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# Child Pornography Laws in India: Adequacy and Enforcement Challenges in POSCO Act and IT Act

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### Abstract

Child sexual exploitation in digital spaces has emerged as one of the most alarming challenges of the twenty-first century. The rapid growth of internet usage, social media platforms, encrypted communication, and easily accessible digital devices has significantly increased the circulation of Child Sexual Abuse Material (CSAM). India, recognizing the severe threat posed to children, has enacted two major legal frameworks—the Protection of Children from Sexual Offences (POCSO) Act, 2012 and the Information Technology Act, 2000—to regulate, criminalize, and prevent child pornography. The POCSO Act adopts a child-centric approach by defining child pornography comprehensively, criminalizing its production, storage, and dissemination, and providing stringent punishments. Complementing this, Section 67B of the IT Act targets online publication, transmission, browsing, and facilitation of CSAM, thereby extending legal protection to the virtual environment. Despite these strong statutory provisions, the enforcement landscape remains fraught with obstacles. The inherently anonymous and borderless nature of cyberspace complicates detection, investigation, and prosecution. Many offenders operate through encrypted platforms, dark net markets, and cross-jurisdictional networks, making evidence collection challenging. Law-enforcement agencies often lack advanced cyber-forensic tools, adequate training, and real-time coordination mechanisms. Moreover, delays in reporting by intermediaries, limited awareness among parents and children, inconsistent implementation across states, and the stigma surrounding sexual offences further weaken the enforcement process.

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### Introduction

The pornography industry is one of the fastest-growing sectors globally today. The number of people engaging with this industry has notably increased in the current climate. It is essential to recognize that the digital transformation of the industry, particularly via the internet, has propelled its rising popularity. The easy and quick access to the global web through technology has caused a troubling increase in cyber pornography, including child pornography and other online crimes. This creates a complex challenge for governments and law enforcement agencies worldwide. Technology and the internet have enabled the distribution of pornographic content, which can negatively impact the moral and psychological development of young individuals. A child represents the future of a nation. Across the globe, children are nurtured, as the well-being of a country relies on the healthy development

of its youth. In a global context, children, who are the prospective citizens of the future, face a major disadvantage—they are vulnerable both physically and mentally. Child sexual abuse is a serious social disgrace because it disrupts society's human consciousness and prevents children from developing normally. It disrupts a child's normal development and has serious negative effects on both the child's body and mind. In addition to causing physical harm to the body, it also permanently damages the child's intellect at a very young age. Millions of boys and girls around the world are undoubtedly subjected to sexual abuse both within and outside of their homes. They are frequently abused by family members and acquaintances. Anyone who exploits a child's vulnerability to seek sexual pleasure can be the offender. Child pornography is not a single act; rather, it is a continuum of serious offenses with dire consequences. It begins with the youngster being

sexually exploited; even if they are aware of what is occurring, it does not lessen the horror of being taken advantage of. This abuse is then documented and disseminated to corrupt people who may gain twisted pleasure from witnessing the misery of these exploits, which feeds and satisfies their own urge to carry out such an act.

### Definition of Child Pornography

Art. 2(c) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography<sup>1</sup>

Defines child pornography as any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

According to Article 34 of the Convention on the Rights of the Child<sup>2</sup>, states parties promise to shield children from all types of sexual abuse and exploitation. In order to achieve this, States parties must specifically take all necessary national, bilateral, and multilateral actions to stop "the exploitative use of children in pornographic performances and materials."

The 2024 UN Convention against Cybercrime<sup>3</sup> adopts a modern and comprehensive framework to criminalize all forms of online child sexual abuse material (CSAM), a term broader and more accurate than traditional "child pornography." Article 14 requires States to treat as criminal offences the online production, distribution, transmission, sale, display, access, possession, and financing of CSAM when done intentionally. CSAM is defined to include visual- and where states choose, even written or audio-depictions of anyone under 18 engaged in real or simulated sexual activity, shown with exposed sexual parts for sexual purposes, or subjected to sexualized cruel or degrading treatment.

### Legal Framework in India

India has been working on its laws as the majority of the globe works to eradicate the scourge of child pornography. India designed the Protection of Children from Sexual Offences Act, 2012, which was created to ensure that offenders will face harsher penalties for sexual offenses against children. Child pornography is strictly punishable nationwide per Section 67B of the Information Technology Act of 2000.

