AN E-BOOK ON THE TOPIC "CHILD EXPLOITATION – CHILD PORNOGRAPHY"

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I.ABSTRACT

Sex is a contentious issue in Indian society, sometimes associated with immoral and impure morals. Given that children cannot determine the distinction between the wrong and correct route on their own, advanced technologies have the potential to trap them in something traumatic and irreversible. A child, being defenceless, might suffer severe emotional and physical suffering if he becomes a victim of child abuse. Child pornography is a type of pornography that exposes a photo of a child and a video of a child making a sexual sound in order to arouse the sexual desire of other people or viewers.

II. KEYWORDS

Child, Pornography, POSCO, Juvenile Molestation.

III. AIM AND OBJECTIVE:

The core aim of this study is to understand the concept of child pornography with respect to Indian and international laws.

IV. RESEARCH METHODOLOGY

This research article uses references of both primary sources like case laws and as well as secondary data like journals, articles, internet databases and other resources.

V. INTRODUCTION:

A child is someone who is at the start of his or her life and has many years ahead of him or her; nevertheless, when he or she becomes a victim of an offence as heinous as child pornography, it becomes extremely difficult for that youngster to live properly afterwards. Such an occurrence will eternally mark the mind of such a youngster. Pornography exclusively involving adults is generally recognized as a form of protected speech under the First Amendment to the U.S. Constitution. As such, it may be banned or regulated only if it is "obscene" under the criteria established by the U.S. Supreme Court in *Miller* v *California* (1973)¹.devoid of literary, artistic, political, or scientific value. Child pornography is a type of sexual exploitation of children.

^{1.} Miller v. California, 413 U.S. 15 (1973).

Child pornography is defined by federal law as any visual portrayal of sexually explicit activity involving a minor (persons less than 18 years old). Child pornography photographs are also known as child sexual abuse images. The creation, distribution, importation, receiving, or possession of any picture of child pornography is illegal under federal law. A breach of federal child pornography statutes is a serious offence, and offenders who are convicted risk harsh statutory penalties. The age of consent (the age at which most persons become legally capable of consenting to sexual contact) varies greatly between nations, although it is established at 16 to 18 years in most countries, including the United States. Sexual intercourse, sodomy, fellatio, masturbation, sadomasochistic abuse, bestiality, and sexually appealing displays of genitals or the pubic area are all considered sexually explicit behaviours. The Supreme Court upheld the case of New York v. Ferber (1982)². In response to the advancement of computer technology, which enabled the creation of artificial electronic images and the digital alteration of genuine photographs, the United States Congress passed the Child Pornography Prevention Act (CPPA) in 1996, which specifically prohibited depictions of minors engaging in sexually explicit conduct and images of explicit sexual conduct by adults who resemble minors. However, in Ashcroft v. Free Speech Coalition (2002), the Supreme Court overturned the CPPA on the grounds that the law's broad definition of child pornography.

V A. DEFINITION:

According to Article 9 of the Cyber Crime Convention, 2001⁴, child pornography is defined as "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. The POCSO Act, 2019 ⁵ defines Child Pornography as Any visual depiction of sexually explicit conduct involving a child which includes a photograph, video, digital or computer-generated image indistinguishable from an actual child. The India Child Protection Fund (ICPF) has released a research indicating a significant increase in demand for internet child pornography during the lockdown.

^{2.} New York v. Ferber, 458 U.S. 747 (1982).

^{3.} Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002).

^{4.} Cyber Crime convention, 2001, article 9, 2001(India).

5. Protection of Children from Sexual Offences Act, 2019, S.14,2019(India).

V B. AGE AND CONSENT:

Child pornography defines a child as someone under the age of 18, regardless of sexual consent age. The legal age at which a person may agree to sexual activity differs by nation, posing a difficult challenge to the movement. Internationally uniform and coordinated protection of minors against sexual exploitation.

While a person under the age of 18 can freely consent to sexual intercourse, he or she cannot legally consent to any type of sexual exploitation, including child pornography. Furthermore, in cases where dual criminality is required - where a crime committed abroad must also constitute a crime in an offender's ¹home country in order for the offender to be prosecuted in his or her home country - agreement on a plea bargain is required. The common age for what constitutes a child is critical. Any inconsistency might mean that a child sex offender is not prosecuted. For these reasons, a child should be defined as someone under the age of 18 for the purposes of child pornography legislation.

