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CHILD PROTECTION IN THE DIGITAL AGE: POCSO ACT INNOVATIONS AND THE MANDATE FOR CSEAM

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ABSTRACT

A child is the most important asset of society and has a vital role to play in the development of nation. They are the future of the country. The future of any country depends on how the children of that country are nurtured and nourished. Child sexual abuse is one of the major problems of India. Regarding this problem, a special law has been enacted named as the Protection of Children from Sexual Offences Act, 2012 commonly known as the POCSO Act with a view to protect the children from all sorts of behaviour with sexual intent and the sexual offences against them. Undoubtedly, the passing of this legislation has been a major step in securing children's right. This paper covers the study of child pornography which, with the advent of digital age, is spreading like a cancer in the society. The study also covers the steps taken by the judiciary to tackle this menace and setting new horizons in the POCSO Act, 2012 to eradicate this evil from the very threshold.

Keywords: Child, Child sexual abuse, POCSO Act, Child Pornography, Offences, Punishment.

INTRODUCTION

India being a populous country of the world with 1.4 billion population has 480 million people under 18 years of age. Among

these children, approximately 40% need care and protection.¹ The dimensions of crime in India are changing rapidly and the inhuman side of the human, in committing crimes against the children including the sexual one, are also on the rise which is a matter of concern. The recent data published in year 2022 by the National Crime Records Bureau, Govt of India is astounding. As per the National Crime Records Bureau's report published in 2022, as many as 1,49,404 cases were registered as Crime against Children in the year 2021, whereas in the year 2022 this figure increased and total 1,62,449 cases were registered in the year 2022 which shows the increase of 8.7% in a single year. The cyber pornography cases increased from 44 in the 2018 to 1171 in the year 2022.² This is an alarming situation. The major crime heads under the category of 'Crime Against Children' for the year 2021 were offences of kidnapping and abduction and under POCSO Act, 2012 including the offences of child sexual assault. The perusal of the recorded cases of child sexual exploitation indicates that majority of such crimes against children are either committed in their homes or the neighbourhood, so it gives the inference that the children are not safe and protected even in their own homes. The sexual exploitation of children is a universal phenomenon and a graver issue tormenting the societies world over and has been a matter of serious concern for India too being a populous country having 40 % of children among its citizen. Prior to the enactment of the POCSO Act 2012, India lacked a specific stringent law to deal with the issues of sexual offences against children. Though the provisions related to sexual offenses existed in the, now repealed, Indian Penal Code, 1860 but fundamentally they were not designed to tackle the distinctive vulnerabilities of a child, focusing the children. The Indian Penal Code, 1860 was a general penal legislation covering the crimes prevalent in the society at the time of its enactment. The existing

¹ Retrieved from <<https://pmc.ncbi.nlm.nih.gov/articles/PMC2738347/>> (last visited on November 18, 2025).

² Retrieved from <<https://www.pib.gov.in/>> (last visited on November 18, 2025).

laws were failing to efficiently deal with and curb the menace of sexual abuse of children, which necessitated the Indian Parliament to come up with a special legislation focusing on children and to protect the children from their sexual exploitation, sexual harassment and pornography aiming to curb such wrongs and also to provide for the establishment of Special Courts to deal with trial of such offences and for connected matters. Hence the POCSO Act 2012 being a special law came into being, fulfilling India's obligation at United Nations.

ONLINE CHILD SEXUAL EXPLOITATION AND ABUSE AND ITS TYPES

The online child sexual exploitation is increasing day by day not only in India but all over the world. Due to the technological development, it has taken different shapes. Following are the different types of Child sexual exploitation which is an offence in every country:

Child Pornography:

The endless expansion of the Internet and advanced digital technology has made an eruption in the child pornography market. In the digital era, the child pornographic material is easily and readily available through social-media networking websites, file-sharing sites, photo-sharing sites, gaming devices, and even mobile apps. People consuming child pornography associate on Internet media and networks to share their interests, desires, and experiences abusing children, in addition to selling, sharing, and trading images. The paedophile tends to focus on prepubescent children for their sexual preferences. Using a child for sexual activities and pornography is a menace around the world and many countries have made the child pornography a punishable offence under their local laws. It is rendered by taking pictures or videos, or more rarely sound recordings of children who are wearing less clothing than usual, or wearing no clothing, or being raped/sexually exploited. It can also be in the form of drawings, sketches or images of children. Child pornography sometimes is called "child sexual abuse images" because it images a child who is being sexually abused and exploited. Child pornography is

made by setting up a camera or other recording device to record the sexual molestation of a child. In other case it may be drawn, written or digitally created using a computer system and such cases, it is called “simulated child pornography” or “virtual child pornography” or “non-photographic child pornography”, or “pseudo-photographic child pornography”. The names of the activity may be different but underline act is to show the exploitation of a child. The child in the pornography is simulated, virtual, or drawn, meaning the child is not real. There may be various probable causes for a person to watch child pornographic material. The most common of all is that the viewer is a paedophile (a psychiatric disorder when a person of age of 16 years or older is sexually attracted to children who have not begun puberty which may be under 10 years old, depending also on sexes), hebephile (when adults are sexually attracted to people under the age of consent, generally between 12 and 15 years), or ephebophile (when an older adult is sexually attracted to post-pubescent teenagers or adolescents but still biologically adults in age between 15–19 years) who finds children sexually attractive and uses pornography featuring minors, children to induce arousal.³

