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# Safeguarding the Vulnerable: Strengthening Legal Frameworks to Mitigate the Menace of Child Pornography in India

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## ABSTRACT

*Child pornography is a deeply disturbing and unlawful menace globally and India also is not immune to this deplorable crime. Several factors are linked to the involvement of adults in child pornography. These individuals possess a significant sexual attraction to children across various age ranges. Notably, a considerable number of offenders perceive this attraction as a form of “love” for children. Surprisingly, the majority of them fail to comprehend why society does not accept or understand this affection towards children. The surge in child pornography is based on diverse and complex reasons such as societal, technological, economic, and cultural factors. It is imperative to adopt a comprehensive strategy and ensure that all stakeholders like the precise core verticals of the Government Bodies, Law Enforcement teams, the relevant NGOs, various Communities’ leaders and respectable individuals from the society to effectively address this issue. This study delves into potential causes including advancements in technology, proliferation of online platforms, inadequate awareness, economic influences, weak legal enforcement, cultural norms, transnational networks, psychological elements, and more. As aforementioned, to counter the escalation of child pornography, it is extremely important to adopt a comprehensive approach, entailing legal revisions, widespread public awareness initiatives, educational programs, robust support systems for victims, integration of advanced technologies, and collaboration on an international level. We need an ongoing strengthening of International and domestic legal frameworks and a well supported mechanism. internationally. In a country like India the vital aspects of the said strategy must encompass establishing clear and inclusive definitions of child pornography, providing comprehensive support to victims, and consistently monitoring and evaluating the legal structure.*

**Keywords:** *Child pornography, legislations, socio economic and technological factors, combating strategies.*

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## I. INTRODUCTION

Child pornography is a deeply distressing and illegal issue that involves the creation, distribution, and consumption of explicit or sexually suggestive images or videos of minors for sexual gratification or exploitation. This abhorrent practice is a grave violation of the rights and well-being of children and has significant psychological, emotional, and physical consequences on the victims involved. The impact of child pornography is not confined to one particular region or country—it is a global issue affecting numerous nations, including India. The terms ‘sexual violence against children’ or ‘child sexual abuse and exploitation’ or ‘child pornography’ etc encompass a wide range of abusive actions occurring in various settings and relationships. According to UNICEF about 1 in 10 girls under the age of 18 have been forced to engage in sex or perform other sexual acts<sup>3</sup>. The exploitation and abuse of minors in these illicit activities reflect a failure of society to protect its most vulnerable members. The victims of child pornography often suffer lifelong trauma and psychological scars, impacting their overall development and well-being.<sup>4</sup>

In India, child pornography has emerged as a serious concern due to various factors. “NCRB data showed an increase of 16.2 percent in registered cases in crimes against children”<sup>5</sup>. According to 2021 statistics Delhi (160) has the maximum number of Child pornography cases in India followed by Karnataka (159) and Kerala (129).<sup>6</sup>

## II. REASONS FOR THE SURGE IN CHILD PORNOGRAPHY

There are multifarious reasons for the upswing in child pornography. These reasons are complex and diverse. Some of them are elaborated upon below.

**1. Societal Factors:** Child pornography’s pervasiveness is significantly influenced by societal factors deeply embedded within a community’s socio-economic and cultural structure. Poverty and economic fragility, for instance, play a central role in rendering individuals and families vulnerable to exploitation, with desperate circumstances often pushing them towards distressing choices that can include involvement in child pornography. Limited education and

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<sup>3</sup> United Nations International Children's Emergency Fund <https://www.unicef.org/protection/sexual-violence-against-children> (Dated:24 September 2020)

<sup>4</sup> “Child Welfare Information Gateway. Long-term consequences of child abuse and neglect”. Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau. (2019).

