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Exploring Dark Corners: A Deeper Look into Child Pornography in India through Analytical and Comparative Insights

AMOL YADAV¹ AND VYOM JAIN²

ABSTRACT

This paper delves into the critical issue of child pornography in India, shedding light on its multifaceted challenges and the complexities it presents. In recent times, the proliferation of technology and the internet has exacerbated the dissemination of explicit content involving minors, raising concerns about the safety and well-being of children. The paper comprehensively examines the legal framework surrounding child pornography in India, focusing on its definition, classification, and the efforts taken to combat it.

Through an in-depth analysis, the study uncovers the intricate web of challenges that authorities and society face in tackling this crime. It highlights the jurisdictional complexities that hinder efficient regulation and enforcement, while also addressing the societal stigma and systemic inadequacies that contribute to the perpetuation of child pornography. Moreover, the paper scrutinizes the psychological and emotional impact on the victims, emphasizing the urgent need for specialized care and protection for those ensnared in this disturbing trade.

This paper is a call to action, advocating for a comprehensive approach to combat child pornography. It underscores the necessity for a robust legal framework, enhanced international cooperation, and heightened awareness campaigns to educate both the public and law enforcement agencies. The paper ultimately aims to provide insights that guide policymakers, legal practitioners, and social workers in formulating strategies that effectively dismantle this reprehensible practice and safeguard the well-being of India's vulnerable children.

Keywords: *Child pornography, Challenges, Legal framework, Dissemination, Well-being.*

I. INTRODUCTION

In contemporary societies, the heinous nature of child pornography is widely recognized. With the progress of technology, instances of child pornography have surged both in frequency and severity. These crimes have evolved into more malicious forms, inflicting greater harm. The

¹ Author is a student at Jamia Millia Islamia, India.

² Author is a student at Jamia Millia Islamia, India.

repercussions for the young victims are profound, with many enduring lasting suffering in various ways. Those subjected to abuse and exploitation in explicit materials often grapple with enduring depression and overwhelming guilt. Moreover, child pornography is directly intertwined with the sexual abuse of minors. Notably, certain child pornographic content portrays physical and sexual abuse against children, amplifying the victimization as these depictions are recorded, circulated, and consumed, exacerbating the trauma. The awareness that the depicted abuse is being shared and enjoyed by others compounds the distress. The issue of child pornography aligns with the principles outlined in the United Nations Convention on the Rights of the Child (CRC). According to this convention, states that have ratified it are obligated to combat the sexual exploitation of children and their exploitation for pornographic purposes.

While the Internet is celebrated for its role in global communication, it brings both advantages and drawbacks. Among these, one of the most egregious is the proliferation of child pornography. Disturbingly, some developed countries view child pornography as a facet of free speech and expression rather than an evil. Nonetheless, even in these nations, regulations against such content have been enacted, as the realm of protected speech has its limits. To comprehend the issue, it's imperative to define child pornography and recognize its dissemination via the Internet. Defining pornography proves intricate, as perspectives on explicitness and obscenity vary. Child pornography centers on the sexual exploitation of minors, involving their exploitation to gratify the desires of others while disregarding the children's emotional and physical needs. India, for instance, has classified child pornography under Section 13 of the Protection of Children from Sexual Offences Act 2012, elucidating what constitutes the exploitation of children for pornographic purposes.³

However, enforcing such laws encounters challenges. The reluctance of parents to report cases stems from fears of repercussions affecting their children's future. The internet serves as a major conduit for pornography distribution, but due to its hidden nature, regulatory bodies grapple with tracing and rescuing affected children. The lucrative nature of this industry, generating millions to billions, complicates matters further. Child pornography's heinousness leaves a profound societal impact, necessitating the destruction of existing materials and the prohibition of related websites. It's prevalent in developing nations, where the majority of these videos are created. A lack of widespread concern often hampers state intervention despite international conventions and laws addressing the issue.⁴

³ Dr. Samir Bhadury, *Child Pornography in India: Issues and Challenges*, 6 JPSP 6524, 6524 – 6529 (2022).

⁴ Yukti Lamba, *Why We Need to Look Beyond the Law to Protect Children from Pornography*, Youth Ki Awaaz (Aug. 19, 2023), <https://www.youthkiawaaz.com/2016/06/problems-ofchild-porn-and-abuse-in-india/>.

Crucially, the victims in this crime are the very children depicted in these materials. Often, authorities prioritize apprehending culprits over rescuing these victims due to jurisdictional complications. This exacerbates the complex web of challenges surrounding child pornography. In essence, child pornography constitutes a grave societal ill, necessitating stringent legal measures to curb its spread and protect the exploited children. The internet's dual nature as an enabler and a challenge underscores the necessity for comprehensive solutions, including international collaboration and a renewed focus on the well-being of the young victims entangled in this repugnant trade.