The enlargement of child pornography is coupled with two factors which is the institution, and availability of home-movies, videos, digital-cameras, computers which make pornography relatively cheap, and secondly due to the development of the internet the production and distribution of these contents have increased and become easily available.⁴

According to various studies, amongst teenagers between 10 to 17 years old who regularly use the internet, 20% receive sexual content, one in 33 receive an aggressive sexual solicitation and 25% have unwanted exposure to pictures of naked people or people having sex. One in every five children who use a computer

³ Retrieved from <https://simple.wikipedia.org/wiki/Child_pornography> (last visited on November 21, 2025).

⁴ Retrieved from <<https://articles.manupatra.com/article-details/child-pornography-in-india-a-study-from-socio-legal-perspectives>> (last visited on 29th September, 2025).

has been hailed over the internet by paedophiles. With this only, 25% of children take actions, like telling their parents about an encounter with a predator. In practice, only 10% of cases are reported about this to the legitimate authorities. On daily basis as many as 1,16,000 requests per day for child pornography are shared through a file-sharing network. In the UK, many children who become the sufferer of child pornography become the prey of the person they met before, on the internet. The same situation exists in India with more gloomy situations.⁵

In India under the POCSO Act the word 'Child Pornography' has been defined under Section 2(1)(da) which mean and include any visual depiction of a child involved in any sexually explicit conduct such as photograph, video, image generated digitally or by a computer which is indistinguishable from an actual child i.e., any self-generated image of an actual child or any other image that has been created, adapted or modified, that appears to depict a child. As far as the age of the child is concerned it is of 18 years as defined in Section 2(1)(d) of the POCSO Act and it includes both male and female child.⁶

Displaying or sending any image of a child, connected with any sexual act through the internet or social media, is a blatant infringement of the right of children. This is a global reality of the world. Recently, according to a study of the UNICEF, most of the time children are forced into these situations due to faked promises and their limited knowledge about the risk posed by these activities. Further, victims of child pornography suffer not only from the sexual abuse faced by them but also from the knowledge of being the circulation of their images across the world. This permanent record on the internet can have a permanent effect on the life of the child. Many victims of child pornography go through feelings of helplessness, fear, depression, lack of control, and humiliation because their images are available for others to view in continuity. This causes a violation of the human rights of the children. Indian Government under the Information Technology Act, 2000, has from time-to-time

⁵*Ibid*, page 3.

⁶ Bare Act, Prevention of children of Sexual offences Act, 2012.

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blocked websites containing child sexual abuse material (CSAM), based on lists from Interpol received through the Central Bureau of Investigation, India's national nodal agency for Interpol because of raised concerns about child pornography.

Cyber Grooming:

Now a days, Cyber Grooming is growing as one of the major cyber threats faced by children and teenagers. It is a practice where someone builds an emotional bond with children through social media or messaging platform with an objective of gaining their trust for sexually abusing or exploiting them. The cyber groomers can use gaming websites, social media, e-mail, chat rooms, instant messaging etc. Creating a fake account and pretending to be a child or having some interest as of the child. Initially they may give compliments, gifts, modelling job-offer to the target (victim). Once trust is built, they may start sending obscene messages, photos, and videos, and may also persuade the child to share sexual images or videos in return. Teenagers, especially during phases of biological and social changes, are more vulnerable to such exploitation. The psychological impact of cyber grooming can be long-lasting and may continue to affect victims into adulthood. With the rapid growth of internet usage among children, online abusers find it easier to contact and trap them. Pedophiles often hide their real identity while communicating through chatrooms or emails and trick children into sharing personal information. They may lure children for sexual exploitation and also share pornographic material online to attract them. The number of pedophiles active on the internet is steadily increasing. Section 67-B of the Information Technology Act provides legal protection to children from such predators. According to this section, any person who encourages, entices, or induces a child into an online sexual relationship or any sexually explicit act can be punished with imprisonment of up to five years and a fine of up to ten lakh rupees for the first offence. For second or subsequent offences, the punishment may extend to seven years of imprisonment and a fine of up to **ten** lakh rupees.⁷

⁷ Dr. Vishwanath Pranjape, Cyber Crimes and Law, (Central Law Agency, Allahabad Ed. 2023), p.40.

