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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

“CHILD PORNOGRAPHY IN THE DIGITAL AGE: A LEGAL AND REMEDIAL FRAMEWORK”

AUTHORED BY - RADESH RAJORIA & JAHNAVI VERMA

Abstract:

The growth of the internet has made it easier for child pornography and cybercrime to spread, which presents serious difficulties for law enforcement organizations around the globe. The main legislative frameworks in India that address these offenses are the Protection of Children from Sexual Offenses (POCSO) Act, 2012 and the Information Technology Act, 2000. This essay critically analyses the Indian legal framework's rules pertaining to child pornography, with a particular emphasis on Section 67(B) of the IT Act, which makes it illegal to produce, distribute, or view child pornography. Even with these regulations in place, there are still a number of obstacles that make enforcement difficult, such as unclear legal definitions, gaps in intermediary liability, and jurisdictional problems. Moreover, the dark web, encrypted communications, and VPNs all contribute to the anonymity that makes it more difficult to identify and prosecute perpetrators. This essay also examines the resource shortages and outmoded technology that law enforcement must contend with. In order to effectively address child pornography and cybercrime in India, it closes by proposing reforms to better the legal and technological frameworks. It emphasizes the need for clearer legislation, increased international collaboration, and stronger surveillance systems.

Literature Review:

Child pornography is becoming more and more common in today's societies and is thought to be one of the fastest-growing online hobbies. Owners of child pornography, in contrast to producers, do not take an active role in the physical or sexual abuse of minors. However, because these possessors witness the abuse and rape, they may be to blame for the innocent youth's ongoing victimization. The best ways to govern child pornography have become one of the most contentious issues on the internet in recent years.

The government and law implementation organizations around the world have made numerous attempts to restrict the availability of child pornographic content on the internet. For everybody

who has access to online help, the internet has opened up an exciting new world of communication and information. In addition to providing countless chances for adults and children to learn about the world in which we live, technology has had a profound impact on child sex abuse, particularly through the spread of child sex abusers.

Due to worries about child pornography, India shut over 857 pornographic websites in 2015. This decision was taken in accordance with the Information Technology Act and Article 19(2) of the Indian Constitution, which permits the government to impose restrictions based on morality and decency. This total ban was eventually lifted, though, and it was limited to websites that featured child porn. The Department of Telecom has just once more blacklisted 827 websites for having unlawful content on them.

No nation is free from this type of child sexual exploitation in the modern world, thus governments, law enforcement, and civil society must work together to ensure the safety of all children. India has embraced this idea and made the complete prohibition of pornography a crime. International commitments, adult exposure to child pornography prohibited, and tougher laws addressing child pornography are all necessary.

Keywords: Cybercrime, Child Pornography, Fraud, Computer

Introduction:

Cyber Crime is a very wide term which involves offences related to computers or the computer networks for the purpose of communication and to transfer the information to another person in a very short span of time¹ (Aarshi, 0). Cybercrime to be put in simple words is crime committed against any individual or group to harm them in such a way that it causes them a loss, regardless of monetary loss.

There have been an increase in Cybercrimes since the advancement in technology and in no doubt the people engaging in these crimes or the offenders have caught a high access with increase in the tech used. Offenders have found new ways of fraud to commit crimes and cause harm to people. One of the offences comprehended in the Indian law is child pornography. Information

¹ Aarshi, *Pornography as a cyber crime*, 2024, <https://www.legalserviceindia.com/legal/article-914-pornography-as-cyber-crime.html#:~:text=Child%20pornography%20is%20an%20illegal,the%20age%20of%2018%20years.>

Technology (IT) Act, 2000, Indian Penal Code (IPC) and Protection of Children from Sexual Offences (POCSO) Act 2012 have considered it as a crime.

Chapter III, Section 13 of POCSO defines, use of child for Pornographic purposes. The POCSO has been very strict with the punishment and taking obligations of sexual offences against children.