II. NATURE OF CHILD PORNOGRAPHY

The nature of child pornography in India is a deeply concerning and evolving issue with serious societal and legal implications. Child pornography involves the creation, distribution, or possession of explicit sexual content featuring minors. Despite legal frameworks in place, the prevalence of this heinous crime persists due to various factors. Technological advancements have facilitated the dissemination of such content, making it easier to produce, share, and access. The age-old vulnerabilities of children combined with the anonymity of the internet have contributed to the exploitation of minors for profit and gratification. This has led to an alarming increase in the number of cases reported over the years. The effects on the child victims are both immediate and long-lasting.⁵ Children subjected to such abuse experience emotional trauma, often leading to psychological issues like depression, anxiety, and post-traumatic stress disorder. The violation of their rights and dignity hampers their physical, emotional, and mental development, potentially causing lifelong scars. The legal response to child pornography in India involves provisions under the Information Technology Act, the Indian Penal Code, and the Protection of Children from Sexual Offences (POCSO) Act. These laws criminalize the production, distribution, and possession of explicit content involving minors and prescribe stringent penalties.

Child pornography isn't a singular offense; rather, it constitutes a series of interconnected transgressions, each bearing severe consequences. It initiates with the sexual exploitation of a child who often lacks comprehension of the situation. Even if they grasp its gravity, their awareness doesn't mitigate the enormity of the crime. Subsequently, these acts are captured and disseminated among a reprehensible group of individuals deriving perverse satisfaction from witnessing the agony inflicted upon these exploited children. This vile enjoyment fuels their inclination to perpetrate such acts themselves, propagating a cycle of heinous behavior and

⁵ Parnita Agal, *Child Pornography: A Comparative Analysis*, 8 IJSR 746, 747-748 (2019).

escalating criminal activity.⁶

A child stands at the nascent phase of life, with years ahead to navigate. However, when subjected to the brutality of child pornography, their path is forever marred. This trauma indelibly marks their psyche, impeding their ability to lead a normal existence. The Internet's expansion and sophisticated digital technology run parallel to the alarming growth of the child pornography trade. These abhorrent images infiltrate various online platforms, including social networks, file-sharing sites, photo-sharing platforms, gaming consoles, and even mobile applications. Offenders in this realm establish connections via Internet forums and networks, exchanging interests, experiences, and appalling tales of child abuse. This alarming connectivity not only perpetuates the distribution of explicit images but also facilitates the sale and trade of such illicit content.⁷

However, challenges remain in terms of enforcement, awareness, and implementation. Gaps in law enforcement capabilities, inadequate resources, and the clandestine nature of online platforms make detecting and prosecuting offenders complex. Moreover, the stigma associated with reporting such incidents and the lack of proper mechanisms for victims' rehabilitation further exacerbate the issue. To address the nature of child pornography in India, a multi-pronged approach is required.⁸ This includes strengthening law enforcement, enhancing public awareness campaigns, and investing in technological solutions to track and prevent the circulation of explicit content. Societal collaboration, technological vigilance, and the prioritization of children's well-being are essential to combat this grave violation and ensure a safer environment for India's youth.

III. DEFINING CHILD PORNOGRAPHY

Child pornography encompasses the portrayal of a child, either real or simulated, engaged in explicit sexual activities, manifested through diverse mediums such as audio, video, or written content, often employing electronic, digital, or optical channels. It involves the utilization of minors in sexually suggestive conduct and can extend to manipulated visuals implying a child's involvement in sexual behaviour. Essentially, it constitutes the sexual abuse and exploitation of children, gravely compromising their overall well-being and causing profound harm to both their physical and psychological health. The Optional Protocol to the Convention on the Rights of the Child provides a comprehensive definition of child pornography. It encompasses any

⁶ Geeta Chopra, *Child Rights in India: Challenges and Social Action* (Rawat Publications, 2021)

⁷ Theodore Millon, et al., *Psychopathy: Antisocial, Criminal and Violent Behaviour* 306 (The Guildford Press, 2003).

⁸ Barla Malleesh Yadav, *India's Response to Combating Child Pornography*, 5 IJEDR 1171, 1172 (2017).

form of representation that features a child partaking in actual or simulated explicit sexual activities or focuses on the sexual attributes of a child for primarily sexual objectives. Within this context, child pornography involves not only the portrayal of a child but also those with paedophilic inclinations. A paedophile, usually male but also female in some instances, imposes their sexual desires upon children, reflecting a disconcerting preference known as paedophilia. This preference constitutes an unsettling deviation from healthy sexual relationships and extends to fantasies about engaging in sexual activities with minors.⁹

Engaging in pornography constitutes not only a legal transgression but also a violation of ethical principles. The term "pornography" lacks a standardized definition and is generally associated with content of an explicit nature. The United States Supreme Court established a three-part framework to assess whether pornographic material qualifies as 'obscene' in the landmark case of *Miller v. California*¹⁰. The criteria encompass the following considerations: (a) whether an average individual, applying prevailing community norms, would perceive the work as catering to prurient interests, (b) whether the work explicitly depicts or describes sexual conduct in an offensively explicit manner, as defined by pertinent state legislation, and (c) whether, when viewed holistically, the work lacks substantial literary, artistic, political, or scientific value. This evaluative approach, known as the Miller test, has been employed as a benchmark. Nevertheless, its application in the realm of the Internet remains a subject of debate.

