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Sex Trafficking of Children: A study on Cyber Child Pornography in India

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ABSTRACT

Human trafficking is the world's third most serious crime. The fight against human trafficking and human rights are inextricably linked. Child pornography on the has become one of the most noticeable human rights violations in the present day culture.. Child pornographers have found a convenient forum for posting gruesome pictures of sexual abuse of children with the increased access to the internet and various of its platforms over the last decade. Although the governments and the law enforcement bodies worldwide have time and again tried to limit the availability of the pornographic content over the internet but the same has failed. This paper examines the chief issues in relation to technical, legal and social challenges that people and law enforcement agencies face with the main focus being India when it comes to cyber child pornography. It also suggests a new strategy for fighting child pornography on the internet.

Keywords: *vulnerable group, human rights, commercial sexual exploitation, child trafficking, cyber child pornography.*

I. INTRODUCTION

Human rights are portrayed in a negative light in public culture, but the concept of human rights is far more than that. Human rights, it has been said, are based on shaky philosophical foundations and have been reduced to rhetoric. Human trafficking is the world's third most serious crime. It is the act of placing or keeping people in exploitative situations for financial benefit. Within a region, or across borders, trafficking may take place. It targets children, women and men for a variety of reasons that involves exploitative and coerced labour practices by hiring them in plantations, factories and also includes illegal activities such as forced marriage and sexual assault. It has emerged as a major social issue, especially among the children and women. It is among the most severe injustices threatening their human rights and dignity amounting to heinous commodification and commercialization of the lives of innocent human beings. The fight against human trafficking and human rights are inextricably linked. Human rights law has consistently declared the inherent unlawfulness and immorality of an

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individual appropriating the humanity, labour and legitimate personality of another since its inception.

Despite the fact that trafficking is a transnational crime, India, like many other South Asian countries, is increasingly being used by the traffickers as a destination, source and transit point. The onus cannot be put upon the failure of human rights alone as the society is equally responsible for its failure. The employment of smugglers become easier in the face of deep-seated patriarchal ideals and rising abuse of the human rights. As a result, sex trafficking of the most vulnerable groups, i.e., children and women is a heinous crime violating both their dignity and human rights. Commercial sexual exploitation of children is one of the gravest forms of human rights violations to exist. It is a violation of the most basic human rights of our society's most marginalized members and an outrage that must be sharply criticized. It is described as sexual harassment by an adult for monetary gains to the trafficker. Children are used both as commercial and sexual tools. It includes activities such as child pornography, sex tourism, trafficking, and other types of transactional sexual activities in which a child participates. The main challenge in combating the sexual abuse against children is their lack of awareness as the children involved do not realize that they are being exposed to non-consensual or coerced sex. The emergence of the internet and various social media platforms has created new avenues for human rights abuses against minors and women. Cyber child pornography is a global issue. While India's Internet access rate is growing, so is the issue of child pornography. Furthermore, there are several regulations in place to combat this issue but they are often ineffective.

The main aim of this paper to explain and address the issue of cyber child pornography, as well as the factors that contribute to it. The essence of pornography has changed as a result of new technology. In the world of computing, there is also the emergence of a massive market for child pornography.

(A) Literature Review

1. Articles

Schell & Martin (2007)², the authors discuss the issue of cyber child pornography in detail and how it has become a major problem in the present day society. They further state that the current practises that have been adopted by the law enforcement agencies have proved to be insufficient. The authors have proposed the adoption of new technological approach to deal with the issue of cyber child pornography.

² Schell H., Martin V., "Cyber Child Pornography: A review paper of the social and legal issues and remedies and a proposed technological solution", 12(1) Aggression and Violent Behavior 45-63 (2007).

Andrade & Rao (2013)³ discusses the various issues pertaining to child sexual abuse both in the national and international domain. It raises a questions about the limitation of various child protection legislations. It fails to establish a proper link between the child protection legislations and how the same have catered to the issues of human trafficking.

Behera, Rao & Mulmule (2013)⁴ argue that child abuse has been common in India since a long time but it has been recently recognised. It suggests that children need special care and attention and should be protected from online abusers. But this article fails to discuss the issues surrounding pornography as a medium of commercial sexual exploitation of children in detail.

Belur & Singh (2015)⁵, the main argument given by the author is that while sexual abuse of children is not a recent issue in India, the issue of child pornography has only recently been recognized. This article looked at child exploitation as a broad concept that encompassed a subset of child pornography. Although the article discusses the POCSO Act in connect with sexual abuse and child pornography, it fails to highlight how the same has been unable to effectively address these issues of human trafficking and violations of rights.

