

# A Study of Child Pornographic Responses in India and Its Impact

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## Abstract

It is not uncommon for children to be treated as sexual objects. It has been in civilization from the dawn of time, manifesting itself in the form of sexual writings and artwork involving children. With the creation of video and digital cameras, computers, software, and, most importantly, the emergence of the internet, the contemporary notion of pornography was born. The advancement of information and technology has made the creation of child pornography both inexpensive and simple, as well as the dissemination and manufacturing of it. The internet has become a key conduit for the dissemination of pornographic content, as well as a storehouse for a huge quantity of information and data. Pedophiles may easily get child pornography from other nations thanks to the internet's transnational nature. The other issue is jurisdiction, because the problem is trans-border, and the state's sovereignty is the most significant element, which normally prohibits any other country or state from interfering with their problem. Because child pornography is a prohibited activity, evaluating its true value is impossible. Governments all across the world have decried the exposure of minors to pornography and have taken steps to control the internet. Even the Indian government has recently attempted to curb child pornography, but all measures have failed. Whether or not the government's efforts are in the right direction is a topic of greater concern. These considerations are taken into account when conducting this research. This research study will examine the different national and international approaches to child pornography, as well as whether current laws adequately address this horrible crime.

**Keywords-** Global, sovereignty, Internet, child pornography, etc.

## Introduction

The Internet is billed as a means of global communication, but in addition to the benefits it provides, it also facilitates the spread of numerous evils. The most heinous of the evils is child pornography, which is not considered evil in most developed countries and is considered to be a part of the right to free speech and expression. However, even in these countries, laws prohibiting child pornography have been enacted because there are limitations on what content can be considered as part of the right to speech and expression. Now, in order to grasp what we mean by child pornography, we must first comprehend what it is and how the Internet aids in its spread. Now, in order to grasp what we mean by child pornography, we must first comprehend what it is and how the Internet aids in its spread. Determining what constitutes pornography is a difficult issue since the impression of the inclusion of various people and the amount of obscenity may be a factor in deciding what to include in the definition.

The sexual exploitation of minors is defined as child pornography. The use of children to fulfil the sexual wants of others, at the expense of the child's mental and physical requirements, has been classified as sexual exploitation of children. Kid Sexual Abuse is defined as the engagement of a child in sexual behaviour that he or she is unable to fully comprehend by the parents. India has taken the step of defining child pornography under (Section 13) of the Protection of Children from Sexual Offences Act 2012, which specifies how and when a kid is sexually assaulted for the purpose of pornography and is classified as a child pornographer. Despite the fact that the statute stipulates a penalty for the commission of the crime, it essentially covers the fundamental acts of crime as specified in the POCSO Act. The implementation policy suffers greatly as a

result of the exclusivity of the definition and the problem of parents refusing to come out because of the causal belief that leaking the information will result in harsh repercussions and, as a result, affect the future of the child. The use of the internet for the transmission of pornography is widely recognised, since it is the largest stakeholder in the watching of pornographic content available. Because of the massive increase in internet usage, the sector has witnessed a massive transformation. In addition, the spread of child pornography has been considered as a tough issue for many country governments to manage, since the restrictions of these websites appear to be a difficult burden for them to do. Along with the specific issue of easy access to pornographic content, there is also the issue of jurisdiction.. As Child Pornography is illegal so it is generally hidden on the web which makes the task of the regulatory bodies and implementing bodies to actually track the children who are involved in this particular form of indecent act and rescue them. There has been an estimated revenue collection of about several million to a billion that this industry generates so there are various people who are involved and actually earning bread and butter to this.

The crime of Child Pornography is not considered crime in itself but because it depicts abuse of children so it leaves a grave and a deep impact on the society. The law in this regard try to destroy the available material or to ban available websites in order to prevent it the exploitation and further depictions of sexual abuse of children. It is commonly seen in third world Nations where actually most of these videos are made. The biggest problem in stopping this crime is that there are very limited sites on which these offensive materials are displayed and as the sites are limited in number to take an action the state refuses as this does not form a majority concern for them although National and International have made conventions and laws for it. The other problem is that the children who are involved in this particular crime are themselves victim of this crime so they need special care and protection. The authorities rather than rescuing the children from this inhuman treatment are busy in capturing the culprit who themselves are very difficult to find and catch hold because of the jurisdictional problem and the difficulty in finding them. The society problem is also that the children who are involved or forced to be in the pictures and video for any form of pornographic material are ill-treated by the society and are subjected by them even though they were never at fault.

## **INDIA'S JUDICIAL RESPONSE TO CHILD PORNOGRAPHY**

The rapid growth of internet and technology has resulted in the rise and availability of child pornography in India. In the light of these technological advancements and otherwise, the Indian Government has enacted various reforms to strengthen the legal frameworks. India had blocked around 857 pornographic websites in 2015 because of the concerns about child pornography. This particular decision was taken under the Information Technology Act and in consonance with Article 19(2) of the Constitution of India that allows the Government to impose restrictions on the grounds of decency and morality. However, this complete ban was later lifted and only implemented to those websites containing child porn. This part shall explore the current state of laws with respect to child pornography in India.

### **The POCSO Act of 2012**

The Protection of Children from Sexual Offences Act of 2012 (POCSO Act) is the primary piece of law that addresses child sexual abuse in general, including sexual assault, harassment, and pornography. The use of a kid in any form of media for the purpose of sexual satisfaction is particularly prohibited under Chapter III. Preparation, production, providing, sending, publishing, facilitating, and distribution of pornographic content are all covered under the Act. The POCSO Act's ultimate goal is to protect children from sexual exploitation and degradation, as child pornography is one of the most severe types of child abuse.