In the context of Common Law, the principle of obscenity was introduced in the case of *R. v. Hicklin*.¹¹ For the first time, the court applied a test to ascertain obscenity. Lord Cockburn articulated that the crux lies in determining whether material identified as obscene has the potential to morally degrade and corrupt individuals who are susceptible to such immoral influences and who might come into contact with such publications. This perspective underscores the potential harm of such material on impressionable minds.

As highlighted by Article 9 of the Cyber Crime Convention (2001), child pornography pertains to explicit visual content depicting a minor participating in sexually explicit behaviour and a person appearing as a minor engaged in similar conduct. The vulnerability of children in today's technology-driven world is evident, making them susceptible to the adverse aspects of modern digital culture. Social media, in particular, serves as a prominent platform where children become vulnerable to interactions with individuals seeking to fulfill their illicit desires. This

⁹ Wells, Melissa, et al, *Defining child pornography: law enforcement dilemmas in investigations of internet child pornography possession*, 8 Police Pract. 266, 269-282 (2007).

¹⁰ 413 U.S. 15 (1973)

¹¹ 11 Cox C.C. 19 (1868)

alarming trend creates an environment in which paedophiles can easily target innocent children, manipulating and coercing them, ultimately leading to appalling crimes like child pornography and trafficking.¹²

IV. IMPACT OF TECHNOLOGICAL PROLIFERATION ON CHILD SAFETY AND WELL-BEING

The rapid advancement of technology and the widespread availability of the internet have significantly altered the landscape of communication and information sharing. However, this digital revolution has not been without its adverse consequences, particularly when it comes to the safety and well-being of children. The proliferation of technology and the internet has led to an alarming increase in the dissemination of explicit content involving minors, giving rise to profound concerns that demand immediate attention. In recent years, the ease of access to digital devices and the internet has made it easier for explicit content, including child pornography, to be shared and distributed. The anonymity afforded by online platforms has emboldened *wrongdoers*, enabling them to exploit vulnerable children for their gains. This troubling trend has sparked a significant rise in cases involving the sexual exploitation of minors, exposing them to lasting psychological and emotional trauma.¹³

As society grapples with the implications of this technological proliferation, it is imperative to acknowledge that the safety and well-being of children are at stake. Protecting children from the harms of explicit content requires a multi-faceted approach that includes stringent regulations, advanced technological interventions, educational initiatives, and robust legal frameworks. Parents, caregivers, educators, law enforcement agencies, and policymakers must collaborate to create a secure online environment for children. The digital age has introduced numerous opportunities, but it has also brought forth new challenges that need urgent mitigation.¹⁴ Safeguarding children from explicit content and ensuring their overall safety in the digital realm must be a priority for society as a whole. As technology continues to evolve, concerted efforts are required to strike a balance between its benefits and potential harms, particularly concerning the safety and well-being of the youngest members of our society.¹⁵

V. ROLE OF INTERNATIONAL LAW IN COMBATING CHILD PORNOGRAPHY

¹² *Supra* note 2

¹³ Hadeel Al-Alosi, *Virtual child pornography could both help and hinder law enforcement*, The Conversation (Aug. 21, 2023), <https://theconversation.com/virtual-child-pornography-could-both-help-and-hinder-law-enforcement-82746>.

¹⁴ Marvin R.V. Storrow, *Child Pornography and Freedom of Expression*, 64 *Advocate Vancouver* 625 (2006).

¹⁵ *Supra* note 5.

The 1989 United Nations Convention on the Rights of the Child is the inaugural legally binding treaty concerning children's rights, encompasses provisions for shielding children from sexual abuse. Article 34 of the Convention imposes responsibilities on states to implement suitable national, bilateral, and multinational measures to safeguard children from all forms of sexual exploitation and abuse.

In 2000, the United Nations General Assembly ratified the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (referred to as "the optional protocol"). This protocol stands as a paramount universal agreement that exclusively addresses the issue of child sexual abuse. It acknowledges the rights of victims of these offenses and sets out benchmarks for safeguarding victims throughout the criminal justice proceedings. Not only does the Optional Protocol emphasize reinforcing international cooperation and adopting extraterritorial laws, but it also rejects the notion of dual criminality. Article 3 of the Optional Protocol mandates states to criminalize the production, distribution, import, export, dissemination, offering, or sale of child pornography. Additionally, Article 3(1)(c) compels states to penalize the possession of child pornography for any of the aforementioned purposes.

