

SEXUAL ABUSE OF CHILD IN RELATION TO CHILD PONOGRAPHY

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Abstract

Pornography has been the most controversial topic arising from the use of the Internet in recent years. Its availability on the Internet has caused fear and a 'moral panic' among the government, law enforcement bodies such as the police, prosecutors and judges together with the media in general. There is no settled definition of pornography in a multi-national environment such as the Internet and cultural, moral and legal variations all around the world make it difficult to define 'pornographic content' in a global society.

This article will discuss two different issues within one context, the Internet: the regulation of harmful content such as pornography and regulation of illegal content such as child pornography. These issues are different in nature and should not be confused. Any regulatory action intended to protect a certain group of people, such as children, should not take the form of an unconditional prohibition of using the Internet to distribute certain content that is freely available to adults in other media. The production and distribution of child pornography is illegal in the UK and in many other countries. This also applies to the Internet

INTRODUCTION-

The aim of this article is to describe and discuss problem and factors that increase the risks of online or internet child pornography. It tries to identify the different impact of the child pornography on both the victim child and the user. It also discussed the different challenged which are been faced while tackling child pornography

The treatment of children as sexual object has existed through the ages in different cultures whether the ages in different cultures whether it is been nationally or internationally and so too has the production of various literature and drawing involving children. However pornography has very much developed in the modern sense¹.

MEANING OF CHILD PONOGRAPHY-

The word "pornography" has originated from the Greek word "phonographs" which means "writing bout prostitutes "and the term child pornography means any audio , visual material which uses children in sexual context²

¹ R. Tyler, "Child Pornography: Perpetuating the sexual victimization of children" 9,C A N 313(1985)

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² Article 9(2),The Council of Europe Convention on convention on cyber crime 2001

Available at :<http://jurip.org/wp-context /upload/2017/5/shraddha-subedi.pdf>(visited on march 18 ,2018)

The International Criminal Police Organization (Interpol) defines child pornography as “means of depicting or promoting sexual abuse of a child including print or audio-censored or sex acts or genital organ of children .Child pornography is also defined as “ any representation by whatever means of child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of the child the dominant characteristics of which is depiction for a sexual purpose.”³

Child pornography is not a new term .It is giving way to prostitution by way of young children by deceiving their young minds. It is a mental and physical pain that a child has to go through which becomes a bad memory for whole life. A child nurtured in such manner may have several psychological disorders in the long run. Thus strict norms should prevail that deter and put fear in the minds of the wrongdoers before committing such an acts. Such a person should be boycotted from the society . the Indian judicial system is making way and imposing strict punishment in such cases.⁴

REASON FOR CHILD PONOGRAPHY –

The most obvious use of child pornography is to aid in sexual arousal and gratification of adults. However child pornography is also used to;-

- Validate ones behaviour as normal⁵
- Seduce children and lower their inhibitions⁶
- Blackmail a children ⁷
- Preserve a child’s youth in an image at the age of preference ⁸
- Establish trust among there paedophiles ⁹
- Gain entrance to private clubs ¹⁰
- Produce for commercial gain ¹¹

Internet – the reason of promotion of child’s pornography.

The internet has emerged and increases the problem of child’s pornography by increasing the amount of material available, the efficiency of its distribution and the ease of its accessibility

- Permits and gives the permission to large quantities of pornographic image from around the global
- Provides pornography available instantly at any time and place
- Allows pornography to be used (apparently) anonymously and privately

³ Article 2 (1), Optional Protocol to the Convention on the Right of the Child on sale of children ,child prostitution and child pornography of united nation
Available at :<http://jurip.org/wp-context /upload/2017/5/shraddha-subedi.pdf>(visited on march 18 ,2018)

⁴ Vinod Kapoor , child pornography :A nuisance 3 1 JSR1784 MDI= pdf (visied on mach 18, 2019

⁵ Available at –<https://www.eurasiare-view,/0305207-child-pornography-in-digital-age-and-the-lawin-india-analysis/>(visited on-18 march,2019)

