

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

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**Volume 4 | Issue 4**

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**2021**

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# The Worst Form of Child Labour Child Pornography

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## ABSTRACT

*The issue of child labour is not restricted to any particular nation state but is a menace of the global level. Sale and trafficking of children, debt bondage, forced and compulsory labour are some of the existing forms of child labour, however, child pornography is a recent addition to this exhaustive list and with the invention and usage of electronic devices such as computers, video and digital cameras, software and the all-powerful, Internet, the same has paved its way to become one of the most deliberated subjects. It is prevalent in every nation of the world and is the quickest and the fastest growing online business. Owing to such peculiarity, the use of child pornography has become a predominant characteristic of the present society. INTERPOL has concluded Germany to be one of the significant makers of child pornography whereas Netherlands and the United Kingdom are the vital dissemination communities. Moreover, United States is the biggest market of the interest of child pornography. Therefore, the need arises to have a more comprehensive understanding of the concept of child pornography and the legal framework concerning it, at both, the national level and the international level along with identifying areas which require improvement in this regard.*

## I. INTRODUCTION

***“Child labour perpetuates poverty, unemployment, illiteracy, population growth, and other social problems.”***

- ***Kailash Satyarthi***

Article 1 of the *U.N. Convention on the Rights of the Child, 1989* defines child as,

*“Every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”*

However, with pretext to India, child is defined under varied legislations, keeping in mind the aims and objects of that particular enactment. Section 2 (ii) of the *Child Labour (Prohibition and Regulation) Act, 1986* defines child as,

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*“A person who has not completed his fourteenth year of age.”*

However, Section 2 (d) of the *Prevention of Children from Sexual Offences Act, 2012* defines child as,

*“Any person below the age of eighteen years.”*

The *International Programme on the Elimination of Child Labour (IPEC)* under the mandate of the International Labour Organisation defines child labour as,

*“Work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that –*

- *is mentally, physically, socially or morally dangerous and harmful to children, and/or*
- *interferes with their schooling by – depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work”*

Article 3 of the *Worst Forms of the Child Labour Convention, 1999* entails the worst form of child labour and comprises of,

- a. *“all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;*
- b. *the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;*
- c. *the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;*
- d. *work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”*

Therefore, it can be rightly concluded that child pornography wherein the child is required for the production of pornography or for pornographic substances, is a form of child labour.

Throughout the globe, 152 million children, the age group ranging from 5-17 years, were in child labour whereas according to the data from Census 2011, the number of child labourers in India is 10.1 million of which 5.6 million are boys and 4.5 million are girls. In 2019, India recorded over 100 cases of child pornography and over 27 cases, the highest in the country, was alone reported in Kerala, followed by 25 cases in Uttar Pradesh, 8 in Madhya Pradesh and

Himachal Pradesh, 6 in Maharashtra and Assam, whereas relatively fewer cases were recorded in other states.

In 1998, more than 3,000 cases were enrolled against sites containing youngster porn. The quantity of cases expanded to more than 1,00,000 in simply 10 years and in the year 2014, the number surpassed 1 million interestingly. In 2019, there were 18.4 million revealed instances of child pornography across the world.

## II. MEANING OF “CHILD PORNOGRAPHY”

The crime of child pornography was initially, only morally wrong but with the advent of technology and fleeting of time, the crime has paved way to become legally wrong as well. There exists no rigid and standard definition of child pornography but assumes an obscene character with regards to children.

The Council of Europe defines child pornography as,

*"Any audio-visual material which uses children in a sexual context."*

According to an amendment to the *Protection of Children from Sexual Offences Act, 2012*, brought in August 2019, the Ministry of Women and Child Development of India defines child pornography as,

*"Any visual depiction of sexually explicit conduct involving a child which includes photographs, videos, digital or computer-generated image indistinguishable from an actual child and an image created, adapted or modified but appear to depict a child."*

Article 2 (c) of the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000* lays down,

*"Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes."*

Child Pornography includes real or reproduced sex including minors, cruelty, masturbation, crack sexual demonstrations, sadomasochistic abuse, or the presentation of private parts in an expressly energizing way. Furthermore, it includes dispersing and communicating indecent material of children in e-design. It alludes to the depiction of a minor or an individual who seems, by all accounts, to be minor in an explicitly express demonstration via recordings, photos or other PC produced content. Indeed, even the change of a picture or video in such manner that it has all the earmarks of being a minor occupied with an explicitly express demonstration is viewed as child pornography.

