



AN OVERVIEW OF LEGISLATIONS RELATING TO CHILD PORNOGRAPHY IN INDIA

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"We are guilty of many errors and many faults but our worst crime is abandoning our children, neglecting the fountain of life. Many of the things we need can wait. The child cannot. Right now is the time his bones are being formed, his blood is being made, and his senses are being developed. To him we cannot answer 'Tomorrow,' his name is today."

- Gabriel Mistral¹



ABSTRACT :

The easy accessibility of the internet has served us with many purposes and benefits. Internet has also its evils too and one being child pornography, as videos on the internet about child are easily available and child pornography have increased rapidly over the years. The pornography business has moved toward becoming multi million dollar industry and kids become the most heartbreaking casualties of this dim world.

KEYWORDS : *child pornography , pornography business , visual material containing.*

INTRODUCTION

The word 'pornography' has originated from the Greek word 'porni' i.e. prostitute and 'graphein' i.e. to write and was originally defined as any work of art or literature depicting the life of prostitutes.²The Oxford Dictionary defines Pornography as "printed or visual material containing explicit description or display of sexual organs or activity intended to stimulate sexual excitement".³Article 9 of the Cyber Crime Convention, 2001, states that child pornography includes: "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." Article 9 of the Convention also provides for the punishment for child pornography.

Child Pornography is the most heinous crimes which includes sexual abuse of children. Child Pornography is also known as, "child sexual abusive images" and Child sexual abuse images and videos which are documented for the purpose of being shared for others to watch and in such way victimize the child over and over again, can be said as Child Pornography.

¹https://www.goodreads.com/author/quotes/140617.Gabriela_Mistral

²<https://www.britannica.com/topic/pornography>

³<https://en.oxforddictionaries.com/definition/pornography>

Children are the most vulnerable to abuse and exploitation. Children being weak, gentle and meek must be protected from the world of criminals, negative people and so on. It is the obligation of the general public everywhere including legitimate and legal experts to ensure the defenseless children.⁴ The present paper will critically discuss the laws for curbing Child Pornography in India.

CHILD PORNOGRAPHY & LAWS IN INDIA:

India as a country has always been progressive in protecting human rights and especially those of vulnerable groups like women and children. Information Technology Act, 2000, Indian Penal Code, 1860 and The Protection of Children from Sexual Offences Act (POSCO Act), 2012 provides protection from child pornography. As Child Pornography stands as a violation of fundamental rights of the child, is declared as an offence punishable under POCSO Act 2012.

Constitutional Provisions: Since the inception of Indian Constitution there has been a significant growth in legislations for the protection of rights of the children. Constitution accords special status to children and empowers states to make special provisions for them under Article 15(3).⁵

Directive Principles of State Policy: Provisions laid down under Part IV of constitution directs the states to protect the children from sexual abuse so that their rights are not violated. Article 39(e) - The tender age of children are not abused. Article 39 (f) - Children are given chances and offices to create in a solid way and in states of opportunity and pride and that adolescence and youth are secure edagainst abuse and against good and material deserting.

Indian Penal Code 1860: The word pornography is nowhere defined in the Indian Penal Code but it contains the word obscenity which can be related to term pornography. Section 292⁶ and 293 of Indian Penal Code 1860 deal with the term obscenity but it does not include online obscenity. However IPC stands inadequate to control and fix liability on child pornography.

In *Ranjit D. Udeshi v. Province of Maharashtra*, the Supreme Court drew a contrast among 'vulgarity' and 'sex entertainment'. It was held that while sex entertainment signifies composing, pictures, and so forth expected to emerge sexual want, profanity may incorporate distribution not planned to do as such but rather which have the propensity.

Information Technology Act, 2000: Initially Section 67 of the IT Act, 2000 which covered punishment for publishing or transmitting obscene material in electronic form, did not cover any actions as to pornography. But subsequent amendment was made to the Act in 2008 whereby section 67A and 67B, were inserted in the Act to deal with pornography.

Section 67A deals with punishment for publishing and transmitting any material as to pornography whereas Section 67B is the only section which specifically deals with Child Pornography. It makes following demonstrations of an individual identifying with tyke erotic entertainment culpable, for example,

- (a) whoever publishes or transmits or causes to be distributed or transmitted material in any electronic structure which delineates youngsters occupied with explicitly unequivocal act or lead or
- (b) whoever makes content or advanced pictures, gathers, looks for, peruses, downloads, publicizes, advances, trades or circulates material in any electronic structure portraying youngsters in disgusting or obscene or explicitly express way or
- (c) whoever cultivates, allures or incites kids to online association with at least one kids for and on explicitly unequivocal act or in a way that may outrage a sensible grown-up on the PC asset or

⁴<https://www.eurasiareview.com/03052017-child-pornography-in-digital-age-and-the-law-in-india-analysis/>

⁵ Article 15(3): Nothing in this article shall prevent the State from making any special provision for women and children.

⁶292. Sale, etc., of obscene books, etc.—

(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious 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 person, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(d) whoever facilitates mishandling youngsters on the web or
 (e) whoever records in any electronic structure claim misuse or that of others relating to explicitly unequivocal act with youngsters,

Such activity is made culpable with discipline on first conviction with detainment of either portrayal for a term which may stretch out to five years and with a fine which may reach out to ten lakh rupees and in case of second or resulting conviction with detainment of either depiction for a term which may stretch out to seven years and furthermore with fine which may reach out to ten lakh rupees. The offence is non-bailable.

POCSO Act, 2012: Protection of Children from Sexual Offences Act, 2012 is a special enactment made for the protection of children under Article 15(3) of the constitution which grants power to the State to make special provision for children.

The POCSO Act 2012 is the main legislation at present combating sexual abuse of the children, specifically child pornography, but the Act does not define the term child pornography. Chapter III of the Act comprising of section 13 to 15 deals with punishment for using child for pornography.

Section 13 makes certain activities punishable if the child is used for pornographic purposes such as -
 Whoever, use a child in any form of media, for the purposes of sexual gratification, which includes -

- (a) representation of the sexual organs of a child;
- (b) utilization of a youngster occupied with genuine or reenacted sexual acts (with or without entrance);
- (c) the revolting or profane portrayal of a kid, will be liable of offense.

Section 14 prescribes punishment for using child for pornographic purposes. It states following imprisonment, such as whosoever by directly participating in pornographic acts by using a child for pornographic purposes -

- (1) shall be punished with minimum imprisonment upto five years and fine and in case of second or subsequent conviction with imprisonment upto seven years and fine.
- (2) submits an offense under area 3 (for example offense of penetrative rape), will be rebuffed with detainment of least ten years and maximum detainment forever and fine.
- (3) submits an offense under section 5 (for example offense of disturbed penetrative rape), will be rebuffed with thorough detainment forever and fine.
- (4) submits an offense under section 7 (for example offense of rape), will be rebuffed with detainment for a term at the very least six years which may broaden upto 8 years, and furthermore obligated for fine.
- (5) commits an offence under section 9 (i.e. offence of aggravated sexual assault) 10 ten years, and also liable for fine.

Area 15 states discipline for capacity of explicit material including youngster in any structure with detainment as long as three years or with fine with both.

CONCLUSION:

With the enactment of POCSO Act 2012, there is an comprehensive law on child pornography. It is a landmark legislation for protection of rights of children from sexual abuse. But it is observed that child pornography related crimes are less frequently reported. Unless such cases are reported there cannot be significant effect of the Act.

The Act does not pay attention as to which means or methods to be adopted for curbing child pornography, the harms of child pornography are also not undertaken by the Act thus there can be reformation of legislation.