

Viewing as Possession: Section 15 of POCSO after Just Rights for Children Alliance

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Abstract

Section 15 of the Protection of Children from Sexual Offences Act, 2012 was rewritten in 2019 to create three separate offences relating to the storage and possession of sexual material involving children. In January 2024 the Madras High Court quashed a prosecution on the reasoning that merely downloading and watching such material in private was not an offence. In *Just Rights for Children Alliance v. S. Harish*, decided in September 2024, the Supreme Court reversed that decision. It held that possession includes constructive possession, that watching such material online without downloading it can amount to possession, and that an intention to transmit may be inferred from a failure to delete, destroy or report it. The Court also asked Parliament to replace the term “child pornography” with “child sexual exploitative and abuse material”.

This paper examines the decision doctrinally. It is argued that the ruling correctly closes a gap the High Court had opened, but that two consequences need attention. First, reading intention from omission, together with the statutory presumption of a culpable mental state in Section 30, places a heavy burden on the accused, which is defensible only if the reporting route is clear and accessible. Second, the decision does not settle how Section 15 applies to synthetic imagery created with artificial intelligence or to adolescents who share images of themselves.

Keywords: POCSO, Section 15, Constructive Possession, CSEAM, Section 67B, Mens Rea, Synthetic Imagery

1. Introduction

Offences relating to sexual material involving children have changed character over the last two decades. A crime that once required the physical production and circulation of photographs now happens almost entirely on phones, messaging applications and cloud storage, where material can be viewed, forwarded and deleted within minutes. Laws written around the idea of a person “having” an object struggle with conduct that leaves only a temporary trace on a device.

India has addressed this through two statutes. Section 67B of the Information Technology Act, 2000 (IT Act) punishes a range of conduct relating to electronic material depicting children in a sexually explicit manner, including browsing and downloading it [1]. The Protection of Children from Sexual Offences Act, 2012 (POCSO) treats the use of children for such material as a sexual offence in its own right, and Section 15 deals with its storage and possession [2]. After the 2019 amendment, Section 15 contains three distinct offences, graded by the intention with which the material is kept [3].

The question that reached the Supreme Court in 2024 was apparently simple. Is a person who downloads and watches such material on his phone, without sharing it with anyone, guilty of an offence under Section 15? The Madras High Court had said no. The Supreme Court, in *Just Rights for Children Alliance v. S. Harish*, said yes, and in doing so gave the first detailed reading of the amended section [4]. This paper asks whether the Supreme Court's reading is sound, and what it leaves unresolved. It is argued that the Court was right to reject the High Court's view, and right to apply the idea of constructive possession to material that is streamed rather than stored. However, the way the Court inferred an intention to transmit from a failure to delete or report has consequences for the burden of proof that deserve closer attention. The judgment also leaves open two questions that are becoming more pressing: the treatment of synthetic imagery generated by artificial intelligence (AI), and the position of adolescents who create or share images of themselves.

2. Review of Literature

Writing on this area falls into three groups. The first concerns terminology. The Luxembourg Guidelines, adopted in 2016 by an inter-agency working group, recommended that “child sexual abuse material” or “child sexual exploitation material” be preferred over “child pornography”, on the ground that the older term suggests consent and normalizes what is in fact a record of abuse [5]. The Optional Protocol to the Convention on the Rights of the Child, which India has ratified, still uses the older term but defines it by reference to the depiction of a child engaged in real or simulated explicit sexual activity [6].

The second group concerns possession offences and the mental element. English courts dealt with this question earlier than Indian courts did. In *R v. Bowden* the Court of Appeal held that downloading an image, or printing it, amounts to “making” it for the purposes of the Protection of Children Act 1978, so that a person who views and saves such material cannot argue that he did nothing more than look [7, 8]. English law later went further, and Section 62 of the Coroners and Justice Act 2009 now criminalises possession of prohibited non-photographic images of children, which covers drawn and computer-generated material [9].