Live Streaming of Child Sexual Abuse

Live streaming of child sexual abuse refers to the real-time online transmission of sexual abuse involving a child to viewers who are located elsewhere. This form of exploitation commonly occurs across national borders through the internet, although some countries have also reported cases that take place entirely within their own territories. The abuse is typically carried out using online chat rooms, social media platforms, and communication applications that include live video features. Individuals who view these live streams may take on different roles. Some are passive viewers who pay simply to watch the abuse, while others actively participate by communicating with the offender, a facilitator, and sometimes even directly with the child. These active participants may request that specific sexual acts or acts of physical violence be carried out. This form of participation is referred to as “child sexual abuse to order,” and such requests may be made either before the streaming begins or during the live broadcast itself. Not all instances of live streaming involve payment. In some cases, abuse occurs in the context of coercive or manipulative relationships, including situations where offenders are motivated by emotional dependence, sexual gratification, or pressure from others who may also be abusing them. When live-streamed abuse is recorded or when still images are captured from the broadcast, the individuals involved can also be charged with the production and possession of child sexual abuse material. Technology allows facilitators or viewers to secretly record live streams or save screenshots for later use or distribution. However, in many cases, no recordings are recovered, which significantly complicates efforts to identify victims and prosecute offenders, including viewers, facilitators, and direct abusers. Finally, a wide range of financial methods are used to pay for access to live-streamed child sexual abuse. These include traditional banking systems, deposits to bank accounts, debit and credit cards, online payment services, money transfer services, and increasingly, digital and cryptocurrency-based payment systems.⁸

⁸ Retrieved from <<https://www.unodc.org>> (*last visited on 15 November, 2025*).

UN CONVENTION ON THE RIGHTS OF THE CHILD, 1989

In 1989, a historical step was taken by the World leaders with the adoption of the United Nations Convention on the Rights of the Child for safeguarding the rights of the children. It has been widely ratified by the countries helping in the transformation of the life of children all around the world. The United Nations' Convention on the Rights of the Child is an important agreement among the countries undertaking to protect children's rights. The Convention explains about the children, their rights being children and the various responsibilities of their governments. Through Article 3 of the United Nations' Convention on the Rights of the Child, it is assured that in order to protect the best interests of the child the governments must take every such steps that children are protected and looked after by their parents, or by other people when needed. The governments must ensure that people and places who have been given the responsibility for looking after the children, are fulfilling their obligation regarding children. Further Article 17 of the Convention ensures that children have the right to get any information from the Internet, radio, television, newspapers, books and other sources but it is the adults who should take the responsibility to ensure that the information the children are getting is not harmful for them in any way. The governments must persuade the media to share information from different resources, in languages understandable by all children. Article 19 of the UN Convention provides to protect the children from any violence. It is the duty of the governments to safeguard the children in their own countries from any violence, abuse and being deserted, abandoned or neglected by anyone who are obliged to look after them. The most important Article to save children from the menace of Child Pornography, sexual abuse and sexual exploitation is the Article 34 of the UN Convention on the Rights of the Child stating that the government should protect children from sexual exploitation and sexual abuse, including by people forcing children to have sex or making sexual pictures or films of them in lieu for money. Article 34 of the Convention

require for the States to undertake to protect the child from all sorts of sexual exploitation and sexual abuse. For these purposes, the States are mandated to take all possible measures to prevent:

- (a) The coercion or inducement of a child to engage in any illegal sexual activity;
- (b) The exploitative use of children in any unlawful sexual practices including prostitution;
- (c) The exploitative use of children in pornographic performances and materials in any form. Article 42 provides that the governments should actively make the children and adults aware about the UN Convention on Child Rights.⁹

The UN Convention on the Rights of the Child also explains as to how governments, the United Nations - including the Committee on the Rights of the Child and UNICEF and other organisations are to work to ensure that all children enjoy all their rights with freedom and dignity. India is a signatory to this Convention and has made laws to comply with the said UN Convention but still large chunk of Indian children failed to enjoy their childhood as expected and intended by the convention as they are not able to enjoy their rights and are prone to the offences like sexual abuse, sexual exploitation and child pornography.¹⁰

INTERPOL and ECPAT International published a joint report in February 2018 entitled Towards a Global Indicator on Unidentified Victims in Child Sexual Exploitation Material. The study identified a number of alarming trends¹¹:

- The younger the victim, the more severe the abuse.
- 84% of images contained explicit sexual activity.
- More than 60% of unidentified victims were prepubescent, including infants and toddlers.
- 65% of unidentified victims were girls.

⁹ Retrieved from <<https://www.unicef.org/child-rights-convention>> (last visited on 29th September, 2025).

on 29th September 2024.

¹⁰ Ibid.

¹¹ Retrieved from <<https://www.interpol.int/en/Crimes/Crimes-against-children/International-Child-Sexual-Exploitation-database>> (last visited on 20th November, 2025).

- Severe abuse images were likely to feature boys.
- 92% of visible offenders were male.

MANIFESTATION OF THE POCSO ACT 2012

The Constitution of India contains provision with regard to the welfare of the children, as they are the future politicians, doctors, engineers, advocates, scientists, judges, intellectuals and others. Article 15(3) empowers the State to make special provisions for children and at the same time, the Constitution of India through Article 39 mandates the State to direct its policy towards securing adequate means of livelihood, resources, health of its men and women. The Constitution (42nd Amendment) Act, 1976 inserted Article 39(f) to the Constitution, for the State to direct its policy to give opportunities and facilities to develop children in a healthy manner and for protecting the childhood and youth against exploitation, assuring freedom and dignity. The United Nations' Convention on Rights of Children recommends a set of ideals to be ensured by all State parties including India for securing the best interest of the child and also to undertake preventive measures against any type of child exploitation such as prostitution, pornographic performances, unlawful sexual activity or depictions. The POCSO Act 2012 is the legislative manifestation to realise this constitutional mandate and the UN Convention on the Rights of the Children. It was on 11th December 1992 the Government of India has assented to the Convention on the Rights of the Child, which was adopted by the General Assembly of the United Nations. The objective of the POCSO Act can be clearly seen from the Preamble of the Act which states as under:

“An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.”