The Council of Europe Convention on Cybercrime (2001), known as the Budapest Convention, is a premier treaty addressing child abuse, taking a practical approach that applies universally to both judicial officers and law enforcement agencies simultaneously. Article 9 of the Budapest Convention defines child pornography as material that portrays a minor or a person resembling a minor engaged in sexually explicit activities. Notably, the Budapest Convention employs clear terminology and meticulously categorizes internet-based child pornography. It also stipulates the criminalization of child pornography.¹⁶

The 2007 Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse encompasses child pornography within the realm of child abuse, broadening its scope to include sexual tourism within the purview of child abuse. However, the convention's limitation lies in its limited global adoption, as it has been adopted solely by European nations thus far.

VI. INDIA'S RESPONSE TO COMBATING CHILD PORNOGRAPHY

Section 293 of the Indian Penal Code, 1860, specifically addresses the prohibition of selling, distributing, exhibiting, or circulating any obscene material to individuals below the age of twenty years, designating these actions as cognizable offenses. The Information and Technology Act, 2000, serves as the foundation for cyber laws in India. During its amendment

¹⁶ *Supra* note 6.

in 2008 to extend its scope, both the Standing Committee and the Expert Committee for the Information and Technology (Amendment) Bill advocated for the inclusion of a dedicated provision concerning the criminalization of child pornography. This recommendation materialized as the insertion of Section 67B into the IT Act, rendering child pornography illegal. For first-time offenders, the penalty encompasses a prison term of five years and a fine of ten lakh rupees, while subsequent offenders face a seven-year prison term and a fine of ten lakh rupees. Notably, the IT Act differentiates between the storage and consumption of adult pornography, which is not criminalized, and child pornography, which is considered a criminal offense.¹⁷

The Protection of Children from Sexual Offences Act, 2012, also encompasses provisions for penalizing child pornography. Section 14 of the POCSO Act criminalizes the exploitation of children for pornographic purposes across various media, including depicting a child's sexual organs, engaging a child in real or simulated sexual activities, and presenting a child in an indecent or inappropriate manner. Under the POCSO Act, the storage of child pornographic material for commercial reasons is prohibited, while non-commercial storage remains unaddressed. While Section 67B of the IT Act focuses on the nature of child pornography by outlawing the pornographic depiction of minors, Section 14 of the POCSO Act targets the involvement of children in pornography by criminalizing their exploitation for such purposes.¹⁸ In both legal frameworks, the concept of a child's consent is disregarded, as children are legally deemed incapable of providing consent.

VII. LEGAL ASPECTS OF CHILD PORNOGRAPHY IN INDIA

The Protection of Children from Sexual Offences (POCSO) Act, enacted in 2012, serves as a robust legal framework in India to safeguard children from sexual assault, harassment, and pornography offenses, prioritizing their welfare throughout legal proceedings. The Act emphasizes child-centricity, incorporating mechanisms for child-friendly reporting, evidence recording, investigation, and expedited trials through specialized courts. The legislation encompasses various crimes, acknowledging penetrative sexual assault beyond penile-vaginal penetration and criminalizing acts of indecency involving children. It categorizes penetrative sexual assault, sexual assault, and sexual harassment, delineating offenses such as inappropriate remarks, gestures, following, and flashing.¹⁹

¹⁷ Khalid Khan, *Child Pornography on the Internet*, 73 Police J. 7 (2000).

¹⁸ *Controlling Child-Porn Related Crimes*, Press Information Bureau Government of India Ministry of Women and Child Development (Aug. 25, 2023), <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1580264>.

¹⁹ Singhal, Ankur, *Legal Status of Pornography in India*, 1 *Int'l JL Mgmt. & Human.* 224, 226-227 (2018).

In August 2019, the Indian Parliament introduced amendments to the POCSO Act, enhancing penalties for juvenile perpetrators of sexual crimes, including the possibility of a death sentence. To counter child pornography, the amendment establishes punitive measures for those exploiting children for sexual purposes, leading to imprisonment for up to five years and fines. Subsequent convictions carry stiffer penalties, up to seven years of imprisonment and larger fines. Child pornography is defined as any visual representation of explicit sexual behavior involving a child, encompassing photos, videos, and digitally generated images indistinguishable from real children.

