

Amendments to POCSO Act

Why in news?

The Union Cabinet has recently approved amendments to the Protection of Children from Sexual Offences (POCSO) Act, 2012.

What are the amendments proposed?

- The act will be amended to introduce the death penalty as a punishment for offences of penetrative sexual assault and aggravated penetrative sexual assault.
- The following cases will be treated as “aggravated offence”.
 1. Cases of sexual assault by police officers,
 2. by members of the armed forces,
 3. by public servants,
 4. by relatives,
 5. gang-penetrative sexual assault,
 6. where the survivor is less than 12 years old and
 7. attempt to inject hormones in children to attain early sexual maturity for the purpose of penetrative sexual assault
- A hefty fine would be imposed for not deleting, not destroying child pornographic material or not reporting child pornography.

What are the concerns?

- **Burden of proof** - Usually, in criminal cases, the burden of proof lies on the prosecution, and the guilt must be proved beyond reasonable doubt.
- Under POCSO, however, there is a presumption that a person who is prosecuted for an offence has actually committed the offence, unless the contrary is proved (Section 29).
- Instead of “innocent until proven guilty”, the court assumes that the accused is guilty once the prosecution lays the foundation of the case.
- The Act also presumes that the accused person had a sexual intent when touching the child (Section 30).
- The amendment does not address this existing issue with the bill.
- Under Article 21 of the Constitution, a person can only be deprived of their life or liberty in accordance with the procedure established by law, which should be just, fair and reasonable.

- Thus, by additionally imposing the death penalty for offences that already carry such stringent presumptions violates the right to life guaranteed under the Constitution.
- - To overturn the presumptions, the accused needs to bring witnesses and documents in their defence or conduct a stellar cross-examination, which **Evidence** require high quality lawyering.
- However, if the accused is in jail, their family will have to collect evidence and find witnesses.
- For migrant workers, it is even more difficult since their neighbours or employers may not readily give evidence.
- **Legal procedure** -The 262nd Law Commission Report has recommended universal abolition of the death penalty, except in terror cases.
- This has not been given due credence.
- **Premise** - Further, the reason given for introducing the death penalty is that it will deter child sexual abuse.
- However, the government does not cite any evidence to prove that the death penalty can achieve this goal, in the absence of better policing and shorter trials.

What are the other issues with death penalty report?

- Death row prisoners are typically overwhelmingly poor, lower caste, or religious minorities with 76% of death row prisoners were from backward classes and religious minorities.
- Economic vulnerability had also impacted the experience of the prisoner during investigation and trial.
- Prisoners suffer from lack of access to lawyers during interrogation and many of them had experience of custodial violence.
- At the national level, 24.5% of those on death row were from Scheduled Castes and Scheduled Tribes with Maharashtra, Karnataka, Madhya Pradesh, Bihar, Jharkhand and Delhi being above the national average.
- Also, as cases travelled up the court hierarchy, the proportion of general category prisoners fell, and the proportion of SC and ST prisoners increased.
- Thus, introducing the death penalty in POCSO is likely to send more poor, lower caste and religious minority accused to death row.

Source: The Indian Express



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