PROVISIONS UNDER THE POCSO ACT, 2012

The Protection of Children from Sexual Offences Act (POCSO) 2012, comprehensively deal with the issues relating to the sexual offences against children. The POCSO Act not only connotes the

punishments for offences, but also provides for a method for reinforcement of victims and progressed techniques for capturing offenders. Under POCSO Act a 'Child' means any person under 18 years of age. A child may be male and a female. The offender contravening the Act, 2012 may be male or female, young or old, Indian or Foreign national. Thus, the child victim and the offender under this legislation may be male or female. Under the POCSO Act 2012 both genders are alike and are liable for punishment for offences committed to contravene any penal provision of the law. The POCSO Act, thus is a gender-neutral legislation. There are three distinct classes of sexual offences, punishable under the POCSO Act, i.e., sexual assault, sexual harassment and using a child for pornography. The Sexual assault by itself has various degrees of seriousness as Section 13 of POCSO Act deals with the provision of using a child for pornographic purposes. Using a child in any form of media (e.g. television channels, internet etc.) for the purposes of sexual gratification amounts to the offence of using a child for pornography. Sexual gratification under the POCSO Act, 2012 includes:

- Showing the sexual organs of a child, or
- Using a child in real or simulated sexual acts with or without penetrative sexual assault or for representation of a child in indecent or obscene manner.

In the programmes or advertisements telecasted in the television channels or on internet or in any form of electronic/print media, is liable to be punished under the penal provisions of section 14 and 15 of the POCSO Act, as the case may be. The provision of section 14 provides different punishments for varying crimes. Section 14(1) POCSO Act provides punishment of imprisonment extending upto 5 years and fine if a child or children are used for pornographic purposes is/are used. But if child/children are used for pornographic purposes committing an offence referred to in section 3 of the POCSO Act and while doing so the person committing such crime directly participates in pornographic acts, then the punishment of imprisonment provided under section 14(2) POCSO Act is ten years which may extend to imprisonment for life, and fine. Further the aggravated punishment is provided

under section 14 (3) of POCSO Act, which provides that if the person using the child for pornographic purposes commits an offence as referred to in section 5 of POCSO Act and directly participating in pornographic acts then such persons shall be punished with rigorous imprisonment for life and fine. Hence the maximum sentence under section 14 of POCSO Act, 2012 is the imprisonment for life. At the time enactment of POCSO Act, 2012 the punishment for storing pornographic material involving child in any form for commercial purposes was extendable up to three years or with fine or with both. But considering the rising gruesome and heart wrenching offences being committed against children, the Indian Parliament amended the POCSO Act vide Amendment Act, 2019 and aggravated the punishment. The punishment under section 15 of POCSO Act, post-amendment of 2019, is modified in different stages. Now for the storing or possessing the pornographic material involving children in any form for commercial purposes the punishment of imprisonment under section 15(3) POCSO Act, 2012 is between three years to five years and fine or both. For repeated offender, upon subsequent conviction this punishment is between five years to seven years. Whereas mere storage/possession of such material and failure to delete or reporting of the same to the designated authority is also an offence punishable under section 15(1) POCSO Act as this would result in drawing the inference that the person did so with intention to share or transmit such pornographic material, though such punishment is in the form of fine extendable up to Rs. 5,000/-. A person who stores/possess such pornographic material for transmitting or displaying/distributing in any manner to anyone except for reporting to concerned authority or producing before the Court as evidence, is also punishable under section 15(2) POCSO Act with imprisonment extendable up to three years or fine or both.¹²

It has been made mandatory under POCSO Act to report to the police if an offence under this Act including child pornography has been committed. If a person fails to report an offence under

¹² Bare Act, Prevention of Children from Sexual Offences Act 2012.

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POCSO, the person can be punished with imprisonment of upto 6 months and/or with fine. Any person can report an offence under POCSO Act and an offence can be reported after its commission or if there is an apprehension and fear that such a crime may be committed. The child facing or fearing such abuse can also report the crime directly to the law enforcement agency.¹³ The mandatory reporting is pivotal to the operation of the POCSO Act as the Hon'ble Supreme Court in the case of *State of Maharashtra and Anr v Dr Maroti*¹⁴, observed that "non reporting of the cases will defeat the purpose of POCSO Act". The provision of section 19 of POCSO Act requires that "any person", who "has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed...shall provide such information" to the police. A report made in good faith confers protection on the reporter from any civil or criminal liability but the failure to report an offence is punishable under this law. However, a false complaint made with intent to defame a person is punishable under the POCSO Act, 2012

PROVISIONS UNDER THE INFORMATION TECHNOLOGY ACT, 2000

The Information Technology Act of 2000 is the basic legislation in India dealing with cybercrime and electronic commerce. The Act was formulated on the footing of the United Nations Model Law on Electronic Commerce 1996 (UNCITRAL Model). It was enacted to safeguard the lawful conduct of digital transactions and the reduction in cybercrimes. The I.T. Act, as it is often called, was amended in year 2008 when it introduced material changes by addressing pornography, child porn, cyber terrorism and voyeurism. The Information Technology (Amendment) Act, 2008 *inter-alia* make amendment to Section 67 of the I.T. Act, 2000 and introduced Section 67A along with Section 67B. It was for the first time, that few specific provisions were inserted, to recognize and protect the vulnerable and tender age of children by criminalising various forms of online sexual degradation, sexual

¹³Section 21, Prevention of Children from Sexual Offences Act 2012.

