
FROM CHILD PORNOGRAPHY TO CSEAM: A CASE COMMENT ON JUST RIGHTS FOR CHILDREN ALLIANCE V. UNION OF INDIA

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ABSTRACT

The law surrounding child sexual exploitation in India has faced increasing interpretative challenges, particularly with respect to Section 15 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”) and Section 67B of the Information Technology Act, 2000. Conflicting High Court rulings on whether passive possession or mere viewing of exploitative content amounts to criminal liability have created significant legal ambiguity. In this context, the case of Just Rights for Children Alliance v. Union of India warrants close examination, as it addresses these interpretative gaps through a purposive and victim-centric approach.

This paper seeks to analyse four key aspects of the case. First, it explores the scope of Section 15 of the POCSO Act. Second, it examines the Court’s introduction of the doctrine of constructive possession into Indian jurisprudence, drawing on U.S. federal case law to clarify the concept of control in digital spaces and its interplay with Section 67B of the IT Act. Third, it discusses the principle of foundational facts and the operation of statutory presumptions under Sections 29 and 30 of the POCSO Act. Lastly, it analyses the Court’s reasoned rejection of the plea of ignorance of law.

Through a normative analysis, this paper supports the Court’s interpretation and highlights its role in resolving key ambiguities in the law on child sexual exploitation.

Keywords: POCSO, CSEAM, Criminal liability, Digital child protection

INTRODUCTION

The protection of children from sexual exploitation remains one of the most pressing challenges in today's society, especially in the digital age where abuse often transcends physical boundaries. Despite stringent laws like the POCSO Act, courts across India have struggled to maintain a uniform stance on what constitutes criminal liability in cases involving child pornographic material. Various High Courts have expressed divergent views— The Kerala High Court has held that mere possession or viewing of child pornographic material does not attract liability under Section 15, unless there is an actual transmission or sharing.¹ The Karnataka High Court similarly ruled that Section 67B applies only to intentional browsing or transmission, not mere possession.² In contrast, The Madras High Court³ and Madhya Pradesh High Court⁴ have taken a broader view, holding that viewing, browsing, or transmitting such material is sufficient to attract liability under Section 67B. By adopting a purposive and victim-centric reading of the POCSO Act and the Information Technology Act, the Supreme Court effectively abridges these divergent views and has not only closed the dangerous loophole created by a narrow, text-based interpretation of the law, but also set a principled precedent for addressing digital offences involving children.

FACTS

The case arose from a Cyber Tipline report received by the NCRB, identifying the respondent, S. Harish, as a suspected consumer of child sexual exploitation and abuse material. Based on this, an FIR was registered on 29.01.2020 by the All-Women's Police Station, Ambattur, under Section 67B of the IT Act and Section 14(1) of the POCSO Act. A forensic examination of the respondent's mobile phone revealed over 100 pornographic videos, including two files clearly depicting underage boys involved in sexual acts with an adult woman. Following the investigation and the respondent's admission to viewing pornographic content, a chargesheet was filed under Section 67B of the IT Act and Section 15(1) of the POCSO Act. However, the High Court quashed the proceedings, holding that mere possession or storage of CSEAM without proof of transmission, publication, or sharing does not constitute an offence under either statute. It further held that Section 15 of POCSO was inapplicable, and only active

¹ Shanteeshla T v State of Kerala 2024 KER 35968

² Inayathulla N v State 2024 KHC 26513

³ P G Sam Infant Jones v State represented by Inspector of Police 2021 SCC OnLine Mad 2241

⁴ Nupur Ghatge v State of Madhya Pradesh MCRC No 52596 of 2020

dissemination or creation is punishable under Section 67B. Challenging this interpretation, the appellants approached the Supreme Court, contending that the High Court's narrow reading undermined the protective purpose of the statute.