The Information Technology Act of 2000 addresses obscene electronic content and underwent revisions in 2008 to specifically target child pornography. It penalizes the publication, transmission, browsing, collection, distribution, and creation of sexually explicit material featuring children. Encouraging online relationships with minors, facilitating child abuse online, and recording child sexual abuse electronically are punishable offenses. The act imposes prison terms and fines for violators, and its non-bailable, cognizable nature reflects the seriousness of the crimes. Liability is also imposed on intermediaries for information retention and production, but amendments in Section 79 provide conditions where intermediary liability is exempted. However, despite these extensive legal provisions, combating child pornography remains a formidable challenge. The rapidly evolving digital landscape and the difficulty of distinguishing between explicit content and child pornography present hurdles. Implementation is hindered by a lack of adequate funding and a limited focus on the digital realm's complexities. Addressing these issues requires a more dedicated approach from both government bodies and institutions entrusted with enforcement, recognizing the need for a concerted effort to effectively curtail this grave concern.²⁰

VIII. CHILD PORNOGRAPHY AS OFFENSE UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

The enactment of the Protection of Children from Sexual Offences Act, 2012 by the Government of India was spurred by a pivotal factor - the escalating instances of child abuse and the demand for safeguarding children within the realm of media and public discourse. This legislative framework casts a net over sexual abuse, sexual harassment, and pornography-related offenses. The Act encompasses a set of guidelines and protocols to guide law enforcement and the judiciary in dealing with offenders. Specialized children's courts have been established to address these matters; however, the effective execution of these regulations

²⁰ Debarati Halder, *Child Sexual Abuse and Protection Laws in India* 144-145 (SAGE Publications, 2018)

remains a significant challenge, undermining the overall security of children against sexual exploitation within the nation.

In 2007, the National Commission on the Rights of the Child emerged as an independent entity, entrusted with the task of ensuring that children's rights enshrined in both the Constitution of India and the United Nations Convention on the Rights of the Child align harmoniously with the various rules, legislations, and programs. Notably, the Commission was also assigned the responsibility of overseeing the enforcement of the Protection of Children from Sexual Offences Act, 2012. This legislation marked a notable shift, extending its protective scope to cover cases of sexual exploitation, including child pornography, which previously required the occurrence of a sexual offense involving penetration for charges to be brought forward.²¹

Under the Act, engaging in acts such as displaying pornography to a child, enticing a child with pornographic intentions, viewing a child engaging in sexual activities via various means, or issuing threats involving explicit depictions of a child's body parts on any media platform constitutes sexual harassment. Such offenses warrant imprisonment for up to three years. The Act also explicitly addresses situations where an individual exploits a child for their own sexual gratification, which encompasses creating representations of a child's sexual organs, engaging in real-life sexual acts, with or without penetration, or producing obscene representations of a child. For such acts, the punishment entails imprisonment for five years and can extend to seven years along with a fine upon repeat conviction. Moreover, the legislation delineates provisions for instances where a person directly engages in pornographic activities with a child, involving sexual assault through penetration for pornographic purposes. Here, the prescribed penalty is a minimum of ten years' imprisonment, which can extend to a life sentence. If the sexual exploitation is deemed aggravated, the offender faces the prospect of rigorous life imprisonment in conjunction with a fine.²²

Section 15 of the Act addresses the possession of pornographic material for commercial purposes, stipulating imprisonment for up to three years and/or a fine. Any abetment in connection with the aforementioned offenses is treated as if the person had committed the offense themselves. Lastly, in cases of an attempt to commit a sexual act, the legislation provides for a penalty of either half of a life sentence or the maximum duration of imprisonment determined by the court, along with a fine as deemed appropriate.

²¹ Francis Pakes, *Comparative Criminal Justice* 1 (2nd Ed., Willan Publishing 2010).

²² *Supra* note 8.

IX. JUDICIAL APPROACHES TOWARDS THE PROBLEM

While legislative measures have been enacted to address these concerns, the practical enforcement of such laws remains a subject of scrutiny. For instance, Section 15 of the 2012 POCSO Act, which pertains to the storage of pornographic content involving minors for commercial purposes, has yet to witness any cases brought before the High Court or Supreme Court. This apparent lack of cases indicates potential inefficiencies in the implementation and oversight of these laws. The judiciary has demonstrated a stringent stance when confronted with child pornography-related matters, given the substantial evidence often present. Nevertheless, the true challenge lies in successfully bringing these issues to light, as they are frequently avoided or dismissed in various contexts.

Instances of significant judicial interventions are relatively sparse at the High Court and Supreme Court levels. Notable cases include the matter of *State of A.P. v. Mangali Yadagiri*²³, where a 14-year-old SC/ST girl was raped and photographed to prevent her from reporting the crime. The case was referred to the High Court of Hyderabad, which ruled for it to be tried in a POCSO Special Court. In the case of *P. Shanmugavel Raj v. State and Ors.*²⁴, a Criminal Revision petition was filed against the trial's committal for the rape of a 13-year-old girl. The Madras High Court directed the case to be tried in a Special Court as provided for in the act.

In *Hector Firdaus Kothavala v. State of Maharashtra*²⁵, the matter concerned anticipatory bail for an offense under the POCSO Act. In this disturbing case, a father allegedly made sexual advances towards his own children, aged 4 and 6. Though the young victims might not have fully comprehended the severity of the acts, the heinous conduct came to light through the mother, leading to legal action. The accused secured anticipatory bail. Similarly, in *Shashi and Ors. v. The State of Karnataka*²⁶, a distressing incident unfolded involving friends of the victim's father. They lured the victim into a forest, sexually assaulted her, and recorded the vile act. Charges were pressed under the POCSO and IT Acts. Despite this, the Karnataka High Court granted bail to the accused, and the final verdict is still pending.