The third group concerns the purposive interpretation of POCSO. In *Attorney General for India v. Satish* the Supreme Court rejected a reading of Section 7 that required skin-to-skin contact, holding that the statute must be construed to advance its protective purpose rather than to create technical escape routes [10]. *Just Rights for Children Alliance* applies the same approach to Section 15. Comparatively little Indian writing has yet examined how that approach interacts with the reverse burden in Section 30, and that is the gap addressed here.

3. Research Methodology

The study is doctrinal. It analyses the text of Section 15 of POCSO before and after the 2019 amendment, Section 67B of the IT Act, the reporting rule in the POCSO Rules, 2020, and the decisions of the Supreme Court interpreting these provisions. A limited amount of comparative material from English law and international instruments is used where it helps to frame the analysis. The study does not involve empirical work, and it does not examine the operational methods used to detect or investigate these offences.

4. The Statutory Framework

4.1 Section 15 after the 2019 Amendment

As originally enacted, Section 15 punished storage of pornographic material involving a child for commercial purposes. The 2019 amendment replaced it with three sub-sections [3]. Section 15(1) punishes a person who stores or possesses such material in any form with the intention of sharing or transmitting it, and who fails to delete or destroy it or to report it to the designated authority. The punishment is a fine of not less than five thousand rupees for a first offence. Section 15(2) punishes storage or possession for transmitting, propagating, displaying or distributing the material, except for the purpose of reporting or for use as evidence in court, with imprisonment of up to three years, fine, or both. Section 15(3) punishes storage or possession for commercial purposes, with imprisonment of three to five years for a first conviction.

The same amendment inserted a definition of “child pornography” in Section 2(1)(da). It covers any visual depiction of sexually explicit conduct involving a child, including a photograph, video, or digital or computer-generated image indistinguishable from an actual child, and an image created, adapted or modified that appears to depict a child [3]. The significance of this wording is considered under heading 6 below.

4.2 The Reporting Rule

Section 15(1) refers to reporting “to the designated authority, as may be prescribed”. Rule 11 of the POCSO Rules, 2020 supplies the detail. A person who receives or comes across such material must report it to the Special Juvenile Police Unit, the police, or the cybercrime portal, giving details of the source and the device or platform on which it was seen [11]. The rule matters because, after Just Rights for Children Alliance, the existence of a clear and practical reporting route is part of what separates an innocent recipient from an offender.

4.3 Section 67B of the IT Act and Section 30 of POCSO

Section 67B of the IT Act is wider than Section 15 in one important respect. Clause (b) punishes anyone who creates, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes such material in electronic form, with imprisonment of up to five years on a first conviction [1]. Browsing and downloading are therefore offences under the IT Act without any further intention. POCSO, by contrast, grades the offence according to purpose, and carries only a fine for the least serious form.

Section 30 of POCSO then provides that, in any prosecution for an offence requiring a culpable mental state, the court shall presume that the accused had that state of mind. Sub-section (2) adds that the accused can rebut the presumption only by proving the contrary beyond reasonable doubt, and not merely on a preponderance of probability [2]. This is an unusually demanding reverse burden, and it is central to the analysis under heading 5 below.

5. The Decision in Just Rights for Children Alliance

5.1 What the High Court Held

The accused had been found with sexual material involving children on his mobile phone. A case was registered under Section 67B of the IT Act and Section 14(1) of POCSO, and the charge sheet later invoked Section 15(1). In January 2024 the Madras High Court quashed the proceedings. It reasoned that the accused had only downloaded and watched the material in private, that there was no evidence he had published or transmitted it, and that such private viewing did not fall within either provision [4].

5.2 What the Supreme Court Held

The Supreme Court set aside the High Court's order and restored the prosecution. Its reasoning can be reduced to four propositions [4].