JUDGMENT

The Supreme Court held that a *prima facie* case was made out under Section 15(1) of the POCSO Act and Section 67B of the IT Act, thereby rejecting the High Court's reasoning and interpretation. It clarified that Section 15(1) criminalises the possession or storage of child pornographic material where there is a failure to delete or report such content, provided it is accompanied by an intention to share or transmit; actual transmission is not required to attract liability. Section 67B was also interpreted broadly to include browsing, downloading, or collecting child sexual abuse material, thereby covering even private consumption. The accused's plea of ignorance of law was held untenable, as such ignorance cannot give rise to any bona fide or colourable claim of right to retain illicit material. The Court found the explanation that the files were auto downloaded via WhatsApp to be factually unsupported. Invoking the presumption of culpable mental state under Section 30 of the POCSO Act, it concluded that the accused failed to rebut it. Accordingly, it reversed the High Court's quashing of proceedings under Section 482 CrPC and directed that the criminal trial be restored and proceeded with in accordance with law

ANALYSIS

A. SCOPE OF SECTION 15 OF THE POCSO ACT

One of the key issue the case dealt with was the scope of Section 15 of the POCSO Act. It has long occupied a grey zone, particularly in cases where possession exists without overt dissemination. In this case, the Supreme Court confronted whether the provision extends to passive conduct alone—a question made more pressing by the divergent interpretive paths taken by various High Courts.

For Section 15(1), the Supreme Court began its analysis by closely examining the statutory language, particularly the phrase “with an intention to share or transmit child pornography.” The Court made it clear that the offence under this sub-section is not contingent on actual sharing or transmission of the material. Instead, what is penalized is the act of storing or

possessing CSEAM and then failing to delete, destroy, or report it, when such omission is motivated by an intention to share or transmit. The intention to share or transmit is inferred from the failure to delete or report CSEAM, which the law presumes indicates a future intent to share or transmit. This interpretation is reinforced by the legislative choice of words: had Parliament intended to punish only actual sharing or transmission, it would have used “transmits” or “shares” instead. The actus reus here is the omission to delete, destroy, or report, and the mens rea—the intention to share or transmit—is inferred from this omission..

For Section 15(2), the Supreme Court recognized a distinct, more active form of culpability. Here, the focus shifts from mere omission to the purpose behind the storage or possession of CSEAM. Section 15(2) criminalizes both preparatory and completed conduct. It applies when a person “stores or possesses” CSEAM either “for transmitting or propagating or displaying or distributing in any manner”, i.e., Facilitation, or actually transmits, propagates, displays, or distributes it, i.e., Commission, which constitutes two distinct actus reus. The phrase ‘for transmitting or propagating or displaying or distributing in any manner’ reflects legislative intent to criminalise both preparatory and completed acts. Had the legislature intended to limit the offence to completed acts, it would have drafted the provision to require proof that the accused “transmits, propagates, displays or distributes” the material. Instead, the focus is on the underlying purpose, broadening the provision’s reach to cover indirect or preparatory conduct that could lead to harm.

Section 15(3) of the POCSO Act, as interpreted by the Supreme Court, targets the storage or possession of CSEAM when done for a “commercial purpose.” The Court interpreted this term broadly to include any activity intended to gain a benefit—not just monetary, but any form of valuable consideration. While the actus reus remains the same as in the other sub-sections (possession or storage), the mens rea is heightened by the requirement of a commercial motive. This interpretation addresses the serious threat of profiteering from child exploitation and ensures that liability attaches even if the commercial scheme fails or remains incomplete, thereby reinforcing the law’s deterrent effect.

We note that each sub section (1), (2), and (3) are independent and distinct offenses, only one sub-section of Section 15 can apply to a case at a time. Sub-sections (1), (2), and (3) are separate offences and cannot be used together for the same set of facts. Each one requires a different level of intent. The intent under subsection (1) is still developing, while the intent under

subsections (2) and (3) is clearer and more advanced. Once it becomes clear that the accused had the intent required for subsection (2) or (3), subsection (1) no longer applies. Courts must therefore identify which sub-section best corresponds to the accused's actions and intentions, ensuring proportional sentencing and avoiding duplicative charges or double jeopardy.

B. FROM VIEWING TO CRIMINAL LIABILITY

The Supreme Court recognised that Indian law, until now, had left ambiguous whether individuals who merely browse or view such material online—without downloading, storing, or sharing it—could be held criminally liable. This uncertainty created a loophole that allowed offenders to escape accountability by engaging with CSEAM in fleeting or non-permanent ways, such as streaming or temporary viewing, without leaving digital traces.

To address this, the Court extended the doctrine of constructive possession to the digital offences. Drawing on comparative jurisprudence from U.S. federal courts, the Court held that the legal concept of possession should extend beyond physical custody to include the degree of control an individual exercises over illicit content, even if such control is temporary or intangible.

