



SOCIAL CHALLENGES IN CURBING CHILD PORNOGRAPHY IN INDIA

Gajanan Choudhary
LL.M.

ABSTRACT :

Children, as has historically been, are one of the most vulnerable groups in the society. Child abuse increasingly being a greater concern, discourses of child rights have garnered importance. Kofi A. Annan, former Secretary General of the United Nations, observed that:¹

KEYWORDS : child rights , Child Pornography , contact offence.



INTRODUCTION

“There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace.” There is worldwide acknowledgment of the importance of the rights of children and prevention of their violation.

The Concern of Child Pornography:

One of the grossest violations of the rights of a child is constituted in child pornography. Child abuse images represent heinous crimes and they call for a need to be rooted out of our society. Children are incapable of giving legal consent for sex or for being taking nude photographs of. As the creation of child pornography often involves the actual sexual assault of a child, every child pornographic image represents a crime scene in itself. There is also evidence that people who seek child pornography online could eventually go on to harm a child for real, transforming it from a ‘content offence’ to a ‘contact offence.’ Child pornography is thus a form of child sexual exploitation. The USA's government law has characterized kid sex entertainment as any visual portrayal of explicitly unequivocal lead including a minor (people under 18 years of age).²

“Unfortunately, we’ve also seen a historic rise in the distribution of child pornography, in the number of images being shared online, and in the level of violence associated with child exploitation and sexual abuse crimes. Tragically, the only place we’ve seen a decrease is in the age of victims. This is – quite simply – unacceptable.”

¹ Foreword by Kofi A. Annan in *The State of the World's Children, 2000*.

² The United States Department of Justice website- <https://www.justice.gov/criminal-ceos/child-pornographyHome> » Criminal Division » About The Criminal Division » Sections/Offices » Child Exploitation and Obscenity Section (CEOS) » Subject Areas

-Attorney General Eric Holder Jr. at the National Strategy Conference on Combating Child Exploitation in San Jose, California, May 19, 2011³.

International Legal Scenario in Place vis-à-vis Child Pornography:

Legislations in place vis-à-vis child pornography throw light on the relevance of this issue as a concern and increasingly so, in the contemporary times. Article 2 of the Optional Protocol to CRC defines child pornography “as any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes”. Article 3 of the Optional Protocol has set out a framework for criminalizing child sex abusers. It requires that States parties provide criminal sanctions for “producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography.”

India in Tackling Child Pornography:

In India, while offences of child pornography can be tried under Sections 292, 293 and 294 of The Indian Penal Code, Sections 67B of the Information Technology Act, 2000 provides punishment for publishing or transmitting of material depicting children (below 18 years) in sexually explicit act, etc. in electronic form. Indian legal provisions vis-à-vis the offence of child pornography only became preciser with the Sections 13, 14 and 15 of the Prevention of Children from Sexual Offences Act, 2012 (POCSO) also make it punishable if any person uses a child for purposes of pornography.⁴

India is a signatory to a few universal instruments and assertions on the privileges of kids to assurance, security and nobility. The Indian Government acknowledged two Optional Protocols to the United Nations Convention on the Rights of the Child, tending to the contribution of kids in outfitted clashes, clearance of kids, tyke sex entertainment and prostitution, in the year 2005.

Gravity of the Problem in India:

The issue of child pornography is a problem that goes deep. Child pornography, unfortunately one of the most rapidly growing businesses online has built an estimated annual revenue of \$3 billion. According to the Association of Sites Advocating Child Protection, child pornography is usually distributed two ways. It's either commercial child pornography that is distributed for profit, or non-commercial child pornography that is offered free or traded among offenders, like the P2P networks.⁵

In India, there has been an alarming 100 per cent increase in cases of publication or transmission of obscene material, including child pornography, using electronic means in just one year — 2012 to 2013. Statistics reveal that 1,203 cases were reported in 2013 as against 589 in 2012. The maximum number of 234 cases was reported from Andhra Pradesh, a nearly 74 per cent jump from 2012. In a written reply to the Lok Sabha to a specific question by BJP MP Varun Gandhi, the Ministry of Home Affairs shared statistics according to which Kerala stood second with 177 cases. A total of 159 cases were registered in Uttar Pradesh as against only 26 in 2012. While no such cases were reported from Assam in 2012, the State recorded over 100 per cent increase with registration of 111 cases in 2013. Cases went up from 48 to 81 in Rajasthan and in Maharashtra, there was 60 per cent increase in reported offences that are punishable under the Indian Penal Code and Sections 67, 67A and 67B of the

³ The United States Department of Justice website- <https://www.justice.gov/criminal-ceos/child-pornographyHome> » Criminal Division » About The Criminal Division » Sections/Offices » Child Exploitation and Obscenity Section (CEOS) » Subject Areas

⁴ “Law and Social Transformation in India” by Dr. Krishna Pal Malik and Dr. Kauskhi C. Raval, 4th edition- 2014, Allahabad Law Agency law publishers Faridabad.