¹⁴ Crim Appl No. 1874 of 2022.

abuse and exploitation with enhanced punishment. Section(s) 67, 67A and 67B respectively, punish the use, transmission and publication of obscene materials including material of child pornography. These provisions conjointly encompass and collectively form the umbrella scheme of comprehensive penal provisions contained in the IT Act in this regard.

Section 67 of the IT Act, 2000 is the principal legal provision in the said Statute, that criminalises the publication or transmission of “obscene material” in any electronic form as an offence. Section 67A of the IT Act, is an aggravated offence as it prescribes enhanced punishment than the preceding provision because it further amplifies the scope of ‘obscene material’ by stipulating that any obscene material that contains or depicts any sexually explicit act or conduct, when published or transmitted shall be punishable under the said provision. The provision of section 67B of IT Act, 2000 specifically deals with materials of child pornography and it provides for even more severe form of offence by bringing within its scope those obscene materials in any electronic form that depict a child in any sexually explicit act or conduct. It has further expanded the ambit of ‘actus reus’ to include publication as well as transmission thereof. Even the browsing, creation, collection, online facilitation or enticement of children into any sexual act or conduct is put in the ambit of this provision.¹⁵

JUDICIAL PERSPECTIVE TOWARDS CHILD PORNOGRAPHY

The judiciary has been actively engaged in the protection of the children’s rights and both the High courts of the various States and the Supreme Court have given their judgments focusing on the sexual offences committed against children. In the case of *Independent Thought v. Union of India & Anr.*¹⁶ the Hon’ble Supreme Court held that the preamble to the POCSO Act recognizes and mandates that the Act and its provisions ought to

¹⁵ Information Technology Act 2000.

¹⁶ AIR 2018 SC (CRIMINAL) 229.

operate and be interpreted in a manner that would be in the best interest and well-being of the child. It should ensure that the sexual exploitation and abuse of children are addressed effectively and induce a healthy physical, emotional, intellectual and social development of the child.¹⁷ Watching pornography or being compelled to watch pornography in a public place can never come within the ambit of freedom of speech or expression or thought as enshrined under Article 19(1)(a) of the Constitution, for the freedom, as envisaged under the Constitution, is not absolute.

In *Nawabuddin v. State of Uttarakhand*,¹⁸ the Hon'ble Supreme Court held that any act of sexual assault, exploitation or harassment of the children must be dealt with, in a stringent manner and no leniency should be shown when dealing with an offence under the POCSO Act in view of the object which the Act sought to achieve.

In *RE: Prajwala Letter Dated 18.2.2015 Videos of Sexual Violence and Recommendations*¹⁹, the Supreme Court had received a letter from NGO-Prajwala on allegations that the videos of sexual violence were being circulated in abundance through electronic means. An order was passed on March 22, 2017 constituting a committee to assist and advise the Apex Court on the feasibility of ensuring that videos depicting rape, gang-rape and child pornography are not available for circulation, and above all to protect the identity and reputation of the victims, because circulation of such videos cannot be in public interest at all.

In *P.G.Sam Infant Jones vs State*²⁰, the Madras High Court observed that child pornography is an extremely serious issue warranting a firm approach to tackle it. But distinction should be made between a onetime consumer and those who transmit or propagate or display or distribute the same in digital domain. It is obvious that the moment one steps into the digital space, one comes under the surveillance either of the State or

¹⁷ 2017 INSC 1030

¹⁸ 2022 INSC 162

¹⁹ Suo Moto Writ Petition (CRL.) No. 3 of 2015; August 01, 2023.

²⁰ 2021 SCC OnLine Mad 2241.

those manning the social networking sites. If one is zealous about privacy, then the only option available is to stay away from such networks, which in the current world, is not a viable option. As per the Madras High Court, while viewing of pornography in private domain may not be an offence in view of an individual's right to expression and privacy, but watching child pornography falls outside the ambit of such individual's rights and stands on a different footing due to its contents. The court held that Section 67B of Information Technology Act, 2000 penalises various kinds of acts pertaining to child pornography including the act of viewing such material.

In *State of Maharashtra & Anr. v. Maroti*²¹ the Supreme Court examined and explained the true purport of the obligations envisaged under Section(s) 19 & 21 of POCSO Act in reporting to the authorities. It was held that prompt and proper reporting of offences under POCSO Act is the bedrock of the obligations that have been cast under these provisions, and any other view would defeat the very purpose and object of the POCSO Act. The Court further observed that merely because the failure to discharge the obligation under Section(s) 19 & 21 is punishable with imprisonment for a short duration, does not mean that such an offence is not to be taken seriously. Accordingly, it held that strict compliance of such provisions must be ensured to protect the tender age and youth of children against exploitation.

