

Child Pornography in India: Issues and Challenges

¹Dr. Samir Bhadury

¹Assistant Professor, Department of Law, Rajiv Gandhi University. Samirbhadury31@gmail.com

Abstract

Sex is a divisive subject in the social framework of India, often being linked to immoral and prurient values. Child pornography is a branch of pornography which shows a picture of child and video making a sexual sound with an intention to arise the sexual desire of persons or viewers as well. Such a branches always show a violent picturisation of the children and adolenses who were in pain through watching these children considers the best part of the videos. Often such an industries, take the picturisation of the child in naked body and shoot a video of the child getting involve into the sexual activity and then sale those video in the website as to earn the money from those shouted videos of the child. And today we can find all such video easily in internet as well as in the market due to the advancement of technology and availability of handy smart phone, some time a child are forcefully has to embrace such an activity due to many reason. In this article researcher tries to find out the reasons and legal prospects regarding child pornography in India. Researcher also discuss the judicial pronouncements and legal solution on child pornography.

Keywords: Children, Pornography, Rights, POCSO.

Introduction

Today, child pornography is considered by most societies to be an especially heinous crime. With technological advancements, child pornography crimes have increased in numbers and have also developed to be more vicious and harmful than before. The effects on the child victims are strong, and many suffer in different ways for years to come. It is common for children who have been abused and depicted in pornographic material to develop depression and feelings of guilt. Furthermore, child pornography crimes are directly linked to the sexual abuse of children. Apart from the fact that some child pornographic material depict physical, sexual abuse against children, the fact that the abuse has been recorded, shared and viewed add to the victimization and abuse of the child victims. The trauma is simply reinforced by knowing that the recorded and depicted abuse is circulating and being enjoyed by others. The matter of child pornography as abuse of children and children's rights is

addressed in the United Nations Convention on the Rights of the Child (CRC). According to the convention, all state parties that have ratified the convention should work against sexual exploitation of children, as well as all exploitation of children for pornographic purposes. Sweden has ratified the convention, and has through the ratification therefore agreed to work towards the abolishment of all types of sexual exploitation of children. However, how this work should be carried out is not specified, and there are many factors that affect how each state chooses to tackle the issue. Since it is not explicitly stated that possession of child pornography should be criminalized, states can take it upon themselves to decide whether or not possession should in fact be considered a crime.

According to a retrospective self-report type of national probability sample, 90% of men and 80% of women surveyed reported that they had experience with erotica (visual pornographic material) at some time during their lives. About

30% of the men and 17% of the women reported their first exposure prior to age . There is no literature available concerning the psychiatric consequences of children having been involved in photographed sexual encounters, nor is there any literature on the consequences of childhood exposure to erotic material, e.g., pornography. While pornography usually has a negative connotation, some authors have examined its potential positive implications. For instance, in a catharsis hypothesis, society is willing to "sacrifice" and "exploit" a few children for the benefit of many claim that commercial pornography has no deleterious effects on prepubertal child viewers and may, in fact, be utilized so as to have a positive and constructive effect in directing them toward psychosocial normalcy. Kutchinsky's studies of the effects of legalizing pornography in Denmark showed that concurrent with the increased availability of pornography, a significant decrease in the number of sexual offenses, including child molestation, was registered by the police. However, Kutchinsky also notes: "to the majority of sexual offenders against children, the criminal interference with children was not a coveted goal in itself; rather it served as a poor substitute for a preferred but unobtainable normal heterosexual experience".

Objectives of the study

1. To study the position regarding offences and punishment of the child pornography in India.
2. To study the major causes of the child pornography.
3. To analyze the prospects , legal framework and suggestions to prohibit child pornography.

Research Problem

Today child pornography is the pressing issue in India due to rapid development and the adoption of the internet and smart technology. As to end up the child pornography, one must adopt determination to protect children and issue an effective legal regime for well being of the child. All the law and order should be adopted strictly to protect and prevent the child from being explicated.

Methodology

The methodology is doctrine in nature. The researcher has utilized primary as well as secondary sources of the data. Legislations, Judicial Pronouncements regarding child abuse and various articles, books used for this study.

Nature of Child Pornography

The offence of child pornography is not just one offence, rather it is a series of offences and harsh consequences. It begins with the sexual abuse of child who probably don't even understand as to what is happening with him, and even if he knows about it, that doesn't make it any better. Then such abuse is recorded and distributed among certain horrible people who take intense pleasure in watching those children suffering in pain owing to their exploitation, which provokes them to do it themselves. This is how the desire to do such heinous acts evolves among people, and many of them even succeed to do it, hence more crimes.

