CHILD PORNOGRAPHY AND INTERNET SUBCULTURES IN INDIA - A LEGAL PERSPECTIVE

*Sumedha Gupta

ABSTRACT

Objectives: The primary objective of this study is to shed light on the pervasive issue of child pornography on the internet and its detrimental impact on children globally. The research aims to investigate the rise of child pornography online, emphasizing its role in the sexual exploitation and misuse of children. Through a comprehensive analysis, the study seeks to uncover the various dimensions of this disturbing phenomenon.

Methods: To achieve the stated objectives, the research employs a multifaceted approach. The study begins by exploring the enthusiastic engagement of children with the internet, emphasizing their use for learning, play, and communication. Subsequently, the dark aspects of cyberspace are examined, focusing on the prevalence of child pornography and its potential physical consequences. The second half of the paper delves into an investigation of legislative measures and government initiatives in India designed to combat child pornography.

Results: The findings of this study reveal a concerning reality regarding the proliferation of child pornography as a thriving business with far-reaching consequences for children worldwide. The results highlight the urgent need to address the issue comprehensively, considering the intersection of technology, legislation, and societal awareness. Additionally, the study provides insights into the effectiveness of specific governmental initiatives in India, contributing to a broader understanding of the challenges and opportunities in combating child pornography.

Conclusion: In conclusion, while acknowledging the efforts made by legislative measures and government initiatives in India, this study discusses the limitations of current Indian law in effectively tackling the issue of child pornography. The conclusion emphasizes the necessity of addressing gaps in the legal framework and proposes specific measures to enhance the prevention of child pornography in India. Overall, the study advocates for a comprehensive and proactive approach to safeguarding children in the digital age, considering both national and international perspectives.

Keywords: child pornography, internet, children, impact, sexual exploitation, abuse.

Received: 09/10/2023
Accepted: 08/01/2024
DOI: https://doi.org/10.55908/sdgs.v12i1.2997

* Ph.D Research Scholar, Department of Law, Galgotias University, India, E-mail: adv.sumedhagupta@gmail.com, Orcid: https://orcid.org/0009-0000-7486-757X
PORNOGRAFIA INFANTIL E SUBCULTURAS DA INTERNET NA ÍNDIA - UMA PERSPECTIVA LEGAL

RESUMO

Objetivos: O principal objetivo deste estudo é lançar luz sobre a questão generalizada da pornografia infantil na internet e seu impacto prejudicial nas crianças em todo o mundo. A pesquisa visa investigar o aumento da pornografia infantil on-line, enfatizando seu papel na exploração sexual e no uso indevido de crianças. Através de uma análise abrangente, o estudo procura descobrir as várias dimensões deste fenômeno perturbador.

Métodos: Para alcançar os objetivos declarados, a pesquisa emprega uma abordagem multifacetada. O estudo começa explorando o engajamento entusiástico das crianças com a internet, enfatizando seu uso para aprendizagem, brincadeiras e comunicação. Subsequentemente, os aspectos obscuros do ciberespaço são examinados, focando-se na prevalência da pornografia infantil e suas potenciais consequências físicas. A segunda metade do artigo investiga uma investigação de medidas legislativas e iniciativas governamentais na Índia destinadas a combater a pornografia infantil.

Resultados: Os resultados deste estudo revelam uma realidade preocupante em relação à proliferação da pornografia infantil como um negócio próspero com consequências de longo alcance para as crianças em todo o mundo. Os resultados destacam a necessidade urgente de abordar a questão de forma abrangente, considerando a interseção de tecnologia, legislação e consciência social. Além disso, o estudo fornece informações sobre a eficácia de iniciativas governamentais específicas na Índia, contribuindo para uma compreensão mais ampla dos desafios e oportunidades no combate à pornografia infantil.

Conclusão: Em conclusão, embora reconhecendo os esforços feitos por medidas legislativas e iniciativas governamentais na Índia, este estudo discute as limitações da atual legislação indiana para lidar efetivamente com a questão da pornografia infantil. A conclusão sublinha a necessidade de colmatar as lacunas do quadro jurídico e propõe medidas específicas para reforçar a prevenção da pornografia infantil na Índia. Em geral, o estudo defende uma abordagem abrangente e proativa para proteger as crianças na era digital, considerando tanto as perspectivas nacionais quanto as internacionais.

Palavras-chave: pornografia infantil, internet, crianças, impacto, exploração sexual, abuso.

