Madras HC Ruling on Child Abuse - Need for Sexuality Education

Why in news?

- In a case on child rape, the Madras High Court held up rigorous imprisonment as punishment for a child rapist.
- The Court also made some key observations, which are worth looking at in terms of approach to handling such cases by the state machinery.

What is the case on?

- The high court was hearing a case in which a man had sexually assaulted a five-year-old girl in Nagapattinam in 2011.
- According to the case, the man Ganapathy, had raped the girl when she was playing with her friends.
- Based on a complaint given by the girl's mother, the Nagapattinam police had registered an FIR against Ganapathy for rape.
- Significantly, Justice S Vaidyanathan, who was hearing the case, junked several arguments made by the defence on technical lines.

What are the observations made by the Judge?

- The Judge overruled several arguments made by the counsel for the accused in relation to -
    i. initial delay in filing the complaint
    ii. absence of injuries on the child
    iii. the trustworthiness of the victim's statement
- **Delay** - The defence side argued that the accused, the mother, delayed the filing of a complaint.
- To this, the Judge said that the rape of a girl of a tender age will have adverse effects, which her family needs time to recover from.
- He thus attributed the delay to normal human conduct.
- It was also said that in a village setting, neither the girl nor her parents would be tempted to rush to the police station immediately.
- **Injuries** - On the absence of external injuries, the judge said that it is not possible to find bloodstains on the girl's body four days after the rape.
- **Trustworthiness** - The Judge stated that courts have to believe what the

child-survivor says in such cases.
- The courts should not be influenced by misconceptions that children are likely to lie in cases of sexual abuse.
- Children should also not be seen as being tutored by parents to make false statements in court.
- These misconceptions should not affect the manner in which courts respond to cases of child sexual abuse.

What are the guidelines for defence lawyers' interrogation?

- The attitude of defence lawyers reflects a structural problem in the legal system.
- It is more often biased and derogatory towards victims of child sexual abuse.
- Defence questions are hostile, often sexually explicit, and structured to imply that lack of resistance means consent.
- The guidelines in Sakshi v. Union of India (2004) aim at discouraging this controversial practice.
- It requires questions in cross-examination to be routed to the prosecutrix (a female victim of a crime on whose behalf the state is prosecuting a suspect) through the Presiding Officer.
- The objective is to prevent harassment and intimidation by the defence counsel.
- However, this is not an established practice and happens only when cross-examination gets unacceptably offensive and objectionable.

How is child's vulnerability a limitation here?

- The child witnesses often do not understand the confusing questions of defence counsel.
- This makes them vulnerable and they end up giving vague answers.
- Also, children delay disclosure of the abuse (one third of them wait at least a year).
- So, chances are that medical evidence may go undetected or get lost.
- This further hampers their chances of securing justice.
- Delayed disclosure also makes it difficult for child witnesses to recall specific details of the abuse.
- This, in turn, makes it easier for the defence to disprove allegations.
- All these highlight the need to have a policy in place to address the concerns of delayed reporting of abuse and brutal cross-examination of child witnesses.

How would sexuality education help?

- Not knowing how to narrate what exactly happened to them, children typically provide vague and sketchy responses in trial proceedings.
- Children should thus be educated to know and use the names of body parts instead of using euphemisms.
- Teaching the correct names of private parts will also reduce the shame and stigma associated with talking about them.
- Children should be educated about the nature of sexual abuse as well as the procedures to invoke formal justice mechanisms.
- They should be equipped with the right vocabulary to talk about sexual abuse.
- It is thus imperative to introduce sexuality education in the school curriculum.
- This should be underpinned by concepts of criminology and criminal justice.
- This would prepare the children to -

i. recognise potentially inappropriate behaviour
ii. understand the different emotions that come with feeling 'unsafe'
iii. verbalise abuse to seek help from adults and disclose abuse promptly

- Besides these, there is also the compelling need to increase the awareness of the legal system about child-sensitive communication.

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