VI. HISTORY AND BACKGROUND:

Pornography has its origins in Modern Greek. The term "pornographie" initially originated in French in the early nineteenth century and in English by the mid-19th century. Classical styles of art exhibit a range of sensual scenes, albeit they differ greatly from what is now termed "porn." These sexual images were not employed to arouse the genitals in the way that many people do now, but rather as a political tool to shock and condemn religious and governmental institutions. Marcantonio Raimondi, an Italian, was among the first to be imprisoned for showing sexual pictures after creating a series of sensual engravings in 1524. The French Revolution had a significant impact on the development of pornography. The utilization of X-rated material as a political tool grew significantly in the run-up to the revolution. Pornography was frequently employed in satirical works to ridicule political figures. Pornography was formerly solely available to the wealthy, and distributors were not arrested by authorities until the content became widely available. As print became more affordable in Europe, obscenity was marketed to the public, and legal action was sought to prevent its distribution. Despite government attempts, X-rated industries grew in big cities such as New York and London, England. The rise of photography in the 1820s altered pornography because, like print, photographs made mass distribution possible. European visitors to India in the nineteenth century were horrified by what they saw to be pornographic depictions of sexual contact and intercourse on Hindu temples such as those of Khajuraho. Numerous modern Muslim countries also attribute the label "pornography" to many films and television shows that are acceptable in Western society.

VII. CURRENT SCENARIO IN INDIA

When the entire world was confronting the COVID-19 pandemic, Indians were made aware of a relatively deep-seated issue, emphasizing the significance of sex education for young pupils or teens in schools. It all started when bizarre news began to circulate on social media platforms, first on Instagram and then quickly expanded to other platforms such as WhatsApp and Facebook, where images of multiple talks among a group of adolescent students from Delhi were shared. The group's name was "Bios Locker Room," and its goal was to trade nude images of females, the majority of whom were minors, and engage in body shaming and sexist and derogatory comments. This event sparked a massive outcry against the boys for their undeniably heinous actions. The Delhi Commission for Women took Suo-motu cognizance of the case in order to get to the bottom of the issue and promptly sent a report to the Delhi Police and Instagram. Its punishment for such an act is either imprisonment for at least three years or a fine of up to two lakh rupees, or both. This should be read in connection with Article 21 of the Indian Constitution, which gives a person to the right to privacy as part of his or her personal liberty and life, and which was recently recognized in *K.S Puttaswamy* v. UOI.⁶ and Section 66E protects a person's right to privacy or personal space, which cannot be infringed upon by anybody. According to the reading of the "Bios Locker Room" case, it is apparent that the boys infringed on the personal space of the women, which they should not have done at any cost. India has one of the highest rates of use of pornographic websites. Unfortunately, the sector displays a variety of hazardous information, such as online child sexual abuse. The increase in child pornography charges reflects the bleak image of online child sexual abuse in India. Child pornography is prohibited under the Information Technology Act of 2000 and the Indian Penal Code of 1860. Child pornography is prohibited under the Information Technology Act of 2000 and the Indian Penal Code of 1860. A child is defined as someone under the age of 18. The Internet is widely utilized by its abusers to reach out to and sexually abuse children all around the world.

^{6.} K.S Puttaswamy v. UOI Writ Petition (Civil) No 494 of 2012; (2017) 10 SCC 1; AIR 2017 SC 4161.

In India, the internet is quickly becoming a need. Its expansion has made children a possible target for cybercrime. The Internet is widely utilized by its abusers to reach out to and sexually abuse children all around the world. In India, the internet is quickly becoming a need. Its expansion has made children a possible target for cybercrime. As more houses gain internet connection, more children will use it, increasing their chances of falling prey to pedophile violence. The ease with which pornographic information is quickly and freely available on the internet reduces children's inhibitions. Pedophiles entice minors by sharing pornographic material, and then they attempt to meet with them for sex or acquire nude images of them, including their sexual positions. When pedophiles approach children in chat rooms while appearing as teens or children of a similar age, they become closer with them and gain their trust. Finally, pedophiles gradually introduce sexual talk to assist children lose their inhibitions about sex and then invite them to personal connection. The Information Technology Act is a series of regulations that makes not only transmitting or creating child pornography in electronic form illegal, but also surfing it. The preceding section addresses webpages, graphical files, SMS, MMS, digital pictures, and so on.

