Child Pornography: Innocence Sold Behind the Lense

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Abstract

"No Violence Against Children Is Justifiable and All Violence Against Children Is Preventable"

-Prof. Paulo Pinheiro

The treatment of children as a sexual object is not a new phenomenon. Internet has been a major contributor in child pornography due to its transnational nature. Any form of image or video clipping that consist a child of 17 years of age or less, in some sexual explicit manner may be considered as child pornography. Child are precious and equally vulnerable, they are victims of revenge porn, paedophiles and money. The effects of child pornography on the survivors are everlasting as they go through mental traumas, psychometrics changes, depression and anxiety. India has always been the soft target, factors being poverty, illiteracy and lack of awareness. A pornographic video is created in India every 40 seconds and up to 38 per cent of porn uploaded is deemed to be child abuse. As per the research it became crystal clear that child pornography is a major threat to society. In spite of the ban imposed by the government on cellular networks to block the porn sites, Indian government still lacks the efforts to control the rampant increase in child pornography and obscenity. Laws are stringent and lack sufficient punishment. This abstract throws a light on how child pornography has become a global problem and whether the existing laws are sufficient enough to tackle this heinous crime.

Key Words-Child Pornography, Obscenity

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Introduction

Article 19 of the Indian Constitution guarantees freedom of speech and expression to each and every individual. But at the same time, clause (2) of that article makes an exception imposing restriction on the exercise of above given right in the interest of public decency and morality. One cannot freely exercise right of freedom of speech and expression since there are certain limitations to it. Crossing those limitations or going beyond moral lines is deemed obscene as far as what the expression indicates. And when undertaken with a view relating to the cyber word such obscene material in electronic form is more serious offence than obscenity, this kind of material especially in videography form is known as pornography. The problem doesn't end here. A pornographic video is created in India in every 40 seconds and up to 38 percent of porn is deemed to be child abuse posing a major threat to society, ringing a bell of alarm, that how unsafe children are.

Pornography and Child Pornography

The World Health Organisation defines child abuse as involvement of child in any kind of act that is sexual in nature and the child lacks the understanding of what is being done to him/her and is under serious misconception.[1]

As per the Article 19 of Cyber Crime Convention 2001, child pornography includes pornographic material that usually depict a minor engaged in sexual explicit conduct and a person appearing to be a minor, engaged in sexual explicit conduct. Article 9 of the Convention also provides that whoever intentionally commits and without right , the following conduct for the child pornography for the purpose of its distribution through a computer system ;offering or making it available child pornography through computer system ;distributing or transmitting child pornography through a computer system ;producing child pornography through computer system ;possessing child pornography in a computer system; or on a computer data storage medium.[2]

1.Dr Gupta and Agarwal, Information Technology Law and Practise pg533

2.Substituted by the Cyber Crime Convention 2001, Article 9 and Article 19

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Apart from various other countries, India is one of the major contributors as well as consumers of child pornography, despite increase enforcement against such explicit material available online. Cyber experts told Mail Today that 35 -38 percent of porn that is being uploaded on web is related to children and teenagers, where Kerala is the highest uploader of such content and Haryana having the most viewers. As per the cyber expertsanalysts keywords like 'schoolgirls', 'Desi girls' and 'Teens' are most searched ones.[3] 35 – 40 percent of content downloaded regularly from India is porn. Kislay Chaudhary director of Indian Cyber Army (ICA) said, "The content and consumer of child pornography are growing at a sharp rate. There are no exact statistical data, but our findings show that search engines queries are related to pornography which are about 68 million search quires per day".[4]

The victims of child pornography predominantly belong from poorer and backward communities as the makers target their financial condition and illiteracy as tool to exploit them in every way possible. The online sexual grooming of minors is done which include enticement and distribution of pornographic clips so that the child can be abused offline as well. The Current situation is such that, not only paedophiles but porn industries are also playing a brisk role in production and distribution of child pornography. With time cybercrime is rapidly increasing as internet is boundary less. Paedophiles can easily download the pornographic videos from any corner of the world. Child pornography is a heinous crime which is affecting the life of the children both mentally and physically. The children belonging from comparatively better families are not aloof. To convince the children, paedophiles manipulate the children in such a way that convinces them that it is all natural and fun to do. Cases of revenge porn are registered where the main motive is either enmity or a way to boast their egos. Peer pressure, curiosity to have new experiences, befriending strangers who lures the child,blackmailing, taking advantages of the soft spots of the child and sexteting (exchange of sexual images on mobile phones) and then uploading such content on pornographic sites are becoming crucial reasons behind child pornography.