The High Court in *Shibu Soren v. Central Bureau of Investigation*²⁷ ruled that a person can be prosecuted for promoting or transmitting child pornography through electronic media. This case expanded the scope of child pornography offenses to include online dissemination and

²³ 2016(1) ALD (CrI) 314(A.P).

²⁴ Criminal Revision Case (MD) No.743 of 2013.

²⁵ Criminal Anticipatory Bail Application No.712 of 2013.

²⁶ Criminal Petition No.5959/2022.

²⁷ 2007 (143) DLT 37

distribution. Further in the case of *State of Tamil Nadu v. Suhas Katti*²⁸, the Court emphasized that even mere possession of child pornography is a punishable offense. The court recognized the importance of protecting children from sexual exploitation and reiterated the need for strict action against offenders.

In *Pardeep Kumar v. State of Himachal Pradesh*²⁹, the Himachal Pradesh High Court held that viewing or accessing child pornography is an offense under the POCSO Act, regardless of whether the person downloaded or possessed the content. This judgment clarified that mere consumption of child pornography is punishable under the law.

In the matter of *Kamlesh Vaswani v. UOI & Ors.*³⁰, the Hon'ble Supreme Court directed that the National Commission for Women to give its suggestions to the Union of India for issues related to Child Pornography and means to curb the same.

These cases underscore the pressing need for consistent and effective implementation of legal provisions related to child pornography. While certain instances showcase judicial resolve, the challenges in obtaining justice for such heinous crimes remain evident.

X. THE EFFECTS OF CHILD PORNOGRAPHY ON CHILDREN

Child pornography stands as a catalyst for the most malignant aspects of character development, bearing profoundly adverse consequences for children;

Psychological Trauma

The exposure of children and adolescents to pornography can create a perplexing and distressing encounter, exerting detrimental effects on their growth. The context of the material they encounter might be elusive to them, leading to confusion spurred by the unexpected sexual arousal they experience. This perplexity can precipitate uncertainty about their own sexual emotions and inclinations, possibly leading to engaging in sexual behaviors with peers or embracing precarious sexual conduct during their adolescent years.

It is imperative for adults who engage with adult-oriented pornography to take stringent measures to prevent children's access to such content. This entails employing measures like content filtering, erasing browsing histories, and utilizing technical barriers to obstruct access. Ensuring that children remain shielded from adult-oriented or sexually explicit material is of utmost importance within domestic environments.

²⁸ C No. 4680 of 2004

²⁹ Cr.MP(M) No. 1724 of 2020

³⁰ WP C No.177/2013

Re-Victimization

The phenomenon of sexual re-victimization isn't confined by age boundaries. While its prominence is notable among survivors of childhood abuse, individuals subjected to adult sexual abuse can also be vulnerable to re-victimization. The intricacies underlying the recurrence of such experiences are still under scrutiny, encompassing factors such as age, mental well-being, personality, social networks, and the severity and duration of the initial trauma. Each individual's journey is distinctive, and ongoing research postulates that the psychological aftermath of the initial trauma might contribute to re-victimization irrespective of age.

Long-term Effects on Development and Well-Being

Childhood sexual abuse casts an extensive spectrum of detrimental impacts on mental health, encompassing depression, culpability, shame, self-condemnation, eating disorders, somatic ailments, anxiety, dissociation, suppression, denial, sexual dysfunctions, and relational complexities.

Among the long-term repercussions, depression is notably prevalent, often leading survivors to internalize the abuse and foster self-deprecating thoughts, ascribing a diminished sense of self-worth. This can prompt them to avoid social interactions, feeling devoid of any value to contribute. Feelings of guilt, shame, and self-blame can also manifest as survivors grapple with a sense of personal accountability for the abuse inflicted upon them. In scenarios where the perpetrator holds a position of esteem and trust, children may struggle to perceive them negatively, further complicating their understanding that the abuse was not their fault. This internalization can generate a cycle of negative self-perception, potentially culminating in self-destructive behaviors and thoughts of suicide. Survivors of child sexual abuse necessitate seeking assistance, be it through counseling, therapy, or other forms of support, to embark on a journey of healing and resilience in the face of the trauma they have endured.³¹

XI. EFFORTS TO COMBAT CHILD PORNOGRAPHY IN INDIA

The government consistently engages in initiatives to enhance awareness about child pornography through campaigns and collaborations:

Role of Law Enforcement in India

Within the Indian Penal Code (IPC), Section 317 addresses the offense of exposing or forsaking a child below the age of 12 years. This provision stipulates that any parent or individual who

³¹ *Supra* note 2

leaves or abandons a child under 12 years of age with the intent of abandonment shall face penalties, including imprisonment for a duration of up to seven years and the imposition of fines. This legal provision is established to safeguard children from the peril of abandonment or exposure to harm by their parents or caregivers.