A child is someone who is at the very beginning of his/her life and have many years to live ahead, however, when he/she becomes a victim of an offence as brutal as child pornography, it becomes very difficult for that child to live normally afterwards. Such an incident would leave a stigma in the mind of such a child forever. The expansion of the Internet and advanced digital technology lies parallel to the explosion of the child pornography market. Child pornography images are readily available through virtually every Internet technology, including social networking websites, file-sharing sites, photo-sharing sites, gaming devices, and even mobile apps. Child pornography offenders can also connect on Internet forums and networks to share their interests, desires, and experiences abusing children, in addition to selling, sharing, and trading images.

Defining Child Pornography

It is the representation of a child engaged or involved in real or simulated explicit sexual activities in audio, video, or written form through various means like electronic, digital, optical means. It involves the use of a minor in sexually explicit conduct. It can also be the case where the visual depiction has been created, adapted, or modified to make it appear

that a minor is engaging in sexual conduct. It is nothing but a child's sexual abuse and exploitation of children engaged in such activity which directly hamper their well-being, and harm their physical as well as mental health.

The Optional Protocol to the Convention on the Rights of the Child defines child pornography as any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. [2] Child pornography involves a child, as mentioned in the definition and pedophile. A pedophile, in most cases is a male (and some, a female) who imposes his/her sexual desires onto a child [3]. Paedophilia is common term used to express a sexual preference which greatly covers fantasizing sexual activities with children. Such an occurrence is a direct denial of a healthy sexual relationship which reflects when it occurs between two adults. [4] According to Article 9 of the Cyber Crime Convention, 2001, child pornography is defined as "pornographic material that visually depicts: a minor engaged in sexually explicit conduct and a person appearing to be a minor engaged in sexually explicit conduct. "Children are very delicate and vulnerable on intellectual front and it is arduous for them to step back from the negative constituents of the modish technological era. Social media is the catchiest platform wherein children tend to fall prey to or get in touch with people who look for minors to fulfill their sexual pleasures. This makes it easier for the pedophile(s) to target innocent children and brainwash them, which leads to heinous crimes like child pornography and trafficking.

Legal Aspects in India

Protection Of Children from Sexual Offences (POCSO) Act, 2012 This Act was enacted to provide a robust legal framework to protect children from sexual assault, sexual harassment, and pornography offences while safeguarding the child's interest at every stage of the court process. The framing of the Act seeks to place children first by making it easy to use by including mechanisms for child-friendly reporting, recording evidence, investigating, and prompt criminal trials through designated special courts. The new Act calls for a number of crimes to punish an

accused. It acknowledges ways of penetration other than penile-vaginal penetration and also criminalizes acts of childhood immodesty.

Penetrative sexual assault: penetration of penis/object/ another part of the body into the vagina/urethra/anus/mouth of the child or asking the child to do so with them or any other male. Sexual assault: when someone touches the child or causes the child to touch them or someone else, sexual harassment: passing sexually colored remarks, sexual gesture/noise, repeated followup, flashing, etc. Child pornography exacerbated sexual assault / aggravated sexual assault.

Amendment to POCSO Act, 2012 The Parliament of India passed an amendment to the Protection of Children from Sexual Offences Act, 2012, in August 2019. The new bill aims to improve the punishment of minors for sexual crimes, including a death sentence. To counter child pornography, the Bill provides that those who are using a child for sexual purposes will be prosecuted with up to five years imprisonment and fine. However, the punishment would be up to seven years and fine in the event of a second or subsequent conviction. The Bill defines child pornography as any visual representation of sexually explicit behavior involving a child, including photographs, video, digital or computer-generated images that cannot be distinguished from a child.

Information Technology Act, 2000 The information technology Act of 2000 punishes the publishing or transmission of any obscene material in electronic form. The earlier Act did not have any specialised provisions regarding child pornography; all the instances of pornography were treated under Section 67 of the earlier Act. Though, it is important to note that the IT Act, 2000 was an important step forward from the earlier legislations. Earlier all the instances of pornography whether online or not were treated under the Indian Penal Code 1860 and the Indecent Representation of Women (Prohibition) Act 1986. The transmission or publishing of obscene material is punishable by imprisonment of two years and five which may extend up to five Lakhs rupees and any subsequent conviction by an imprisonment of five years and fine which may extend up to ten lakhs rupees. The subsequent amendment to the 2000 Act in 2008

