

India's Response To Combating Child Pornography

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Abstract - The treatment of children as sexual objects is not a new phenomenon. It has existed in the society from time immemorial through the medium of erotic literature and drawings which involved children. The modern sense of pornography came into existence with the invention of video and digital cameras, computers, software and most important of all the development of internet. The growth of information and technology has rendered the making of child pornography cheap and has also made the distribution and production an easy task. The internet has become a repository to a large amount of information and data and is becoming a major medium of transmission of pornographic materials. Because of the trans-national nature of internet, pedophiles can easily access child pornography from other countries also. The other problem lies is about the jurisdiction as the problem is trans-border one the state as consideration of the sovereignty as the most important feature generally disallow any other country or state to interfere with their problem. Child pornography being an illegal business, determining its actual worth is not possible. Governments across the globe have condemned children being subject to pornography and have been taking measures to regulate the internet. Lately, even Indian Government has put in efforts to curtail child pornography, but all the efforts are failing. The efforts put by the government are in proper direction or not that is the matter of the more serious concern. This research is done in consideration with these things in mind. This present research article shall discuss the various national and international responses to child pornography and shall also discuss the whether the existing laws sufficiently tackle this heinous crime.

Key Word - Child pornography, transnational, jurisdiction

THE CONCEPT OF CHILD PORNOGRAPHY AND ITS IMPACT

Internet is said to be mode of Global Communication but with the benefit it imparts there are various evils which are easily spread through it. The biggest of the evil being Pornography which not considered as evil in most of the developed nation and considering the same to be the part to be free speech and expression right but even in these nation the law related to banning of child pornography has been made as there are limitation as to what the content can be considered as part of right to speech and expression. Now to understand what do we mean by Child Pornography we need to understand what actually it is and how the Internet actually helps in progress of the same. To define Pornography is a tedious task as the perception to the inclusion of various persons and to what extent of obscenity can be the consideration of what to include in the definition.

Child pornography is deliberated as the sexual exploitation of children. Sexual exploitation of children has been defined as "the use of children to meet the sexual needs of others, at the expense of the child's emotional and physical needs. Child Sexual Abuse is defined as the involvement of a child in sexual activity that he or is incapable of wholly understanding by the World Health Organization. India in it step to define Child Pornography under *Section 13* of The Protection of Children from Sexual Offences Act 2012 which state how and when a child is sexually abused for the purpose of porn would be treated as an offender for child pornography. Thought the act provides with the Penal Punishment for the commission of the offence but still it basically covers the basic acts of crime which are defined in the particular POCSO Act. The implementation policy also suffers hugely because of the exclusivity of the definition and the problem of the parents of not coming out because of the causal thinking that the particular information if leaked out would lead to severe repercussions and in turn would harm the future of the child.

The use of internet for the propagation of the Pornography is quite well known as it is actually the biggest shareholder which makes up for the viewing of the porn material available. The industry has actually seen a humungous approach because of the actual explosion of the usage of the internet. In lieu of this the propagation of Child Pornography has also been seen as the controls of these websites seem to be a difficult task for the various nation states to tackle out. Alongside with the particular problem of easy availability of the porn material the problem of Jurisdiction also plays part. The Internet has created a number of encounters to the concept of jurisdiction in respect of many crimes. The inherent architecture of the Internet means that questions have been raised as to whether 'cyberspace' should be recognised as a new form of international space. Child Pornography is easily transmitted because of Internet as paedophiles can easily access the Internet and download any illegal picture or movie from any source in the world. It becomes very difficult for the law to control that as the location can be very hard to track as there are various chat rooms in the world where transmission of photos, images and live videos are served which are very helpful for the Paedophiles. Because there is a lack of an international boundary for the usage of Internet the paedophiles can easily access and download the material from anywhere in the world so actually the country which restrict this are incapable as the material is not generally produced in that particular country. 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 they 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 LEGISLATIVE 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.

POCSO Act, 2012

Protection of Children from Sexual Offences Act, 2012 (POCSO Act) is the main legislation that deals with child sexual abuse in general which includes offences of sexual assault, sexual harassment and pornography. Chapter III specifically makes the use of a child in any form of media for the purpose of sexual gratification an offence. The Act covers the offences of preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material. The overall aim of the POCSO Act is the protection of children from sexual exploitation and degradation, as child pornography can be considered as one of the extreme forms of exploitation of children.

There is no legal definition available of the term child pornography. Moreover, it is to be noted that prior to the POCSO Act there is no specific mention of the terms 'child' and 'pornography' within a single legislation. The Act defines a child as any person below the age of 18 years and provides protection to them. On the other hand child pornography includes representation of sexual organs of a child, usage of child engaged in sexual acts and indecent and obscene representation of child through any program or advertisement in television channels or the internet.

The Act punishes the use of child for pornographic purposes with an imprisonment of five years and/or fine. Moreover, in the event of any subsequent conviction may result in an imprisonment of not less than ten years or may extend to life imprisonment and shall also be liable for a fine. In order to grant extreme level of protection, the Act also punishes the storage of pornographic material involving a child for commercial purposes with an imprisonment of three years and/or fine.

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 are 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. MangaliYadagiri* 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

In the case of *Hector FirdausKothavala 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 of 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 tackled 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.

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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