Activism and Awareness Campaigns

The Me Too movement signifies a social uprising aimed at amplifying consciousness about the pervasiveness and repercussions of sexual violence, ultimately striving to instigate transformative change. The movement, propelled by the courage and determination of survivors and their supporters, aims to catalyze a shift in societal attitudes and practices regarding sexual harassment and assault. At its core, the movement offers solace and affirmation to survivors of sexual violence while illustrating the magnitude of the issue. Moreover, its aspiration is to empower survivors to step forward, fostering an environment where instances of sexual misconduct are not trivialized but are treated with utmost seriousness.³²

International Collaboration

In 1992, India ratified the United Nations Convention on the Rights of the Child (UNCRC), a comprehensive framework delineating the civil, political, economic, social, and cultural rights of children. In furtherance of this commitment, India ratified the Protocols to the UNCRC in 2005, addressing aspects like children's participation in armed conflicts and countering the sale of children, child prostitution, and child pornography. Furthermore, India's endorsement of the International Conventions on Civil and Political Rights, as well as Economic, Social, and Cultural Rights, reinforces its dedication to safeguarding children's rights. Notably, India has also ratified the Optional Protocol to the Convention on the Rights of the Child concerning children's involvement in armed conflicts and the Optional Protocol related to the sale of children, child prostitution, and child pornography.³³

In addition, India's endorsement of the SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prosecution underscores its commitment to thwarting human trafficking. This convention aims to prevent and combat the trafficking of women and children, while simultaneously facilitating the prosecution of offenders.

³² *Supra* note 3.

³³ Vinod Kapoor and Priya Nagpal, *Child Pornography: A Nuisance*, 3 IJSR 1784, 1784-1785 (2014).

XII. RAJYA SABHA COMMITTEE PRESENTS HOLISTIC MEASURES TO TACKLE CHILD PORNOGRAPHY AND ENSURE CHILDREN'S SAFETY ONLINE

The Adhoc Committee of the Rajya Sabha, led by Chairman Shri M. Venkaiah Naidu, issued a comprehensive report with 40 key recommendations to address the grave concern of child pornography and its impact on children's safety. The committee emphasized the importance of legislative amendments, technological advancements, and social measures to curb the rampant dissemination of explicit content involving minors. The report underscored the significance of parents' involvement in guiding children's exposure to explicit content, which could arise from various media forms. The committee called for mandatory monitoring apps on all devices and filters to control children's access to pornography. It advocated stringent regulation of online payments for purchasing child pornography material, as well as suggested amendments to the Protection of Children from Sexual Offences Act and the Information Technology Act to safeguard children from sexual abuse.

Furthermore, the committee proposed measures to make Internet Service Providers (ISPs) responsible for preventing access to child pornography content and recommended the establishment of a national level nodal agency to counter this menace. International cooperation against child abuse was also urged. The report recognized the need for integrated actions, rather than fragmented efforts, to effectively combat child pornography. It urged the Indian Prime Minister to address this issue in his 'Man Ki Baat' broadcast and to spearhead a global alliance against child pornography. The recommendations encompassed legislative, technological, and institutional aspects, targeting both the access of children to explicit content and the distribution of pornographic material involving children. In conclusion, the Adhoc Committee's comprehensive approach strived to protect children from the damaging effects of explicit content by advocating for legal reforms, technological innovations, and educational initiatives. The committee's work highlighted the significance of coordinated efforts to ensure children's safety in the digital age.³⁴

XIII. COMPARATIVE ANALYSIS OF CHILD PROTECTION LEGISLATION IN THE UK, INDIA, AND SOUTH AFRICA

Child protection laws in the United Kingdom, India, and South Africa share similarities and distinctions, reflecting the societal needs of each nation. The UK introduced the Sexual Offences Act in 2003, South Africa enacted the Criminal Law (Sexual Offences and Related

³⁴ *Supra* note 12.

Matters) Amendment Act in 2007, and India passed The Protection of Children from Sexual Offences Act in 2012. By examining and comparing these legislations, we can highlight variations and discrepancies in their approaches.

