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CONCEPT OF CHILD PORNOGRAPHY IN CYBERSPACE

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ABSTRACT:

The emergence of child pornography in cyberspace is one of the major issues in the present world because of the rapid advancement of internet technology and the ease of internet accessibility. The creation, circulation, and exchange of pornographic materials involving children not only threaten the dignity of children but also threaten their fundamental human rights. This article is focused on exploring the concept of child pornography in cyberspace, the reasons and effects of child pornography in the virtual world, and the legal scenario in India regarding child pornography, i.e., the Information Technology Act of 2000 and the POCSO Act of 2012. It also elaborates on the major legal decisions taken in this context. It also enlightens the readers on how the parents, educational institutions, and the government can play an important role in the prevention of such heinous crimes. It also highlights the importance of the proper enforcement of law and awareness in the creation of a safe internet world for children.

INTRODUCTION:

Child pornography is one of the most disturbing and damaging crimes that has come into existence with the advent of modern technology. The exploitation of children for pornographic material can cause great damage to the child involved¹. Children who have gone through such an experience always face a tough life and find it hard to form emotional relationships with others². Moreover, it has been observed that such children never get over the experience, and it stays with them even after the experience has been over. There are chances that the experience is not over when it should be over. This is because, with child pornography, it is possible for a child to live with the fear that they are still being exploited on the internet by the pornographic material made during their exploitation. The United States Supreme Court has also admitted that child pornography can be more damaging than other sexual exploitation

¹ Susan W. Brenner, *Cybercrime and the Law* 197–200 (2012).

² David Finkelhor, *Childhood Victimization* 45–47 (2008)

because it can be recorded and viewed repeatedly³.

Another major concern is that child pornography is used for financial gain⁴. Some individuals or groups may exploit children and then upload these child pornography recordings on websites or other online sites for financial gain. Once these recordings are made and uploaded, they are shared and downloaded by different individuals across different parts of the world. This not only increases the scope of this crime, but it also increases the pain and agony faced by these child victims. This is because these child victims come to understand that their exploitation and abuse are being watched by different individuals across different parts of the world. Some of these child victims also face stigma and discrimination by different individuals across different parts of their countries. This affects their normal lives and relationships, and it is therefore very important to protect their identity and privacy, especially of child victims.

Recently, with the rise of internet technology and other digital technologies, cybercrime has also been increasing at a rapid rate⁵. The term cybercrime generally means crimes that are committed through computers or other digital technology or internet facilities. It is considered a broad term that involves all sorts of illegal activities that are carried out in the cyber world. As the use of digital technology for communication, educational, and entertaining purposes is increasing among people, the rate of cybercrime has also been increasing at a rapid pace. Among all sorts of cybercrimes, child pornography has been considered one of the most serious crimes against vulnerable children.

Currently, the digital content can take many forms such as websites, images, videos, graphics, SMS, and MMS⁶. Though the internet has many advantages, it also has some disadvantages that allow criminals to abuse the technology for harmful purposes. According to various research findings, child sex exploitation in the cyber world is an issue that is of great concern to the entire world, and as a result, various challenges are being faced by the law enforcement authorities of the world. Children and teenagers are the ones who are actively involved in surfing the internet, and hence, they are more prone to being victims of such exploitation. Therefore, it is important to understand that in order to stop the menace of child pornography in the cyber world, legal steps are to be taken, and awareness must also be created about online

³ New York v. Ferber, 458 U.S. 747, 759 (1982).

⁴ U.N. Off. on Drugs & Crime, supra note 2.

⁵ Jonathan Clough, Principles of Cybercrime 5–10 (2d ed. 2015).

⁶ Jonathan Clough, supra note 12.

safety. It is important to understand that stopping child sex exploitation is not just a responsibility of the legal authorities, but it is a social responsibility⁷.

Research Methodology:

The following doctrinal research methodology will mainly be based on the analysis of existing literature, laws, policies, and real-life cases related to Concept of Child Pornography in Cyberspace. This study employs a qualitative research approach, combining desk research with case studies. It is second-hand information, which already exists, and the researcher collects and analyses it from someone else. This will involve information from books, Articles, journals, websites, newspapers, magazines, and other sources.