First, the three sub-sections of Section 15 are distinct offences. They are not stages of one offence, and the absence of the ingredients of Section 15(2) or (3) does not prevent a prosecution under Section 15(1). Second, Section 15 is in the nature of an inchoate offence. It punishes storage or possession with a particular intention, before any transmission has occurred. The High Court's insistence on proof of actual transmission therefore misread the provision.

Third, possession includes constructive possession. A person who has the power and intention to control material is in possession of it even if it is not stored on his device. A person who repeatedly watches such material online, and who can pause, enlarge, share or delete it, exercises control over it. The Court distinguished a person who opens an unsolicited link by accident and closes it at once. Such a person is not in possession, although he is still expected to report what he has seen.

Fourth, the intention to share or transmit required by Section 15(1) can be inferred from the failure to delete, destroy or report the material. The Court read the second part of Section 15(1) as describing the conduct from which the culpable intention may be drawn.

The Court also held that the High Court had ignored Section 67B(b), which expressly covers browsing and downloading, and that it had failed to apply the presumption in Section 30. Finally, it recommended that Parliament amend POCSO to replace "child pornography" with "child sexual exploitative and abuse material" (CSEAM), and directed courts to use that term in their orders and judgments [4, 5].

5.3 The Right Result

The Court was clearly right to reverse the High Court. The High Court's reading would have left the private consumer of such material outside POCSO altogether, even though demand from such consumers is what sustains the abuse of the children involved in producing it. It also overlooked that Section 67B(b) of the IT Act already treated browsing and downloading as offences. The Supreme Court's approach is consistent with the purposive reading adopted in *Satish*, where the Court refused to allow a narrow construction to defeat the object of the statute [10].

The application of constructive possession to streamed material is also sound. The ordinary meaning of possession in criminal law has never required physical custody, and the Court's distinction between the person who watches deliberately and repeatedly and the person who closes an unsolicited link draws the line in a sensible place.

5.4 The Burden Problem

The more difficult part of the judgment is the fourth proposition. Section 15(1) requires an intention to share or transmit. The Court treated the failure to delete, destroy or report as evidence from which that intention may be inferred. Combined with Section 30, the practical result is significant. Once the prosecution proves that the accused had the material and did not delete or report it, the court will presume that he intended to transmit it, and the accused must disprove that intention beyond reasonable doubt.

There is a fair argument that this goes further than the text requires. Failing to delete material is consistent with an intention to share it, but it is equally consistent with simple retention for private use, which is reprehensible but is not what Section 15(1) describes. The Supreme Court has accepted in other contexts that a reverse burden can be justified only after the prosecution establishes the foundational facts, and that the burden placed on the accused should not be so heavy that the presumption of

innocence is emptied of content [12, 13]. A presumption of intention that arises from an omission, and can only be rebutted beyond reasonable doubt, sits near the edge of that principle.

It is not suggested that the result is unconstitutional, and two features limit its practical harshness. Section 15(1) carries only a fine, and the more serious forms of the offence under Section 15(2) and (3) still require proof of a specific purpose. The point is rather that the fairness of the Court's reading depends heavily on the reporting route. If an ordinary person who receives such material without seeking it knows how to report it, and can do so easily and without fear of being treated as a suspect, the inference from failure to report is reasonable. If the route is obscure, the inference falls on people who simply did not know what was expected of them.

6. Questions the Decision Leaves Open

6.1 Synthetic and AI-Generated Imagery

Generative AI tools can now produce realistic sexual images that appear to depict children without any real child having been photographed. Indian law is better placed than many systems to deal with this, because the 2019 definition in Section 2(1)(da) already includes a computer-generated image indistinguishable from an actual child and an image created, adapted or modified that appears to depict a child [3]. On its terms, Section 15 therefore reaches synthetic material, and the reasoning in Just Rights for Children Alliance on possession and intention would apply to it in the same way.

