Protection of Children from Sexual Offences Act

Why in news?

Recently, judgement in the **Satish Ragde v. State of Maharashtra** case was criticised as the accused was acquitted under POCSO Act.

What is POCSO act?

- The act was enacted in 2012 especially to protect children aged less than 18 from sexual assault.
- It admitted that a number of sexual offences against children were neither specifically provided for in existing laws nor adequately penalised.
- Therefore an offence against children needs to be explicitly defined and countered through proportionate penalties so that it acts as an effective deterrence.
- The **UN Convention on the Rights of the Child** which was ratified by India in 1992 requires sexual exploitation and sexual abuse to be addressed as heinous crimes.

How does POCSO and IPC deal with sexual assault?

- One, In IPC the definition of assault or criminal force to woman with intent to outrage her modesty is very generic.
- In POCSO, the acts of sexual assault are explicitly mentioned such as touching various private parts or doing any other act which involves physical contact without penetration.
- However it excludes rape which requires penetration; otherwise the scope of 'sexual assault' under POCSO and 'outraging modesty of a woman' under the IPC is the same.
- Two, IPC provides punishment for the offence irrespective of any age of the victim but POCSO is specific as it is for the protection of children.
- Section 7 of the POCSO Act says that whoever with sexual intent touches the breast of the child is said to commit sexual assault & the Section 8 of Act provides minimum imprisonment of 3 years.
- Whereas Section 354 of the IPC lays down a minimum of one year imprisonment for outraging the modesty of a woman.

What is this case about?

- The Bench acquitted a man found guilty of assault on the grounds that he touched the victim's limbs and breasts only over her clothes and there was no skin-to-skin contact between them.
- This judgment is likely to set a dangerous precedent & finally the apex court stayed the acquittal.
- In **Vishaka v. State of Rajasthan (1997)**, the Supreme Court held that the offence relating to modesty of woman cannot be treated insignificant.
- In **Pappu v. State of Chhattisgarh (2015)**, though the High Court, acquitted the accused under Section 354 of the IPC as the offence was found lacking in use of criminal force or assault.
- But it convicted him for sexual harassment under Section 354A which requires physical contact and advances as a necessary element.

What we can infer from this?

- The essence of a woman's modesty is her sex and the culpable intention of the accused is the crux of the matter in the above cases of sexual assault.
- In UK, **Sexual Offences Act 2003** says that touching (with sexual intent) includes touching with any part of the body, with anything else or through anything.
- But the POCSO Act is silent on these matters & it requires skin-to-skin touch as a mandatory element of an offence for the conviction.
- This dilutes the protection given to children & must be declared ultra vires to protect the bodily integrity.

Source: The Hindu

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