In the case of *Fatima A.S. v. State of Kerala (2020)*²², in a video on social media, a mother was seen being painted her naked body above the navel by her two minor children and she alleged that the motive of the video was to teach sex education to them. The Supreme Court of India observed in this case that, "in the initial years, what the child learns from their mother will always have a lasting impression on their mind. It is usually said that the mother will be the window of the child to the world". Hence the same was covered under Section 13 of POCSO Act.

²¹ (2023) 4 SCC 298.

²² Bail Appl. No.3861 of 2020.

In *Manuel Benny v. State of Kerala*²³, accused person had downloaded and stored pornographic videos depicting children in a sexually explicit manner in his mobile phone from a messaging app; 'Telegram' for private viewing. Accordingly, a case was registered against the accused therein under Section 15 of the POCSO Act and Section 67B of the IT Act, 2000. When the final report was filed, the offence under Section 15 of the POCSO Act was dropped, and chargesheet was filed only for the offence under Section 67B of the IT Act, 2000. The accused filed a quashing petition before the High Court of Kerala at Ernakulam claiming that even if the materials in the chargesheet were taken at their face value, no ingredients were made out to constitute the offence under Section 67B of the IT Act. The High Court whilst quashing the criminal proceedings held that in order to attract the offence under Section 67B of the IT Act, the pornographic material in question must be voluntarily downloaded. There should be an intention on the part of the accused to download any pornographic content in order to view it so as to constitute an offence under Section 67B of the IT Act. The learned Single Judge further observed that as per the FSL report, the child pornographic videos had been accessed through the messaging app 'Telegram' wherein there is a possibility of automatic download of videos. Since there was no material to show that the accused therein had voluntarily downloaded or browsed the pornographic material in question, so no prima-facie offence had been made out under Section 67B of the IT Act, and thus the High Court quashed the criminal proceedings.

In *Akash Vijay v. State of Kerala*²⁴, the Kerala High Court held that mere storage or possession of any pornographic material involving a child will not constitute an offence under Section(s) 15 of the POCSO or 67B of the IT Act in the absence of any material to show that the accused person either intentionally downloaded or browsed the said material or that he shared or transmitted the same.

²³ 2022 KER 9730.

²⁴ 2024 KER 42626.

In *Akhil Johny v. State of Kerala*²⁵, the learned Single Judge of the Kerala High Court held that where the allegations are limited only to the presence of pornographic material involving a child in the mobile phone or hard disk of the accused, no offence could be said to have been made out under Section(s) 15 of the POCSO or 67B of the IT Act and as such the criminal proceedings would be liable to be quashed.

But everything above has been put to rest by the Hon'ble Supreme Court on September 23rd, 2024 by the bench of Hon'ble Chief Justice of India Dr Dhananjaya Y. Chandrachud and Justice J.B. Pardiwala. The landmark judgment in the case of '**Just Rights for Children Alliance & Anrv. Harish & Ors.**'²⁶ has changed the scenario of child pornography. 'Just Rights for Children Alliance' is a collation comprising of five different NGOs working in unison against child trafficking, sexual exploitation and other allied causes. On January 1st, 2020, the All-Women's Police Station Ambattur, Chennai, Tamil Nadu received a letter from the Addl Deputy Commissioner of Police (Crime against women and children Branch) to the effect that as per the Cyber Tipline Report of the National Crimes Record Bureau (NCRB), an active consumer of pornography has allegedly downloaded pornographic material involving children in his mobile phone. The FIR was lodged at the All-Women's Police Station Ambattur, Chennai, TN for the offence punishable under Section(s) 67B of the IT Act and 14(1) of the POCSO Act, 2012. As per the Computer Forensic Analysis Report dated 22.08.2020 it was found that the mobile phone of accused contained two video files relating to child pornography depicting two underage boys involved in sexual activity with an adult woman. The Computer Forensic Analysis Report further stated that more than hundred other pornographic video files were downloaded and stored in the said mobile phone. The Chargesheet was filed against the accused for the offences under Section(s) 67B of the

²⁵ 2024 KER 53767.

²⁶ Criminal Appeal Nos. 2161-2162 of 2024 (arising out of Special Leave Petition (CrI) Nos. 3665-3666 of 2024) D/- 23.09.2024.

IT Act and 15(1) of the POCSO respectively as during probe materials collected from Computer Forensic Analysis Report, proves offence under Section 15(1) of the POCSO Act. Aggrieved by this, the accused approached the High Court of Madras vide a quashing petition. The High Court allowed his petition and quashed the criminal proceedings essentially on three grounds:

1) To constitute an offence under Section 14(1) of POCSO Act, a child must have been used by the person accused for pornographic purposes. It observed that although the two videos depicting children engaged in sexual activity were found to have been downloaded and stored in the mobile phone belonging to accused and assuming that the accused had watched the same but the same would not constitute an offence under Section 14(1) of the POCSO Act.

2) To constitute an offence under Section 67B of the IT Act, the person accused must have published, transmitted or created material depicting children in sexually explicit act or conduct. It held that accused admitted to be addicted to watching pornography, yet mere watching or downloading of child pornography without any transmission or publication of the same does not fall within the purview of Section 67B IT Act.