⁵ Child Pornography: Basic Facts About a Horrific Crime by Mary L. Pulido, Ph.D., Contributor Executive Director, The New York Society for the Prevention of Cruelty to Children https://www.huffingtonpost.com/mary-l-pulido-phd/child-pornography-basic-f_b_4094430.html

Information Technology Act. Of the total 737 arrests, the maximum (167) were made in Uttar Pradesh and 130 in Maharashtra.⁶ Thus this menace has pervaded through states in India.

The Challenges Society Poses in India:

Despite legislations in India having to do with the subject, child pornography still remains a significant menace to tackle, especially for the law enforcement agencies and authorities. It thus becomes pertinent to consider the challenges that present themselves against the effective tackling and curbing of this menace in the society in India.

The Legal Process:

Until 2000, the only special legislation that addressed pornography, aside from the generic IPC, was the Indecent Representation of Women Act, 1986. Reviewing the few reported cases under these statutes reveals that the issue of obscenity as pornography has not been the key issue, and that child pornography is not yet perceived to be serious crime. There were few offences registered under either of these laws, so there were few convictions.

The most significant case on the display of pornographic material depicting the abuse of children was in Freddy Albert Peat⁷ case, the accused was found with a large amount of pornographic material reflecting the sexual abuse of boys, and the accused was eventually convicted and sentenced to imprisonment for life. The course of this trial revealed a lack of awareness of the crime of child pornography as well as how to investigate and prosecute child pornography cases.⁸ Prosecution of cases of child pornography would bring subsequent challenges: The problems involved with child pornography draw from those of child sexual exploitation which is an inherent part of the former offence. The problems in bringing child abusers to book are, firstly, reporting of the cases of such abuse where factors of lack of awareness of one's rights, inability to speak up against the crime and the criminals, taboo associated with such topics in society and lack of overall knowledge of children play the role. Secondly, problems in trial and evidence. Children who have to undergo trial processes in the process of bringing perpetrators of sexual abuse to justice, undergo potentially traumatic experiences that involve narrating the assault ordeal, lack of sensitivity they may have to experience during the entire process, etc.

Internet: The Medium:

Emerging as a primary medium of expansion in the contemporary times, the internet has come to characterize a facilitation platform for crimes of child pornography. Thus the in-coming of greater advanced digital technology and the internet's deeper penetration into the Indian society and at different levels, establishing its access, has led to the deepening of this problem, paralleling the explosion of the child pornography market. With the growth of the Internet from the 1990s through the present and with the decrease in price of personal computers in recent years, child pornography sold over the internet has become an increasingly visible problem for society, regardless of geographical and legal jurisdictions as the Internet has no real borders. This poses challenges to our law enforcement systems bound by jurisdictions. The number of internet users in India will reach 500 million by June

⁶ Pornography cases up 100 per cent last year, Devesh K Pandey, NEW DELHI; AUGUST 07, 2014 02:18 IST

<https://www.thehindu.com/news/national/pornography-cases-up-100-per-cent-last-year/article6288856.ece>

⁷ State of Goa v. Freddy Albert Peat, (Cr.112/91, State of Goa Sessions Case, 24/91).

⁸ Law and Social Transformation in India by Krishna Pal Malik and Dr. Kaushik C. Raval, Allahabad Law Agency law publishers, Faridabad, third edition, 2011.