Two uncertainties remain. The first is the phrase “indistinguishable from an actual child”. Synthetic material that is clearly stylised, such as drawn or animated images, may fall outside that phrase but within the separate limb on images that “appear to depict a child”. The relationship between the two limbs has not been examined by any court. English law has addressed the same issue directly through a separate offence for prohibited non-photographic images [9]. The second uncertainty concerns proof. Where the prosecution's case depends on whether an image shows a real child, questions of authenticity and forensic examination arise that the possession cases have not yet had to face. The amendments to the IT Rules in February 2026, which require labelling and provenance metadata for synthetically generated information and strengthen intermediary obligations, may help at the platform level, but they do not change the elements of the offence [14, 15].

6.2 Adolescents and Self-Generated Images

The second open question concerns adolescents. A sixteen-year-old who takes an explicit picture of herself and sends it to a boyfriend of the same age has, on the literal terms of POCSO, created material depicting a child, and the recipient who keeps it is in possession of it. Just Rights for Children Alliance did not deal with this situation, and its reasoning on inferred intention could apply to it with harsh results.

The Law Commission, in its 283rd Report, declined to recommend lowering the age of consent under POCSO, but suggested that courts be given guided discretion in sentencing in cases involving tacit approval between adolescents aged sixteen to eighteen [16]. That suggestion was made in the context of sexual activity, not images, but the same concern applies. Where both parties are children, the case will usually also engage the Juvenile Justice (Care and Protection of Children) Act, 2015, which is built around rehabilitation rather than punishment [17]. The Supreme Court in Just Rights for Children Alliance itself emphasised the importance of sex education and awareness as tools of prevention [4]. A framework that treats the consensual exchange of images between adolescents in the same way as adult consumption of abuse material is unlikely to serve that preventive purpose.

6.3 Platforms and Takedown

Possession offences are only one part of the response. Most such material reaches users through platforms, and the obligations of intermediaries are governed by Section 79 of the IT Act and the IT Rules. In *Shreya Singhal v. Union of India* the Supreme Court read down the notice-and-takedown obligation so that an intermediary must act on actual knowledge received through a court order or government notification [18]. In the *Prajwala* matter the Court later pressed for stronger proactive measures against sexual violence and abuse material online [19]. The tension between these approaches has not been resolved, and the effectiveness of Section 15 depends partly on how quickly material is removed before ordinary users come across it.

7. Suggestions

First, Parliament should act on the Supreme Court's recommendation and replace "child pornography" with "child sexual exploitative and abuse material" throughout POCSO and Section 67B of the IT Act. The change is not merely cosmetic. It aligns Indian law with international practice and makes clear that what is being punished is participation in the abuse of a child [5].

Second, the reporting route under Rule 11 of the POCSO Rules should be made simpler and more visible, with a clear statement that a person who reports material he has received will not be treated as an accused for having received it. Since the inference of intention from failure to report now carries significant legal weight, people need to know what is expected of them [11].

Third, Parliament should consider amending Section 30 so that, for offences under Section 15(1), the accused may rebut the presumption of culpable mental state on a preponderance of probabilities rather than beyond reasonable doubt.

Fourth, the definition in Section 2(1)(da) should be clarified to state expressly that it covers synthetic and AI-generated images whether or not they are indistinguishable from an actual child, and investigating agencies should develop forensic capacity to distinguish real from synthetic material.

Fifth, cases involving the consensual exchange of self-generated images between adolescents of similar age should be routed primarily through the Juvenile Justice framework, with prosecution under Section 15 reserved for cases involving coercion, exploitation or further distribution [17, 16].

8. Conclusion

The Supreme Court's reading of Section 15 as three separate offences, and its treatment of streamed material as possessed, bring the law into line with how this material is actually consumed. What the judgment does not yet provide is a fair balance at the point where intention is inferred. Since the presumption in Section 30 does most of the work once omission is proved, the practical test of the decision will be whether ordinary users know how to report what they receive, and whether investigators and courts are careful to separate deliberate consumers from accidental recipients. Synthetic imagery and adolescent self-generated images are likely to be the next areas of difficulty, and both are better resolved by Parliament than left to case-by-case development.

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