1 INTRODUCTION

The extraordinary progress of technology in the contemporary world has both positive effects (such as the simplification of complex tasks) and adverse effects (such as the violation of the rights of individuals as a consequence of its misuse). The exploitation of children is a subset of this more significant issue. Children today are constantly plugged into many media, from computers to mobile phones. It's apparent that the internet, as well as other types of contemporary technology, has made a lot of knowledge available that may greatly benefit both children and adults. Unfortunately, children become victims of the drug channels, illicit hackers, illegal prostitution, and child pornography that have emerged as a result of the same internet and technology. The sexual abuse of minors is what is meant by the phrase "child pornography." The use of children to fulfil the sexual
demands of adults, at the expense of the child's own mental and physical needs, is considered sexual exploitation. Prostitution with minors, pornography, and sexual abuse are all examples. The exploitation cycles of child prostitution and child pornography are typically intertwined. Any depiction of a sexual act that is deemed demeaning for the sake of entertainment or financial gain is considered pornographic. Thus, anything similar featuring a child is deemed as ‘child pornography.’

Since children do not have good instincts and knowledge about what is right and wrong, anyone can easily lure them to work for them or act according to them. Due to a multitude of factors, including isolation, a lack of parental attention, and unlimited internet access, these crimes are occurring often within the four walls of the child's home. Through different internet technologies, child sexual abuse is taking on new forms and channels. Online child sexual exploitation exacerbates existing kinds of bullying, stalking, and harassment against children. It has resulted in child sexual exploitation through the development and transmission of child sexual abuse materials (CSAM). Child safety has arisen as a serious problem all over the world, particularly in light of rising rates of online sexual child exploitation of minors in various methods. Compared to real space, cyberspace has distinct and different features. It is virtual, borderless and provides some anonymity. With the rapid use of new technology, certain criminals are exploiting these tools to perpetrate cybercrimes such as online CSAM and exploitation. (2002) Cooper identifies three fundamental elements of internet usage: affordability, accessibility, & anonymity (known as the “triple A engine”), that are aspects which draw a large number of users ranging from the general public to sex perpetrators, to the use of pornography. Both (2002) Quayle & Taylor & Sullivan & Beech (2003) argue that downloading pictures, collecting, fantasizing, cognitive distortions, power, and control may lead to the conduct of contact sex crimes among online pornography users. Calder (2004) argued that there is a large gap between viewing child pornography and engaging in sexual contact with a kid, but that the latter desire is inherent in the former.

---

6 Ibid. at 449
The usage of communication & information tech for sexual misuse &/or exploitation of minors is known as online child sexual exploitation. With the current condition of the internet, there are two crucial difficulties associated with CSAM, i.e., the growth of CSAM content on the internet and the accessibility of children to digital pornographic materials (Underage Exposure). Given that one in every three internet users is a minor, this poses a huge dilemma that requires immediate legal and technical answers. Unfortunately, most of the transmission of CSAM and incidents of Underage Exposure occurs on intermediary platforms over which they have no control or are unable to assert influence. 7

1.1 OBJECTIVE

Cyberspace has dark corners and alleys where crime thrives, and electronic activities can have physical effects. Child pornography on the internet has not only become a prosperous business, but it has also resulted in the sexual exploitation & misuse of kids all over the world. This study’s objective is to investigate the rise of kid porn on the web as well as its effects on children. It also put forth a variety of legislative measures and government initiatives in India to fight child porn.

The use of ICTs expands the pool of possible victims, allows for the creation of fake identities, and eases the transmission of dangerous materials to minors. This includes material depicting child sexual assault. ICTs may also be used by traffickers to advertise child sex tourism and attract new victims, some of whom may be minors. Human traffickers may also conduct their operations mostly, if not entirely, over mobile phones. The usage of mobile phones and the Internet aids criminals in concealing their identities and obscuring their actions, lowering the risk of detection. The usage of the internet allows for unparalleled societal acceptance for criminals. Online child sexual abuse content may provide the mistaken appearance of societal acceptance. Internet networks may also be used to share tactics for gaining access to victims and evading law authorities. 8