CONCEPT OF CHILD PORNOGRAPHY IN CYBERSPACE:

The rapid growth and spread of the internet and digital technology are among the factors that have contributed to the growing spread of child pornography in cyberspace⁸. Within the last few decades, the internet has spread and reached all segments of society, regardless of age. The spread and availability of smartphones and laptops, coupled with the availability and affordability of internet services, have made it easier for individuals to connect and share information digitally in real-time. Although there are many advantages and benefits associated with digital technology, there are also negative consequences and abuses associated with its use and spread⁹. One of the main reasons that has led to the development of child pornography on the internet is the anonymity that the world of cyberspace offers to the criminals involved in the crime¹⁰. Many of the criminals involved in the crime of child pornography believe that it is easy to remain anonymous in the world of the internet. This feeling of anonymity has led many criminals to engage in the crime that they may not have dared to engage in in the real world.

In addition, the absence of knowledge regarding internet safety and responsibility also contributes to the problem¹¹. Children and teenagers use the internet on a daily basis but are not aware of the possible dangers that can result from internet communication. In most cases,

⁷ U.N. Off. on Drugs & Crime, *supra* note 2.

⁸ U.N. Off. on Drugs & Crime, *Global Study on Sexual Exploitation of Children* (2020).

⁹ Jonathan Clough, *Principles of Cybercrime* 15–18 (2d ed. 2015).

¹⁰ Susan W. Brenner, *Cybercrime and the Law* 210–12 (2012).

¹¹ UNICEF, *Child Online Protection Guidelines* (2019).

offenders use this as an opportunity to manipulate or deceive children through internet communication. This can result in cases where children are coerced or deceived into disclosing personal information or images. Thus, the rise of child pornography in cyberspace can be attributed to various factors, including technology, anonymity, financial considerations, and lack of awareness. The issue of child pornography in cyberspace can be tackled by stepping up legal measures, monitoring online sites, and creating awareness of proper internet usage for children and adults alike¹².

CAUSES FOR THE GROWTH OF CHILD PORNOGRAPHY IN CYBERSPACE:

The rapid development of the internet and digital communication has greatly affected the way people communicate, share information, and access information. Although technological development has led to many positive developments in the field of education, communication, and globalisation, it has also led to the development of new avenues for abuse. The most worrying development that has been identified in the digital age is the development of child pornography in the virtual world. There are many reasons that contribute to the development of such illegal activities in the virtual world.

- **TECHNOLOGICAL ADVANCEMENT AND EASY INTERNET ACCESS:**

One of the major reasons for the growing prevalence of child pornography in the realm of cyber space is the easy availability of digital technology and internet services in the world today. In the modern world, smartphones, computers, and internet services can be easily accessed by a large number of individuals in the world today¹³. These technologies enable users to share digital content in real time through the internet. The internet also gives access to many avenues through which information can be exchanged quickly through the use of the internet, including websites, social media sites, online forums, as well as online messaging applications. However, the same avenues can also be misused by individuals who wish to spread illegal information online. The child pornographic content that is uploaded online can be copied, downloaded, and spread many times by different individuals after it has been uploaded online¹⁴. The content spreads quickly and can also be extremely hard to remove from the internet.

¹² INTERPOL, Crimes Against Children Report (2022).

¹³ Int'l Telecomm. Union, supra note 1.

¹⁴ Europol, Internet Organised Crime Threat Assessment (2021).

The other important aspect is the aspect of anonymity in cyberspace. Most offenders feel that their identity can be hidden when in cyberspace using various tools and applications that allow for creating fake identities. Such offenders feel that they can engage in illegal activities because their identity cannot be easily established. This makes the investigation of child pornography in cyberspace a challenge for law enforcement agencies.

- **SOCIAL AND ECONOMIC FACTORS:**

Apart from the technology-related aspects, other social and economic factors have also contributed to the development of child pornography on the cyber world. In this case, the offenders or child abusers may use the internet for the purpose of earning money from the production of child pornography. In this context, the offenders can reach the whole world through the internet. This implies that the illegal content can be sold or distributed globally¹⁵. Moreover, the absence of monitoring systems on some of these online platforms can also provide an opportunity for illegal content to spread. Although most of these online platforms have taken measures to delete illegal content and report any illegal activities, the huge amount of information being shared on the internet on a daily basis makes it difficult to monitor all the content. The rise of child pornography in cyberspace is not due to a single cause but is a result of a mix of technological advancements, economic drivers, and social factors. To combat this problem, legal measures are important but awareness and proper use of technology and collaboration between governments, technology firms, and society are also essential.

