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“CHILD PORNOGRAPHY AND ITS LEGAL FRAMEWORK FOR ITS CONTROL: A CRITICAL ANALYSIS”

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ABSTRACT

In Indian society, sex is a taboo topic that is often associated with immoral behavior. Child Pornography is a type of pornography in which a child is shown in an image or on video making a sexual sound in an attempt to arouse the sexual urges of those who engages in it. The most shocking thing about these kinds of recordings is usually show how brutally the children and adolescents who were in agony while watching them are portrayed. Such a type frequently snap images of children's bodies, record a video of the children engaging in sexual activity, and sell such videos in the Indian Society. The researcher in this paper has tried to show the major challenges which has been facing by the society. This paper has also the NCRB report of India which has shown how many children has been victimized and how many cases has been registered against them.

Keywords: Child Abuse, Exploitation, Child Pornography, Victim, Child

1. INTRODUCTION

It is widely perceived that childhood is often considered as a “golden age” described as freedom, innocence, bliss, joy and play. This time period is considered as the ‘Safety and Security, liberated from the burdens of grown-up liabilities. However, it's additionally important to recognize that young kids are in general vulnerable and can undoubtedly become the victim to abuse and exploitation, as well as impacted by hurtful societal components. Consequently, they are defenselessness highlights the requirement for expanded protection and care from the rest of the world.³ Child Sexual abuse incorporates different types of sexual victimization of children, including both non-penetrative and penetrative sexual intercourse,

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³ Trevor Buck, International Child Law, (Routledge Taylor & Francis Group, 3rd edition, London, 2014)

sexual harassment, sex tourism, online exploitation, pornography and commercial sexual abuse. Lately, child sexual exploitation has arisen as a worldwide issue, with a critical number of cases detailed in monetarily developed countries, despite the fact it is likewise common in emerging countries. The event of child sexual abuse is impacted by cultural and societal practices. Tragically, many cases go unreported due to culture of silence, feeling of dread towards embarrassment and social shame, which frequently prevents victims from speaking out. Minor occurrence of misuse are much of the timely disregarded. A review led by the Ministry of Women and Child Development across 13 states in India uncovered that almost 50 per cent of the children studied were victims of the sexual abuse, with boys similarly affected' over 20 per cent boys experienced serious type of child abuse.⁴ Child sexual abuse material, legally referred to as child pornography, encompasses any content that depicts sexually explicit activities involving a child. This includes visual representation such as photographs, videos, or computer generated images.

Definition of Child Pornography

“Pornography” term has been defined from Greek words “Porne” and “Graphien” which in literal terms means that the works related to sexual sex and themes or writing about prostitutes. The term ‘Porn’ or ‘Pornography’ has been very hard to define to be in particular meaning because each nations has its own definition in where pornography is lawful but in some it is against the law as well as punishable. So, there are multiple definitions around the word which define “Child Pornography”. The definitions are as follows:

1. UN Definition: “Child pornography (also called child sexual abuse material or child porn) is pornography that exploits children for sexual stimulation. It may be produced with the direct involvement or sexual assault of a child (also known as child sexual abuse images) or it may be simulated child pornography.”
2. Indian Definition: According to the definition given in POSCO Act, 2012 child pornography is “any visual depiction of sexual explicit conduct involving a child which includes photograph, video or digital or computer- generated images indistinguishable from an actual child and an image created, adapted or modified but appear to depict a child.”

⁴ Study on Child Abuse: India (2007). Ministry of Women and Child Development, Government of India, 2007 available at: www.wcd.nic.in/childabuse.pdf (visited on September 30, 2024)

3. Federal Definition: As per Section 2256 of Title 18, United States Code, Child Pornography refers “to any kind of visual depiction that displays sexually explicit conduct that involves individuals who are under the age 18.”

Nature of Child Pornography

The offence of child pornography is not one act but a series of chain of grave offences with severe results. It starts with the sexual exploitation of the child, who cannot acknowledge what is happening to them, even if they realize then also it does not decrease the horror of being exploited. This abuse afterwards get recorded and shared among depraved individual who may derive twisted pleasure from seeing the suffering of these exploitation, fueling and filling their own desire to commit such act. This process result to the increase of such behaviors with various acting on these impulses resulting in escalation of these crimes.