Remarkably, a report by an NGO, The India Child Protection Fund, on the unexpected surge in access to child pornography in India during the early days of lockdown revealed no symptoms of concern in the public, nor did it spark any debate on the matter. However, when screenshots of the 'bios locker room' talk were published on social media, certain knee-jerk reactions occurred, including the filing of a petition with the Supreme Court. Under Sections 14 and 15 of the POCSO Act the Indian government has strong regulations against such offensive content. Section 14 of the POCSO Act deals with the penalty for utilizing minors for pornographic purposes, whilst Section 15 deals with punishment for storing pornographic material involving children. There are, however, additional flaws. Offenders also utilize picture hosting platforms to transmit such offensive information. Offenders, according to the Internet Watch Federation (IWF), use free sites where no money is necessary to register an account and publish content. These are hidden services, sometimes known as websites maintained behind a proxy.

Networks or dark webs that are difficult to discover since the hosting servers' whereabouts cannot be traced routinely. According to the NCRB report, Delhi has 161 incidents and 161 child victims. Karnataka has recorded 159 occurrences, 167 of which involved children. There were 129 incidents in Kerala with children being victims. According to the National Center for Missing and Exploited Children, 78% of reported victims were female Children,

while 15% were male children. The criminals approach the child on a social networking site several times and collect information about their residence. The offender then attempts to change the channel of contact to an anonymous messaging service, where they may access sexually explicit information via a messaging app or live video chat. Following that, these photos and materials. These photographs and contents are then utilized against children, who become sextortion victims. There is currently no legislation prohibiting the viewing of pornography in one's personal space. Following the Supreme Court's judgement, the Department of Telecommunications prohibited the use of certain websites that included child pornographic content. It is illegal to show pornographic information to children, according to the Information Technology (IT) Act of 2002^{- The} Chairman of the Rajya Sabha has established an Ad-hoc Committee to investigate and report on the subject of child pornography and the prevalence of its horrifying repercussions. The Committee also suggested significant modifications to the Protection of Children from Sexual Offences (POCSO) Act of 2012 and the Information Technology Act of 2000, in addition to beginning reforms at the technological, institutional, social, and educational levels.

VIII. INTERNATIONAL PERSPECTIVE

Child pornography is a worldwide issue. The majority of available data on the scope and nature of the problem has focused on North America and Northern Europe-regions that have played critical roles in the creation, distribution, and consumption of child pornography. "The market for child pornography in the United States is often recognized as the most lucrative in the world." Child Pornography and Pedophilia: Report of the U.S. Senate Permanent Subcommittee on Investigations, 99th Cong. 2d Sess. 34 (1986) [hereinafter U.S. Senate Report]. The reality of child pornography in underdeveloped nations is overshadowed by the severity of other problems such as poverty, infant mortality, illiteracy, starvation, and sickness, and there is frequently little trustworthy data on the subject. Nonetheless, children are subjected to pornographic exploitation as a phenomenon that occurs all over the world. The global flow of pornography is difficult to characterize precisely, but a quick look at some of the main international production hubs provides an idea of global supply and demand. Japan is the most prominent commercial producer of child pornography in Asia, creating a considerable and rising number of "teen pornography" in teen publications, which displays young Japanese females in sexually explicit positions. Japan also creates millions of sexual comics aimed at young students, which are widely available in vending machines across most Japanese cities. Japanese child pornography displays a particular attraction for sex among Japanese girls, who are frequently represented in school uniforms. Pornography involving prepubescent minors is prohibited.

According to WHO, roughly 73 million boys and 150 million girls under the age of 18 were abused in 2002. Meta-analysis done in the year 2009 assessed 65 papers in 22 countries and an "overall international figure". The following were the study's key findings: 1. An estimated 7.9% of men and 19.7% of girls were sexually molested before the age of 18. 2. Africa has the greatest prevalence of child sexual abuse (34.4%). In another 2009 survey, the rate of child sex abuse was 5.6% among girls and 1.6% among boys. It was also revealed that males were sexually molested at an earlier age than girls. Research done in Mexico found that the prevalence of child sex abuse was 18.7% (58% in females and 42% in boys). According to 2012 research in the United States, 17 million children were sexually molested over the following 18 years. 47\$ of youngsters were sexually abused. Seventy-seven percent of child molesters are married.