The Court relied on *U.S. v. Tucker*,⁵ where the defendant had routinely viewed child pornography without storing it on his device, often deleting any trace of the material immediately after viewing. Rejecting the defence of non-possession, the U.S. court held that the ability to access, manipulate, or delete material amounts to constructive possession. The test was whether the person could exercise “immediate control” over the content. Similarly, in *U.S. v. Romm*,⁶ the court found that even temporary access or interaction—such as saving, forwarding, or deleting images—constitutes dominion over the material. Thus, actual download or permanent storage was not considered essential for liability; what mattered was the capacity to engage meaningfully with the content.

Adopting this reasoning, the Supreme Court held that under Section 15 of the POCSO Act, possession includes situations where an individual exercises effective control over CSEAM, even without physically storing it. The requisite ingredients for liability are the power to access or manipulate the material and the conscious knowledge of doing so. This reading ensures that

⁵ U.S. v. Tucker 150 F. Supp. 2d 1263 (D. Utah. 2001)

⁶ U.S. v. Romm, 455 F. 3d. 990 (9th Cir., 2006)

offenders cannot evade liability by claiming that they did not save the content or that the material was auto deleted. The Court's interpretation effectively closes the gap in Indian law by recognising that browsing, viewing, or interacting with CSEAM—without deleting or reporting—still perpetuates harm and must attract liability.

The Court further reinforced this interpretation by reading Section 67B(b) of the Information Technology Act, 2000, purposively. It held that Section 67B(b) criminalises a broad range of conduct, including the creation, access, and interaction with CSEAM. Significantly, the Court made it clear that even the mere act of browsing or viewing such material online—whether or not it is saved or permanently stored—would constitute an offence under this provision. In the Court's view, the digital consumption of CSEAM, in any form, contributes to the exploitation of children and cannot be exempted from liability simply because the material was not shared, downloaded, or stored.

This combined approach—integrating constructive possession into the interpretation of Section 15 and broadening the scope of Section 67B(b) ensures that offenders cannot exploit technological gaps or legal technicalities to escape accountability.

C. CONCEPT OF STATUTORY PRESUMPTION AND PRINCIPLE OF FOUNDATIONAL FACTS

The Supreme Court undertook a doctrinally rigorous examination of the statutory presumptions contained in Sections 29 and 30 of the POCSO Act. Recognising the grave nature of offences targeted by the Act and the evidentiary difficulties in proving mental elements in such cases, the Court affirmed that these provisions were consciously inserted by the legislature to address those challenges. It reiterated, relying on *Attorney General for India v. Satish*⁷, that these presumptions—while procedural—are indispensable tools to bridge the evidentiary gap in crimes of a concealed and non-overt character, such as sexual offences against children.

Drawing on the Constitution Bench's decision in *Baldev Singh*⁸, the judgment emphasizes that no statutory presumption may arise absent proof of foundational facts. Just as Section 54 of the NDPS Act creates a presumption of possession only after lawful seizure, Sections 29–30 of POCSO activate only once the prosecution proves beyond doubt that the accused stored,

⁷ Attorney General for India v. Satish (2023) 6 SCC 1

⁸ State of Punjab v. Baldev Singh (1999) 6 SCC 172

transmitted or facilitated child-pornographic material in the manners prohibited by Section 15 et seq.

Similarly, decisions such as *Seema Silk Sarees*⁹ and *Noor Aga*¹⁰ affirm that reverse burdens on mental-state elements withstand constitutional scrutiny only when the initial onus remains with the prosecution. The Court reiterated that a statutory presumption neither displaces the requirement of proving actus reus nor lowers the prosecution's burden to "beyond reasonable doubt" for foundational facts. Once those facts are secured, the burden shifts to the accused to rebut the presumption on a "preponderance of probability," thereby striking a balance between effective enforcement and the presumption of innocence.

This "Principle of Foundational Facts" as clarified serves two critical functions. First, it prevents convictions based solely on conjecture by anchoring mens rea to proven physical or digital acts. Second, it ensures that the statutory presumption — a tool to bridge evidentiary gaps in secretive offences — does not usurp the prosecutorial burden prescribed by criminal jurisprudence.

