POCSO Shocker: Sonu Kushwaha vs State of U.P.

Why in news?

Recently, Allahabad High Court has said that a penetrative sexual assault on a 10-year-old boy by an offender did not amount to an aggravated form of the crime.

What is the issue?

- A case was registered against Sonu Kushwaha under Section 377, 506 IPC and Section 3 and 4 of POCSO Act for performing oral sex with a minor boy when he was 10 years old (2016).
- The trial court convicted and sentenced him under Section 377, 506 IPC and Section 6 of POCSO Act.
- The court sentenced the appellant to 7 years of rigorous imprisonment along with fine.

(Note: The incident and registration of complaint happened in 2016. Hence the judgment was based on POCSO Act, 2012 and not on the POSCO (Amendment) Act, 2019 as its provisions does not apply retrospectively)

What are the important provisions of POCSO Act, 2012?

- The Protection of Children from Sexual Offences (POCSO) Act was enacted in 2012 especially to protect children aged less than 18 from sexual assault.
- The Act defines a child as any person below 18 years of age and defines different forms of sexual abuse including penetrative, non-penetrative assault as well as sexual harassment and pornography.
- **Section 4** deals with penetrative sexual assault and imposes a minimum imprisonment of 7 years.
- **Sections 5 and 6** of the POCSO Act deals with aggravated penetrative sexual assault punishable with a minimum prison term of 10 years that can go up to life.

- **Section 5(m)** says that whoever commits penetrative sexual assault on a child below 12 years would be punishable with the offence of aggravated penetrative sexual assault.
- **Section 9 and 10** deals with aggravated sexual assault with imprisonment which shall not be less than 5 years but which may extend to 7 years and shall also be liable to fine.
- **POCSO (Amendment) Act, 2019 -** The Act has enhanced punishment under various sections including punishment for aggravated penetrative sexual assault to be increased to include death penalty.
- The minimum punishment for penetrative sexual assault has been increased from 7 years to 10 years.
- **POCSO Rules, 2020 -** New rules include the provision of
    - Mandatory police verification of staff in schools and care homes
    - Procedures to report sexual abuse material (pornography)
    - Imparting age-appropriate child rights education among others

What was the Allahabad high court's observation?

- The Court observed that the offence committed by the appellant neither falls under Section 5 or 6 of the POCSO Act nor under Section 9(M) of the Act as penetrative sexual assault is involved in the present case.
- The penetrative sexual assault under Section 4 is a lesser offence than aggravated penetrative sexual assault under Section 6.
- So the Court reduced the sentence of the appellant from 10 years of rigorous imprisonment to 7 years and further imposed a fine of Rs 5,000.
- The court has neglected Section 5(m) that penetrative sexual assault on a child below 12 years can be added to aggravated penetrative sexual assault list.

What is the role of NCPCR in this regard?

- The National Commission for Protection of Child Rights (NCPCR) has urged the Uttar Pradesh chief secretary to file an appeal against an Allahabad High Court judgement.
- NCPCR is mandated under sections 109 of the Juvenile Justice Act, 2015 and 44 of POCSO Act, 2012 to monitor the implementation of the Acts.
- It has observed that the high court verdict of commuting the sentence of the accused from 10 years to 7 years and the offence from aggravated penetrative sexual assault to penetrative sexual assault seems to be not as per the letter and spirit of the POCSO Act, 2012.
- The commutation of sentence is observed by the commission to be

prejudicial to the justice delivered to the victim in this case.

NCPCR was set up in March 2007 under the Commissions for Protection of Child Rights (CPCR) Act, 2005.It is a statutory body under the administrative control of the Ministry of Women & Child Development.

What does the judgement imply?

- The High Court's view that a particular act amounting to a penetrative sexual act does not attract the punishment prescribed for its aggravated form will have on lower courts trying similar cases.
- The Supreme Court's broader interpretation of the POCSO Act seems to be an error correction made by the High Courts that narrowly interpretated the words 'touch', 'physical contact' and 'skin to skin contact'.
- In this regard, the verdict in Sonu Kushwaha vs State of U.P. has to be reviewed as it seems to be based on an error of law.

What are the other initiatives taken for the protection of children from sexual assaults?

- **Fast Track Special Courts** - The government is setting up 1,023 Fast Track Special Courts including 389 exclusive POCSO courts for expeditious trial and disposal of cases related to rape and the POCSO Act.
- **Special Juvenile Police Unit**- Any person who has received any pornographic material involving a child or any information shall report the contents to the Special Juvenile Police Unit or the cybercrime portal.
- **Periodic training** - The government has been providing orientation programmes, sensitisation workshops and refresher courses to all persons coming in contact with the children to sensitise them about child safety and protection.
- **POCSO e-Box -** POCSO e-Box is an online complaint box for reporting child sexual abuse.
- It is an NCPCR initiative to help children report such crimes directly to the Commission.
- **United Nations Convention on the Rights of the Child** - The Convention which requires sexual exploitation and sexual abuse to be addressed as heinous crimes was ratified by India in 1992.

References

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