2018, a report by IAMAI and Kantar IMRB said. At the end of December 2017, India had 481 million users, growing 11.34% from 2016.⁹

What is meant to be social media for all progressive purposes of socializing has brought along this scope of offence committing on its platform. The reason behind this has been that the availing and posting of image content of child pornography is an easy method available through virtually every internet technology, including social networking websites as also through file-sharing sites and even certain mobile apps unless endeavoured by the authorities to place an effective ban. Active efforts by the government of India in this direction has addressed one of the numerous channels such offenders would then go on to use for their purpose. Further, the concerns of breach of privacy rights of citizens due to monitoring by agencies or the social media or messaging platforms brings its own challenges allied with the difficulties in distinguishing between adult pornography and child pornography basis-consent. Appearing before a Bench led by Justice Madan B. Lokur, popular messaging application WhatsApp submitted that it has an “end-to-end encryption technology due to which it will not be possible to remove offensive contents.”¹⁰

Shortcoming of Justice System:

The ways offenders incorporate in order to evade law enforcement detection have come to become increasingly sophisticated. Several sophisticated online criminal organizations have even written security manuals to ensure that their members follow preferred security protocols and encryption techniques in an attempt to evade law enforcement and facilitate the sexual abuse of children. The continuous production and distribution of child pornography increases the demand for new and more egregious images, perpetuating the continued molestation of child victims, as well as the abuse of new children.¹¹

Child pornography has unfortunately come to be a market, especially through means of the internet. Criminals create and distribute cyber pornography for a sizable profit. The methods being employed to combat online child pornography may rather be considered primitive and inefficient. Lack of empirical data on child pornography is proving to be a hurdle to the allocation of resources for training, law enforcement and understanding of how to conduct investigations into cases of child pornography in India. The National Crime Records Bureau (NCRB) measurements give almost no data on kid erotic entertainment cases. As a result, the gravity of the issue is not being appreciated. The entire system of data collection calls for an overhaul.

Probe agencies may not have been able to sufficiently understand the changing profile of crime. There have been several cases in which the investigating officers were not acquainted with the use of technology and forensic investigation techniques. They avoided invoking provisions of the Information Technology Act. Police officers should be imparted necessary training for better investigation, adding that the intersection of technology with sexual violence has changed the very manner of sexual offences committed against children.¹²

⁹<https://timesofindia.indiatimes.com/business/india-business/number-indian-internet-users-will-reach-500-million-by-june-2018-iamai-says/articleshow/62998642.cms>

¹⁰ ‘Child porn, rape videos need to be removed’ – Krishnadas

Rajagopal <https://www.thehindu.com/news/national/child-porn-rape-videos-need-to-be-removed/article25683232.ece>

¹¹ The United States Department of Justice website- <https://www.justice.gov/criminal-ceos/child-pornographyHome> » Criminal Division » About The Criminal Division » Sections/Offices » Child Exploitation and Obscenity Section (CEOS) » Subject Areas

¹² Pornography cases up 100 per cent last year, Devesh K Pandey, NEW DELHI:, AUGUST 07, 2014 02:18 IST

<https://www.thehindu.com/news/national/pornography-cases-up-100-per-cent-last-year/article6288856.ece>

Psycho-Social Factors:

Child pornography offenders have found a medium for the purpose of sharing their desires and interests pertaining to the abuse of children, in addition to selling, sharing, and trading images. In the networking arena, not only communication, but also collaboration among child pornography offenders has been facilitated. Resultantly, a typical shame attributed to such acts and behaviour that would accompany this behaviour in the society has witnessed erosion. This has become a causative factor in the desensitization of those involved in the physical as well as psychological damage caused to their victims, creating potential for further horrendous crimes of child abuse. For this reason, online communities create scope for the attraction and encouragement of new and new persons to join them in the sexual exploitation of children. The internet has enabled easy connect from one paedophile to many other paedophiles where tackling this psychiatric disorder takes further hit.

From a psychological profile perspective, psychologist Kimberly Young and Psychiatrist Alvin Cooper, two experts who have studied online sexual behaviour, maintain that cyber sex (whether it involves minors or not) is a form of psychopathology and a symptom of neurotic, compulsive behaviour. It is, without question, a type of addiction. Viewed as a type of socio- and psychopathology, cyber child pornography, in particular, is as an element of unhealthy power relations, whereby an adult abuses minors for his own pleasures. These acts of real-world abuse are often set into motion by adults having unhealthy sexual fantasies involving minors. For the most part, the cyber-supported sexual fantasy fulfilment with minors is found in ritualized practices and fixations, primarily of a sadistic sort.¹³ Tackling such addictions, fixations or obsessions calls for efforts to create awareness, encourage examinations, and deal on case-to-case basis with the issue. This is easier said than done, drawing a challenge before the society.