The word "child pornography" does not have a legal definition. Furthermore, before to the POCSO Act, there was no particular reference of the phrases "child" and "pornography" in a single piece of legislation. The Act defines a kid as someone under the age of 18 and ensures that they are protected. Kid pornography, on the other hand, comprises depictions of a child's sexual organs, the use of a child in sexual actions, and indecent and obscene depictions of children in any programme or advertising on television or the internet.

The use of a kid for pornographic purposes is punishable by a five-year jail sentence and/or a fine under the Act. Furthermore, every successive conviction may result in a sentence of not less than 10 years'

imprisonment or perhaps life imprisonment, as well as a monetary penalty. To provide an even higher degree of protection, the Act also makes it illegal to store pornographic material involving a child for commercial reasons, punishable by a three-year prison sentence and/or a fine.

### **The Information Technology Act, 2000**

The publication or transmission of any obscene content in electronic form is punishable under the information technology Act of 2000. The previous Act had no specific provisions for child pornography; all occurrences of pornography were dealt with under Section 67 of the previous Act. It is crucial to emphasise, however, that the IT Act of 2000 constituted a significant improvement over previous legislation. Previously, the Indian Penal Code 1860 and the Indecent Representation of Women (Prohibition) Act 1986 applied to all cases of pornography, whether online or not. Transmission or publication of obscene content is punishable by a sentence of two to five years in jail, with a fine of up to five lakh rupees, and every subsequent conviction by a sentence of five years in prison.

In 2008, the 2000 Act was amended to expressly criminalise child pornography. It is illegal to publish or transmit content portraying children in sexually explicit acts. It also makes it illegal to browse, gather, distribute, or create any sexually explicit content containing children. Inducing internet relationships with minors, enabling child abuse online, and electronically recording sexual abuse of children are all illegal. The Act stipulates that a first conviction is punished by five years in jail and a fine of up to five lakh rupees, while a second conviction is punishable by seven years in prison and a fine of up to ten lakh rupees. The Act creates a non-bailable and cognizable offence. Intermediaries are liable for the retention of information under Section 67C.

Even with such extensive legal laws penalising child pornography, preventing child pornography remains a difficult issue. The current state of technology does not allow for the production of child pornography from the vast field of pornography. Because pornography must be seen in the context of the right to freedom of expression, it is difficult to distinguish between the two on the internet. Though the legislation was enacted under various statutes, the basic problem of implementation remains a serious issue. In the physical world, implementation is possible due to the government's stricter approach, but in the digital sphere, the government appears to be concerned, and even the institutions charged with enforcing the law appear to be concerned.

### **JUDICIAL IMPACTS TOWARDS THE PROBLEM**

Despite the fact that laws have been enacted by legislation, their application is being scrutinised with suspicion. For example, no case has been filed in the High Court or Supreme Court under Section 15 of the POCSO Act 2012, which deals with the storage of pornographic material involving a child for commercial purposes. As a result, the implementation or authorities dealing with the issue appear to be unsuccessful in their efforts. The judiciary has attempted to resolve the problem of child pornography whenever the issue has arisen with a severe approach since the evidence in these cases is ample, but the true difficulty lies in the actual resolution of the subject. There are just a few decisions dealing with the issue at the High Court and Supreme Court levels. A few of these are mentioned farther down.

The case of *State of A.P. v. MangaliYadagirithe* was heard in the High Court of Hyderabad, and it included a 14-year-old SC/ST girl who was raped by a few people and subsequently photographed. She was also warned that if she came out, the offenders would make it public, so she was unable to complain for a long time. The case was referred to the High Court with the request that it be heard in the POCSO Special Court or the SC/ST Court; nevertheless, the court decided that it will be handled in the POCSO Special Court. In the case of *P. Shanmugavel Raj v. State and Others*, the court ruled that this was a Criminal Revision petition challenging the trial's commitment in the matter of a 13-year-old girl's rape. The case was pending in the session court, but because the statute called for the establishment of a special court, the High Court of Madras ordered that it be heard there. A Special Prosecutor's case was also brought up, and the court concurred with the earlier finding. In the case of *Ishan v. State of M.P.t*, the victim went to a friend's residence, when her friend's brother pulled her, raped her, and recorded her. She told her parents about the event, and they filed a police report. Because the offender was a minor, the case was referred to the JJB, and

subsequently a revision plea was filed at the High Court of Madhya Pradesh, where the accused was released on bail.

## Conclusion

There are many types of exploitation that a kid of a vulnerable age might face, but sexual exploitation is the most serious since it has a long-term and devastating influence on the child's life. As a result, legislation should be enacted to address this issue. The problem of regulating is enormous, and some recommendations are as follows: -

- a) Acquire technical knowledge and competence in Internet pornography.
- b) Form alliances with other government 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.

The internet and the advancement of computer technology have had a significant influence on the spread of child pornography. Only a combination of governmental measures, filtering technology, and self-regulation can effectively combat child pornography on the internet. Governments all across the world have committed to eradicate all forms of child pornography. It is critical to have a global awareness and concerted effort to eliminate child pornography. As previously said, this century has seen a slew of international and national programmes aimed at reducing child pornography. However, there is still more work to be done to attain this aim. To churn out child pornography from the internet, current technology must be improved. Furthermore, law enforcement authorities, like technology, must grow with time in order to satisfy the demands of society and defend the interests of children.

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