specifically punishes child pornography. The Act of publishing or transmitting material depicting children in sexually explicit act is punishable. Moreover, it also punishes browsing, collection, distribution, and creation of any sexually explicit material containing children. Inducing online relationship with children, facilitating child abuse online and recording sexual abuse of children in electronic form is a punishable offence. The Act provides for a punishment with an imprisonment of five years and a fine up to five lakhs rupees and the second conviction is punishable with an imprisonment of seven years and a fine up to ten lakhs rupees. The offence made under the Act is non-bailable and cognizable. Section 67C imposes liability on intermediaries for the retention and production of information. Section 79 was also amended; it specifies the condition under which liability will not be imposed on intermediaries. Even after having such elaborate legal provisions punishing child pornography, curtailing child pornography is a challenging task. The present technology is not so developed to churn out child pornography from the wide area of pornography. As the matter of Pornography has to be seen in consonance of Right to freedom of Expression it a task to differentiate them on the digital media. Though the legislation has been made under the different statutes but the basic problem of implementation is a serious issue as in the physical world the implementation can be possible due to stricter approach by the government but as for the digital sphere the government seems to have a little bit of concern and even these institutions who are accorded with the duty to do so are not even funded properly, so in actually to curb the problem a serious approach is required.

Judicial approaches towards the problem

Though the laws have been made by the legislation but still the implementation of the same is to be looked by suspicious eyes. As for example Section 15 of the POCSO act 2012 which deals with storage of pornographic material involving a child for commercial purposes has not been registered any case in High Court or Supreme Court till now. So the implementation or the authorities dealing with the issue seems to be little ineffective in its work. Judiciary has tried to sort the problem related to the Child Pornography whenever the

matter related to it has surfaced with strict approach as the availability of evidence in these cases are abundant but the real issue lies in actual coming out of the matter related to it. Most of the places person tends to avoid the issue. There a very few judgements at the level of High Court and the Supreme Court dealing with the matter. Some of them are discussed below :

In the case of State of A.P. v. Mangali Yadagiri the matter was in High Court of Hyderabad where a SC/ST girl of 14 years was raped by few persons and then pictures were taken. She was even threatened that if she comes out then the perpetrators said that they would make it public so she was hindered from complaining for some time. Here the matter was referenced to the High Court that the case shall be tried in POCSO special court or SC/ST Court, here the court made that it shall be tried in the POCSO Special Court.

In a case of P. Shanmugavel Raj v. State and Ors. This was a Criminal Revision petition for against the committal of trial of the case of the rape of a 13 years old girl. Here the matter was pending in the session court but as the act provided for the special court to be established in the act so the High Court of Madras ordered the same to be tried in that court. The matter of Special Prosecutor was also made to which court agreed with the previous conclusion.

In the case of Hector Firdaus Kothavala v. State of Maharashtra the matter was of anticipatory bail in offence related to POCSO act. Here in the heinous case the father of 2 children was making sexual advancement towards them. Children being of age 4 and 6 years did not have greater understanding about the same did not mentioned but the heinous act was found out by her wife and the case was made. That accused got the anticipatory bail from the court.

In the case of Shashi and Ors. v. The State of Karnataka where the facts are that some friends of victim's father came to their house and then asked victim to collect firewood from the Jungle where afterwards the perpetrators went and raped her and also made video of the preposterous act. They were charged under POSCO and IT Act and the matter was made but the High Court of Karnataka granted them with bail and the final order is still awaited.

In the case of *Ishan v. State of M.P.* facts were that the victim went to her friend house and there the friend brother dragged her raped her and made a video of her. The incident was narrated by her to her parents to whom the case was filed. Here as the perpetrator was a juvenile so the matter went to JJB and later the revision petition was filed in the High Court of M.P. where the accused was released on bail.

Suggestions & Conclusion

India being one the youngest nations in the world has a large population of Children to account for. In this regard the laws should be made in consonance and for the betterment of the children as they serve as the future of this country. There is various form of exploitation that a child of tender age could meet with but sexual exploitation is the more severe one as it leaves a deep and mammoth impact on the child for the rest of the life, so laws should be framed in accordance so that this problem can be tackle out. The problem related to regulation of the same are huge and some suggestions in this regard are

- a) Acquire technical knowledge and expertise in Internet pornography.
- b) Establish links with other agencies and jurisdictions.
- c) Establish links with ISPs.
- d) To strengthen the central authority and a proper communication channel to be setup.
- e) To know the peculiarities of law and the POCSO court working in resonance with the IT Act.
- f) Parents , teachers should be friendly with childrens .
- g) Government also take necessary steps to prohibit child pornography.

The development of computer technology and the internet has a far reaching impact on the circulation of child pornography. The fight against child pornography on the internet can only be accomplished by a combination of statutory measures, filtering technologies and self-regulation. Governments across the globe have pledged to eliminate child pornography completely. It is important to have an

international understanding and consolidated effort to abolish child pornography. As discussed above, a lot of international and national initiatives have been taken place in this century to curtail child pornography. But even now a lot has to be done to achieve this goal. The present technology needs to be improved to churn out child pornography from the internet. Moreover, the law enforcement officials, much like technology must evolve from time to time so as to meet the needs of the society and protect the interests of the children.

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