2. Books

Seth (2015)⁶ discusses the safety of children over the internet. The author uses a variety of case studies and examples to convey details about the benefits and drawbacks of internet use, as well as explore new legislation addressing child pornography, such as the POCSO Act of 2012 and the IT Act of 2000, as well as all foreign and national measures taken in other jurisdictions. Comparing the laws in different nations on online abuse, the author fails to discuss the drawbacks in these laws and how the same failed to effectively counter child pornography.

Adenwalla (2008)⁷ reviews Indian law on sexual exploitation of children and points out its flaws. To make Indian law child-friendly and to provide them substantive remedies, some principles from international law and instruments must be adapted. The author has not researched international law exhaustively, but he has attempted to recognise several concepts that are children friendly.

3. Methods

The research methodology opted by the researcher is non-empirical research. It has been done

³ Andrade C., Rao S., "Childhood Sexual Abuse And The Law: More Problems Than Solutions?", 55(3) Indian Journal of Psychiatry, 214-15 (2013).

⁴ Behera PB, Sathyanarayana Rao TS, Mulmule AN, "Sexual abuse in women with special reference to children: Barriers, boundaries and beyond.", 55(4) Indian J Psychiatry, 316-9 (2013).

⁵ Belur J., Singh B.B., "Child sexual abuse and the law in India: A Commentary", 4 Crime Sci, 26 (2015).

⁶ Karnika Seth, Protection of Children on Internet (Universal Law Publishing 2015).

⁷ Maharukh Adenwalla, Child Sexual Abuse and the Law (Indian Centre for Human Rights and Law 2008).

by analysing the existing legal sources and knowledge. Secondary data has been used by re-analysing, interpreting and reviewing the past data by way of existing publications-text and e-books, scholarly articles, journals, e-library databases and official government documents. The paper aims to analyse the research questions on what, why and how basis. The data has been collected through various e-data sources. The reviews of data has been done from websites, Google Books and Law reports. Furthermore, the most recent material was gathered from various journals and newspapers.

II. FINDINGS

Disseminating or exhibiting any picture of a child engaging in any sexual act through any social media platform or over the internet amounts to serious infringement of their rights. Nonetheless, it is a global reality that affects all social classes. According to a UNICEF report from 2014, about 120 million children are likely to be abused in pornography annually worldwide. The underlying reasons being lack of awareness about the risks and wrongful claims. All this amounts to gross human rights violations of these children. They have the same human rights as all other human beings. Many international treaties have created obligations over the States guaranteeing that children are protected. The Optional Protocol to the Convention on the Rights of the Child on the Selling of Minors, Child Trafficking and Child Pornography is a protocol to which India is a signatory. It focuses upon the states guaranteeing that such actions against children are criminalized and presses upon them a duty to punish or repatriate such criminals. It is an offense that infringes on a child's right to life and liberty by disregarding their right to bodily integrity and a decent life. The Internet is one of the chief reasons for the promotion of child photography as the content is easily available and accessible online. It increases the effectiveness with which it is distributed and allows it to be used anonymously or privately. Each year, approximately 150,000 children and women are trafficked from South Asia, the majority of whom are from India⁸. CSEC⁹ is one of the most common types of human trafficking of children in India occurring on a wide. A report by the Ministry of Women and Child Development¹⁰ shows that 53.22% of the children are exposed to one or more form of sexual abuse. The sexual abuse among children is the highest in the states of Bihar, Andhra Pradesh, Assam and Delhi. According to a 2005 Action Research Study undertaken by the NHRC, the majority of the victims come from economically disadvantaged

⁸ Asian Development Bank, "Combating Trafficking Of Women And Children In South Asia Regional Centres As Paper for Bangladesh India and Nepal". Manila (2002).

⁹ Commercial Sexual Exploitation of Children.

¹⁰ Kacker Loveleen, Vardan Srinivas, Kumar P, "*Study on Child Abuse: India 2007*", Ministry of Women and Child Development, Government of India (2007).

groups such as Scheduled Tribes, Scheduled Castes among others. The average age of the children is between 11-14 years of age¹¹. Since countries like India and various other South Asian countries have fewer laws against child sexual exploitation, these countries are gradually replacing South East Asia as the preferred destination for the tourist sex industry. India is now attracting a significant number of sex tourists. Goa, with its combination of beaches and weak security at the airport for chartered flights, is the most popular destination in India for tourists looking for child prostitutes. As a result, this is a blatant breach of the rights of the most disadvantaged members of society, and it is past time to remedy it.

(A) CSEC challenges in India

The main challenges and concerns with respect to commercial sexual exploitation and sexual abuse of children in India are absence of institutionalised settings to deal with child sexual abuse, absence of comprehensive laws in relation to sexual offences especially child pornography against children. The Indian criminal laws do not address such issues and the existing laws in relation to commercial sexual exploitation of children lack enforcement. In addition to this, the understanding of child rights who are sexually exploited or abused is absent in our society.