IMPACT OF CHILD PORNOGRAPHY ON VICTIMS:

This is because child pornography has very serious and lasting consequences on the child involved in it. Unlike in other criminal activities, child pornography does not end after the child has been abused. This is because, in most cases, the abuse is captured and shared on the internet, and the child will continue suffering for a very long time. The emotional, psychological, and social impacts are likely to affect a child in a great way and make it difficult for him or her to lead a normal life.

- **EMOTIONAL AND PSYCHOLOGICAL TRAUMA:**

One of the biggest impacts of child pornography is the emotional trauma that the victim has to go through¹⁶. Children who are exploited in such a manner often develop feelings of fear,

¹⁵ Europol, supra note 10.

¹⁶ David Finkelhor, *Childhood Victimization* 45–47 (2008).

confusion, and helplessness. The children may not fully comprehend what is happening to them, but the trauma that the children go through can be quite profound. In some cases, the children may also develop feelings of guilt for the occurrence of the event, as well as fear of what other people may think of them should the occurrence be revealed to the public. This may, in the long run, lead to feelings of anxiety, depression, as well as a lack of self-confidence among the children¹⁷. In some cases, the children may also find it hard to trust other people in the social environment.

- **LONG-TERM SOCIAL PERSONAL CONSEQUENCES:**

The effects of child pornography can linger for a long time even after the initial act because the pictures or videos can stay online indefinitely. The victims can always be afraid that their pictures or videos will show up again. A situation like this can make people feel unsafe for a long time. As they grow up, they may have problems in every area of their lives¹⁸. Some people may have trouble trusting people in general or making healthy relationships. Some people may have trouble continuing their education or making friends because they are embarrassed or afraid of what others will think of them. In some cases, social stigma can also cause people to treat certain groups unfairly. But child pornography should not be thought of as just a cybercrime or a crime against the law. It should also be seen as a violation of human rights that hurts the children's dignity, safety, and future. The first step in helping the victim get better is to protect their privacy and give them emotional and psychological support.

- **LEGAL FRAMEWORK IN INDIA:**

In the present digital age, the increasing use of the internet has made it imperative for the government to enact stringent laws that can safeguard children from exploitation on the internet¹⁹. With the increasing use of the internet for communication and information-sharing, the possibility of misuse of the internet has also increased. In this context, India has enacted many provisions of law regarding the prevention of child pornography on the internet. These laws are not only designed to penalise persons who commit these crimes but also to protect the dignity and privacy of children who may be victims of online exploitation. The important laws in this area are Information Technology Act, 2000 and the Protection of children from Sexual Offences Act, 2012²⁰. both of plays an imported role in dealing with offences involving child

¹⁷ Am. Psych. Ass'n, *Effects of Sexual Abuse on Children* (2013).

¹⁸ David Finkelhor, *supra* note 1.

¹⁹ Shubhankar Dam, *Cyber Law in India* 112–15 (2017).

²⁰ Information Technology Act, No. 21 of 2000, India Code (2000); Protection of Children from Sexual

pornography and in better protection for children in this digital environment.

- **INFORMATION TECHNOLOGY ACT, 2000:**

The Information Technology Act, 2000 is one of the key laws in India that deals with cybercrimes and help regulate activities carried out in digital world. The Act was changed to make the parts that deal with internet crimes stronger because more and more people are using the internet for illegal activities. There are parts of the Act that deal with putting obscene or sexually explicit content on the internet, sending it, and spreading it. Under this Act, Section 67 specifically deals with the publication or transmission of obscene material in electronic form. Nevertheless, in recognition of the need to address offences concerning minors, a new section, designated as Section 67B, has been introduced. The new section is devoted to child pornographic content and has made it illegal to produce, publish, download, view, transmit, or distribute child pornography on the internet or other electronic media in the form of sexually explicit content featuring children. The law also prohibits acts such as enticing children for online relationships for sexual purposes. When an individual is found guilty of these offences, he or she is subject to severe punishments such as jail terms and fines. This was done to discourage people from misusing these online platforms and to ensure that the internet is not abused for exploiting children.

- **PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012:**

Another significant law that safeguards children from the risk of sexual exploitation is the Protection of Children from Sexual Offences Act, 2012, which is also known as the POCSO Act²¹. The main purpose of the introduction of the POCSO Act is to offer a comprehensive legal policy to address different forms of sexual abuse of children. The law has defined a child as a person below the age of eighteen years, and there are strict punishments for crimes of sexual assault, harassment, and exploitation of children. The law has also recognised the increasing menace of child pornography and has included provisions for the criminalisation of the use of children in the creation of pornographic materials. The law has clearly stated that anyone who uses children in the creation of pornography can be prosecuted and punished for the crime. One important aspect of the POCSO Act is that, apart from punishment, it is dedicated to protecting the interests of child victims. The child-friendly procedures are given importance in the investigation and trial, so that the child victims are not subjected to further

Offences Act, No. 32 of 2012, India Code (2012).

