



#EndChildSexualAbuse

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Children and Pornography

Special Law, Special Prosecution, Special Court....yet nothing “Special” for Children

Case examples show that relevant provisions of the law on pornography are not being used to book the accused, despite the FIRs and the statements recorded before Judicial Magistrates clearly stating the facts. Is it so difficult to procure the necessary evidence or it is just shirking from extra work? It certainly cannot pass off as mere oversight, especially where children are stating the facts clearly.

Legal Provisions under the POCSO Act, 2012		
Sexual Harassment [Sec. 11]	Use of Child for Pornography [Sec. 13]	Storage of Pornographic Material [Sec. 15]
<ul style="list-style-type: none"> • Makes a child exhibit his body or any part of his body • Shows any object to a child for pornographic purposes • Threat to use photograph or other depiction of a body part of the child or involvement of child in a sexual act • Enticement for pornographic purposes or sexual gratification 	<p>Use of a child in any form of media for sexual gratification in the following ways –</p> <ul style="list-style-type: none"> • Representation of sexual organs of child • Usage of a child in real or simulated sexual acts (with or without penetration) • Indecent or obscene representation of a child <p>The above may be for personal use or for distribution.</p> <p>Any of the above carried out along with a sexual act that is an offence in itself would be liable to greater punishment.</p>	<p>Storing pornographic material + involving a child + for commercial purposes</p>

Here are some cases...

Case 1

The FIR mentions that blue film used to be shown to the victim, yet it does not book the accused under the relevant sections of the POCSO Act. In her statement under section 164 of the CR.P.C., the child reiterates that the accused showed her a blue film. Police

investigation misses out on this important fact and the charge sheet too does not carry the relevant charges. Both, the “Special Public Prosecutor” and the “Special Court” too overlooked the fact and the case continues to be tried under the IPC and not the “Special Law”.

Case 2

Extract from the FIR says, "the accused was present that time in his house and he called me on the top floor and I went there, I thought that accused's sister was also present but when I was reached there I could not find anyone except the accused. He pushed me on his bed and started having sex with me. When he was done, he showed me a black colour mobile phone he said that look when we are having sex I have made a pornography video of you if you talk about the incident to anyone I will update this video on the internet".

Case 3

In a case of incest, the alcoholic father used to watch pornographic video in the presence of the ten-year-old child. Though the FIR did not mention any of this, during subsequent interaction, HAQ's social worker got to know about it from the child's mother. What could have kept the case alive and helped in the prosecution is the evidence relating to use of pornography that was never collected by the police since they failed to take account of its existence and use by the accused in the first place.

Case 4

In the case of a 13 year old girl, the sexual abuse started at the tender age of 11 years. Her biological father was the accused and later released on bail. She mentioned how her father would show her pornographic material on his mobile phone and ask her to repeat the action. "मुझे अपने फ़ोन में गन्दी पिक्चर भी दिखाते हैं और वैसा करने को कहते हैं।" Although these facts are mentioned in the FIR, the case is not booked under the relevant sections of the law.

Case 5

The first time the accused sexually assaulted the child, he made a video, which he used to threaten her, while repeatedly forcing himself on her. The FIR mentions that the accused used photographs and the video, threatening to upload them on the internet. The victim also mentioned this in her statement recorded before a Judicial Magistrate under section 164 of the Cr.P.C. victim. But neither the FIR nor the charge sheet book the accused under the relevant sections.

Case 6

The FIR and the child's statement under section 161 and section 164 of the Cr.P.C. state that the accused used to show the victim pornographic pictures on the mobile phone. The accused also admitted to this in his statement, but said that his mobile was stolen. Neither the FIR nor the charge sheet include relevant sections. In S.161 and S.164 statements also, the victim states that the accused used to show her pornographic pictures in the mobile phone.

A sensitive Judge can make a difference

In the case of two friends who were abused by their neighbour, the fact of pornographic material being shown finds a mention in the FIR, but again the relevant sections of the law were not used while registering the case. The phone on which the accused had shown the video clips to the victims at the time of abuse was not seized by the IO during investigation.

Fortunately, in this matter, the Ld ASJ pointed this out and the phone was later seized and sent to FSL. In the chargesheet, Section 12 of the POCSO Act was incorporated and FSL report of the phone was put on record through a supplementary charge sheet on directions of the ASJ.