IX. LEGAL ASPECT:

Child pornography is defined as "pornographic material that visually depicts: a juvenile engaged in sexually explicit activity and a person seeming to be a minor engaged in sexually explicit conduct" under Article 9 of the CyberCrime Convention, 2001. Child pornography is defined as "any visual portrayal of sexually explicit action involving a kid, including a picture, video, digital, or computer-generated image indistinguishable from an actual child" under the POCSO Act of 2019. The India Child Protection Fund (ICPF) has released research indicating a significant increase in demand for internet child pornography during the lockdown. In India, there are several laws in place to protect and develop the country's children. Article 21 of the Constitution guarantees the right to life and liberty, whereas Article 24 prohibits minors under the age of fourteen from working in mines, factories, or other dangerous occupations. Article 39(f)⁷ requires the State to direct its policy toward ensuring children's health and strength, as well as providing them with opportunities and facilities for healthy development, and Article 45 requires the State to make every effort to provide early childhood care and education to children under the age of six.

that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

to make every effort to provide early childhood care and education to children under the age of six. Special laws concerning crimes against children exist as well, including the Immoral Traffic (Prevention) Act of 1986, the Child Marriage Restraint Act, the Child Labour (Prohibition and Regulation) Act of 1986, and the Juvenile Justice (Care and Protection of Children) Act of 2000.

The Penal Code, 1860 and The Criminal Procedure Code, 1973, are governed by the Penal Code of 1860 and the Criminal Procedure Code of 1973. Because there are no separate regulations controlling child abuse, the same laws apply to both adults and children in the nation. Sections 375 (rape), 377 (unnatural offenses), and 354 (outraging women's modesty) of the Penal Code govern sexual offences. These provisions are similarly biased toward women and are insufficient, either substantively or procedurally, to address the unique needs of children who have experienced sexual assault.

A Protection of Children from Sexual Offences (POCSO) Act:

This Act was enacted to provide a strong legal framework to protect children from sexual assault, sexual harassment, and pornographic offences, while also protecting the child's interests at all stages of the judicial process. The Act's framework prioritises children by incorporating systems for child-friendly reporting, documenting evidence, investigating, and expediting criminal proceedings through designated special courts. The new Act makes a number of offences punishable by prison time. It recognises alternative methods of penetration besides penile-vaginal penetration and criminalises acts of child immodesty⁸. The government, in a statement, had said the amendments in Section-2, 4, 5, 6, 9, 14, 15, 34,42 and 45 of the POCSO Act, 2012 are being made to address the aspects of child sexual abuse in an appropriate manner. "Section-4, 5 and 6 are proposed to be amended to provide option of stringent punishment, including death penalty, for committing sexual assault and aggravated penetrative sexual assault crime on a child to protect the children from sexual abuse. "Section-4, 5 and 6 are proposed to be amended to offer option of strict punishment, including death penalty, for committing sexual assault and aggravated penetrative sexual assault offence on a child to safeguard the children from sexual abuse. Sections 14 and 15 of the POCSO Act of 2012 are also suggested to be changed in order to address the problem of child pornography. It is proposed to impose a fine for failing to destroy, delete,

^{8.} Dr. Samir Bhadury, Child Pornography in India: Issues and Challenges, Vol. 6 ,JPSP,6524,6525-6527,2022.

or report pornographic information involving a child with the purpose to spread or transmit it. The Convention essentially highlights the measures that the State must take to prevent:

(1) the inducing or coercing of a child to engage in any unlawful sexual activity.

(2) the exploitative use of children in prostitution or other unlawful sexual practises.

(3) the exploitative use of children in pornographic performances and materials.

At the same time, the Act intends to safeguard children's correct growth and to preserve their privacy and confidentiality through the court process, as well as to ensure the child's physical, emotional, intellectual, and social development. The Act prescribes for a maximum of years' imprisonment, including a fine, for the first offence, and up to seven years for the second. If the individual additionally participates in an act that constitutes the aforementioned sexual acts/assaults, he would be liable a life sentence. Similarly, anybody who keeps pornographic information for commercial reasons in any manner involving a kid faces up to three years in jail, a fine, or both. The Act punishes not only the perpetrator who performs such acts, but also those who aid or abet such acts.