2 THEORETICAL FRAMEWORK

2.1 PREVENTION OF CHILD PORNOGRAPHY THROUGH INTERNATIONAL CONVENTIONS AND GUIDELINES

2.1.1 What is Child Pornography?

Child porn is a kind of sexual abuse of a child. Governmental law describes child porn as “any visual depiction of sexually explicit conduct involving a minor (persons less than 18 years old)”9. The Oxford Dictionary describes porn as “written or visual material providing explicit description or depiction of sexual organs or behavior designed to arouse sexual arousal.”10 Pornography is also defined as “content that depicts erotic behavior (as in pictures or writing) intended to cause sexual excitement”11. Child porn is described as “pornographic material that visually shows a juvenile engaged in sexually explicit activity and a person purporting to be a minor nor engaged sexually explicit conduct”12 under Article 9 of the 2001 Cyber Crime Convention. Minor porn is likewise punishable under Article 9 of the Convention. It states that “whoever intentionally and without right commits the following conduct: producing child pornography for its distribution through a computer system; offering or making available child pornography through a computer system; distributing or transmitting child pornography through a computer system; possessing child pornography in a computer system or on a computer data storage medium”.13

Statistics- As per the 2007 research carried out by the Ministry of Women & Child Development, 53.22 per cent of ids reported suffering more than one sort of sexual exploitation. Assam, Andhra Pradesh, Bihar, & Delhi had the biggest number of reported instances. 21.90 per cent of minor subjects stated suffering extreme forms of sexual exploitation, while 50.76 % reported facing additional kinds of sexual exploitation.14 A report called "Child Sexual Abuse Material in India" says that the number of people looking for violent child pornography on the internet has gone up by up to 200%. This number is both alarming and disheartening. This presents a chilling reality of the extreme

---

10Pornography noun - Definition, pictures, pronunciation and usage notes https://www.oxfordlearnersdictionaries.com/definition/english/pornography (last visited on July 15, 2022)
12Delhi High Court Legal Services Committee v Union of India & Another (2015) CRILJ 2054
14Aatif, S, ‘Child Pornography and Sexual Abuse in Child Care Institutions’ (2007) 6 Institutionalised Children Explorations and Beyond 35
threat that India’s kids face during this lockdown period.\textsuperscript{15} In the year 2020, —in a worldwide integrated study of minor sexual harassment materials discovered online, at 19.87 lakh reports, India ranks first on the list, accounting for 11.7\% of the total reports. Pakistan occupies the second spot with 11.5 lakh reports, contributing 6.8\% to the total. Bangladesh secures the fourth position with 5.5 lakh reports and a share of 3.3\%.\textsuperscript{16}

There are national laws in every nation that control the behavior of its population, as well as international treaties and conventions that promote the well-being and safety of all people worldwide. Countries all across the world have signed agreements and treaties meant to safeguard minors from sexual exploitation & misuse.

\textbf{2.1.2 The UN Convention on Rights of Child, 1989}

The UN Convention on Rights of Child (UNCRC), 1989 is a very detailed single treaty in the human rights field that covers the traditional and recent trends of human rights and the peculiar rights of the kid.\textsuperscript{17} Article 6 of the UN CRC guarantees the right of children to life. It provides that “States Parties recognize that every child has the inherent right to life and shall ensure to the maximum extent possible the survival and development of the child.”\textsuperscript{18} According to Article 34 of this convention, all members have undertaken to protect and prohibit the sexual exploitation of children throughout the world. Under this convention, signatories are obligated to take all necessary steps to prevent any kid from being encouraged or forced into engaging in any unlawful sexual action: being exposed to any type of commercial sexual abuse and distribution such content that depicts child sexual abuse or exploitation; or engaging in any other activity that would cause physical, mental, and emotional harm to the child.\textsuperscript{19} Another article of this convention, i.e., Article 39, deals with empowering and obligating the signatory nations to encourage and promote the integrity, dignity and health of the victims subjected to sexual misuse & exploitation. This provision is necessary in order to maintain the courage and hope of those victims to live their life without fear and trauma caused by the violation of their rights as global citizens and innocent human beings.\textsuperscript{20}

\textsuperscript{17} Eseni Azu Udu, ‘Human Rights in Africa’ (2011) Mbeyi & Associates 120
\textsuperscript{18} UN CRC, note 103, (1989) Article 6(1) & (2)
\textsuperscript{19} Ibid at Article 34
\textsuperscript{20} Ibid
2.1.3 Optional Protocol on Sale of Child, Child Prostitution & Child Pornography

The General Assembly approved this protocol of UN on 2000, 25\textsuperscript{th} May, while its procedure has been in force since 18\textsuperscript{th} January, 2002. This protocol has made the activities like selling children, child prostitution and pornography, illegal. This has also put forth the minimum requisites for the protection of the victims who were subjected to child sexual abuse and also considered them to be deserving of proper compensation. Due to this, this protocol is supported by many signatories and is a part of multiple international collaborations. However, it is pertinent to note that Optional Protocol does not exclude anyone from dual criminality concept.