As a child, everything in beginning of life is new but when they become the victim of a crime as during their childhood, it is very difficult for them to overcome the harshness they will face in their life afterwards. The cycle of internet has grown tremendously which have coincided with rapid expansion of the child pornography. These images are accessible through nearly every form of internet, including social networking sites, file-sharing and photo-sharing in the market.

2. INTERNATIONAL TREATIES OR CONFERENCE OR ORGANIZATION

1. **ECPAT International (Ending Child Prostitution and Trafficking):** ECPAT is dedicated to ending online sexual exploitation of children, child trafficking and sexually exploitation of child in the travel and tourism world. This Organization uses reports on basic freedom to monitor countries that have adopted which is defined by agreements like Lanzarote Convention on Cyber Crime.
2. **Treaties:** At least there are two major treaties in which one is focusing on ‘Optional Protocol’, made to fight against the evil child pornography worldwide. First major treaty is affiliated to the Council of Europe’s Cyber Crime Convention, The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and the EU Framework Decision of 2006, which obligates the member states to illegalize all types or kind of child pornography. Second major treaty is affiliated to the United Nations, which was established under Article 34 of the United Nation Convention on the

Rights of the Child (UNCRC). It states that the all the members of this Convention shall take measures to prohibit the exploitation of child in sexually, pornographic performances and distributing of these materials.

- 3. International Centre for Missing and Exploited Children:** This Organization opposes the social evil like child sexual exploitation, Child Pornography, and Child Abduction. For recognizing the social evil like child pornography, they have made a ‘model legislation’ which provides a clear meaning and pinpoint sanctions and sentencing. There was a research which was conducted in 2018 which clarifies that child pornography is penalized in 118 out of 196 Interpol member states.

International Laws

Under International Law, first convention which was implemented on children’s right was (CRC) which can be called as ‘Children’s Right was convention of rights of children. The CRC Convention gave the checkpoints or the guidelines on rights enjoyed by the children and also give most accurate meaning to the term ‘child’. As per the Article 2 of the CRC Convention makes it transparent that no discrimination shall be made in respect of race, language, sex, religion or any other status when you are giving power to the child of their rights.

Article 19(1) focuses on the need to importance of every child from different and kinds of physical and mental violence, specifically i.e., sexual maltreatment, abuse, and exploitation. This article is very crucial in making efforts to change for ending evil of sexual exploitation on children. The Universal Declaration of Human Rights i.e., (UDHR) also addresses and signifies child abuse and protection in which Article 25(2) of the ‘declaration mentions that all children, irrespective of the fact that whether they are born legitimate or illegitimate of wedlock, shall be equally protected.’ Same goes on with the International Covenant on Civil and Political Rights which includes Article 24(1), ‘stating that every child shall be given protection without discrimination on the basis of race, sex, or color, as per their status as a minor, by both their family and society.’ Inclusively, Article 34 of the ‘United Nations Convention on the Rights of the Child (UNCRC) requires all signatory nations to take appropriate measures to prevent the exploitative use of children in pornographic performances and materials.’

In 2006, European Union Framework Decision by Council of Europe’s Cyber Crime Convention came into play when all the members under this conventions signed for criminalization of all modes if child pornography.

3. INDIAN LEGISLATIONS

Now it has been more than a decade when internet came into the hands of everyone in which the view was using in such a way that will connect each and every one around the globe but various types of malpractices came into the existence in which one of the major point was sexual maltreatment of children on which an ongoing report of the Ministry of Women and Child Development which states that over 50 percent of the children has been harmed or sexually exploited in their life. As most of the world parts are working on the eradication of the evil of child pornography, India also worked on their legislations where the Government of India drafted a Bill in the year which was passed i.e., Protection of Children from Sexual Offences Act, 2012. This enactment was made which guarantees that stricter actions will be taken into considerations for pedophiles against the evil of children from Sexual Offences.

