

# New definition of child porn under POSCO

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## Manifest pedagogy

Sexual violence, specifically violence against children became a huge issue after Kathua rape. POCSO act is the central act to deal with such cases. Instead of focusing on the single issue, aspirants should rather read all topics of sexual violence both against women and children at once so that they get a holistic idea and write good answers

## In news

- Centre has redefined child porn under POSCO

## Placing it in syllabus

- Child sexual abuse laws in India (not explicitly mentioned)

## Static dimensions

- Problems of child sexual abuse (CSA)
- POCSO provisions

## Current dimensions

- New definition of child pornography
- Critical analysis of POSCO Act

## Content

Census data from 2011 shows that India has a population of 472 million children below the age of eighteen, of which 225 million are girls. Protection of children by the state is guaranteed to Indian citizens by the constitution and India

is a signatory to the UN Convention on the Rights of the Child. Child sexual abuse laws in India have been enacted as part of the nation's child protection policies.

### Problems of Child Sexual Abuse(CSA)

Child Sexual Abuse happens when a person uses a child for his/her sexual gratification. CSA is mostly committed by someone who is in a position of power or authority, and sometimes, even in a position of trust. Such a person take advantage of the child's helplessness and vulnerability. CSA may be physical, visual or verbal in nature.

The issue of CSA is widespread across India, impacting children of all ages, socio-economic classes and genders. Half of the country's children face some form of sexual abuse, with 21% having faced severe sexual abuse. Boys account for around 53% and girls for 47% of all children reporting abuse. (Child Abuse Report, Women and Child Development India, 2007).

The impact of CSA can be diverse and numerous. Sexual abuse can impact the life of children at the physiological, psychological, and social levels and on sexual behavioral patterns. Physical impact can include child pregnancy, sexually transmitted diseases, repeated urinary infection and psychosomatic illness. Psychological impact can include unusual or unexplained fear of people or places, nightmares, eating and sleeping disturbances, lack of trust in self and others, regressive behaviors and even suicide. Social impact can include sudden withdrawal, increased hostility, aggression and drastic change in academic performance.

POSCO Act:**The Protection of Children from Sexual Offences (POCSO) Act, 2012** was formulated in order to effectively address sexual abuse and sexual exploitation of children through legal provisions. The objectives of the POCSO Act are to protect children from the offences of Sexual assault, Sexual harassment, Pornography and to **establish Special Courts**

**for speedy trial of such offences.**

The Salient features of the Act are that it:

- Defines the child as anyone below the age of 18.
- Is gender neutral law, wherein the law takes cognisance of sexual crimes committed against both girls and boys under the age of 18 years.
- Addresses a wide range of sexual offences which include anything from complete and partial penetration, non-penetrative sexual assault, stalking of a child, showing children pornography, using the child for pornography and exhibitionism.
- The law protects children from both contact and non-contact sexual abuse.
- Places the burden of proof on the accused and ensures punishment for all perpetrators irrespective of age and gender.
- Does not recognize consensual sexual acts among children or between a child and an adult.
- Prosecutes any person (including a child) for engaging in a sexual act with a child irrespective of whether the latter consented to it.
- Provides for more severe punishment, when the sexual offence is committed by a person in a position of trust or authority.
- Introduces child friendly measures and defines the role of the Police as a child protector.
- Pronounces the importance of Mandatory Reporting of sexual offences.
- Stipulates that a case of CSA must be disposed of within one year from the date the offence is reported.

Other Indian laws for child protection:

**Juvenile Justice (Care and Protection of Children) Act, 2015** provides strengthened provisions for both children in need of care and protection and children in conflict with the law.

Some of the key provisions include :

- Change in nomenclature from 'juvenile' to 'child' or 'child in conflict with law' across the Act to remove the negative connotation associated with the word 'juvenile'.
- Clarity in powers, function and responsibilities of the Juvenile Justice Board (JJB) and the Child Welfare Committee (CWC).
- A separate new chapter has been added on Adoption to streamline the adoption of orphans, abandoned and surrendered children.
- **Inclusion of new offences committed against children and mandatory registration of Child Care Institutions.**
- Under Section 15, special provisions have been made to **tackle child offenders committing heinous offences in the age group of 16-18 years.**
- The Juvenile Justice Board is given the option to transfer cases of heinous offences by such children to a Children's Court (Court of Session) after conducting a preliminary assessment.
- Several new offences committed against children are included in the Act such as sale and procurement of children for any purpose, including illegal adoption; corporal punishment in child care institutions; use of a child by militant groups; offences against disabled children and kidnapping and abduction of children

New definition of child pornography:The Union Cabinet has approved a new definition for child pornography in its amendments to the POCSO Act, which is likely to be introduced in Parliament soon. **Neither Section 67 of the IT Act nor Section 293 of the Indian Penal Code define child pornography.**

- The **new definition** reads, "Any visual depiction of sexually explicit conduct involving a child which include photographs, video, digital or computer generated image indistinguishable from an actual child

and an image created, adapted or modified but appear to depict a child.”

- The amended law will also apply to pornographic content where adults or young adults pretend to be children.
- Cabinet has also enhanced the fine for possessing child porn but not deleting or reporting it to anywhere between Rs 5,000 to Rs 10,000 from the earlier proposal of 1,000.
- If a person stores such content for distributing it further, except for when presenting it in court as evidence, he could face a punishment of upto three years, the first time, five years the second time and seven years for subsequent violation. These crimes also attract fines.
- Changes also include death penalty for sexual offences against children.

Only prescribing punishment led to possibility that the case may get entangled in inconclusive legal battles. Hence to **achieve zero tolerance towards child pornography**, redefining the term was essential as **definition leads to setting the context of the crime**.

#### Critical analysis of POSCO Act:

Under POSCO act, any person (including a child) can be prosecuted for engaging in a sexual act with a child irrespective of whether the latter consented. A husband/wife can be prosecuted for engaging in a sexual act with his/her spouse under the age of eighteen years. The Act does not recognise consensual sexual acts among children or between a child and an adult.

This is where the problem lies. In State v/s Aas Mohammad, a 14-year-old girl was pregnant due to sexual relationship with her landlord and a complaint was filed against him. In court, during the proceedings, the accused offered to marry the girl and the couple got married when he was released on bail. The

judge ensured compliance with the undertaking and acquitted the accused as the girl and her mother retracted their statements.

The above ruling is in contradiction with the spirit of POCSO Act. This act means to protect children from offences of sexual assault, sexual harassment and child pornography.

It is not meant to give legality to child marriage or any such acts which are clearly illegal in India. The marriage of an underage is a mockery of justice and the resilience of court on such matter is a grave wrong.

Another issue that has received less attention is whether couples under 18 years of age should be treated as juveniles in conflict with the law. The National Commission for Protection of Child Rights (NCPCR) had stressed on the need for the law to recognise consensual sexual exploration among adolescents by decriminalising it when it is between:

- Children above 12 years when the age-gap was less than two years and
- Children above 14 years when the age-gap was less than three years.

But POSCO has failed to consider the nuances of age, age difference, and child development.

Insofar as child sexual abuse is concerned, though POCSO is a wholesome law, there is a strong urgency to ensure its implementation and create awareness amongst officers and all stakeholders on what it contains. Successful implementation of any law demands a coherent understanding and structural application, which is absent in case of laws ascertaining the identity and social dignity of children in India