There is also a drawback of this protocol that it does not always helps the child victims in the criminal proceedings after their rights have been violated and they suffered a loss. This protocol applies to only certain kind of sexual abuse. Therefore, in these kinds of cases, the victims rely on the Article 38 and Article 39 of Child Safety Convention which prevents minors from different kind of sexual exploitation rather than this protocol in order to get the justice they deserve.

Child porn is described as “any portrayal, by whatever means, of a child participating in actual or simulated explicit sexual actions, or any representation of a child's genital parts for principally sexual objectives,”\textsuperscript{21} as per the 2\textsuperscript{nd} Article of the Optional Protocol. The Signatories are required by 3\textsuperscript{rd} Article of the Optional Protocol to make it illegal to “produce, distribute, disseminate, import, export, offer, sell, or possess for the foregoing reasons child pornography as described in Article 2.”\textsuperscript{22} Pornography includes live shows, photographs, movies, video recordings, and capturing or transmitting digital images.

The Council is very worried regarding the rise in the presence and distribution of child porn on the Web. It has consistently asked the Signatories and the international community to take action as quickly as feasible to solve the situation. The adoption of rules governing network providers’ responsibilities in relation to child porn has been expressly urged. The Optional Protocol’s Article 3(1) (c), when rigorously explained, “requires signatories to punish the person having the possession of child pornography only where it is for the foregoing purposes i.e., for manufacturing, spreading, propagating,

importing, exporting, selling, or purchasing. Nonetheless, the Committee on the Rights of the Child has urged governments to make simple possession illegal.”"23 Apart from this, the UN Commission on Human Rights Program of Action works to stop the Trafficking of Juveniles, Child Exploitation, and Child Porn which strengthens the UN Convention on the Rights of the Child & global attempts to penalize those who abuse minors for sexually explicit reasons.

3 METHODOLOGY

The author conducted a review of various international Conventions and Guidelines. It also reviewed the information exclusively related to the Indian legislation.

3.1 DETAILED ANALYSIS OF INDIAN LEGISLATIONS & GUIDELINES

New communication methods and modern technology have dramatically altered the world in which we live and do our everyday business. Instead of conventional paper files and documents, business people and companies are increasingly employing computers to generate, transfer, and retain information in digital form. Paperless transactions are eliminated by electronic commerce. Many legal rules now presuppose the presence of paper-based records and documents that must contain signatures. Customarily, the law of evidence has relied on written copies & oral deposition. As a result, regulatory adjustments to enable e-commerce have become an essential requirement.

3.1.1 Information Technology (IT) Act, 2000

Since there was a need to govern the electronic and digital activities in the nation and to provide legality to lawful activities such as the admissibility of any electronic or digital document. Apart from this, there was also need for governing the digital content on social media networks which today has a huge impact on the people of this country. To serve the same purpose, Information Technology Act 2000 was enacted, which exclusively contained cyber legislation. The Information Technology Act of 2000 also

---

aspires to build a legal framework in which all digital documentation and other electronic activities are given legal sanctity.\textsuperscript{24}

To stimulate e-commerce and offer legal admissibility and enforceability to electronic documents and electronic signatures, the Indian government recognized the need requirement for new legislation as well as relevant adjustments to current laws. Cyber regulation is contained in the IT Act of 2000. The purpose of this Act is to lay a lawful groundwork for electronic enterprises in India, & it would have a substantial impact on all the electronic businesses of India as well as bring a huge development to the Indian Economy.\textsuperscript{25} The Information Technology Act of 2000 strives to provide a legislative framework that gives legal protection to all digital documentation and other electronic activity.

With respect to the present context, there are additional stipulations inserted to put additional cyber violations under the ambit of the IT Act 2000. The new amendment includes rules for data security & privacy and a clause to combat terrorist activities utilizing electronic & virtual means. Sections 67 A through 67 C of the original Act were incorporated into the Amendment. The provisions are concerned about “the publication or transmission of content in the electronic form involving sexually explicit acts, child pornography, and the requirement of the intermediary to maintain and keep such information as the central government may specify.”