3) Although the pornographic content was found to have been downloaded and stored in the mobile phone of accused yet in the absence of any material to show that the accused had transmitted or published the same, no offence whatsoever could be said to have been made out either under the POCSO Act, I.T. Act or the IPC and thus quashed the criminal proceedings.

While examining the above order of the Madras High Court the Apex Court observed that in short, the High Court laid down three propositions of law, i.e, Firstly, mere possession or storage of any pornographic material is not an offence under the POCSO Act; Secondly, section 67B of the IT Act only makes the act of transmission, publication or creation of material depicting children in sexually explicit manner an offence. Mere watching or downloading of child pornography in private domain is not punishable under the same; and thirdly, to attract the provisions of the POCSO or the IT Act it is not sufficient to merely establish

storage or possession of child pornography and that transmission or publication of the same is also required to be established and in the absence of the same the criminal proceedings are liable to be quashed.

It has been clarified above that offence under section 15 of POCSO Act was amended vide POCSO (Amendment) Act 2019. Prior to said amendment, in Section 15 of POCSO Act, there was no use of word “possession” as it was added later on after the amendment of 2019. Since then, both the storage as well as possession of any child pornographic material are punishable by law when done with any of the specified intention. Applying the doctrine of constructive possession, the Apex Court held that wherever a person indulges in any activity such as viewing, distributing or displaying etc. pertaining to any child pornographic material without actually possessing or storing it in any device or in any form/manner, such act would still tantamount to ‘possession’ in terms of offence under Section 15 of the POCSO Act, if he exercised an invariable degree of control over such material.²⁷ Thus, any form of intangible or constructive possession of any child pornographic material will also amount to “possession” under Section 15 of the POCSO Act in terms of the Doctrine of Constructive Possession and thus physical or tangible “storage” or “possession” of such material in Section 15 of the POCSO is not required. The Apex Court, in order to obviate any confusion clarified that, where any child pornographic material is in the constructive possession of an accused, the act of failure or omission to report the same would constitute the requisite of actus-reus for the purposes of Section 15 (1) of POCSO Act and then there is no requirement under Section 15 of the POCSO that ‘storage’ or ‘possession’ must continue to exist at the time of initiation of the criminal proceeding. An offence can be made out under Section 15 POCSO Act, if it is established that the person accused had ‘stored’ or ‘possessed’ of any child pornographic material with the specified intention at any particular point of

²⁷ Just Rights for Children Alliance & Anr v. Harish & Ors. Criminal Appeal Nos. 2161-2162 of 2024.

time even if that was before such initiation or registration of criminal proceedings.²⁸

Thus, any visual depiction of a sexually explicit act which any ordinary person of a prudent mind would reasonably believe to prima facie depict a child or appear to involve a child, would be deemed to be ‘child pornography’ for the purposes of the POCSO Act. The Apex Court lowered the degree of satisfaction for the Courts while dealing with the case of child pornography and it held that for any offence under the POCSO Act that relates to child pornographic material, such as Section 15, the courts would only be required to form a prima facie subjective satisfaction that the material ‘appears to depict a child’ from the perspective of any ordinary prudent person. Such satisfaction may be arrived at through a report of the forensic science laboratory (FSL) of such material or from opinion of any expert on the material in question, or by assessing such material by the courts themselves, depending on the particular facts and circumstances of each case. This test or criteria of ‘subjective satisfaction’ is not a superfluous or imaginary creation of the legislature, but a well-founded test, that exists in various other countries. In view of this the Hon’ble Supreme Court gave the observations, infra:

- I. Section 15 of the POCSO provides for three distinct offences under sub-section(s) (1), (2) or (3). Section 15(1) POCSO Act, 2012 penalizes the failure to delete or destroy or report any child pornographic material that has been found to be stored or in possession of any person with an intention to share or transmit the same. The mens-rea is to be gathered from the actus reus itself i.e., it must be determined from the manner in which such material is stored or possessed and the circumstances in which the same was not deleted, destroyed or reported.
- II. Section 15(2) POCSO Act, 2012 penalizes the actual transmission, propagation, display or distribution of any child pornography as-well as the facilitation of any of said acts. The mens rea under this offence is to be gathered

²⁸ *Ibid.*

- from the manner in which the child pornographic material was found to be stored or possessed.
- III. Section 15(3) penalizes the storage or possession of any child pornographic material when done for any commercial purpose. In order to establish an offence under Section 15(3), besides the storage or possession of the child pornographic, there must be some additional material sufficiently indicate that the said storage or possession was to derive any gain or benefit.
 - IV. The three offences under section 15 POCSO Act are distinct and cannot coexist simultaneously in the same set of facts.
 - V. Any act of viewing, distributing or displaying etc., of any child pornographic material by a person over the internet without any actual or physical possession or storage of such material in any device or in any form or manner would also amount to ‘possession’ in terms of Section 15 POCSO Act, 2012, by virtue of the doctrine of constructive possession.
 - VI. The visual depiction of sexually explicit act which any ordinary person of a prudent mind would ordinarily and reasonably believe to depict a child or appear to involve a child, would be sufficient to construe as ‘child pornography’ and the courts are only required to form a prima facie opinion for arriving at the subjective satisfaction that the material produced before it depict a child from the perspective of any ordinary prudent person. The Court may arrive as such satisfaction from a forensic science laboratory (FSL) report or opinion of any expert, or by own assessment.
 - VII. Section 67B of the IT Act is a comprehensive provision designed to address and penalize the various electronic forms of exploitation and abuse of children in online mode. It not only punishes the electronic dissemination of child pornographic material, but at the same time, also the creation, possession, propagation and consumption of such material as-well.

