

POCSO and Child Pornography

Why in News?

Recently Supreme Court expanded the scope of POCSO act regarding child pornography.

What are the POCSO provisions on Child Pornography?

- **Child Pornography** - The act defines it as any visual depiction of sexually explicit conduct involving a child which include photograph, video, digital or computer-generated image.
- **Child Pornography Offences** - Section 14 and 15 of the POCSO Act provides for the using child for pornographic purposes and possession of pornographic material involving child.
 - **Possession** - Storage or viewing pornographic material in any form involving a child.
 - **Non-Reporting** - Failure to report about child pornographic material to the designated authority is also a punishable offence.
 - **Transmission** - Transmitting or propagating or displaying or distributing child pornographic material in any manner.
 - **Commercial purpose** - Possessing pornographic material in any form involving a child for commercial purpose.

Section 67B of the Information Technology (IT) Act also penalises use, transmission and publication of obscene materials and browsing, creation, collection, online facilitation or enticement of children into any sexual act or conduct an offence.

CASES & VICTIMS

Cases registered under
Sections 14 & 15 of POCSO

| Year | Incidents | Victims |
|------|-----------|---------|
| 2022 | 696 | 703 |
| 2021 | 536 | 540 |
| 2020 | 584 | 592 |
| 2019 | 1114 | 1117 |
| 2018 | 812 | 821 |

Source: NCRB reports; All India data

What are the interpretations of the supreme court?

- **Reversal of HC Judgement** - SC set aside Madras High Court decision and held viewing in private, downloading, storing, possessing, distributing or displaying pornographic acts involving children attract criminal liability under the POCSO Act and IT act.

Madras High Court held that mere possession or storage and watching or downloading pornographic acts involving children in private was not a crime.

- **Substitute child pornography** - Supreme Court urged the Parliament to amend the POCSO Act to substitute the term “child pornography” with “Child Sexual Exploitative and Abuse Material” or CSEAM.
- **Inchoate offences** - Section 15 was not limited to punishing the sharing or transmitting of child pornographic material, and could even be used to punish the “intent” to commit such an act.

An inchoate crime is a criminal act that is incomplete or not fully developed, but is punishable because it involves preparation for a further crime.

- **Expansion of Section 15(1)** - Failure to “delete or destroy or report” child pornography would allow the court to “indirectly” infer that the concerned individual intended to share or distribute.

- **Constructive possession** - The definition of “possession” to include cases where the individual may not have physical possession of the material, but have the power to control the material in question and the knowledge of exercise of such control.
- **Reporting** - A person will only be absolved of any punishable liability if the person reports the same to the specified authorities.
- **Past Storage** - Charges can be made for possessing child pornographic material even in the past and deletes the same.
- **Intention** - The intention of an accused can be determined based on the manner in which such material is stored or possessed and the circumstances in which the same was not deleted or not reported.

Why use of the term CSEAM is emphasized than child pornography?

- When combating child sexual exploitation, the use of the correct terminology is important to streamline discussions, and research accurately and avoid confusion.
- **Child sexual exploitation material (CSEM)** - It is the recording of the sexual abuse or exploitation of a child or young person.
- This can include images, videos, or live-streamed content that depict real children or young person’s being sexually abused and exploited.
- **Reflecting True Reality**- CSEAM would more accurately reflect the reality that these images and videos were not merely pornographic but were records of incidents during which children were sexually exploited and abused.
- **Emphasizing Seriousness** - The term child pornography fails to describe the true nature of the material and undermines the seriousness of the abuse from the child’s perspective.
- **Prevents trivialization** - Pornography is a term primarily used to describe material depicting adults engaged in consensual acts distributed for the purposes of sexual pleasure.
- Using this term in the context of children risks normalizing, trivialising and even legitimising the sexual abuse and exploitation of children.
- **Imagined Consent** - Pornography is often seen as a consensual act between adults and using child pornography term undermines the victimisation.

References

1. [The Indian Express | strengthening the law against child pornography](#)
2. [The Hindu | Child Sexual Exploitative and Abuse Material](#)