In the UK, the Sexual Offences Act, 2003, was introduced to prevent harm to children from sexual acts. Similarly, the South African Act addresses children's vulnerability and emphasizes combating child abuse. In contrast, the Indian Act responds to an urgent need to curb the rising cases of child sex abuse. In the UK, offenses against children under 13 and those aged 16 and under are treated distinctly, with more severe penalties for the latter. In South Africa, children are defined as under 18, but an additional category includes those aged 12–16 engaging in sexual activities with each other with consent. In India, the age of consent varies, with cases involving children aged 16–18 scrutinized for consent between the child and the adult. The UK Act outlines offenses such as non-penetrative acts on children under 13 and those aged 16, carrying a potential life sentence. Sexual activity in front of a child or making a child witness a sexual act is also considered offenses. In India, exposing a child to explicit material is deemed sexual harassment. South Africa's Act addresses various offenses related to sexual activities involving children and includes penalties for facilitating sexual acts with a child. The theme of trust positions recurs across legislations. Both the UK and India's Acts punish individuals in positions of trust who engage in sexual acts with children. In South Africa, however, there is a notable absence of provisions addressing abuse of power.³⁵

Each legislation reflects unique societal contexts. The UK Act is comprehensive, covering various offenses with stringent penalties. The South African Act focuses on actions by third parties facilitating offenses, but lacks provisions addressing abuse of power. The Indian Act aims to harmonize aspects of the UK and South African laws to meet local needs. Notably, the age of consent varies across the three countries, and the definition of "child" also differs. The child protection legislations of the UK, India, and South Africa align with their respective societal demands. While they share common goals, the variations in definitions, provisions, and penalties emphasize the distinct approaches each country has taken to safeguard children from sexual offenses.

XIV. WAY FORWARD

Parents play a pivotal role in positively impacting their children's understanding of sensitive topics like pornography through ongoing conversations. Rather than being a single

³⁵ Rupashree Sahoo et. al, *Child pornography through cyberspace - a comparative analysis of laws and criminal justice responses in India, USA, UK and Japan*, 14 IJESDF 433, 438-439 (2022).

comprehensive discussion, addressing this issue involves a series of dialogues that can naturally stem from various forms of media content such as songs, music videos, movies, and inadvertent exposure to explicit images. By nurturing a critical perspective in their children towards media consumption, parents enable them to discern between fiction and real, healthy relationships built on equity and respect.

To counter the dissemination of child sexual abuse material, a comprehensive set of measures is proposed. The National Cyber Crime Reporting Portal is designated as the central platform for reporting electronic material under the POCSO Act. The Union Government is granted authority to block websites and intermediaries hosting child sexual abuse material. Enabling law enforcement agencies to break end-to-end encryption facilitates tracing of child pornography distributors. The implementation of monitoring apps on devices sold in India is proposed to ensure restricted access to explicit content. Cooperation between ministries and blockchain analysis companies aims to identify users engaged in cryptocurrency transactions for purchasing child pornography.

Furthermore, social media platforms and online streaming services are urged to adopt minimum technologies for detecting child sexual abuse material and to establish separate adult sections to prevent underage access. The National Crime Records Bureau is tasked with recording and reporting cases of child pornography annually. The creation of a national hotline number facilitates the reporting of child sexual abuse and the distribution of explicit content. Awareness campaigns launched by the Ministries of Women and Child Development and Information and Broadcasting aim to educate parents about recognizing signs of child abuse and online risks.

Moreover, schools are encouraged to conduct regular training programs for parents to increase awareness about hazards associated with early access to smartphones and the internet. Drawing insights from international experiences, policies restricting smartphone usage among underage children are proposed. In sum, a combination of active parenting, stringent regulations, technological interventions, and educational initiatives is deemed crucial to safeguarding children from the detrimental impact of explicit content and ensuring their overall well-being in the digital age.

XV. CONCLUSION

Child pornography is widely recognized as a heinous crime with severe consequences for victims. Technology's progress has intensified its prevalence and harm. The repercussions for victims are profound, causing depression and guilt. Child pornography is intertwined with the sexual abuse of minors, with some content depicting abuse, amplifying trauma. The issue aligns

with the UN Convention on the Rights of the Child. Despite the benefits of the Internet, it facilitates child pornography, necessitating legal measures. In India, child pornography is a pressing issue with legal implications. Laws address creation, distribution, and possession of explicit content involving minors. Challenges include enforcement difficulties and stigma around reporting. International law plays a role, but universal adoption is crucial. India's response involves legal frameworks, specialized courts, and child-centered approaches. Despite provisions, challenges persist, requiring collaborative efforts for effective prevention and protection.

The judicial approaches towards addressing child pornography and its effects on children, efforts to combat child pornography in India, and a comparative analysis of child protection legislation in the UK, India, and South Africa. While legislative measures exist, practical enforcement remains a concern. The judiciary's response varies, with some cases reaching High Court and Supreme Court levels, emphasizing the need for consistent implementation. Child pornography negatively impacts children psychologically, potentially leading to confusion, revictimization, and long-term mental health issues. Child protection efforts in India involve laws against abandonment, the Me Too movement, and international collaborations. The Rajya Sabha Committee's recommendations aim to tackle child pornography through legislative, technological, and social measures. Comparing legislation in the UK, India, and South Africa highlights variations and societal contexts. The response concludes with a proposed way forward, including parental engagement, technological interventions, and educational initiatives to safeguard children from explicit content and promote their well-being in the digital age.
