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# Mid-Day Explains | What does SC's recent ruling on child pornography mean for children's safety in India?

Premium

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The Supreme Court of India recently delivered a landmark ruling, suggesting renaming the term 'Child Pornography' in the POCSO Act to 'Child Sexual Exploitative and Abuse Material', and broadening the scope of offence for 'possession of such material. Experts explain these changes and the significance they hold

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## Key Highlights

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1. Recently, the SC extended the scope of what is considered an offence under POCSO, IT Acts
2. The bench also called for a law replacing 'child pornography' with a term 'CSEAM'
3. While it is a landmark legal decision aimed at protecting children, there are loopholes

Trigger warning: Mentions of sexual exploitation and abuse

In what is being considered a landmark legal verdict, the [Supreme Court of India](#) on September 23 ruled that watching, downloading and not reporting child pornography amounts to an offence, even if it is not done with the intent of transmission. In doing so, the SC overturned a previous Madras High Court order, that had said mere downloading and watching child pornography was not an offence under the Protection of Children from Sexual Offences (POCSO) Act and Information Technology (IT) Act.

interpretation of what constitutes an offence on this matter under the POCSO Act. Additionally, the ruling also called for a [change](#) in law to replace the term 'Child Pornography' with 'Child Sexual Exploitative and Abuse Material' in Section 15 of the said Act.

The judgment read, "One must also be mindful of the fact that the term "child pornography" is a misnomer that fails to capture the full extent of the crime. It is important to recognise that each case of what is traditionally termed "child pornography" involves the actual abuse of a child. The use of the term "child pornography" can lead to a trivialisation of the crime, as pornography is often seen as a consensual act between adults. It undermines the victimisation because the term suggests a correlation to pornography — conduct that may be legal, whose subject is voluntarily participating in, and whose subject is capable of consenting to the conduct."

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### Why renaming the term 'child pornography' is significant?

This is being considered an important step towards children's safety by legal, cyber and psychology experts alike.

Adv. Divya R, Trainer, External Member & Chief Quality Officer, The Legal Swan, says, "Child sexual exploitative and abuse material (CSEAM) provides a more accurate reality of the nature and reality of offences under Section 15 of the POCSO Act. CSEAM and child sexual abuse (CSA) both contain exploitation and degradation of a child for the sexual gratification of the abuser."

She adds, "CSEAM is not just pornography but records of sexual offences where a child has either been sexually exploited and abused or where any abuse of children has been portrayed through any self-generated visual depiction. CSEAM emphasises the exploitation and abuse of a child as the criminal nature of the act is highlighted."

Nirali Bhatia, cyber psychologist, psychotherapist and founder of Cyber B.A.A.P. (an anti-cyberbullying organisation) agrees. She says, "This SC ruling addresses the issue correctly. When it is related to children, it is exploitation and abuse. It cannot be pornography. The demand for such material for entertainment and pleasure can be curbed the moment you take out that word."

"Renaming this term will bring education, awareness and an appropriate [understanding](#) that this cannot have any pleasure-value. When we use the terms 'exploitation' and 'abuse', the element of criminality comes in, which is essential," she adds.

The said changes have been made to Section 15 of the POCSO Act.

### What is the law in question?

Section 15 of the POCSO Act mentions the punishment for the storage of pornographic material involving children. It has the following criteria under which such an act is considered an offence with punishment ranging from fine to imprisonment:

- (1) Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, to share or transmit child pornography
- (2) Any person, who stores or possesses pornographic material in any form involving a child for transmitting propagating or displaying, or distributing in any manner at any time except for reporting, as may be prescribed, or for use as evidence in court
- (3) Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose

### Loopholes in Section 15 of POCSO Act

Concerning the Madras HC ruling that was overturned, Adv. Divya says, "The HC wrongly interpreted Section 15 and quashed the criminal proceedings against the accused on several grounds."

### These are:

- Mere storage of child pornographic material cannot be said to constitute an offence.
- In this case, there was no transmission, publication or creation of material depicting children in a sexually explicit manner.
- Similarly, there was also no material to indicate the transmission, publication, or creation of material depicting children in a sexually explicit manner.

All these grounds were loopholes in Section 15 that necessitated the current ruling of the SC.

Adv. Divya says, “Now, for Section 15 to be applicable, actual transmission of child pornographic material is not necessary. One of the primary grounds is storage or possession of such material.”