²¹ Protection of Children from Sexual Offences Act, No. 32 of 2012, India Code (2012).

trauma in the process of seeking justice.

- **IMPORTANCE OF LEGAL PROTECT:**

The Information Technology Act, 2000, and the Protection of Children from Sexual Offences Act, 2012, Effective legal provisions are necessary to deal with the growing problem of child pornography in cyberspace. As significant deterrents by prescribing severe punishment to the individuals involved in such crimes. These laws not only seek to punish the criminals but also offer protection to children who become victims of such online crimes. These provisions of the laws seek to protect the rights, dignity, and well-being of children in the online world. However, it should be noted that the success of all these laws also depends upon how effectively they are implemented and how aware people are about these issues²². It is only through collaboration between law enforcement agencies, educational institutions, parents, and society that cyberspace can be made a safer place for children.

LANDMARK JUDICIAL DECISIONS:

1. Avnish Bajaj v. State (Nct of Delhi)²³

One of the early and important cases relating to cyber crimes in India was the one relating to the online marketplace Baze.com, which was later acquired by eBay. In this case, an obscene video of minors was put up for sale on the online marketplace. Avnish Bajaj was arrested under the Information Technology Act, 2000, and the IPC.

The case raised serious legal questions about extent to which online intermediaries for unlawful content shared by users on their platform. The court also examined with due consideration whether the digital marketplace's management could be held liable for objectionable material being posted on the platform²⁴. This case also emphasized the need for strong safeguards against the spread of obscene and explosive material involving children.

2. Kamlesh Vaswani v. Union of Indian

In this case, the petitioner argued that the free access of such sites could lead to adverse effects in society, especially among children and teenagers who frequently access the internet.

Although it was not entirely banned by the Supreme Court ruling, it raised public awareness regarding the concerns over online accessibility to explicit content and its effect on minors. It

²² Shubhankar Dam, *Cyber Law in India* 145–48 (2017).

²³ Avnish Bajaj v. State (NCT of Delhi), 150 (2008) DLT 769 (Del. HC).

²⁴ Avnish Bajaj, 150 (2008) DLT 769.

also prompted the government to look into available technology to prevent minors from being exposed to harmful online content.

ROLE OF PARENTS, SCHOOLS, AND GOVERNMENT IN PREVENTING CHILD PORNOGRAPHY IN CYBERSPACE:

The fight against child pornography in cyberspace is a collective duty of all parts of society. Though laws and law enforcement agencies are important in dealing with child pornography offences, it is not possible for them to completely eliminate the menace. It is also a duty of parents and educational institutions to protect children in cyberspace. Parents should supervise their children's activities in cyberspace, while educational institutions can enlighten children about safe use of the internet and the possible hazards in cyberspace. At the same time, the government agencies need to enhance the regulations, raise awareness, and implement the existing laws. When all these different stakeholders join hands, it becomes possible to create a safe internet for the children and help them understand the hazards of the internet that may arise from irresponsible use.

- **ROLE OF PARENTS:**

The role of parents in safeguarding children against the risks that exist in the online world is very significant²⁵. In today's digital world, it has been observed that children are using smartphones, tablets, and computers at a very young age. It is useful for learning and communication, also they prevent children from risks if they are not used carefully. The parents should guide their children about safety and guidance use of the Internet. Between Parents and children the communication is a must in this case. Their children should feel free to share their experiences about the internet. Parents can also check their children's activities on the internet, so that they can prevent from risks.

And also parents have an important role to play in teaching their children about safeguard their personal information on the internet. Most of the children use social media platform, online games, etc, without fully understanding the risks involved in internet platforms. Parents should teach their children why we should not share our personal information, photographs, or videos should not be shared with unknown people. When children become aware of these dangers, they are more likely to behave responsibly and act more safely while using digital platform.

²⁵ UNICEF, supra note 1.