⁶ ibid

⁷ ibid

⁸ ibid

⁹ ibid

¹⁰ ibid

¹¹ ibid

- Facilities direct communication, data and image sharing among users
- Delivers pornography with any lost or at very low cost
- Provides images that are high digital qualities to not decorate and can be conveniently kept by any person
- Provides for a variety of forms (picture, video, sound) as well as the potential for real time and interactive experiences
- Permits access to digital images that have been and can be modified to create composite and real time¹²

SEXTING – A reason behind child's pornography

Sexting is a combination of word 'sex' and 'texting' and is used to describe "the digital recording of naked, semi naked, sexually suggestive over explicit images".¹³ And their distribution by email, mobile, phone messaging or through the internet on social networking sites¹⁴

Studies into Australian legal framework used to define and manage sexting emphasise processes of trial and error involved in the regulation of this complex issue.¹⁵ both revealing the divide between digital natives and digital immigrants and demonstrating significant challenges posed by the digital technologies to child protection¹⁶

An evaluation of the framework for safer mobile use also stressed the importance of multi-stakeholder involvement to successfully address e-safety issues. The European commission found that implementation of the framework was effective, however further recommendations for the framework included the classification of commercial materials to ensure age-appropriate content for minors parental control to block online content on their children devices¹⁷

Although in many cases, young people talk about sexting as normal (if at time unwanted) activities among peer, it is widely categorised as illegal behaviour. A recent report by the UK-based National society for the prevention of cruelty to children (NSPCC) argued that children and young people maybe viewing images of similar-aged peers which could be classed as age-appropriate, lei illegal, sexual behaviour.¹⁸

STRECH AND RANGE OF THE CHILD PORNOGRAPHY-

¹² Ibid

¹³ Available at- <http://shodganga.inflibnet.ac.in/bitstream/10603/63591/11/11-chapter%204pdf> visited on (march 18,2019)

¹⁴ Available at- http://www.academia.edu/3536241/lets_get_sexting_risk_power_sex_and_criminalisation_in_the_moral_domain(visited on 18 march,2019)

¹⁵ ibid

¹⁶ Catherine Arcabascio,"sexting and teenagers "OMGRU going jail???16 RICH J.L.and TECH 10(2010)

¹⁷ Available at- http://www.academia.edu/3536241/lets_get_sexting_risk_power_sex_and_criminalisation_in_the_moral_domain(visited on 18 march,2019)

¹⁸ NSPCC,2016 pp 13--14

- It is very much difficult to be limited about the extent of internet child pornography, but all of available evidence points to it being a major and growing problem¹⁹. At any one time there are estimated to be more than one million pornographic images of children on internet with 200 new images posted daily²⁰. One offender arrested in UK possessed 450,000 child pornographic images.²¹ It has been reported that a single child pornography site received a million hits in a month.²²

Long Term effect-

The long term effect of child abuse can be devastating for a child victim²³ –

- Mental Health Problem- Anxiety ,Fear ,Depression ,suicide self injury, Drug abuse etc
- Traumatic Sexualisation- In which a Childs sexually including and sexual attitudes-is a developmentally inappropriate and interpersonally dysfunctionally fashion. Such as prostitution ,aversion to sexual contact , confusion about sexual identity , confusion of sex with love and care –getting or caring giving aggressive sexual behaviour , promiscuity , difficulty in arousal and organ ,inappropriate sexualisation of parenting , revictimization
- Child –rearing difficulties-repeat cycle of abuse in same or differently non –sexual format, over protectiveness, fertility control.
- Stigmatization: the negative connotation – for example- badness ,shame and guilt.
- Social dysfunction : delinquency , criminal, behaviour acts of violence to self or other , victim role.
- Feeling of powerlessness: the process in which the Childs will ,desire and sense of efficacy are continually contravened .leading from the inability to stop to abuse , the child grows to feel anxious inefficient and develops a tendency to run away from problem.
- Feeling of betrayal- children discover that someone on whom they are vitally dependant has caused them harm . Mostly the abuser is a known person and even if it is not the parent, child experiences a loss of trust of the parents and begins a search for a person who could be trusted. This leads to vulnerability to subsequent abuse and exploitation allow for own children to be victimized by oneself or other, leads to discomfort in intimate relationships marital problems , aggressive behaviour and impairs ability to judge people , which in turn leads to choosing wrong friends and disastrous marriage.