[https://www.childwelfare.gov/pubpdfs/long\\_term\\_consequences.pdf](https://www.childwelfare.gov/pubpdfs/long_term_consequences.pdf)

<sup>5</sup> “2022 Country Reports on Human Rights Practices: India” , Bureau of Democracy, Human Rights and Labor <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/india>

<sup>6</sup> Tanushree Basuroy “Number of Child Pornography Offences Reported in India 2021, by Leading State” , Oct 14, 2022 <https://www.statista.com/statistics/1097691/india-number-of-child-pornography-offences-by-leading-state/>

a lack of awareness regarding the gravity of child pornography further contribute to its prevalence, especially in disadvantaged communities where the severity and consequences of engaging in or promoting such illicit activities may not be fully understood. Cultural taboos and norms within various societies can also perpetuate the problem, hindering open discussions about child exploitation and making it difficult to address the issue effectively. Furthermore, the experience of social exclusion worsens the susceptibility of marginalized individuals and communities, including refugees and those residing in underprivileged areas, as they often lack crucial resources, educational opportunities, and support systems. Finally, disrupted family setups, neglect, and inadequate supervision can leave children seeking validation or attention elsewhere, rendering them susceptible to the influence of individuals seeking to exploit them through engaging in explicit activities.

**2. Technological proliferation :** According to UNICEF “Year on year, there are increases in reports of online child sexual abuse content. As digital technology becomes more ubiquitous, it is increasingly connected with cases of child sexual abuse and exploitation.”<sup>7</sup>

The increase in child pornography is significantly linked to rapid technological advancements. Technology has revolutionized the way we communicate, share information, and access the internet. During and after the COVID-19 era, there has been a remarkable uptick in the integration of technology, extending its reach to remote rural areas as well. Unfortunately, these advancements have also provided perpetrators with new and sophisticated means to produce, distribute, and consume child pornography. The proliferation of online platforms and social media has made it easier for offenders to distribute child pornography discreetly and to a wider audience. The internet offers a level of anonymity to those engaged in illegal activities, including sharing child pornography. Encryption technologies and anonymous networks allow offenders to hide their identities. The Dark Web, has become a hub for illegal activities, including the distribution of child pornography. Hidden services and encryption on the Dark Web provide a haven for criminals to trade explicit content without fear of detection. The Eric Eoin Marques case was an eye opener regarding the dark web operations relating to child pornography.<sup>8</sup> On February 6, 2020, Eric Eoin Marques, a 36-year-old individual from Dublin,

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<sup>7</sup> United Nations Children’s Fund (UNICEF) “Ending Online Child Sexual Exploitation and Abuse”, December 2021 <https://www.unicef.org/documents/ending-online-child-sexual-exploitation-and-abuse>

<sup>8</sup>Spanning from July 24, 2008, to July 29, 2013, Marques managed a free anonymous hosting service situated on the dark web, a hidden portion of the internet accessible exclusively through specialized software. This allowed both users and website operators to maintain their anonymity and avoid detection. Marques's hosting service provided a platform for websites that enabled users to view and distribute explicit content depicting the sexual abuse of minors, including prepubescent children and instances of violent sexual abuse. The investigation uncovered that this hosting service harbored more than 200 websites dedicated to child exploitation, housing millions of images depicting such illicit activities. Notably, over 1.97 million of these images and/or videos were

Ireland, admitted guilt for his involvement in a conspiracy to promote child pornography.<sup>9</sup>

Technological advancements have led to sophisticated imaging and video editing tools that allow offenders to produce realistic and manipulative explicit material involving minors. Deepfake<sup>10</sup> technology, for instance, can superimpose a minor's face onto explicit content, further blurring the line between reality and falsification.<sup>11</sup>

**3. Cultural factors:** Cultural norms and attitudes are pivotal in shaping the perception of sexual exploitation and abuse, encompassing child pornography. Within certain societies, patriarchal norms and the objectification of minors contribute to a distressing higher tolerance or acceptance of child pornography<sup>12</sup>. In some cultures, inadvertent or deliberate portrayal of minors in a sexualized light normalizes and desensitizes individuals, blurring the boundaries of appropriateness and potentially encouraging the creation or consumption of child pornography. A lack of comprehensive sex education and awareness about child exploitation within specific cultural contexts leaves individuals uninformed about the legal, ethical, and moral implications of child pornography. Societies that attach shame to conversations about sexuality and abuse, hinder people from openly acknowledging the problem of child pornography. This fosters a culture of silence, providing a cover for offenders to victimize minors without the risk of being exposed or facing consequences.