The web of child pornography has extended far and wide in the recent times due to ease of access to the internet and the recordings therein. It is quite possibly the most horrifying violations at present since it empowers sexual maltreatment of kids, sexual tourism, illegal exploitation and so forth and so on. The victims of child pornography are severely affected, mentally, emotionally and physically and enter into a vicious circle of victimization. Their life is altered forever. The inappropriate images or videos of the victim child once placed over the internet, continues to indefinitely pass from one person to another and can rarely be fully erased or recovered. The victim child may never be able to have a healthy sexuality, establish pious relations and may suffer from worthlessness, low self-esteem, depression or anxiety. The everlasting impact of such an indecent incident on the tender mind moulds child pornography to be the worst form of child labour.

### III. LEGAL FRAMEWORK TO COMBAT THE PROBLEM

*“Child is meant to Learn, not to Earn.”*

- *A.P.J Abdul Kalam*

#### (A) International Level

Child Pornography is a multi-jurisdictional issue to which an overall philosophy should be applied. Viably battling child pornography and child misuse, on an international scale, requires uniform institution of legal provisions. A handful efforts have been taken into this direction on the international level.

The first legally binding treaty on the rights of children and providing for protection of children from sexual abuse was the *United Nations Convention on the Rights of the Child, 1989*, dealing with every aspect of a child right.

Article 19 (1) is the most intrinsic article to put a halt to sexual exploitation of children as it directs the states to take all appropriate legislative, administrative, social and educational measures in order to protect the child from any type of physical and mental violence including sexual maltreatment, sexual abuse and sexual exploitation.

Article 34 of the Convention puts obligations on the states to protect the child from all forms of sexual exploitation and sexual abuse by undertaking all appropriate national, bilateral and multinational measures for preventing the child from the inducement or coercion to engage in any unlawful sexual activity, exploitative use of children in prostitution or other unlawful sexual practices and in pornographic performances and materials.

Furthermore, in 2000, after more than a decade, the United Nations General Assembly adopted the foremost universal treaty, exclusively dealing with the issue of sexual abuse of children, known as, the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*. It outwardly forbade the sale of children, child prostitution and child pornography and emphasized on the fortification of international cooperation and the adoption of extra-territorial laws. Article 3 of the Optional Protocol orders the States to condemn the creation, appropriation, importation, exportation, scattering, offer or sale of child pornography and Article 3 (1) (c) obliges the States to remand the ownership of child pornography, in the event that it is for any of the reasons mentioned herewith.

The *Budapest Convention*, alias the *Convention on Cybercrime of the Council of Europe, 2001*, is among the chief conventions that manage child abuse and has a more realistic methodology, applying to legal officials as well as the law requirement offices, simultaneously. Moreover, it is eminent for its use of unambiguous terms and its itemized arrangement of child pornography on the internet. At the same instance, it accommodates for the criminalization of child pornography.

Recently, in 2007, the *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, catalogued child pornography within child abuse. It is more extensive in its ambit as it additionally covers sexual tourism inside child misuse. The downside of this convention is that it has just been received by the European countries up until now and the worldwide appropriation of it is still absent.

Certain organisations are also whole heartedly working towards achieving the target of removal of child pornography and abuse. One such organisation is the *International Centre for Missing & Exploited Children (ICMEC)*, waging war against child sexual exploitation, child pornography and child abduction.

*ECPAT International (ECPAT)* is another institution which centres around ending the online abuse and harassment of children, the dealing of youngsters for sexual purposes and the sexual misuse of children in the tourism and the travel industry. This association tracks nation states that have executed norms as characterized by arrangements, for example, the Convention on Cybercrime, and Lanzarote Convention through their common reports.

## **(B) India**

It is the duty of the State, towards the children, to provide them with a safe and nurturing environment for their healthy growth which is imbibed in Part IV of the Constitution of India. Article 39 (f) states,

*“The State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”*

However, there were no specific enactments in India, until 2012, as regards sexual offences against children and child pornography. Before the coming into force of the Protection of Children from Sexual Offences Act, 2012, section 293 of the *Indian Penal Code, 1860*, criminalized the sale, distribution, exhibition and circulation of any obscene material to any person below the age of twenty years. The provision provided that the offender, on first conviction, shall be sentenced to imprisonment up to three years and fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with imprisonment of up to seven years and also with fine which may extend to five thousand rupees

After the introduction of *Information and Technology Act, 2000*, rock bed of cyber laws in India, the Standing Committee and the Expert Committee to the Information and Technology (Amendment) Bill suggested to broaden the horizon the enactment and recommended incorporating of a particular provision dealing with the criminalization of child pornography in the country. The recommendation bore fruits and Section 67B was inserted to the main piece of legislation, thereby, criminalizing child pornography. It provided for imprisonment for a term of five years and a fine of ten lakh rupees for first time offenders and imprisonment for a term of seven years along with a fine of ten lakh rupees for subsequent offenders.

