, or causing child pornographic material to be published or transmitted in electronic form.
- **Second category-** The persons penalised under this provision pertains to those who create text or digital images or collect, seek, browse, download, advertise, promote, exchange, or distribute such material in electronic form.
- **Third category-** It concerns those who cultivate, entice, or induce children into online relationships with one or more children for sexually explicit acts or in ways that may offend reasonable adults "on the computer resource.
- **Fourth category**- Those who facilitating child abuse online and
- **Fifth category-** Those recording "in any electronic form" their own abuse or that of others relating to sexually explicit acts with children.
- **Sam Infant Jones vs State, 2021-** The Madras High Court ruled that there is no provision in law that prohibits viewing pornography privately, but there is a distinction between pornography and child pornography.
- The child pornography *falls outside the circle of freedom* due to existence of *Section 67-B of IT Act*, which *penalises every kind of act pertaining to child pornography* and concluded that even viewing child pornography is an offence and held the accused as guilty.

What lies ahead?

- As the Supreme Court prepares to delve into this contentious issue, the case underscores the need for a balanced approach that prioritizes the protection of children.
- There is a crucial need for legal clarity and consistency in interpreting laws related to child pornography.
- Implementing a multi-stakeholder approach that integrates legal, social, and preventive measures is essential to safeguarding children and fostering a safer online environment.

Reference

Indian Express- Illegal watch child pornography

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