**4. Economic factors:** Economic factors significantly fuel the prevalence of child pornography, influencing both its demand and supply. The production and distribution of explicit content involving minors are driven by profit incentives, attracting criminal networks and individuals seeking substantial financial gains. The rise of the dark web and cryptocurrencies has facilitated anonymous transactions, providing a safe haven for illegal activities such as child pornography, with cryptocurrencies enabling untraceable transactions, evading detection. The global nature of the internet and digital platforms has amplified the child pornography market's reach, enabling offenders to operate internationally and increase economic gains from these illicit activities.

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previously unknown to law enforcement. A significant portion of this content featured acts of sadistic abuse against infants and toddlers.

<sup>9</sup> Press Release by Office of Public Affairs, US Department of Justice "Dark Web Child Pornography Facilitator Sentenced to 27 Years in Prison for Conspiracy to Advertise Child Pornography" Sep 16, 2021 "https://www.justice.gov/opa/pr/dark-web-child-pornography-facilitator-sentenced-27-years-prison-conspiracy-advertise-child-0"

<sup>10</sup> Deepfakes use deep learning artificial intelligence to replace, alter, or mimic someone's face in video or voice in audio.

<sup>11</sup> Dave Johnson and Alexander Johnson "What are deepfakes? How fake AI-Powered Audio and Video Warps our Perception of Reality" Jun 15, 2023, <https://www.businessinsider.com/guides/tech/what-is-deepfake?IR=T>

<sup>12</sup> S Shafe and G Hutchinson "Child Sexual Abuse and Continuous Influence of Cultural Practices: A Review" July 28, 2015 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4663956/>

### **III. LEGAL FRAMEWORK ADDRESSING CHILD PORNOGRAPHY IN INDIA**

POCSO (Protection of Children from Sexual Offences) Act 2012 and the IT (Information Technology) Act 2000 in India are two important pieces of legislation that address issues related to child sexual abuse and cybercrime, including cyber pornography involving minors.

#### **(A) Protection of Children from Sexual Offences Act, 2012 (POCSO):**

The POCSO Act was enacted in India in 2012 to provide a legal framework for the protection of children from sexual abuse and exploitation. It defines various forms of sexual abuse against children and prescribes stringent punishment for offenders. The act includes provisions to address child pornography, both online and offline.

The POCSO Act criminalizes the use of a child for pornographic purposes. Section 13 of the Act specifies the actions that qualify as using a child for pornographic purposes. It encompasses any person who engages a child in sexual activities for personal gratification, whether through printed or electronic media, intended for distribution or personal use. This includes displaying a child's sexual organs, indecently representing a child, or involving a child in actual or simulated sexual activities where penetration is not necessary.

Section 14 of the POCSO Act imposes penalties for offenses under Section 13. Offenders face a minimum 5-year imprisonment and a fine, escalating to a minimum 7-year imprisonment and a fine for subsequent convictions. Additionally, if a person involved in the pornographic act also commits offenses under other sections of POCSO Act.

Section 15 of the POCSO Act penalizes the storage or possession of pornographic material involving a child in three situations. First, possessing material to commit child pornography incurs a minimum fine of Rs. 5000, with subsequent offenses attracting a minimum fine of Rs. 10,000. Second, storing or possessing material for display or distribution carries a punishment of up to 3 years of imprisonment or a fine, or both. However, storing for reporting or evidentiary purposes is exempt. Lastly, possessing material for commercial purposes leads to imprisonment ranging from 3 to 5 years or a fine, or both. Repeat offenses carry a punishment of 5 to 7 years of imprisonment and a fine.