VIII. The statutory presumption of culpable mental state on the part of the accused as provided by Section 30 of POCSO Act can be made applicable when the prosecution establish the foundational facts against the accused. Of course, such presumption can be rebutted by the accused.

The Supreme Court in **Just Rights for Children Alliance & Anr v. Harish & Ors.**²⁹ (supra) issues certain recommendations, which are as follows:

- I. Firstly, the term “child pornography” as per the Apex Court is a misnomer which fails to capture the full extent of the crime. The term “child sexual exploitative and abuse material” or “CSEAM” more accurately reflects the reality that such images and videos are not merely pornographic but are of incidents where a child has either been sexually exploited/abused or where any abuse of children has been portrayed through any visual depiction. The Apex Court forbid the sub-ordinate courts from using the term “child Pornography” and directed the term “child sexual exploitative and abuse material” (CSEAM) to be used in judicial orders and judgements of all courts.
- II. Considering the far-reaching consequences of child sexual exploitation, there is a clear legal and moral imperative to take strong action against those who produce or distribute and consume CSEAM. The CSEAM has devastating and far-reaching impact of on its victims on their mental, emotional, and social well-being. Victims of such heinous exploitation may endure depression, anxiety, and post-traumatic stress disorder (PTSD).
- III. The Apex Court considered for the need of sex education in schools as otherwise the teenagers and young adults turn to access for unmonitored and unfiltered information, which is often misleading and may result for unhealthy sexual behaviours.
- IV. The Central and State Governments are obligated under section 43 of POCSO Act to give wide publicity through media including the television, radio and the print media

²⁹ Decision dated 23rd September 2024.

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to make the general public, children as well as their parents and guardians aware of POCSO Act. Similarly, section 44 of POCSO Act obligates the National Commission for Protection of Child Rights and the State Commission to monitor and assist in the implementation of the provisions of this Act, regularly.

- v. The provisions of section 19 read with 20 and 21 of POCSO Act casts collective responsibility of the society in curtailing the issue of abuse and exploitation of children.
- VI. Rule 11 of Protection of Children from Sexual Offences Rules, 2020 places an obligation on the intermediaries to not only report the offences under POCSO Act to concerned authorities but also to hand over the necessary material to the Special Juvenile Police Unit or the police, or the cyber-crime portal, as the case may be. As per a Memorandum of Understanding between the National Crime Records Bureau (NCRB) of the Ministry of Home Affairs (MHA) and the National Centre for Missing & Exploited Children (NCMEC), which is a US based NGO, all the social media intermediaries are required to report cases of child abuse and exploitation to the NCMEC, which is required to further report these cases to the NCRB and then the NCRB forwards this to the concerned State authorities in India through the national cybercrime reporting portal.

The Apex Court gave the following suggestions to the Union of India and to the subordinate courts:

- i. For the Parliament to consider amending the POCSO for the purpose of replacing the term “child pornography” with “child sexual exploitative and abuse material” (CSEAM). The Union of India, may consider introducing suggested amendment to the POCSO through an ordinance.
- ii. The courts are forbidden to use term “child pornography” and instead the term “child sexual exploitative and abuse material” (CSEAM) should be endorsed.

- iii. Sex education programs in schools can help deter potential offenders.
- iv. The services of psychological counselling, therapeutic interventions, and educational support etc. to address the underlying issues and promote healthy development.
- v. Raising awareness about the realities of child sexual exploitative material and its consequences through public campaigns can help reduce its prevalence.

CONCLUSION

The provisions of section 67B of the IT Act, along with related sections such as 67, 67A and Section 14 and 15 of POCSO Act, 2012, constitutes a comprehensive legislative framework to address offences related to child pornography. There's a need for harmonising provisions between the POCSO Act, 2012 and the IT Act, 2000 to ensure consistency in addressing offences related to child sexual exploitation. The recent landmark judgment of the Apex Court opens up a scope for the Government to introduce the necessary changes in the POCSO Act, for courts to deal with offences of CSEAM with liberal interpretation in favour of the prosecution and against the offender. The necessary programmes need to be introduced in the school curriculum for imparting sex-education to the teenagers with a view to restrain them from misguided on the vast space of internet and social media. Though Police Officers across the country are being trained to specifically tackle the proliferation of pornographic content on messaging apps, which is the most prevalent cybercrimes but since criminals are using on-line messaging apps that are encrypted, police authorities find it challenging to nab these perpetrators. These messaging apps are usually shared one-to-one or distributed through a broadcast list making it difficult to trace. Lack of technological understanding among police officials is one of the major hurdles which hinders cracking these cases. Further, Virtual Private Network (VPN) connections that cover up actual numbers and fake IMEI mobile numbers, make it difficult to track the origin of a pornographic message which eventually spreads across groups.