(B) Issues of cyber child pornography

For law enforcement authorities, cyber child pornography presents a number of unique challenges such as the lack of law as the main emphasis is on for self-regulation, weak enforcement agencies, uncertainties in legislations and restrictions owing to cross jurisdictional differences in the law and permissiveness levels in relation to child pornography, decentralised nature of the Internet as child pornography is distributed by peer to peer networks that connect computers that do not require a primary server to name a few issues in relation to challenges faced in controlling cyber child pornography.

(C) Judicial Approach

In **Mr. Jayesh S. Thakkar and Another v. the State of Maharashtra & Other**¹², various recommendations to protect children from cyber pornography were given by the Bombay HC which also led to the neck meant of the POCSO Act, 2012¹³. In **Avinash Bajaj v. State (N.C.T. of Delhi)**¹⁴, the need to have efficient laws that meet with the challenge of regulating the use of internet for distributing pornographic materials was highlighted. In **Bachpan Bachao**

¹¹ NHRC, Action Research Study (2005).

¹² Writ Petition No. 1611 of 2001.

¹³ The Protection of Children from Sexual Offences Act, 2012, Act No. 32 Of 2012.

¹⁴ (2005) 3 CompLJ 364 Del.

Andolan v. Union of India¹⁵, the SC ruled that the blanket term “child abuse” encompasses child pornography. The POCSO Act, 2012, was passed by the legislature to shield children from exploitation and other serious offenses but it prove to be ineffective. Also, no effort has been tackle the issue despite the court’s use of the word “child pornography”. Looking at the various decisions by the HC and SC, it can be understood that there is a dire need for having an effective legislation specifically for cyber child pornography as the existing laws such as The Information Technology Act 2000¹⁶ and POCSO Act 2012¹⁷ are not highly effective.

(D) Effect of COVID-19

During the current pandemic, the child pornography industry in India has grown. A study on “Child Sexual Abuse Content in India” has reported that the demand for violent child pornographic material on the internet has increased by up to 200 percent. Children are more vulnerable to sexual predators, according to the report for research on child sexual exploitation. The hotspots for child pornography have been identified as metro cities such as Kolkata, Mumbai, New Delhi and Chennai along with other capital and tier-2 cities.

III. SUGGESTIONS

As stated earlier, almost every country has taken numerous national and international measures to fight child pornography, but no meaningful outcomes have been achieved to date. It is critical to follow through on the following suggestions.

Because of the Internet’s emergence and rapid growth, the scope of child pornography has grown exponentially. Following other suggestions for tackling the issue of child pornography in India:

- A new special law for child pornography should be enacted and strengthening of anti-cybercrime law.
- Educating the high-risk communities and especially children about their rights and raising awareness over anti child pornography laws.
- Strengthening the collaboration between non-governmental and governmental organisations to deal with the issue of child pornography and providing assistance to the victims and their families.
- Boosting cooperation between international investigating authorities and the national

¹⁵ (2011) 5 SCC 1.

¹⁶ The Information Technology Act 2000, Sec 67B.

¹⁷ The Protection of Children from Sexual Offences Act, 2012, Sec. 13,14 & 15.

police agencies to learn more strategies for catching the human traffickers and dealing with the issue effectively.

- Filtering and completely blocking the sites engaged in child pornography and stricter punishment for human traffickers involved in commercial sexual exploitation.

IV. CONCLUSION

The United Nations fundamental principles include gender equality and the protection of human rights, especially those of children and the most vulnerable. Nonetheless, in our compartmentalized society, the women's and child rights have often promoted in separation from one another. Children are the most vulnerable and the state and society as a whole must protect them. As is evident, the issue of child pornography is growing in popularity and being commercialized in almost all countries. Each country depending upon its character and nature is attempting to address the problem at hand, but a few obstacles are yet to be overcome. The decentralization of the network controlling agency is one such problem. Since there is no one centralized governing body, it becomes difficult to regulate. The complexity of the jurisdiction makes it difficult to track down the perpetrator and appropriate laws must be drafted and implemented to keep the situation under control. Since regulations and laws differ from country to country, a proper single method is needed to ensure that laws and authorities are coordinated. Furthermore, there must be a single definition of child pornography, and the definition of child must be universal across the globe, since the biggest issue in dealing with this problem is legal ambiguity. Although there have been various international conventions and various domestic legislations on this issue, but the same have not been able to effectively cater to the issue of cyber child pornography. It is the worst form of human trafficking that needs to be fought on a common ground.

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