Non -Reporting or Under–Reporting of Cases –

Ironically ,although the incidence of sexual abuse of children seems significant the reported cases represent a very small portion of the children actually abused . some important reasons for this under– reporting are-

¹⁹ Available at-<http://doras.dcu.ie/20940/> visited on march 19/2019

²⁰ S.S.Wellard (2001)"cause and effect "32 cc 15.2001

Available at-<http://doras.dcu.ie/20940/> visited on march 19/2019

²¹ J.Carr,(2004).child abuse ,child pornography and the internet condon:NCH

²² P.Jenkins ,Beyond Tolerance :Child Pornography on internet ,357(University press New York,2001)

²³ Report on Early Marriage- Sexual exploitation And the Human Right of Girls by The Forum on Marriage and Right of Woman and Girls , November 2001. Page No.17

- Society's restriction on sexual deviations places a stigma on both victim and perpetrator and therefore not to report is not suffer disgrace besides the fear of stigma and shame on the family as a result of reporting is a big deterrent factors towards reporting such matter for legal intervention.
- Sexual abuse is difficult to identify and prove and easy to deny.
- Children are given few legal rights and are often not believed.
- In family situations the other family member are less likely to report prosecution upset the family balance both economically and physically
- Long and torturous legal procedure is an enormous disincentive factor.

Reasons Behinds Development of child pornography in Modern Era-

Computer has facilitated the growth of our society but on the other hand it has worked as a catalyst in promoting child pornography. Needles to maintain that the term "computer" here should be understood in terms of its definition in the Information Technology Act of 2001²⁴

Internet is the sole medium through which child pornography is being committed and distributed and following are some of the ways through which it is committed²⁵.

- Web cam- Pornography sites provide live sex of children via Web cam in the internet
- E-Mail- It is used to share nude images among users but generally ignored since it is considered as a risky business
- E-Group – Such groups exist in receiving and sharing the pornography among the member of the group.
- Bulletin Board System(BBS)- It acts as a guide to those who are seeking for child pornography by providing the pornography sites.
- Chat Room- It is used to exchange child pornography and o locate potential victim.

Current concerns and Challenges- There are concerns and challenging which is present while preventing the use of child pornography-

1. Concerns in Controlling Internet Child Pornography-

The fundamental concerns and challenges that may be attributed to the problem of sexual abuse and the commercial sexual exploitation of children in India are-

- The Factor of denial that sexual abuse of girls and boys takes place both within families and outside the home of the child. This research work articulates what many have chosen to deny, minimize or rationalize, that there is a convincing case for critically re-examining the law, policies and practices that have allowed child sexual abuse to persist virtually unchecked in India.
- Lack of comprehensive research or database on sexual abuse and exploitation of children in their homes and in other locations, such as on streets, at their work place by means such as child prostitution, paedophilia, child sex tourism and child pornography.

²⁴ Section -2(1) of Information Technology Act of 2001

²⁵ Dr Fatima Talat, Cyber crime 115(Eastern Book Company Lucknow 2011)

- Absence of measures -In place to deal with child sexual abuse in institutional settings such as juvenile homes , observation homes , orphanages etc
- Lack of comprehensive laws- With regard to sexual offence against children .there is no recognition and therefore , no provision in the criminal laws dealing with various types of sexual abuse that may be committed against children .Additionally intra – familial sexual abuse goes un recognised and therefore unaddressed by law.
- Lack of Enforcement and implementation of existing laws that pertain to commercial sexual exploitation of children.
- Absence of training for sanitizing law enforcement officials towards rights of children and the special needs of a child victim against whom sexual violence and abuse has been committed.
- Lack of social awareness and especially within families that directly impacts the perception of children who are sexually abused and exploited.
- Lack of counselling and therapeutic treatment for a child victim and their families (when sexual abuse happens to be extra familial.