A. Amendment of Section 67 of the IT Act, 2000:

67th Section of the old Act is revised to lower the period of sentence for releasing or sending indecent content in virtual format from five years to 3 years & to raise the penalty from 100,000 to 500,000 Indian rupees. In addition, sections 67 A through 67C has been added to the book. While 67th Sections A & B involves penalties for publication or communication of items comprising of sexually indecent acts & Kids' pornographic material in digital format, 67C Section tackles a middlemen's responsibility to retain & maintain such data as might be stipulated for the period, method, & layout as the central government may recommend.

Section 67A makes disseminating material featuring sexually explicit behavior a crime offensive by a sentence of up to five years and a penalty of up to rupees 10 lakh. This feature was critical in preventing MMS assaults & videotape voyeurism. However,
Kid porn has been addressed solely under 67B Section of the IT Act of 2008. This Section includes portraying children engaged in explicit sexual acts, creating content or electronic photos, ads or encouraging the content describing kids in an indecent or inappropriate form, etc., enabling online misuse of children or causing kids to commit in virtual connections with 1 or more than one kid, etc. Because of the goals of this Section, 'Children' are those below 18 years of age. For the 1st conviction, the penalty is a sentence for a period of up to 5 years & a penalty of rupees 10 lakhs. For subsequent convictions, the penalty is imprisonment for seven years and a payment of ten lakh rupees.

To guarantee that publishing and transmission of historic masterworks or heritage material, or pure scholarly works on education and healthcare, are not adversely affected, genuine heritage material published or transmitted for its use in the teaching or literature, etc., are explicitly exempted from the scope of this Section. However, showing video graphs and images of unlawful conduct through the Internet all fall within this category, as does generating pornographic films or video clips or distributing such clippings by mobile or other modes of communication via the Online platform. Section 67C imposes on intermediaries the obligation of preserving and retaining such facts as might be set for such length & in the way the Central Govt. might specify. Noncompliance is an offence by imprisonment for up to 3 years or a fine.

In the case of Avinash Bajaj v State, the defendant was detained because an online user advertised the sale of the DPS sex scandal film. Despite the fact that Avinash was taken into custody for violating 67th Section of the IT Act, the video was not published on the online platform. Following the conclusion of this case in 2011, the Intermediary Guidelines were enacted, stating that an intermediary's liability could be discharged if they demonstrated that they had taken reasonable precautions to ensure that offensive material was not made available through their online platform.

The sections relating to Child Pornography i.e., Section 67A and 67B are non-bailable as per Section 77B of the Act, while others are bailable.

3.1.2 Indian Penal Code (IPC), 1860

IPC also has a variety of clauses in order to prevent children from sexual abuse & the allocation of obscene items to minors. According to Section 293, IPC provides for provision against the sale or distribution of obscene objects to any child who is under the

---

26 Avinash Bajaj v State (2008) 150 DLT 769
age of majority. In simple words, any person who sells allows renting, distribute, exhibit or circulate any obscene or sexually explicit content, whether hardcopy or in electronic form as provided under Section 292 of the Code, to any individual who is below the twenty years of age, will be considered to be guilty with a sentence for a period up to 3 years & penalty up to 2000 Rupees. Whereas, if the person is convicted for the second and subsequent times, they would be liable to be punishable for up to 7 years and a fine of up to 5000 Rupees. It is pertinent to note that this offence is a cognizable offence and can be tried by the magistrate.

Apart from this, Section 292 (2) of the Code provides for the definition of term obscene which includes any content on book, pamphlet, writing, picture, painting or any kind of figure which works in the “lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it”27 In this regard, the person distributing such content will be found guilty with a sentence for the period up to 2 years & a penalty of up to 2000 Rupees. Wherein the person is convicted for the second or subsequent times, he or she will be liable for imprisonment for a period up to 5 years & a penalty of up to 5000 Rupees.

3.1.3 The Protection of Child from Sexual Offences Act, 2012

The limitation of the IPC & the lack of any serious rules “for effectively addressing and combating heinous crimes such as sexual exploitation and sexual abuse of children gave birth to the Protection of Children from Sexual Offenses (POCSO) Act, 2012, as the very intention of Government establishments was to protect children from offences of sexual assault, sexual harassment, and pornography and to facilitate adequate legal machinery by enacting the Act.”28 The overall aim of the POCSO Act is to safeguard kids from —sexual exploitation & degradation because pornographic content, including children, must be considered an extreme form of exploitation and hence the most heinous crime against children. Under this act, the kid is described as an individual who is less than the age of 18 years (section 2(1) (d)) and provides protection for them. Child includes both the sex i.e., female and male children.