Explaining further, she states, “The Supreme Court has interpreted possession to include both actual and constructive possession. With the evolution of technology, links containing child pornographic material are forwarded or shared instead of actual videos. In such cases, downloaded material may not be available on the devices in which they are viewed. Similarly, if a person has accessed child pornographic material via a child pornographic website, they may have only viewed the material and not necessarily downloaded it on their device. In all such cases, the accused person will still be considered to have child pornographic material.”

“Therefore, storage or possession is not limited to physical or tangible storage or possession. A person who has accessed material through a child pornographic website cannot absolve themselves of criminal liability on the ground that they have closed the link,” she adds.

This decision puts the onus on the consumers of such material. “This will cut down demand. People who consume such exploitative material need to have a fear of consequences,” believes Bhatia.

However, she says, “Just the judgement won’t help. It has to be backed with appropriate education, re-iteration and rapid action. There’s a need for landmark judgements that instill that fear in people.”

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What about creation and production?

While this is aimed at curbing the consumption of child pornographic material, the actual creation and production remains an issue, despite appropriate laws in place. Bhatia says, “The online world is devoid of regulations. It is not impossible to track such material on the internet, but it is a time-consuming process. Beyond this, there’s also a dark web that exists. So, tracking becomes a challenge. “

Stressing on how technology makes this issue even more problematic, she states, “Even one photograph can be used to create a deepfake.”

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Due to these reasons, Bhatia believes, it is difficult to monitor creation. Hence, there’s a need to curb the demand which is where this judgement will help.

Harms of such material on children’s safety

Given the exploitative and abusive nature of such material, it not only poses a significant risk to the physical safety of children but also their psychological well-being.

Bhatia explains, “Experiencing something like this can be devastating for a child. It is not just physical or sexual abuse. It also causes significant emotional damage. Children are in their formative years, still forming ideas about their bodies, love, touch, masculinity, femininity, relationships, etc. Such acts are a violation if done without consent and appropriate knowledge, and at an inappropriate age.”

“Even if such content is created using AI or other technologies without any involvement of the child, if they come across it and see their face on it, the damage can be equally serious,” she adds.

The advent of social media and technology has deepened the issue. “Today, everything is recorded and put on the internet.

sexual abuse material and I had to see what it was. It was so, so disturbing. In some videos, children were even smiling, too young to understand what was happening,” reveals Bhatia.

“The online world is a breeding ground for child traffickers, stalkers and pedophiles. There’s so much information available online on anyone, including children. And with AI, anyone can be at risk,” she further states.

Furthermore, such incidents are life-altering. They can have long-term effects on a child’s idea of intimacy, relationships and more. Due to the devastating impact, strict laws to prevent and punish child sexual exploitation and abuse, and curb both creation and consumption of such material is extremely essential.

The way forward

While the SC’s recent ruling is a step in the right direction, several other aspects still need attention.

Adv. Divya explains:

1. For Section 15(1) to be applicable, storage or possession of child pornographic material and intention to share or transmit such material are the two necessary elements. However, this intention to share or transmit cannot easily be proved. The Supreme Court has clarified that the expression around intention cannot be read in isolation. For example, if a person in storage or possession of CSEAM fails to delete, destroy or report the incident, such inaction can be considered as indicative of the intent to share or transmit any material. Challenges may be found in proving or disproving intent to distribute or share the material.
2. Accused often plead ignorance of law where charges under Section 15 are raised against them. While ignorance of the law cannot be used as a valid defence in any case, this also raises concerns that enough measures are not being taken to create awareness around the POCSO legislation, nature of offences covered, punishment, liabilities and responsibilities, etc.
3. While the Supreme Court has interpreted storage and possession of CSEAM to also include constructive possession, considering that CSEAM gets circulated through encrypted messaging apps and dark web platforms, the law and enforcement agencies may not be technologically well-equipped to deal with such incidents.
4. Platforms may not always remove sexually explicit content unless they receive a court order. Relying on court directions for each case can take a lot of time and may instead be counter-productive. There should be provisions under the POCSO Act that hold platforms responsible and require them to remove content involving CSEAM without waiting for a court order.

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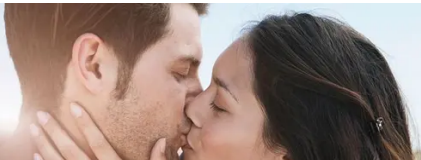
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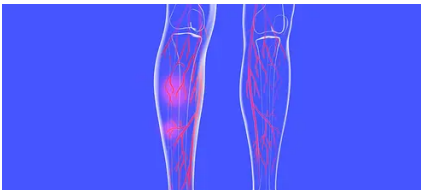
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