Not only there is one enactment which is working against children from sexual offences but the Constitution of India as per Article 21⁵ that gives privilege of living with freedom and life. Additionally, Article 24 does not allow children beneath 14 years to work in a factory, mine, plant or taking any apart in dangerous business. Also, Article 39(f) of the Constitution of India makes the duty of the Government or State to work together on approaches towards the wellbeing and quality of education to children and give them opportunity to grow steadily. Article 45 of the Indian Constitution makes the duty of state make attempt to give the youth caring and train children under the age of 6 years. There are various laws for the protection of child from various forms of exploitation specifically child sexually being exploited like: The Immoral Trafficking (Prevention) Act, 1986, The Child Marriage Restraint Act, The Child Labor (Prohibition and Regulation) Act, 1986 and The Juvenile Justice (Care and Protection) Act, 2000.

The Bharatiya Nyaya Sanhita, 2023 and Bharatiya Nagarik Suraksha Sanhita, 2023 gives the procedural and substantive pieces of criminal offences, adding those which applies to the children as well as women. Section 63 of Bharatiya Nyaya Sanhita, 2023 (Rape), Section 377 (Unnatural offences). In addition to there are laws offences against minor young ladies for prostitution. These initiations were specifically for the women and are not sufficient in overall wither substantially or procedurally.

Apart from these legislations, the State of Goa has enacted the Goa Children's Act, 2003 to

⁵ The Constitution of India, 1950

ensure, advance and protect the interest of children at Goa and to make in general public that is so much pleased to be child inviting. There are following legislations which can be classified offenses into three categories:

- Aggravated rape: Aggravated form of rape includes various kinds of intercourse—vaginal, oral, anal, object using, forced minors to engage in sexual acts with each other, intentionally giving or causing injury to sexual organs, and involving children in explicit photos or films.
- Sexual assault: Sexual assault involves touching sexually using any body part or through any object, voyeurism, exhibitionism, showing obscene images or films to children, forcing children to watch others engaged in sexual activities, threatening to sexually abuse a child, and verbally abusing a child with vulgar or obscene language.
- Incest: Incest includes refers to the commission of sexual offenses by an adult or child who is in relation to that child or minor, including through adoption.

Child Pornography is penalized and strict across the country as per the Section 67B of Information Technology Act, 2000. In present era, Protection of Children from Sexual Offences Bill was made in the year 2006 and was passed by the Parliament in the year 2012.

4. JUDICIAL APPROACHES OF CHILD PORNOGRAPHY AS PER POCSO ACT

Although legislation has enacted laws and tried their best but the implementation is still under progress. For Instance, Section 15 of POCSO Act, 2012, which is recognizing the storage of material related to pornography of children for commercial purpose, and there are multiple cases related to this particular. This gives us the suggestions that the authorities are trying their but it's still under progress. The Judicial Pronouncements are as follows:

1. State of Andhra Pradesh v. Mangali Yadagiri⁶ the matter in question of the High Court, it was the SC/SST girl was raped by the some men and photographs were taken and they threaten her by not telling to anyone then perpetrators would show it to public.
2. Shashi & Ors. v. State of Karnataka⁷, some friends of the victim's father raped a girl in the forest and made the video of her. All the offenders were charged under the POSCO and IT Act.

⁶ AIR 2016(1) ALD (Cri) 314 (A.P.)

⁷ CRL. RP 717 OF 2017

3. Hector Firdaus Kothavala v. State of Maharashtra⁸, this matter is related to the anticipatory bail for the offence relating to PCSO Act. In this case, a heinous crime was committed in which the father of 2 children was taking sexual advancement towards them. The wife of the husband found out that her 2 years and 4 years girls were being molested by their own father. The matter was filed by mother under the POCSO Act and IT Act.

5. PRESENT SCENARIO IN INDIA ON CHILD PORNOGRAPHY

In the present scenario, on date 24 September 2024 the Supreme Court of India gave their interpretation on Section 15 of POCSO Act.⁹ The Supreme Court of India presently increased the scope of the meaning of the word “possession”. The word ‘possession’ in child pornography case from now on include displaying and viewing the content of child pornography. The Supreme Court increased the scope of the term ‘possession’ in which the person might not have the physical possession of material relating to child pornography however the person might have the power to control and also have the knowledge of possessing the child pornographic material. The Supreme Court by this approach came with the idea of ‘constructive possession’ in which the possession of the child pornographic material will include ‘viewing and displaying’ as per the Section 25 of Protection of Child from Sexual Offences Act, 2012. In which Supreme Court judge Justice Pardiwala gave the illustration by saying “Say for instance, ‘A’ routinely watches child pornography over the internet but, never downloads or restore the same in the mobile. Here ‘A’ would still be said to be in the possession of such material, while he exercises a considerable degree of control over such material including but not limited to sharing, deleting or enlarging such material, changing the volume etc. Furthermore, he himself on his own violation is viewing such material, he said to have knowledge of having control