B. Information Technology Act, 2000

The publication or transfer of any obscene content in electronic form is punishable under the Information Technology Act of 2000. The former Act included no particular provisions for child pornography; all cases of pornography were dealt with under Section 67 of the old Act. It is crucial to emphasise, however, that the IT Act of 2000 constituted a significant improvement over previous legislation. Previously, all cases of pornography, whether online or offline, were prosecuted under the Indian Penal Code 1860 and the Indecent Representation of Women (Prohibition) Act 1986. The Information and Technology Act, 2000 (hereafter "IT Act") is the foundation of Indian cyber legislation. While the Information and Technology (Amendment) Bill was being updated in 2008 to broaden its scope, both the Standing Committee and the Expert Committee proposed the inclusion of a particular clause dealing with the prohibition of child pornography. The proposal took the shape of the addition of Section 67B to the IT Act, which criminalised under the IT Act, but the storage and consumption of child porn is. Section 67C makes intermediaries liable for the retention and production of information. Section 79 was also changed; it describes the

conditions under which intermediaries are not liable. Even with such complex legal laws penalising child pornography, reducing child pornography is a difficult undertaking.

X. INTERNATIONAL LAWS

Child pornography is a multi-jurisdictional issue that requires a global approach. To effectively combat child pornography and child abuse on a global scale, uniform enactment is required; laws that differ from country to country serve to weaken the position against child sexual abuse and allow child predators to mass endeavours in countries where they believe they are best prepared to abuse children. The 1989 United Nations Convention on the Rights of the Child, the first legally enforceable convention on children's rights, protects children from sexual abuse. Article 34 of the Convention requires nations to implement all relevant national, bilateral, and multinational measures to safeguard children from all types of sexual exploitation or abuse. The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (hence "the optional protocol") was approved by the United Nations General Assembly in 2000. It is the most important worldwide convention addressing the subject of child sexual abuse. It acknowledged the rights of victims of these crimes and established criteria for victim protection in the criminal justice system. The Council of Europe Convention on Cybercrime (2001), often known as the Budapest Convention, is one of the most important treaties dealing with child abuse since it takes a more pragmatic approach with universal application to both judicial officials and law enforcement authorities.

XI. JUDICIAL STRATEGY

The Judiciary has tried to sort the problem related to Child Pornography whenever the matter related to it has surfaced with a strict approach as the availability of evidence in these cases are abundant but the real issue lies in actually coming out of the matter related to it. Most people tend to avoid the issue. There are very few judgments at the level of the 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*⁹ 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 came 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,

^{9.} State of A.P. v. Mangali Yadagiri, 2015(2) ALD 15 (SC)

In a case of *P. Shanmugavel Raj v. State and Ors¹⁰*. This was a Criminal Revision petition for against the committal of trail 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 *Hector FirdausKothavala v. State of Maharashtra*¹¹ 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, not mentioned but the heinous act was found out by her wife and the case was made. That accused got anticipatory bail from the court. In *Shashi and Ors. v. The State of Karnataka* where the facts are 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 bail and the final order is still awaited.

XII. WAY FORWARD AND CONCLUSION:

India, as one of the world's youngest countries, has a high number of children to account for. In this respect, legislation should be enacted in accordance with and for the benefit of children, who serve as the future of this country. There are different types of exploitation that a kid of a vulnerable age may face, but sexual exploitation is the most serious since it has a long-term and devastating impact on the child, hence legislation should be enacted to address this issue. The regulatory issues are enormous, and some solutions are as follows. India, as one of the world's youngest countries, has a high number of children to account for. In this respect, legislation should be enacted in accordance with and for the benefit of children, who serve as the future of this country. There are different types of exploitation that a kid of a vulnerable age may face, but sexual exploitation is the most serious since it has a long-term and devastating impact on the child, hence legislation should be enacted. In this respect, legislation should be enacted in accordance with and for the benefit of children, who serve as the future of this country. There are different types of exploitation that a kid of a vulnerable age may face, but sexual exploitation is the most serious since it has a long-term and devastating impact on the child, hence legislation should be enacted to address this issue. The regulatory issues are enormous, and some solutions are as follows:

a) Acquire technological knowledge and competence in Internet pornography.

b) Form alliances with other agencies and jurisdictions.

^{10.} Hector FirdausKothavala v. State of Maharashtra Crl.M.P.No.628 of 2013.

c) Establishing a good communication channel and strengthening central authority.

d) Understanding the nuances of the legislation and the POCSO court's operation accordance with the IT Act.

f) Parents and instructors should be pleasant to children.

g) Establish connections with ISPs.

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