Apart from this, a number of laws, including the Juvenile Justice (Care and Protection) Act of 2000, the Child Labor (Prohibition and Regulation) Act of 1986, the Immoral Trafficking (Prevention) Act of 1986, and the Child Marriage Restriction Act of 1986, are in place to protect children from various forms of exploitation, particularly sexual exploitation. The Indian Penal Code has laws pertaining to offenses against children. These were dispersed throughout the IPC. There was no distinct chapter. Now, under BNS, all of the offenses against children are listed in a separately in chapter V. Section 97 – Addresses kidnapping or abducting a child under the age of 10 for the purpose of theft (i.e., stealing from the child). The offender can face up to 7 years of imprisonment along with a fine.

Sections 98 & 99 – These sections criminalize the sale and purchase of a child for immoral purposes such as prostitution or forced intercourse. Both the seller and buyer can be punished with up to 10 years of imprisonment and a fine.

### Role of POSCO Act 2012

POSCO 2012 was enacted to fulfill the constitutional mandate

of Article 15(3) and other articles. Article 15(1) gives the State the authority to create special provisions for children. Article 39 urges the State to develop policies that protect children from abuse and prevent exploitation during their childhood and youth.

Additionally, India ratified the United Nations Convention on the Rights of the Child in 1992. This agreement requires the State to take measures to:

1. Prevent the coercion or inducement of children to engage in unlawful sexual activity,
2. Prevent the exploitation of children in prostitution or other illegal sexual practices, and
3. Prevent the exploitation of children in pornographic performances.

Thus, the Parliament enacted The Protection of Children from Sexual Offences Act 2012 which came into on 14 NOV 2012.

### Using a Minor for Pornographic Purposes

It is punishable under the POCSO Act. Section 13 of the Act explains what it means to use a child for pornographic purposes. This clause states that anyone who uses a child for sexual enjoyment through any type of media, whether printed or electronic, is seen as using the child for pornographic purposes. This applies regardless of whether the use was meant for distribution or just for personal enjoyment. It includes involving a child in real or simulated sexual behavior where penetration is not necessary, displaying a child's genital organs, and showing a child in an obscene way.

Any individual who violates Section 13 of the POCSO Act faces at least five years imprisonment and a fine under Section 14. Additionally, the offender would face a minimum 7-year imprisonment sentence and a fine if found guilty of the same crime once again. It further states that a person will be punished under sections 4, 6, 8, or 10 of the POCSO Act in addition to section 14 if they use children for pornography in addition to offenses listed in sections 3, 5, 7, or 9 by participating in the pornographic act.

### Procedural Safeguards

#### Procedure of Recording Case (Section 19)

A child or someone who knows about a crime under this Act must inform the Special Juvenile Police Unit or a local police officer. They will report the case. If the information comes from a child, it will be written down in simple language that the child can understand. If the child does not understand, an interpreter with the necessary qualifications will be provided for a fee. The Special Juvenile Police Unit will send the report to the Child Welfare Committee and Special Court without delay, within 24 hours. In *State of Gujarat v. Anirudh Singh*<sup>4</sup>, the Supreme Court emphasized that every citizen has a legal obligation to cooperate with investigative agencies and provide information relating to cognizable offences. This principle becomes particularly significant in cases involving child sexual abuse, where schools and teachers often play a crucial role as first responders. Their duty to report is illustrated in *Nar Bahadur v. State of Sikkim*<sup>5</sup>, where teachers, after finding out that a student had gotten pregnant from repeated sexual assault by an older accused, quickly informed the local panchayat, which then filed an FIR. These cases show the important role of schools and community members in starting the criminal justice process and making sure child victims receive protection on time.

In *Shankar Kisan Rao Khade v. State of Maharashtra*<sup>6</sup>, The Supreme Court issued important guidelines on the mandatory reporting of child sexual offenses. The case involved the rape

of an 11-year-old girl with moderate intellectual disability. This incident was not reported to the police or the Juvenile Justice Board. Understanding the greater vulnerability of children with intellectual disabilities, the Court stated that institutions responsible for their care have a greater duty to report any sexual abuse. The judgment underscores the need for proactive protection mechanisms and reinforces institutional accountability in safeguarding children with special needs.

### **Procedure for Media (Section 23)**

No one should report or comment on any child in any form of media, studio, or photographic facility without full information that might harm the child's reputation.

No report in any media disclose name, address, photo, family details, School, neighbor details of the child.

### **Procedure Ensuring Child Friendly Trial**

#### **Recording of Statement by Police Officers (Section 24)**

1. Statements should be recorded at the child's usual residence or at a location chosen by the woman police officer, if possible.
2. The police officer shall not wear a uniform during the investigation and must ensure that the child does not come into contact with the accused.
3. The police officer shall protect the child's identity from the media.
4. No child shall be detained at the police station at night.