27Indian Penal Code 1860, S. 292
Sections 13 to 15 of Lesson 3 of the Act, 'Using Minor for Porn Activities & Penalty', provide for “punishments for using such a child for sexually explicit and pornographic purposes and punishment for storing sexually explicit material involving children”. Chapter III provided explicitly that if a child is used for any expression with the intention of fulfilling a sensual desire or sexual indulgence as an offence. The POCSO Act specifically protects and prevents minors from crimes related to sexual activities to protect the interest, growth, development as well as well-being of the children. Provisions are gender neutral. Section 13 of the Act defines the offence of child pornography, stating that any person using —the kid in any sort of media for sexual purposes and satisfaction will be held guilty of child pornography contrast, section 11 (iii) considers any act as sexual harassment of a child, if any object or media is shown to the kid porn purposes.

3.2 THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (AMENDMENT) ACT 2019

This 2019 law amendment established the first legal definition of "child pornography." This amendment was made to provide more clarity on issues like child abuse and the consequences that follow. It incorporates punishments for offences that were not previously explicitly described and expands the spectrum of offences. POCSO Act Section 2(1) (da) was inserted & it describes: “Child porn refers to any portrayal or representation of sexual act including a kid whether it is in the form of photographs, videos, digital images, or computer-generated images that are indistinguishable from real children. This also encompasses images that have been manipulated to appear as if they depict a child, even if they were created or adapted.

3.2.1 Combating Child pornography- Initiatives of the Government

1. In September 2018, the Home Affairs’ Ministry created a nationwide cybercrime reporting platform to allow people to file online complaints about child pornography.

---

30 Protection of Children from Sexual offences Act (2012), S.13
31 Protection of Children from Sexual offences Amendment Bill (2019), S.3(2)
2. The government restricts websites that contain severe Child Sexual Abuse Material (CSAM) grounded on INTERPOL's "Worst-of-List," which is supplied on a regular basis by the CBI, the National Nodal Agency for Interpol.

3. The Rajya Sabha’s Adhoc Committee in 2020, established by Shri M. Venkaiah Naidu, the chairman, has submitted 40 comprehensive suggestions to curb child sexual abuse and the spread of child porn on the web & additional digital platforms. The Adhoc Committee made 40 recommendations, including expanding the meaning of child porn, limiting access of kids to such material, halting the spread of CSAM, holding ISPs and other online services responsible for blocking access to minors and removing offensive content, and enforcing stricter penalties for those who fail to comply.³²

4. Operation Megh Chakra- The CBI launched a national anti-dissemination and sharing of Child Sexual Abuse Material campaign code named "Megh Chakra" (CSAM) in September 2022. The searches were carried out in response to information supplied by Interpol's Singapore office about the online sale and dissemination of material including child sexual abuse. Interpol's database of images and videos related to child sexual exploitation (ICSE) may be used as intelligence and investigations. It facilitates communication between investigators who specialize in cases of sexual exploitation of minors. CBI also acts as a hub for the International Child Sexual Exploitation (ICSE) database maintained by Interpol.³³

---

3.2.2 Opinion of Indian Judiciary

The Indian Courts, in many landmark judgments, have provided necessary instructions for safeguarding minors against sexual misuse. In a case in Bombay High Court\(^{34}\), various guidelines, i.e., to block pornographic websites, having proper rules in cyber cafes so that the children cannot access the unsuitable material and no such content would be distributed in these cafes which is unsuitable for the children.