Section 15 of the POCSO Act creates three distinct offences, each requiring specific foundational facts before any presumption of mens rea under Section 30 can arise. Mere possession alone cannot trigger all three provisions.

Under Sub-section (1), the prosecution must show that the accused stored or possessed CSEAM and failed to delete, destroy, or report it—only then can intent to share or transmit be presumed.

Sub-section (2) requires possession plus actual dissemination or preparatory acts facilitating such conduct. While dissemination alone suffices, actions taken for reporting or evidentiary purposes are exempt, though the presumption may be used to negate such claims.

Sub-section (3) applies when possession is accompanied by a commercial motive—i.e., intent to gain or profit from the material.

By setting distinct factual thresholds for each, the Court ensures that the reverse burden under Section 30 arises only after actus reus is established—balancing prosecutorial efficiency with

⁹ *Seema Silk Sarees v. Directorate of Enforcement* (2008) 5 SCC 580

¹⁰ *Nora Aga v. State of Punjab* (2008) 16 SCC 417

fair trial safeguards

D. PLEA OF IGNORANCE OF LAW

The accused invoked a plea of ignorance of law, contending unawareness of the prohibition under Section 15 of the POCSO Act against storing child pornographic material. The Court observed that plea of ignorance of law may only be sustained where it leads to a reasonable and bona fide belief in the existence of a right or claim, and the act in question flows directly from such a belief. Absent that, such a plea cannot shield an accused from criminal culpability.

The defence relied on *Chandi Kumar Das Karmarkar*,¹¹ where an honest mistake of law was accepted because the accused genuinely believed he had a legal right to reclaim possession of a fish tank—amounting to a fair pretence of title. This reasoning was echoed *Motilal Padampat Sugar Mills*,¹² where the appellant's mistaken understanding of a tax exemption led to a bona fide belief in a limited concession, accepted as a defence to estoppel. These cases establish a narrow exception: ignorance of law may be excused only when it leads to a credible, genuinely held legal claim.

However, the present case—concerning the possession of Child Sexual Exploitation and Abuse Material (CSEAM)—differs fundamentally. The Court emphasised that such possession is inherently and unequivocally criminal, leaving no room for any legitimate claim of right. Even if the accused was unaware of Section 15, such ignorance does not give rise to any lawful entitlement.

Applying a four-pronged test, the Court held that: (i) ignorance of law must give rise to (ii) a reasonable, bona fide claim of right, (iii) genuinely believed by the accused, and (iv) acted upon accordingly. The accused's failure to meet any of these criteria rendered the plea untenable. No reasonable person could claim a lawful right to possess CSEAM. As such, the defence was held inapplicable to conduct that is intrinsically wrongful.

CONCLUSION

The Supreme Court, in *Just Rights for Children Alliance v. Union of India*, adopted a purposive

¹¹ *Kumar Das Karmarkar v. State of Bengal*, (1964) 6 SCR 78.

¹² *Motilal Padampat Sugar Mills Co. v. State of Uttar Pradesh*, (1979) 2 SCC 409.

and victim-centric approach to address the growing threat of child sexual exploitation in the digital age. This orientation is most evident in the Court's deliberate terminological shift from "child pornography" to "Child Sexual Exploitation and Abuse Material (CSEAM)."

Building on this child-focused lens, the Court interpreted Section 15 of the POCSO Act to cover not only the active dissemination of CSEAM, but also passive possession accompanied by a failure to delete or report. In doing so, the Court closed a long-standing legal loophole that had allowed individuals to evade liability by avoiding overt distribution. Section 67B of the IT Act was likewise interpreted to cover browsing, viewing, or collection of CSEAM—even in private or transient digital interactions—thus addressing modern modes of online exploitation.

Crucially, the Court reinforced that individuals have a positive legal duty to act. Silence, ignorance, or inaction have too often enabled the continued circulation of exploitative material. By affirming that such omissions can attract criminal liability, the Court clarified that the duty to protect children extends beyond the State to every individual. Recognising the obligation to report or delete such content marks a vital step toward effective implementation of the law.

Ultimately, the judgment acknowledges that safeguarding children from sexual exploitation requires more than punitive frameworks—it requires active legal and moral responsibility. In a rapidly evolving digital landscape, such jurisprudential clarity is both timely and urgently necessary, laying the groundwork for a more responsive, accountable, and child-centred legal regime.