The growth of child pornography, a serious and concerning kind of cybercrime, has been made easier by the internet's and digital platforms' rapid expansion, which has also created new opportunities for communication, education, and pleasure. Since children are among the most vulnerable members of society, the abuse and exploitation of them in child pornography puts the young victims of this type of material at serious risk on an emotional, psychological, and social level. Given the seriousness of this crime, India's legal system, which is mainly regulated by the Information Technology (IT) Act, 2000 and the Protection of Children from Sexual Offences (POCSO) Act, 2012, has put strict measures in place to address this threat. According to various studies, it is reported that amongst teenagers between 10 to 17 years old who regularly use the internet, 20% receive sexual content, one in 33 receive an aggressive sexual solicitation and 25% have unwanted exposure to pictures of naked people or people having sex² (Nigam, 2022).

Due to the cross-border nature of the crime, technological improvements like the dark web, and weaknesses in enforcement systems, issues persist even though these laws give important legal remedies to discourage and punish perpetrators. This study explores the legal framework, associated sanctions, law enforcement's role, and efficacy of court interventions in limiting the growing cyber menace of child pornography in India.

Section 13 of POCSO defines Child Pornography: Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purpose of sexual gratification, which includes –

A. Representation of the sexual organs of a child

² Palak Nigam, *Child Pornography in India: A study from socio-legal perspective*, 2022 <https://articles.manupatra.com/article-details/CHILD-PORNOGRAPHY-IN-INDIA-A-STUDY-FROM-SOCIO-LEGAL-PERSPECTIVES>

- B. Usage of a child engaged in real or simulated sexual acts (with or without penetration)
- C. The indecent or obscene representation of a child

Shall be guilty of the offence of using a child for pornographic purposes³

The section 14 and section 15 of the act defines the punishment for using child for pornographic purposes and punishment for storage of pornographic material involving child. Section 67B of the IT act has defined the punishment for publishing or transmitting of material depicting children in sexually explicit act, etc, in any electronic form⁴.

What is pornography?

Literature, films, images, and other media that aim to arouse sexual desire or show sexual acts are collectively referred to as pornography. In terms of the degree of explicit content, it can be softcore or hardcore and frequently features depictions of nudity and sexual activity. Around the world, there are different legal, cultural, and moral perspectives on pornography. Certain nations permit its creation, dissemination, and intake inside regulated structures, but other nations impose limitations or outright prohibit it, particularly in cases where it pertains to non-consensual content, child exploitation, or harm to children.

Legal definitions frequently make a distinction between "obscenity" and "pornography," with the former being more widely denounced and subject to restrictions under laws pertaining to morals and public decency.

By [pornography](#) we generally mean the depiction of any content, whether printed or visual, that contains manifest narration, demonstration or display of sexual activities, sexual organs or any other obscene material with an intention to trigger the sexual excitement of the viewers. We call it child pornography when children are included in the said activity. Although, merely a prefix has been added to the term 'pornography' in this case, but this little prefix increases the dreadfulness of this term horrendously⁵ (Jain, 2021).

Section 2(da) of POCSO defines child pornography, which is any kind of display of overt

³ *Protection of Children from sexual offences Act, 2012*
<https://www.indiacode.nic.in/bitstream/123456789/2079/1/AA2012-32.pdf>

⁴ Ibid

⁵ Akshita Jain, *Remedies against child pornography in law*, 2021 <https://blog.ipleaders.in/remedies-child-pornography-law/>

sexual activity that engages a child. Such content can be an image, a video or any computer-generated picture which cannot easily be differentiated from a real child. The issue of child pornography is addressed by the Optional Protocol on the sale of children, child prostitution, and child pornography (OPSC), which operates on an international scale. Article 2 of the OPSC defines child pornography as showing a kid engaging in actual or simulated explicit sexual activity and disclosing a child's sexual body parts, primarily for sexual purposes.

One thing that is obvious when taken out of context is that the main purpose of porn is to make people feel sexually aroused. Pornography is defined as sexually explicit content intended to arouse consumers' sexual arousal, which is viewed negatively when value judgments are applied to it.