In Avinash Bajaj v. State (N.C.T. of Delhi), it was determined that our country’s law is insufficient to address the problem of controlling internet use to prevent the spread of pornographic content. It was held that “It may be instructive to examine legislative responses in other common law jurisdictions. In the United States, three pieces of legislation have dealt with internet censorship: the Communications Decency Act (CDA), which was established as part of the Telecommunications Act of 1996, the Child Online Protection Act 1998 (COPA), and the Children Internet Protection Act 2003 (CIPA). The CDA intended to make it illegal to use an interactive computer service to communicate or exhibit in any way to people under the age of 18, any message depicting or displaying sexual or excretory activity in a plainly objectionable manner.”\(^{35}\)

\(^{34}\) Maria Kuttubudin Lokhandwala v The State Of Maharashtra And Another (2020) 1 BOMCR 210

\(^{35}\) Avinash Bajaj v State (2005) 116 DLT 427
The Court, in its own motion v. the State of Punjab, ruled that “the Parliament recently adopted the ‘Protection of Children from Sexual Offenses Act, 2012’ that protects children from Sexual abuse and violence, sexual harassment, and pornography. It is also vital to have proper execution of this legislation. The National Commission and State Commissions have indeed been recognized as the designated authority to monitor compliance under the Act. Under this Act, Rules 2012 have also been drafted, and Rule-6 specifies such monitoring, with particular powers allocated to the National Commission and State Commissions.” Nonetheless, the National Commission and State Commissions must begin carrying out their responsibilities under this Act.

In Kamlesh Vaswani v. Union of India, it was ruled that “the websites displaying child pornography, particularly of youngsters aged 14 to 18, should be rigorously prohibited. The court emphasized the gravity, importance, and urgency of the situation and mandated that, by the stated order, all parties take proactive actions to try to control the threat of child pornography.” additional instructions were released to the Secretary of the Department of Transportation to file an individual affidavit within a week on the question of whether the Department of Transportation or different departments of the Govt. of India is proficient to release a directive to shut down websites that display porn.

The Supreme Court took a step back in the Shreya Singhal vs Union of India when it interpreted section 79(3)(b) of the Information Technology Act to suggest that the mediator (i.e., ISP) should terminate or disable the permit to unlawful contents only on obtaining basic knowledge of the court ruling or on being informed by the relevant govt. Hence, the ISPs are not responsible for the actions of any third parties whose data they may host.

4 RESULTS AND DISCUSSION

Even though the infrastructure of the above law is quite satisfactory, the implementation of these clauses is not doing enough justice in the prevention of Child pornography and related sexual abuse. Following are a few of such drawbacks which have been observed over the years of administration of these legislations:

i) In India, there is no agency which monitors and reports all the pornographic data.

36 Court on its own motion v State of Punjab (2013) 3 RCR
37 Kamlesh Vaswani v. Union Of India & Others (2013) WP (C) 177
38 Shreya Singhal v Union of India (2015) SC 1523
ii) Apart from the guidelines given by the Judiciary, there are no established rules and regulations for filming pornography in India.

iii) Both the IT Act, 2000 (Section 67-B) & the Protection of Child from Sexual Offences Act 2012 define term ‘child pornography’ differently. This creates a conflict and contradictory explanation to the meaning of child pornography.

iv) The process of passing laws that are up to date with the latest technological developments is yet another obstacle for governing bodies to overcome.

v) The POCSO Act punished only those individuals or entities who stock the child porn items while not punishing those who attempt to buy, sell or distribute any content depicting child pornography.

vi) There are no detailed guidelines for rehabilitation of children who were victims for being compelled or lured to participate in child pornography.

vii) Under Section 84-C of the IT Act, attempting to commit the offense of child pornography is only punishable if the attempt is made in furtherance of the act and not solely on the basis of the attempt itself.

viii) As per the current law, intermediaries are not obligated to share third-party information with any agency. The Supreme Court (SC) ruled in the Shreya Singhal case that either an order of the court or alert from the proper govt. or its agency is required for an ISP to delete or prevent permit to unlawful items. As a result, ISPs are not required by law to notify law enforcement authorities of any CSAM sent across their networks.

ix) As per the current law, banks, credit card enterprises, & other entities in the payment sector are not needed to notify authorities of any financial transactions involving the purchase of Child Sexual Abuse Material.

x) Although a clause in the Information Technology Act i.e., Section 67-C, the Central Government has yet to notify the sort of information to be kept and held by intermediaries, as well as its length.

xi) There is no provision for the removal of such websites which, through artificial intelligence, allows people to access the child pornography content of other countries.