#### **(B) Information Technology Act, 2000:**

Section 67B of the IT Act penalizes various actions involving sexually explicit material featuring a child in electronic form. This includes publishing, transmitting, creating, collecting, browsing, downloading, advertising, promoting, exchanging, and distributing such material. It also covers forming online relationships with a child for sexually explicit acts and online abuse

of a child. Convictions under section 67B result in 5 years of imprisonment and a fine of ten lakh rupees for the first offense, and 7 years of imprisonment and a fine of ten lakhs for subsequent convictions.

Under the IT Act, publishing or transmitting sexually explicit material depicting children, whether through electronic means or otherwise, is a punishable offense. The act includes provisions to penalize those involved in creating, publishing, or distributing explicit content involving minors, regardless of the medium.

In the context of cyber pornography involving minors, both acts play crucial roles in identifying, prosecuting, and penalizing individuals or groups engaged in creating, sharing, or distributing explicit content that involves minors. The penalties under these acts can include imprisonment and/or fines, depending on the severity of the offense.

### **(C) Effectiveness of the legislations**

The effectiveness of the Protection of Children from Sexual Offences (POCSO) Act and the Information Technology (IT) Act in addressing child pornography and related offenses in India depends on various factors. A few of these factors are outlined below:

- **Awareness and Sensitization:** Effectiveness is tied to the level of awareness and sensitization among law enforcement agencies, judicial bodies, stakeholders, and the general public regarding the provisions and implications of these Acts. Efforts are continuously made to educate and raise awareness about child sexual abuse and related laws.
- **Enforcement and Capacity Building:** Adequate enforcement of these acts is critical. Law enforcement agencies need to be adequately trained and equipped to handle cases of child pornography effectively. Capacity building and training programs help in improving the competence of law enforcement personnel in dealing with these cases.
- **Technological Advancements and Challenges:** The IT Act has been amended to keep up with evolving technology and cybercrimes. However, cybercrimes are constantly evolving, presenting new challenges. Law enforcement needs to adapt and stay updated to effectively combat cyber-related offenses, including child pornography.
- **Coordination and International Cooperation:** Cooperation and coordination at the national and international levels are important for addressing cross-border issues related to child pornography. Collaborative efforts enhance the effectiveness of combating such crimes and bringing perpetrators to justice.

- **Room for Improvement:** Despite the presence of these laws, there is always room for improvement, including continuous review and potential amendments to enhance their effectiveness and address emerging challenges.

#### **IV. STRATEGIES TO EFFECTIVELY COMBAT CHILD PORNOGRAPHY**

The battle against child pornography is a complex and multifaceted endeavor that necessitates a collective effort is essential in creating a safer digital landscape, shielding children from harm, and preserving their innocence. Here, we have expounded upon several pivotal strategies.

- **Strong Legal Framework:** Regular updates and amendments to legislation to keep pace with technological advancements are crucial.
- **Robust Law Enforcement:** Provide adequate training and resources to law enforcement agencies to effectively investigate and prosecute child pornography cases.
- **International Cooperation:** Collaborate with international agencies and organizations to share information, intelligence, and best practices in combating child pornography, particularly given the global nature of the internet. International organizations like the National Center for Missing & Exploited Children (NCMEC) USA maintain a Cyber Tipline, and a Memorandum of Understanding exists between the National Crime Records Bureau (NCRB) in India and NCMEC in the USA, allowing access to material collected by NCMEC, is a good start in this area.
- **Public Awareness and Education:** Public awareness campaigns through diverse mediums like television, radio, and social media, stressing the legal aspects and urging reporting of suspicious activities involving minors is necessary. Educating parents, teachers, and students on recognizing signs of child pornography and promoting internet safety within educational curricula is essential. Interactive workshops for children, community involvement, collaboration with online platforms, and ensuring accessibility in local languages further strengthen this multifaceted approach.
- **Internet Service Provider (ISP) Cooperation:** Collaborate with ISPs and online platforms to report and remove child sexual abuse material swiftly.
- **Technology and Tools:** Invest in and utilize advanced technologies such as AI and machine learning to identify and remove child pornography from the internet. Develop and utilize databases of known child exploitation materials to aid in detection.
- **Support for Victims:** Establish support systems and counseling services for victims of child pornography, helping them recover emotionally and psychologically from the



trauma.