When we narrow down the line of child pornography we can define it as publishing or transmitting obscene material of children in electronic form. Child porn has increased due to the easy access to the internet and easily available videos on the internet. Child pornography is the most heinous crime which occurs and has led to various other crimes such as sex tourism, sexual abuse of the child, etc⁶ (Shivika, 0).

Scholars have argued that there has been a recent increase in the production and viewing of child pornography. With Interpol citing Germany as a major producer of child pornography, Netherlands and United Kingdom being the largest distributors of the same. Although there have been many attempts to limit the availability of pornographic content on the internet by governments and law enforcement bodies all around the world, still there has been increase in the demands.

One of the major factors which is undermined while countering the child pornography is the sharing of child porn over the years around the world⁷ (Jain, 2021). 2014 saw the figure surpass one million for the first time. In the latter part of 2018, the reported cases climbed to 18.4 million, accounting for over one-third of all cases ever reported. There were 21.7 million recorded in 2020, a 28% rise above 2019 estimates.

⁶ Shivika, *Child pornography: A comparative analysis*, <https://www.legalserviceindia.com/legal/article-986-child-pornography-a-comparative-analysis.html>

⁷ Akshita Jain, *Remedies against child pornography*, 2021 <https://blog.ipleaders.in/remedies-child-pornography-law/>

Now when we have an understanding of what is child pornography, the paper will focus on the legislative provisions combating child pornography in India:

Protection of Children from Sexual Offences Act, 2012

A person is considered to have used a child for pornographic purposes if they use them for sexual gratification through printed or electronic media, regardless of whether the purpose is for personal use or distribution. This is stated in Section 13 of the POCSO act. includes showing off a child's sexual parts, portraying a child in an inappropriate way, and participating in real or simulated sexual behaviour with a child in which penetration is not required.

Section 14 states punishes anyone who violates Section 13 by up to five years in prison and a fine. In addition, the offender faces a minimum 7-year prison sentence and a fine if found guilty of the same crime twice. It further states that in addition to the penalties listed in section 14 of the POCSO Act, an individual who engages in pornographic acts with a minor and commits the offense of using a child for pornography will also be punished under sections 4 or 6 or 8 or 9 of the same legislation.

Section 15 punishes the storage or possession of pornographic material featuring children in three distinct scenarios. First off, sharing such content with the intent to distribute child pornography is illegal and carries a minimum fine of Rs. 5000. Repeated offenders risk a fine of at least Rs. 10,000. Second, the punishment consists of up to three years in prison, a fine, or both if the storage or possession was done with the intention of displaying or distributing it.

While POCSO is the main act which deals with the punishment of the said offence there are also Information Technology Act, 2000 and Indian Penal Code of 1860 which deals with the said offence.

Under Information Technology Act, 2000: Section 67b of the IT Act, prohibits the publication, transmission, creation, gathering, browsing, downloading, advertising, promoting, trading, distributing, recording, and other activities involving any electronic media that depicts a child being involved in a sexually explicit action. Additionally, it forbids the development of online friendships with any youngster who engages in sexually explicit behaviour or abuses them

online. According to Section 67B, the penalty for a first offense is five years in jail and a fine of ten lakh rupees; for a second offense, the penalty is seven years in prison and a fee of ten lakh rupees.

Under the provisions of Indian Penal Code, 1860 section 293 of the act does not deal with it directly, rather it prohibits the display of obscene material to young person. The new act of Bhartiya Nyaya Sanhita, 2023 does not directly cater to this problem rather it has two aspect under section 77 and 78 of Voyeurism and Stalking. Under section 98 and 99 of the said act it has given the punishment for selling child for the purpose of prostitution, etc. and buying child for purpose of prostitution, etc. respectively.