3.Available at http://www.dailymail.co.uk/indiahome/indianews/indiaweb

4.Available at http;//www.outlook.com/website/amp

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Prevention of Children Against Sexual Abuse Act

The Protection of Children from Sexual Abuse act was formulated in the year 2012 that aims in protecting the child against crimes like sexual assault, sexual harassment and child pornography. Keeping in mind the vulnerability of a child the act provides ample support to the child in the process of investigation as well as in the judicial proceedings.

According to Section 13 of this act -Any offence which involves a child in the preparation, distribution, production, marketing, and or distribution of pornography via computer, internet, print, electronic or any other technology attracts this offence. The minimum punishment prescribed for this offence is 5 years with fine and in the event of subsequent conviction punishment can extend till 7 years with fineSection 14(1).[5]

IT ACT ,2000

The IT act formed by the in the year 2000 based on the United Nations Model Law on Electronic Commerce 1996(UNCITRAL Model) recommended by the General Assembly of United Nations. Child Pornography has been exclusively dealt with under Section 67B of the Information Technology Act, 2008. Section 67B of the act provide punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form Whoever: -

- publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct or
- creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner or
- cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource or
- facilitates abusing children online or

5. Section 13, Use of Children for Pornographic Purpose, POSCO act 2012

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- records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,
- shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees

  and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and with fine which may extend to ten lakh rupees.[6]

The Indian Penal Code,1860

According to Indian Penal Code 1860 Section 293 also specifies, in clear manner, the law against Sale etc. of obscene objects to minors.[7] According to the language of IPC, whosoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object, as is referred to in IPC Section 292, or offers of attempts so to do, shall be punished with imprisonment for a term which may extend to three years, and which fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees. The section also states that it is a cognizable offence and the Magistrate has the power to hear any such case. For the purposes of sub-section (2), Section 292 IPC, a book, pamphlet, paper, writing, drawing, painting representation, figure or any other object, shall be deemed to be obscene if it is lewd or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it shall be punished with imprisonment, for the first instance, of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.[8]

6. Section 67B-Punishment for publishing or transmitting of material depicting children in sexual explicit act, etc, electric form (Information and Technology Act 2000)

7. Section 292-Sale, etc, of obscene books etc(The Indian Penal Code, 1860)

8. Section 293-Sale etc of obscene objects to young person(The Indian Penal Code,1860)

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Avnish Bajaj vs. State (N.C.T.) of Delhi,[9]the case was of a website having offensive and lewd video clipping named as 'DPS girl having fun', it was held that the accused was disentitled to the grant of bail.

Hector Firdaus Kothavala vs. State of Maharashtra[10]in this case the wife filed a complaint against her husband that he used to harass their children sexually. The accused was granted bail.

Shashi and others. vs. state of Karnataka,[11]some friends of victim's father asked the victim to collect some fibrewoods from the jungle where the wrongdoers raped her and also filmed a video of the heinous crime. Bail was granted

In Kamalesh Vaswani vs. Union of India,[12]certain regulations were issued regarding the spread of child pornography and increase in its viewers. Ms Mahalaxmi Pavani the counsel brought in notice that how a school bus driver was caught watching child pornography after whichmolested a child. It was held that the websites showing child pornography, especially of children between 14 to 18 years should be strictly banned.

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CHILD PORONOGRAPGY; GLOBAL SENARIO

- USA

According to US Federal Child Exploitation and obscenity law, if a naked image of child is sufficiently sexually suggestive it can be deemed as illegal child pornography person convicted for producing child pornography is given minimum fifteen to thirty years of imprisonments including fine.