- **ROLE OF SCHOOLS AND EDUCATION INSTITUTIONS:**

Schools and educational institutions also have a major role to play in protecting children against cyber threats. This is because children spend a considerable part of their time at school and can be made aware of safe usage of the internet. Schools can also implement such programs that can enlighten children regarding cyber safety, online privacy, and the dangers of interacting with strangers online. Teachers can also guide the children on the identification of suspicious online behaviour and the measures that can be taken in case of the presence of harmful content or the receipt of inappropriate messages online. Similarly, educational institutions can also develop policies that shape the usage of digital gadgets in the school premises. A safe and conducive environment that enables students to feel free to raise online issues in school can greatly contribute to the prevention of online problems before they become major issues.

- **ROLE OF GOVERNMENT:**

The government also plays a vital role in protecting children from online exploitation does not lie only with families and society. In India, legislation such as the Information Technology Act, 2000, and the Protection of Children from Sexual Offences (POCSO) Act, 2012, have been implemented to address crimes involving in child pornography and various forms of sexual offence on the internet. Those laws aim not only for punish offenders but also to ensure the protection children who may become victims of such crimes. In addition to this, the government should also ensure the proper implementation of the laws by providing proper investigation and punishment for those who break the law. The law enforcement agencies should be provided proper training and facilities to track the cyber criminals who commit these crimes. Another measure that the government can take is to organise awareness programs and campaigns to make people aware of cyber safety and how to protect children from cybercrimes. The government, in collaboration with technology companies and international organisations, is also needed to fight cyber crimes, since many crimes are international in nature.

PREVENTIVE MEASURES TO COMBAT CHILD PORNOGRAPHY IN CYBERSPACE:

It is important to deal with the problem of child pornography in cyberspace in a manner that involves measures beyond stringent punishment under law²⁶. Although punishment has its own

²⁶ Council of Eur., *Convention on Cybercrime* art. 9, Nov. 23, 2001, E.T.S. No. 185.

importance in dealing with child pornography in cyberspace, it is important to take preventive measures to avoid risks to children in cyberspace. Since cyberspace connects people worldwide, it involves cooperation between governments, law enforcement agencies, technology companies, educational institutions, parents, and society to deal with child pornography in cyberspace in a manner that involves preventive measures and awareness to avoid risks to children in cyberspace.

- **STRENGTHENING LEGAL AND REGULATORY MEASURES:**

Preventing child pornography in cyberspace requires the existence of a strong legal framework along either effective enforcement. Government must ensure that clear legal provision that criminalises the production, publication and possession of child pornographic material. Strict legal punishment is not necessary not only necessary to punish offenders but also to discourage such harmful activities and protect vulnerable children²⁷. In Indian, legislations such as the Information Technology Act, 2000, and the Protection of Children from Sexual Offences Act, 2012, have been introduced as a legal foundation to combat crimes related to online child exploitation. These laws play a big role in the digital space and ensure that children who become victims of such offences are held accountable under the law²⁸. In spite of the strict laws, they cannot completely solve the issue of child pornography in cyberspace. The real shift is in making sure that such laws are likely to be enforced by the concerned authorities. The law and order agencies should be provided with advanced technological support to identify and track the culprits in the digital space. Training programs should be conducted for police officers so that they can handle such cases more effectively and improve the process.

SUGGESTION AND CONCLUSION:

The issue of child pornography in cyberspace is an important one that demands attention and collective efforts from all sections of the society. Even though the country has made significant strides in the matter through the Information Technology Act, 2000, and the Protection of Children from Sexual Offenses Act, 2012, the success of the legislation depends on its proper implementation. Law enforcement agencies must be provided with the latest technology to detect cybercrimes against children. At the same time, the issue of cyber safety must also be promoted among parents, teachers, and children, which would help them understand the issue better. Moreover, technology providers must also take the initiative to monitor the internet for

²⁷ OECD, supra note 3.

²⁸ Aparna Viswanathan, *Cyber Law: Indian and International Perspectives* 220–23 (2018).

the presence of such illegal content, which must be removed immediately. Since the issue of cybercrime is an interstate problem, the involvement of other countries is also important in solving the problem. The issue of child pornography in cyberspace is a significant issue that needs attention and collective efforts from all sections of the society. Though the country has made significant progress in this matter through the Information Technology Act, 2000, and the Protection of Children from Sexual Offenses Act, 2012, it is important that the success of these laws depends on their implementation. The law enforcement agencies must be provided with the latest technology to detect cybercrimes against children. At the same time, the issue of cyber safety must also be promoted among parents, teachers, and children, which would help them understand the issue better. Moreover, the technology providers must also take the initiative to monitor the internet for the presence of such illegal content, which must be removed immediately. As it is an interstate issue, the involvement of other countries is also important to solve this problem.