Lack of awareness:

Under the **Protection of Children from Sexual Offences Act, 2012**, involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material comprises an offence. The general lack of awareness among the populace contributes as a factor in the indulgence of some or few of these acts by them. Thus the overall lack of awareness regarding the legal regulations as also rights of the children and the respect for their dignity has contributed towards the leading of the offences of child pornography.

Overcoming the Social Challenges in Curbing Child Pornography:

The social challenges in curbing child pornography in the Indian context are thus numerous, significant and difficult to tackle in nature. Efforts on multiple levels in the direction of the containment of this offence shall go a long way in effective deliverance of the same. The threat of kid erotic entertainment speaks to a pressing need of being put a conclusion to so as to secure youthful kids against entering and consequently being caught into the universe of voyeurism, dealing and prostitution. The Honourable Bombay High Court recently made suggestions in a decided matter vis-à-vis curbing offences relating to child pornography. They included the following:

1. Parents and relatives ought to cooperate with kids routinely making mindfulness about security and misuses including sexual maltreatment being incurred on them and how to maintain a strategic distance from and to bring alert up if there should arise an occurrence of any endeavor to mishandle.
2. The guardians ought to interface consistently with the kids so that if any maltreatment is made which can be discovered regardless of whether the tyke does not intentionally report.

¹³Uebel, M. (2002, May 31). Toward a symptomatology of cyberporn. Retrieved March 14, 2006, from http://muse.jhu.edu/journals/theory_and_event/v003/3.4uebel.html

3. School specialists ought to make mindfulness about the youngster mishandles. In the event that any conduct change in the understudy is noticed the equivalent ought to be conveyed to the notice of the guardians and enquire the kid in a favorable air to discover any maltreatment has been exacted.
4. Media should likewise assume dynamic job in instructing and sharpening the general public about tyke misuses and sex offenses by giving required exposure about the current laws against sexual offenses particularly youngster sexual offenses.
5. People ought to be taught to take note of the social changes of the kids and discover the explanations behind maltreatment to spare the youngster from injury which might be drawn out.
6. The researching offices should facilitate with NGOs, who are working for the welfare of youngsters and avoidance of tyke maltreatment by remote nationals.
7. There ought to be endeavors by all to resuscitate the crumbled joint family framework for more advantages including security of youngsters.
8. Children ought to be educated to be watchful with the outsiders.

The Internet Watch Foundation (IWF), a dedicated hotline, was established in 1996, which the public can use to report illegal content on the internet, anonymously if they wish. Once the IWF receives a report, the content is assessed by a team of trained analysts, and if found illegal, the URL is then added to a block list and passed on to the Internet service providers (ISPs), who block access to the webpage concerned. There are lessons India can learn from this targeted identification and blocking model. It should consider setting up independent hotlines and seek the partnership of all relevant stakeholders in the process, including ISPs for effective implementation. By delegating the task of assessing the material to independent organisations, the ISPs can retain their current immunity as a 'mere conduit'. It will be a lot quicker and more effective than the police investigating each instance of child pornography reported. The hotline has the advantage of making identification easier, as it offers the public an opportunity to report illegal content online anonymously without having to go through the formalities (and intimidation) of going through the police.¹⁴

Rights of Children- The Centre Stage:

Thus, efforts to tackle the menace of child pornography and curb it must be taken on numerous levels starting from the households to neighbourhoods, schools, relatives, police, the government, judiciary, etc. In this process, the rights of children must take the centre stage and states must join hands to contain the transmission of pornographic material involving children. Thus, efforts on not only the national, but also the international level are warranted to help prevent children from falling prey to such horrendous crimes, and facilitating their development in the fullest manner, essential for the creation of a bright tomorrow.

"The hallmark of culture and advance of civilisation consists in the fulfilment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise to its full stature, physical, mental, moral and spiritual. It is the birth right of every child that cries for justice from the world as a whole.

- Justice V. R. Krishna Iyer¹⁵

¹⁴Poke Me: The real issue India needs to tackle is child pornography, not pornography, By Abhilash Nair. <https://economictimes.indiatimes.com/opinion/poke-me/poke-me-the-real-issue-india-needs-to-tackle-is-child-pornography-not-pornography/articleshow/48557350.cms>

¹⁵ "Jurisprudence of Juvenile Justice: A Preambular Perspective".