In U.S v. Joseph C. Blendsoe,[13] the defendant was punished was intentionally putting up a notice over the internet that offered the exchange of child pornography in the violation of 18.U.S.C

In a similar case of U. S v Philip M. Sebolt,[14] the accused was held liable for using computer to possess transmits and advertises child pornography in violation of 18U.S.C

- Brazil

According to the cyber laws of Brazil, any act that involves the usage of minor or an adolescent in any scene that contains sexual exhibits or pornography is punishable upon conviction with four to eight years in prison and fine. If parents or closely related relatives are caught being involved or if the crimes are committed during the exercise of public functions or under the pretence of such exercise, the punishment is increased by one-third.

13. 04-4276,177 Fed.Appx.311

14. 04-2588,460F.3D 910

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- Argentina

Argentina has a set of rules that are more strict . Possession of child pornography is itself a crime. According to Section 128 of the Criminal Code for those involved in production as well as distribution, the sanctioned imprisonment increases from two to six years of prison. It also punishes those who furnish pornographic material to those who are below the age of 18 years with imprisonment of six months to three years.

- Japan

The bill passed by the Japan's government bans possession of child pornography. Under the new law, the one caught with explicit photos or video of children can be Imprisoned for up to one year and fine will be imposed up to 1 million yen.

International Centre for Missing and Exploited Children

ICMEC which aims at combating child sexual exploitation and child pornography that heads a global missing children's network of 22 countries had the following criteria for various countries to ascertain the position of child pornography and the laws relating to it. ICMEC formed a report titled Child Sexual Abuse Material (CASM) which has the criteria to understand the legislative efforts towards child pornography. The criteria are as follows

- Defining "child" for the purposes of CSAM as anyone under the age of 18, regardless of the age of sexual consent;
- Defining "child sexual abuse material," and ensuring that the definition includes technology specific terminology;
- Creating offenses specific to CSAM in the national penal code, including criminalizing the knowing possession of CSAM, regardless of one's intent to distribute, and including provisions specific to knowingly downloading or knowingly viewing images on the Internet;
- Ensuring criminal penalties for parents or legal guardians who acquiesce to their child's participation in CSAM;
- Incorporating grooming provisions;

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- Punishing attempt crimes;
- Establishing mandatory reporting requirements for healthcare and social service
- Professionals, teachers, law enforcement officers, photo developers,informationtechnology
- (IT) professionals, ISPs, credit card companies, and banks;
- Allowing technology companies to utilize technology tools and mechanisms to identify and remove illicit content from their networks;
- Encouraging cross-sector collaboration between the private sector, law enforcement, and civil society
- Addressing the criminal liability of children involved in CSAM; and
- Enhancing penalties for repeat offenders, organized crime participants, and other
- aggravating factors to be considered upon sentencing.

CONCLUSION

We as adults at times find ourselves trapped in the web of strangers who are cunning enough to manipulate us, hence it is quite apparent how unsafe our children are. Following steps are recommended to protect a child and give them a safe and happy childhood which they truly deserve.

- India still require rigidly interpreted laws and punishments
- Judiciary, police prosecutors and other authorities requires though knowledge about the IT acts and crimes related to it.
- Indian should work towards extradition of people involved in child pornography committing such heinous crime sitting miles away.
- Government should have strict control over foreign based website providing such content.
- Minority and marginal groups are defenceless. They should be protected from the trap of child pornography.
- Regular interaction with the child is important so as the child can freely share about any kind of abuse which he or she is scared to report.

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- The investigating authorities should be in close touch with NGO's that work for betterment and welfare of the children since they are closer to the reality

- Children should be taught by their parents and teachers about how perilous any stranger can become.
- Media is an important source of knowledge of crime going on in the world, media can play an influential role in educating people about offences related to child and child sensitization.
- Extra punishment should be given to those whom the child trust, pushes the child into the web of pornography

Dr Seuss once said," A person is a person, no matter how small". Their tender age cannot be ignored. Child pornography is menace in India, creeping as a social devil affecting many. Children being highly vulnerable, innocent requiring special attention and care. Our Laws are running behind the time as well as behind the cunning minds of sinner especially related to cyberworld. If criminals are smart enough to find a way to commit such horrifying crime, isn't our law and order capable enough to grab them and prevent occurrence of such crimes.

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