- **Preventive Measures:** Focus on preventing child pornography through programs that educate children about online safety, the consequences of sharing explicit content, and the importance of reporting suspicious activities.
- **Industry Partnerships:** Engage with tech companies, social media platforms, and online communities to encourage self-regulation and proactive measures to combat child pornography.
- **Research and Data Collection:** Invest in research to understand the dynamics and prevalence of child pornography, enabling evidence-based policy decisions and targeted interventions.
- **Parental Controls and Guidance:** Promote the use of parental control tools and parental guidance to ensure a safe online environment for children.
- **Community Engagement:** Involve communities, NGOs, and civil society in the fight against child pornography, creating a collective responsibility to protect children from exploitation.
- **Harmonizing domestic legislation with global norms:** International and regional agreements aim to set a universal minimum standard for safeguarding children against sexual exploitation and abuse. When nations endorse these global and regional treaties, they are expressing their dedication to combat child sexual exploitation and abuse (CSEA). They affirm this dedication by ensuring that their domestic laws align with the principles outlined in these international agreements. The objective is to have all countries adhere to identical well-defined standards and definitions, creating a common global framework that facilitates the prosecution of these offenses.<sup>13</sup>

## V. CONCLUSION

- To effectively counter the escalating issue of child pornography, it is imperative to adopt a comprehensive and forward-looking approach. This approach should encompass several key elements, including legislative measures to combat technology-facilitated crimes, strengthened collaboration between technology companies and law enforcement agencies, increased investment in technology for the detection and prevention of online exploitation, and the implementation of robust educational initiatives to raise awareness

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<sup>13</sup> Mar Negreiro “Combating Child Sexual Abuse Online”, EPRS | European Parliamentary Research Service June 2022, [https://www.europa.eu/RegData/etudes/BRIE/2022/738224/EPRS\\_BRI\(2022\)738224\\_EN.pdf](https://www.europa.eu/RegData/etudes/BRIE/2022/738224/EPRS_BRI(2022)738224_EN.pdf)

about the inherent risks associated with technology. The ultimate objective is to strike a delicate balance between harnessing the benefits of technological progress and ensuring its ethical use, all while placing the safety and welfare of children at the forefront. Legislation plays a pivotal role in this strategy, as it provides a legal framework to prosecute those involved in child pornography and to deter potential offenders. This involves creating and implementing laws that specifically address crimes committed using digital technology and the internet. Collaboration between technology companies and law enforcement is equally crucial. Tech companies possess the expertise and resources necessary to develop tools and systems that can help identify and combat child pornography. Working closely with law enforcement agencies enables a more efficient response to online crimes, ensuring that perpetrators are brought to justice.

- Investment in technology is essential for developing advanced tools and methods to detect, prevent, and combat online exploitation of children. This might involve the development of sophisticated algorithms and software designed to flag and remove illicit content from online platforms, as well as tools that can trace the digital footprint of offenders. Education initiatives are a key preventive measure. By raising awareness about the dangers of technology, the signs of online exploitation, and responsible online behavior, individuals can be better equipped to protect themselves and others, especially children. These initiatives should target both children and adults to create a more informed and vigilant society.
- Incorporating these strategies requires the active involvement of various stakeholders, including governments, law enforcement agencies, the private sector, civil society organizations, and the general public. Cooperation among these groups is essential to address the multifaceted challenges posed by child pornography effectively. By coming together and pooling their resources, expertise, and efforts, a concerted global effort can be made to combat child pornography and create a safer digital environment for children.

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