#### **Recording of Statement by Magistrate (Section 25)**

The magistrate records the statement under section 183 of BNSS. Presence of advocates are not required in this case. Recording of statement shall be in presence of parents of child.

### **Procedure and Powers of Special Court and Recording of Evidence**

#### **Recording Evidence**

After the Special Court notices the offence, the child's testimony must be recorded within 30 days. If there is a delay, the Special Court must explain the reasons for it. The Special Court must ensure that the accused does not come close to the child while the evidence is being recorded. The accused should be able to hear the child's statement and communicate with his lawyer. This can be done by using one-way mirrors or curtains, or by using video conferencing to record the evidence. When recording a child's evidence, a certified interpreter, translator, or special educator may be needed.

#### **The Special Court's Responsibilities (Section 30)**

When conducting the trial under the Act, the Special Court is obligated to take the following actions:

1. If necessary, allow the child to take regular breaks during the trial.
2. Create a child-friendly environment by allowing a family member, guardian, friend, or trusted relative to attend the court.
3. Ensure the child is not asked to testify in court more than once.
4. Protect the child's dignity at all times and prohibit harsh questioning or character attacks. Also, ensure that the child's identity is never disclosed during the inquiry or trial. Disclosure may only be permitted if it is documented in writing and serves the child's best interests.
5. As far as feasible, make sure the trial is finished within a year of the date the offence was discovered.

### **Provision under IT Act 2000**

#### **Section 67B: Penalties for Transmitting or Publishing Content of Children in Sexually Explicit Acts, etc.**

This is the major part that only deals with pornography of children. It makes it illegal to create, publish, transmit, browse, download, and advertise child sexual abuse material (CSAM). The following actions are prohibited by Section 67B:

1. Publishing or sending anything that shows a child engaging in sexually explicit behavior; uploading; forwarding; sharing via social media, websites, apps, etc.
2. Producing text, pictures, videos, cartoons, or any other technological depiction of a child engaging in sexual activities
3. It is illegal to browse, download, or even view child pornographic material.
4. Promoting, distributing, or advertising child pornography
5. Encouraging a child to pose for sexual content or engage in sexual conversation online

In the case of Just Rights for Children Alliance v. S Harish<sup>7</sup>, which concerned the ownership and viewing of "child sexual exploitation and abuse material," the Hon'ble Supreme Court rendered a historic ruling related to child sexual exploitation and abuse material (CSEAM).

The Supreme Court held that accessing CSEAM online constitutes "constructive possession" of the content and is illegal under Section 15 of the POCSO Act, regardless of whether the content is stored or distributed. This decision ensures that anyone who encounters child pornography is held responsible even if they do not save, download, or disseminate it by expanding the definition of what constitutes possession.

The idea of "constructive possession," which extends beyond the conventional definition of possession to include access to and control over child sexual exploitation material, even if it is not downloaded or stored, is central to the Supreme Court's decision. The Court determined that the requirement of possession under Section 15 of the POCSO Act is satisfied by an individual's ability to manipulate, edit, or erase CSEAM, even if access is only temporary.

#### **Other Related Clauses**

Section 67: Obscenity focuses on generic sexually explicit content that does not include children.

Section 67A (Content that is sexually explicit) focuses on adult pornography. However, child pornography is expressly targeted by Section 67B.

Section 13 POSCO penalizes the use of a child in the creation stage of pornography. It focuses on while producing the content, children are directly exploited. It can be in any medium, whether it be offline or online.

Publishing, sharing, downloading, viewing, or promoting child pornography online is prohibited by Section 67 B of the IT Act. It mainly focuses on online abuse, including grooming, circulation, and possession. It can only be in digital or electronic format.

#### **Enforcement Challenges**

Consented sexual intimacy: The Protection of Children from Sexual Offences (POCSO) Act, 2012, though enacted to safeguard minors from sexual exploitation, has unintentionally generated complex legal and social challenges, particularly concerning consensual adolescent relationships. The 2011 draft Bill had acknowledged the



reality of teenage consent by proposing provisos under Sections 3 and 7 to exempt consensual sexual activity between 16–18-year-olds, subject to judicial scrutiny of coercion, intimidation, fraud, or undue influence. However, the Parliamentary Standing Committee recommended removing these clauses on the rationale that, once “child” is defined as anyone below 18 years, consent becomes legally irrelevant—otherwise the trial would shift attention to the victim’s conduct rather than the accused.