39Shreya Singhal v Union of India (2013) 12 SCC 73
5 CONCLUSION & RECOMMENDATIONS

This Study can be concluded by stating that it is of utmost significance to prevent children from succumbing to the clutches of online child abuse and pornography. Child pornography is a severe worldwide problem that law enforcement organizations have failed to address fully. Despite efforts to restrict their growth, pornographic websites are widely accessible and continue to increase every day. Children are an easy target, and there is a rising market for child pornography. The most significant obstacle in this respect is jurisdiction since pornographic content is disseminated chiefly over the Internet, which is not hindered by national borders. This is evidence of the inadequate application of current laws. There is a need for proper administration and implementation of legislation and guidelines given by the parliament and courts in their landmark judgments. Pertaining to this, the following are the suggestions and recommendations for the better administration of the legislation as well as the general precautions to be taken by the parents and relatives of the children.

5.1 RECOMMENDATIONS FOR INDIAN LEGISLATION AND ADMINISTRATION

➢ ISPs are the conduits via which CSAM actions spread. As a result, it is critical that ISPs notify law and order authorities or any other designated entity as soon as they become conscious of illegal content on their networks. For this, proper instructions and rules are required on the part of the central government as well as the state government to monitor and report all pornographic activities closely.

➢ It should be made mandatory for the financial companies to be attentive and cautious in case when CSAM transactions are uncovered and they should be obligated to disclose them to police authorities or another regulated body.

➢ Technological businesses must be required to scan their systems and networks with technology tools in order to detect and destroy CSAM.

➢ There is a need for clarity in the terms of the IT Act of 2000 & the POCSO Act in order to avoid any malicious use by the offender.

➢ Updates to current laws and new laws must be constructed flexibly and "technology-neutral" to keep pace with technological advancement without requiring a frequent amendment to have a permanent and sustained impact.

➢ Combating ICT-enabled child abuse and exploitation requires specialized staff with the necessary training and expertise. Professionals that are passionate
about ending child exploitation often build international networks of connections. The resulting bonds might pave the way for informal collaboration ahead of future multinational probes.

➢ In order to shield children from the consequences of such crimes, the investigative authorities may collaborate with non-governmental organizations (NGOs) that focus on improving the lives of minors & reducing the incidence of child misuse.

➢ By providing the necessary attention to the current laws against such offences, the media may also play an active part in educating the public about child abuse.

➢ The research community has the formidable issue of bridging the many gaps in information on child sexual abuse and exploitation concerning ICTs. Policymaking would also benefit from research on how specific innate and extrinsic characteristics impact children's susceptibility to abuse and exploitation.

5.2 PRECAUTIONS TO BE TAKEN BY PARENTS AND RELATIVES OF THE CHILDREN

➢ This issue can only be adequately addressed by beginning its elimination at the family level. The first step is creating a family atmosphere where children feel safe sharing anything and everything with their parents. Children benefit from an environment where sharing is encouraged.

➢ Parents must bear responsibility for serving as instructors, friends, and police officers to minors and teenagers since victims, in many instances, do not have an awareness of the basis on which they have been lured into criminal conduct.

➢ Families should have regular conversations with their children about the dangers of child abuse, including sexual assault, and how to see red flags and get help if needed. Parents should keep in regular touch with their children so that any signs of abuse may be identified even if the child does not come forward voluntarily.

➢ People should be taught to notice changes in children's behavior and investigate the causes of abuse to protect the kid from long-term suffering.
➢ The officials in charge of the schools should raise awareness regarding child abuse. If a pupil's behavior changes, the parents shall be notified, & the kid shall be questioned in a secure habitat to decide if or not misuse has happened.

➢ In the case of children without any guardians, investigative agencies should collaborate with non-governmental organizations (NGOs) that aim to protect these children and prevent child sexual abuse by foreign people.

➢ Everyone should make an attempt to resurrect the disintegrating joint family system for more significant advantages, including kid protection.
REFERENCES

➢ Geraldine Van Bueren, The International law On the Rights of the child, (Brill publication,1995)


➢ Aatif, S, ‘Child Pornography and Sexual Abuse in Child Care Institutions’ (2007) 6 Institutionalised Children Explorations and Beyond


Primary Resources

➢ Optical Protocol on Sale of Children, Child Prostitution and Child Pornography
➢ Information Technology Act, 2000
➢ Indian Penal Code, 1860
➢ The Protection of Child from Sexual Offences Act, 2012

Judgments Used

➢ Court on its own motion v State of Punjab (2013) (3) RCR
➢ Shreya Singhal v Union of India (2013) 12 SCC 73
➢ Kamlesh Vaswani v Union Of India & Others (2016) LQ SC 344
➢ Maria Kuttubudin Lokhandwala v The State Of Maharashtra And Another (2020) 1 BOMCR 210