⁸ CRP No. 222 Of 2020

⁹ Section 15 of Protection of Children from Sexual Offences lays down that:

1. “Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography, shall be liable to fine not less than five thousand rupees and in the event of second or subsequent offence, with fine which shall not be less than ten thousand rupees.”
2. “Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting, as may be prescribed, or for use as evidence in court, shall be punished with imprisonment of either description which may extend to three years, or with fine, or with both.”
3. “Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction with imprisonment of either description which shall not be less than three years which may extend to five years, or with fine, or with both and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than five years which may extend to seven years and shall also be liable to fine.”

over such material.”

Another illustration was given by the Justice Pardiwala that “‘A’ is sent an unknown link by ‘B’, which upon clicking opened a child pornographic video on the phone of ‘A’. Now if ‘A’ immediately closes the link, although once the link is closed ‘A’ is no longer in constructive possession of the child pornography, this by itself does not mean that ‘A’ has destroyed or deleted the said material by merely closing the link. ‘A’ will only be absolved of any liability if he after closing the link further reports the same to the specified authorities.”¹⁰

This matter was presently in question because of the data on Section 14 and 15 of POCSO, 2012 by the NCRB report

Year	Incident	Victim
2022	696	703
2021	536	540
2020	584	592
2019	1114	1117
2018	812	821

6. FINDINGS

1. Public Awareness- Public awareness is one of the essential tools in preventing child pornography, but sometimes its implementation is not made in a proper way. Promoting education regarding this issue and reporting of exploitation of child can build up preventive measures.
2. Impact of Technology- With an advent rise in digital technologies, the detection and prosecution of cases regarding child pornography cases has more complex in terms. With a rapid use of social media platforms, encryption etc., law enforcement becomes weak in tracking offenders.
3. Effectiveness of Existing Laws- Many countries have a well- established law related to prevention of child pornography but has not enforced in a well- established way. Most of the times, different jurisdictions can affect the effectiveness of these legal frameworks.
4. Victim Support Mechanisms- Almost all legal frameworks giving its primary attention towards punishing offenders. In our society, there is a need of concept called ‘Victimology’ through which sufficient attention must be given to the victim.

¹⁰ Just Rights For Children Alliance & Anr v. S. Harish & Ors., SLP(CRL) No. 3665-3666 of 2024.

5. Ethical dilemmas- There have to be a balance between prevention of child pornography and protection regarding privacy rights of individuals.

7. CONCLUSION AND SUGGESSTIONS

The concept of Child Pornography is very complex in terms of legitimate and procedural challenges in protecting the child's interest. There are multiple evidences that child pornography cannot be defined in a particular form because of carrying social and culture norms which is creating difficulty in the creation of defined global framework. These problems are not only global in nature but these are further compounded by the different approaches to criminal jurisdiction over internet based activities, extradition and the evidence collection. There is lack of uniformity and consistency on the framework of privacy, regulation contention and pornography also have significant hurdles to implement a workable global strategy. Even if the problems are highlighted, these hurdles cannot be insurmountable.

Suggestions

1. Strict laws act as deterrent effect on the mind of the wrong doers. Countries shall take strict actions against child pornography so that the wrong doers have a fear about being harshly punished.
2. Young individual must have proper knowledge about the sex education and also about the crimes related to them as well.
3. Initiatives must be taken to eradicate these evils of the society. Initiatives shall have the motive to eradicate from the roots of the society.
4. In addition for strict laws, proper enforcement is important. Active involvement shall be there in fighting against the evil of child pornography, arresting, identifying and prosecuting its producers and distributors. The judiciary shall operate efficiently, ensuring swift and fair judgment to deliver justice.
5. Lastly, we are responsible citizens of the country must stop ourselves from getting indulge into child pornography.

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