Thereafter, on May 22, 2012, the Protection of Children Against Sexual Offences Bill, 2011, pertaining to sexual exploitation of children, was passed by the Indian Parliament and it became the *Protection of Children from Sexual Offences Act, 2012*, aiming to provide a stringent legal framework to children for protection against sexual harassment, sexual assault and pornography offences. Section 14 of the Act provides for punishment regarding child pornography and criminalizes the use of children for pornographic purposes in any form of media, including the portrayal of child’s sexual organs, the participation of a child in real or simulated sexual activities and the indecent or inappropriate portrayal of a child.

Furthermore, the recent amendment of 2019 to the above-mentioned piece of legislation, increased the minimum punishment of the offender from seven years to ten years. Penal provision with regards to a person who commits penetrative sexual assault on a child below the age of 16 years was also inserted, whereby the offender shall be liable for punishment with imprisonment, ranging from 20 years to life and a fine.

#### IV. JUDICIAL APPROACH IN INDIA

In the case of *State of A.P. v. Mangali Yadagiri*<sup>2</sup>, a SC/ST girl of 14 years was raped by more than one person and then pictures were taken of her vulnerable and indecent state by those men. She was even threatened with those pictures if she ever even tried to tell anyone the truth about what happened with her, thereby hindering her from complaining for some time. The matter was then referenced to the High Court that the case shall be tried in POCSO special court or SC/ST Court and the court which delivered it shall be tried in the POCSO Special Court.

In a case of *P. Shanmugavel Raj v. State and Ors.*<sup>3</sup> a Criminal Revision petition was filed in the case of rape of a 13 year old girl. While the matter was pending in the Session Court, the act provided for the Special Court to be established as per the provisions of the act. Thereafter, the High Court of Madras ordered the same to be tried in that court.

In the case of *Shashi and Ors. v. The State of Karnataka*<sup>4</sup>. A child was raped by the friends' of her father who had come over and had told her to bring firewood from the forest. And as she was doing so, they raped her and video recorded the heinous crime. They were granted bail by the High Court of Karnataka and the final order is still pending. The charges on them came under POCSO Act and IT Act.

In *Ishan v. State of M.P.*<sup>5</sup>, The victim was raped by her friend's brother at her friend's house where she was visiting. She was also video recorded by the accused. The child victim later told her parents about the incident and a case was registered and sent to the Juvenile Justice Board for trial . However, later on the filing of revision petition in the High Court of M.P., bail was given to the accused and he was released.

Therefore, from an analysis of the judgments passed by the various High Courts of Judicature, it can be concluded that, though, a legislation has been enacted for safeguarding of children from such heinous crimes but the implementation of the same has not been done effectively. The same can be looked down from suspicious eyes as the authorities have not been able to beneficially apply the provisions of such an enactment for the utmost benefit of the children.

#### V. SUGGESTIONS AND CONCLUSION

Therefore, it can be rightly concluded that child pornography is a moral as well as a legal wrong, having an adverse effect upon the perception of the victim child as regards humanity.

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<sup>2</sup> Criminal Revision Case No. 1596 of 2014

<sup>3</sup> 2015 (1) Crimes 536 (Mad.)

<sup>4</sup> 2013 ILR KAR 5089

<sup>5</sup> 2015 (3) CGLJ 20

Though, it has become a horrifying reality of the new age era but the same should be condemned in the highest order possible. Such filthy and salacious gestures leave an everlasting impact on the mind of the child and gets clearly etched in his/her memory for is entire life. Strenuous efforts, at the international and the national level, must be undertaken to combat the spread and usage of child pornography. With the on-going COVID-19 pandemic, a stark rise in the demand for child pornography material can be witnessed and the same is alarming. The need of the hour is to construct a general worldwide structure for the location, indictment and appraisal of online child pornography and it to be implemented as a principle and essence of law. The structure ought to be more comprehensive and less obstinate in its methodology and it ought to be the one that builds up redressal systems through collaboration and cooperation. The primary duty to provide a safe environment to the upcoming generation lies on the shoulders of the current generation and one must truly and inherently understand it and work towards it with commitment. Unitedly marching towards eradicating child pornography would, undoubtedly, bring about the requisite change and facilitate in providing a safe, secure and better environment for the child to thrive and live in.

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