Children risk becoming invisible if their right to protection is unmet. The key elements of a protective environment are²⁶-

- Prosecution of the perpetrators of crime against children.
- An open discussion by civil society and the media of the attitudes prejudices, belief and practices that facilitate or lead to abuses
- Ensuring that children should ought to know their rights also are encouraged to express them and are given necessary skills and information to protect themselves from abuse and exploitation.

Challenges In controlling Internet Child Pornography

Cyber child pornography periods a few particular demanding or challenging situations for law enforcement agencies and organisations²⁷

These challenges includes :

- The structure of the Internet: The shape of the internet makes management and control of child pornography very tough. The Internet is a non-centralized system i.e. without any controlling head or agencies. Because it deals with miles of community of networks, spite the fact that one pathway is blocked ,many opportunity pathway can be taken to reach the identical destination. Similarly ,if any individual of the website or newsgroup is close down. There are numerous others which can speedy take is region .The decentralised nature of the internet and resultant problem in restricting the distribution of child pornography. is exemplified with the aid of peer to peer networking regarding direct connection amongst computers without need for a primary server.
- The uncertainties of jurisdiction : The Internet is an worldwide conversation tool that crosses jurisdictional boundaries .Not only limited with the cooperation and assist amongst regulation

²⁶ Excluded and Invisible- State of World Children 2006 UNICEF chapter 3 pg no.35
Available at – <http://www.unicef.org/sowc06/English> (visited on March 19, 2019)

²⁷ Regulating Child Pornography on Computer – legal Issues , Available at-
<http://www.neerajaaroa.com/regulating-child-pornography-on-computer-legal-issues/>(visited at march 19,2019)

enforcement agencies necessary to trace the offenders to throughout jurisdiction, it's far required o coordinate assists and avoid duplication of attempt.

- The Lack of Law: The Internet by using is nature, is hard to modify , however many jurisdictions are reluctant to introduce laws that would assist manage internet use. There are debits approximately the appropriate weight to give to he community's protection on the one hand ,and o freedom of speech and industrial pursuits on the other .There is also criminal ambiguity approximately whether or not internet service providers ought to be accountable for the material they create (as are television stations)or simply deemed as he conduits for that material (just like the mail provider)The give up result is that ISP's prison responsibility with admire to internet child pornography are regularly doubtful ,and, for he most component ,the emphasis has been on self-regulation.²⁸
- The Differences in legislation: To the volume ha there have been attempts to adjust the internet manage efforts are hampered by way of cross-jurisdictional differences in law and levels of permissiveness concerning child pornography .For example in the united states a child is defined as someone under 18;in Australia the age is 16 . moreover ,international ovations range of their dedication to put in force legal guidelines and act towards offenders, either for cultural reasons or due to corruption.
- The understanding or excellence of offenders: As the typology of internet offending behaviour indicates ,offender vary inside the degree to which they rent tricky safety features o keep away from detection. There is a center of veteran offenders, a number of whom were likely in paedophile newsgroups for than 20 years who possess high tiers of technologically know- how. It has been argued that many Internet sting operations be successful best in catching green , low stage offenders.

Need of Reforming The Child Pornography-

It is necessary to reform the legislation on child pornography .The government must make careful assessment of the harms of child pornography to provide stronger legislation Attention should be paid to prohibiting the possession of child pornography .This must be done taking into account the intergrading aspect of the experience. All the interested ones like the doctor ; CSO representative should participate in the development of policies. Effective counselling as an inclusive aspect in schools will lead to the general well-being and healthy development of the child. Social work and education also ay an important role.

Prohibiting pornography is not a solution. The rather open communication should start when the child interacts with peers,school,and parents. More advocacy for children's right is needed where parents ,teacher and CSO's will have partner to make society understand the effect of child pornography on children.

²⁸ Aailable at: [Htp://www.neerajaaroa.com/regulating-child-pornography-on-computer-legal-issues/](http://www.neerajaaroa.com/regulating-child-pornography-on-computer-legal-issues/)(visited at march 19,2019)