Section 77 of BNS whoever captures the images of a woman engaging in a private act in circumstances where she would usually have the expectations of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine⁸

Section 78 of BNS defines stalking stating, any man who –

1. Follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite clear indication of disinterest by such woman, or
2. Monitors the use by a woman of the interest, e-mail or any other form of electronic communication,

Commits the offence of stalking⁹

Section 98 punishes person selling child for the purpose of prostitution, etc: whoever sells, lets to hire, or otherwise disposes of any child with intent that such child shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such child will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

The main piece of legislation in India that controls electronic trade and cybercrimes is the

⁸ *Bharatiya Nyaya Sanhita*, 2023 <https://www.indiacode.nic.in/bitstream/123456789/20062/1/a2023-45.pdf>

⁹ Ibid

Information Technology (IT) Act, 2000. This Act contains provisions to address child pornography, serious issue that is becoming worse in the digital age. The Information Technology (Amendment) Act, 2008, updated the act to more fully handle cybercrimes, especially charges involving the online sexual exploitation minors.

The major issues which are faced by the IT act is that despite the provisions, the legal framework under the IT Act lacks clarity and precision in several areas, leading to challenges in enforcement.

1. **Broad Definition:** The ambiguous phrasing used in Section 67(B) may pose challenges for interpretation. Words like "sexually explicit" are open to varying interpretations, which could result in uneven application.
2. **Ambiguities in Responsibility:** Regarding intermediary liability, the law is vague. Although Section 79 requires intermediaries (such as social networking sites and internet service providers) to remove child pornography, it is unclear exactly what intermediaries are required to do in terms of proactive monitoring.
3. **Procedural Gaps:** The legal frameworks for reporting and removing illegal content are lacking in many areas, and there are no clear procedures for swift removal, takedown, or consequences for not doing so.

One of the major challenges that is faced in the IT sector and child pornography is that of anonymity in cyberspace. Anonymity in cyberspace further complicates the enforcement of laws related to child pornography. Challenges include:

1. **Encrypted platforms:** Due to the widespread distribution of child pornography via dark web and encrypted messaging systems, it is challenging for law enforcement to find perpetrators or even gain access to the content.
2. **Anonymous Browsing Tools:** With the increasing use of Virtual Private Networks (VPNs), proxy servers, and the TOR network, offenders can hide their digital footprints, complicating investigations.
3. **Cross-Jurisdictional Issues:** National borders do not apply to cyberspace, and criminals frequently operate from multiple nations, making legal proceedings more difficult. Although India has mutual legal assistance treaties (MLATs) with a few nations, implementation of these agreements is still uneven because child pornographic cybercrimes are widespread worldwide.

Challenges to Digital Surveillance and Law enforcement:

Law enforcement organizations confront enormous difficulties in upholding efficient monitoring and enforcing the law as the digital world grows. The prevalence of cybercrimes, data breaches, and unlawful activities on the internet has made the necessity for strong digital monitoring systems imperative. Nonetheless, significant challenges exist, such as the inefficiency of website blocking, the intricacies of the dark web, and the resource constraints encountered by law enforcement organizations.

There have been many attempts to regulate the cyberspace and the internet but the cyberspace user find their way around. Dark web and TOR are the infamous examples that can surpass any surveillance that is put up by the government.

1. **Challenges of website blocking:** Governments and law enforcement organizations frequently employ website blocking as a technique to prohibit access to harmful or unlawful content. But it has a number of drawbacks:
 - a. **Circumvention Techniques:** Proxy servers, Virtual Private Networks (VPNs), and the Tor network make it simple to access websites. Website blocking is no longer effective because of these technologies, which enable users to get around limitations put in place by governments or internet service providers (ISPs).
 - b. **Dynamic Nature of Websites:** In order to avoid being discovered, websites that carry illegal information frequently build mirror sites or alter their domain names. It is challenging to maintain blocking attempts since content can swiftly resurface under a different domain even after a site has been blocked.
 - c. **Decentralised Content:** The rise of decentralized platforms and peer-to-peer (P2P) networks has complicated the process of blocking websites. Content is often distributed across a network of users, making it harder for authorities to target and take down centralized servers or websites.
 - d. **Collateral Damage:** Blanket blocking of websites can sometimes lead to unintended consequences, such as the restriction of legitimate content. This overreach can raise concerns about freedom of expression and access to information, leading to legal challenges against the blocking orders themselves.
2. **Challenges Posed by the Dark Web:** The dark web is a secret section of the internet that can only be accessed with specialized software like the Tor browser and is not indexed by conventional search engines. It has developed into a centre for criminal

activity, such as the sale of illegal firearms, drugs, and child pornography. Dealing with this hidden aspect of the internet presents substantial issues for law enforcement:

- A. Anonymity:** Because users can remain anonymous on the dark web, it is more difficult for law authorities to find and apprehend criminals. By using onion routing, encryption, and other anonymizing methods, users can virtually completely hide their identity, making it difficult to identify them in the real world.
 - B. Encrypted Communication:** Since most transactions on the dark web are encrypted, it might be challenging to eavesdrop or decode user interactions. Even in the event that law enforcement intercepts the conversation, end-to-end encryption makes sure that the content being transferred is difficult for them to read.
 - C. Cryptocurrency Transactions:** Cryptocurrency transactions, such those involving Bitcoin or Monero, give an additional degree of secrecy to transactions on the dark web. These virtual currencies make it possible to conduct transactions without disclosing the identities of the participants, making it more difficult to identify and stop illegal activity.
 - D. Jurisdictional Issues:** The dark web crosses national boundaries, making it difficult for law enforcement to enforce jurisdictional boundaries. Cross-border investigations are hampered by the fact that criminals frequently operate out of different nations, where local law enforcement may be underfunded or lack cooperative agreements.
3. **Resource Limitations of Law Enforcement Agencies:** When it comes to digital monitoring, law enforcement organizations frequently confront severe resource limits despite the existence of advanced technology and legal frameworks:
- A. Technical Expertise:** Expertise in fields such as digital forensics, cybersecurity, and cryptography is needed for cybercrime investigations. Particularly in smaller or less developed areas, many law enforcement organizations lack the skilled people to handle sophisticated cyber investigations.
 - B. Outdated Technology:** While cybercriminals often employ the latest technology, law enforcement agencies may rely on outdated or less sophisticated tools. This technological gap places law enforcement at a disadvantage when trying to keep up with evolving cyber threats.
 - C. Volume of Data:** For law enforcement authorities, the sheer amount of data created online is staggering. Advanced data analytics technologies are necessary for real-time threat analysis, monitoring, and response. However, these systems can be

expensive and challenging to set up. Agencies with low resources might not have access to the gear and software required for this kind of monitoring.

D. Coordination Issues: International as well as national cooperation between various agencies is frequently necessary for effective digital monitoring. Law enforcement activities might be hindered by bureaucratic obstacles, lack of collaboration, or resource constraints, which can cause investigations to drag on longer than necessary.

E. Legal and Regulatory Barriers: Regulations and rules pertaining to surveillance frequently lag behind technical improvements. Legal limitations on data gathering, privacy issues, and civil liberties issues can make it challenging for law enforcement to track down suspects or obtain evidence without infringing on people's rights.

Conclusion

In the digital age, child pornography and cybercrime pose serious risks since offenders who take advantage of technological advancements and online anonymity to carry out horrible deeds. A strong framework to prevent these crimes is provided by Indian laws, particularly the Information Technology Act, 2000, and the Protection of Children from Sexual Offences (POCSO) Act, 2012. Child pornography is expressly illegal under Section 67(B) of the IT Act, and POCSO provides greater protection for youngsters against sexual exploitation.

Still, there are a lot of obstacles to overcome. The definitions of the law are unclear, and intermediary liability has gaps that lead to inconsistent enforcement. The dark web, encrypted communications, and VPNs are examples of anonymity methods that make tracing and punishment more difficult.

Enhancing technology capabilities, fine-tuning legislative definitions, and bolstering international cooperation are crucial in tackling these difficulties. Improved resources and training for law enforcement, along with heightened awareness on the part of intermediaries, will guarantee more successful deterrent and prosecution of similar offenses. Ensuring a safer digital realm and protecting children will require comprehensive reforms and a proactive strategy.

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