The Justice J.S. Verma Committee (2013) later proposed lowering the age of consent from 18 to 16 years, aligning it with Section 375 of the IPC, reasoning that the UNCRC aims to prevent exploitation, not criminalize normal adolescent behavior. These suggestions were not accepted, and the age of consent in the IPC was raised to 18.

Judicial decisions have highlighted the inconsistencies that stem from this rigid framework. Courts in cases such as *R. Parthiban v. State*<sup>8</sup> and *Ranjit Rajbanshi v. State of West Bengal*<sup>9</sup> have questioned the blanket criminalization of consensual adolescent relationships and the arbitrariness of age-based consent thresholds. Such judgments illustrate a “grey area” in interpreting consent under POCSO, leading to contradictory outcomes.

Scholars argue that sexual consent is a core aspect of personal autonomy, yet POCSO criminalizes all sexual activity involving minors. The resulting over-criminalization not only fails to reflect adolescent realities but also contributes to the revictimization of both the minor involved and the accused. Overall, the judicial and legislative disconnect has produced inconsistent applications of the law, revealing an urgent need for reform to address consensual adolescent relationships more sensitively.

Recently in January 2026, Supreme Court urged government to introduce Romeo Juliet clause to protect genuine adolescent relationship and to avoid misuse of law.<sup>10</sup>

**Child Marriage:** According to the POCSO Act of 2012, child marriage and the consummation of child marriage are banned. Although secular law in India forbids child marriage, some personal laws allow it. This creates complications.

**Reporting:** It is well known that most cases of child sexual abuse go unreported. Many family members and survivors also find it very difficult and personal to recognize and report these offenses. The act's remorse, rage, frustration, and mental upheaval cause both survivors and family members to feel ashamed and embarrassed.

**Investigation and Trial Delays:** According to NCRB data, there is a significant backlog of POCSO cases. The Act's requirement for prompt justice is frequently yet unfulfilled.

**Extraterritorial Authority:** Since cyberspace is global, any laws or court decisions that touch it may have an effect outside of its borders. Jurisdiction is one aspect of foreign communications via the internet that is challenging to ascertain. Because the virtual world is more uncertain than the physical world, it is very difficult to govern cybercrime. As a result, courts faced jurisdictional law issues and were unable to choose the appropriate forum to hear cases involving cybercrime. Since our equipment is incompatible with dealing with international crimes, national laws are unable to address the issue of cybercrime using local machinery.

Section 75 of the Information Technology Act of 2000 states that India has jurisdiction over foreign entities that engage in illicit actions outside of India that have an impact on an Indian computer data system. The section states that the Act's provisions apply to two things: first, any individual, regardless of nationality, and second, a crime or violation

committed outside of India. As a result, the IT Act has adopted the idea of universal jurisdiction to include both cybercrimes and cyber violations.

**Two-finger Test:** historically used during medical examinations of sexual assault survivors to assess vaginal laxity and infer prior sexual activity, remains a deeply problematic and invasive practice. Although banned by the Government of India in 2012, reports indicate that it continues to be administered, including in cases involving minor victims under the POCSO Act. In *Lillu @ Rajesh v. State of Haryana*<sup>11</sup>, the Supreme Court unequivocally held that the two-finger test violates a woman’s fundamental rights to privacy, dignity, and mental integrity. Declaring the practice unconstitutional, the Court emphasized that a survivor’s sexual history has no relevance to determining consent or the occurrence of sexual assault. The judgment reinforces the need for trauma-informed, rights-based medical procedures in cases of sexual violence.

## Conclusion

The POCSO Act and the Information Technology Act, 2000, which make up the majority of India's legislative framework against child pornography, show a strong statutory commitment to shielding minors from online sexual exploitation. While Section 67B of the IT Act makes it illegal to publish, transmit, or browse child sexual abuse material (CSAM) online, the POCSO Act offers thorough definitions, severe penalties, and a child-centric strategy. However, enforcement still faces several difficulties in spite of this strong legislative framework. Therefore, even though the current laws are sufficient in theory, their effectiveness depends on how well they are put into practice. It is imperative that cyber-policing infrastructure be strengthened, that digital evidence be processed more quickly, that international collaboration be improved, that investigators and prosecutors be trained, and that social media and internet intermediaries be required to comply more strictly. To guarantee that the goals of the POCSO Act and IT Act are converted into actual protection for children in the digital age, a concerted effort including law enforcement, the judiciary, technology corporations, parents, schools, and civil society is ultimately needed.

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