



Interpreting POCSO Act

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(MainsGS2:Separation of powers between various organs dispute redressal mechanisms and institutions.)

Context:

The Supreme Court while quashing two judgments of the Nagpur bench of Bombay High Court said that the most important ingredient for constituting an offence of sexual assault under Section 7 of **Protection of Children from Sexual Offences** (POCSO) Act is the “sexual intent”, and not the “skin-to-skin” contact with the child”.

About the POCSO Act:

- The Protection of Children from Sexual Offences Act, 2012, (POCSO Act) and its corresponding rules were enacted with the objective of protecting children from a slew of sexual offences and introducing child-friendly judicial mechanisms for dealing with such offences.
- The Act defines a child as any person below 18 years of age and defines different forms of sexual abuse including penetrative and non-penetrative assault as well as sexual harassment and pornography.
- the POCSO Act is gender-neutral for the legal framework available to child sexual abuse victims.
- POCSO prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.

- Section 44 (1) of POCSO Act, 2012 provides that the National Commission for Protection of Child Rights (NCPCR) and State Commission for Protection of Child Rights (SCPCR) shall monitor the implementation of the provisions of the Act.

Error corrected:.

- The two HC judgments concluding that it will not amount to an offence of sexual assault under Section 7 of POCSO if there is “no direct physical contact, i.e. skin to skin” between the accused and the victim.
- However, the Attorney General of India took the initiative to challenge these two verdicts.
- The NCW also questioned the Court’s understanding of a POCSO provision, arguing that the law does not brook the sort of dilution that led to the Court ignoring the basic fact that the entire Act is aimed at penalising actions rooted in sexual intent.
- Therefore, the Supreme court ruled that the “act of touching the sexual part of body or any other act involving physical contact, if done with ‘sexual intent’, would amount to ‘sexual assault’ within the meaning of Section 7 of POCSO Act”.

Interpretation of High court:

- The Supreme Court showed alacrity and sensitivity in staying the portions of the judgment related to the diluted interpretation earlier this year.
- In one case, the act of groping a 12-year-old girl’s breast over her dress and, in another, the acts preparatory to an assault on a five-year-old were proved in the trial.
- Even after accepting these facts, the absence of physical contact with the girl’s body part was used to absolve the accused of the charge of sexual assault.
- In the second case, the Court took a lenient view that the act of “holding the hands of the prosecutrix” and “opening the zip of the pant” did not fit into the definition of sexual assault.

Intention of the law:

- It was quite apparent that the High Court’s understanding was not in sync with the legislative intent behind the enactment of a stringent law to protect children based on principles found in the UN Convention on the Rights of the Child.
- The ruling pointed out that “the construction of a rule should give effect to the rule rather than destroying it”, and “any narrow and pedantic interpretation of the provision, which would defeat the object of the provision, cannot be accepted”.

- Thus the judgment sets right not only a misinterpretation of the statute but also underscores that the core ingredient of a sexual offence is the “sexual intent” behind it.

Preventing child sexual abuse

- According to a study Status of POCSO cases in India in March 2021 conducted by Kailash Satyarthi Children's Foundation, "Child sexual abuse is one of the most pressing concerns of the day.
- The rising number of cases of children who are reported to have suffered some form of sexual abuse is indicative of the failure of the State and society to provide children with an environment conducive to growth, in accordance with the United Nations Convention on the Rights of the Child.
- However, it is also an opportunity to take cognizance of the problem and strive towards getting justice for victims, and aim to prevent future instances of child sexual abuse.

Low conviction rate:

- Madhya Pradesh, Maharashtra, Uttar Pradesh, Haryana and Delhi constitute 51 percent of the **POCSO cases** in the country but the rate of conviction in these states is between 30 percent and 64 percent.
- Of the 1,023 fast track courts to be set up, 612 are already functional but there is need to establish all the sanctioned courts quickly as 89 percent of child sexual abuse cases still await trial.

Conclusion:

The rising public consciousness and media attention, along with the proactive measures taken by the judiciary in the last few years are the good steps towards the required attention needed by the right of children to live with dignity.