
A LEGAL FRAMEWORK IN INDIA FOR CYBERCRIME RELATED TO CHILD PORNOGRAPHY

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ABSTRACT

Treating children as sex objects is not a new phenomenon. It has been a part of society since ancient times through erotic literature and child-centered images. The development of the Internet, computers, software and video and digital cameras in the present day has contributed to the development of the modern definition of pornography. Advances in information and technology have made the production and distribution of child pornography easier and cheaper. The Internet is currently becoming a major channel for the transmission of pornographic material and has developed into a repository for a significant amount of data and information. The global nature of the Internet allows pedophiles to easily access child pornography from other countries as well. Therefore the important issue of child pornography is trans-boundary, state jurisdiction is another issue; Because sovereignty is considered the most important feature, most states generally prevent any other country or state from interfering in their issue. Since child pornography is an illegal business, it is impossible to estimate its actual value.

This paper focuses on the legal framework and cyber pornography as a material related to cybercrime. Cyber pornography is a new class of crimes committed in cyberspace primarily and fundamentally associated with the use of information and communication technologies. The purpose of this paper is to identify the relevant laws and legal status by discussing the legal framework of cyber pornography. The primary issues that this paper attempts to address include the new law in India known as POCSO. This paper attempts to evaluate the effectiveness of the IT Act and the POCSO interpretation in protecting children from the dangers of cyber pornography; It examines the question of whether the penalties imposed by the law are sufficient, whether the current law is effective in preventing cyber pornography, and whether the most recent amendment to that law includes measures that are possible to prevent cyber pornography.

Keywords: Cyber Crime, Child Pornography, POCSO Act 2012, IT Act 2000

Introduction

The future of the present human society rests on the children. The mental and physical health of humans will determine how future societies develop. The priority education given by the parents to their child determines the development of the nation, just as childhood forms the personality of an adult. The biggest asset of any nation is its children; consequently, child care must be given a top priority in national policy. Children need special attention to develop into active citizens who are physically fit, mentally sound, and alert and socially and morally sound. Crimes against children do not fall into a separate category. In most cases, crimes against children are those committed against children or involving children as victims. One of the biggest technological advances of the 20th century has been the Internet. Sadly, advances in computer and telecommunications technology that make it possible for our children to gain access to new sources of knowledge and cultural experiences are making them more vulnerable to harm and exploitation by computer-sex offenders. The Internet is a playground for pedophiles as it gives them anonymity and allows them to communicate with children and share information about child pornography through newsgroups, chat rooms and email. Computer bulletin boards seem to be specially designed to entice children. They use games to engage children and develop relationships with them online, then arrange face-to-face meetings. Pedophiles primarily use chat rooms and instant/private messages to communicate with children online.

Cyber Crime

Cybercrime, an unstoppable evil, is rooted in the misuse of the growing reliance on computers in modern life. The rate at which people use computers and other technology that is related in their day-to-day lives is rapidly rising and has developed into a need that makes life easier for users. It is an infinite medium that cannot be measured. Cyber stalking, cyber terrorism, e-mail spoofing, email bombing, cyber pornography, and cyber-defamation are just some of the more recent forms of cybercrime. The internet has both advantages and disadvantages, despite its many benefits. Some traditional crimes may also be considered cybercrimes if they are committed online or with a computer.

The first network was called ARPANET. With the invention of the Transmission Control Protocol/Internet Protocol, the World Wide Web, and hypertext, the internet became a worldwide phenomenon. The quantity and quality of information increased as the Internet

grew. However, at the time, no one anticipated the opportunities that technologically savvy criminals would gain from the internet. In 1995, the state-owned Videsh Sanchar Nigam Limited began offering internet services in India. In 1998, the government ended VSNL's monopoly and opened the market to private providers. At that time, 0.1% of India's population used the internet. Now, with 33.22% of its population using the internet, India now ranks second to China in terms of internet users. In the case of computer crime, legislators became increasingly concerned in the 1980's as businesses became increasingly reliant on computerization and as significant vulnerabilities to computer crime were revealed by cases of catalyst events. Criminals no longer have to worry about being caught by authorities when they transmit, store, or even encrypt information that serves as evidence of their crimes. A computer crime scene can now span from the geographical point of the victim (for example, the victim's personal computer) to any other point on the planet due to the extraordinary impact of the Internet, making criminal investigation efforts even more challenging.

Dr. Debarati Halder and Dr. K. Jaishankar define cybercrimes as:

“Offences that are committed against individuals or groups of individuals with a criminal motive to intentionally harm the reputation of the victim or cause physical or mental harm, or loss, to the victim directly or indirectly, using modern telecommunication networks such as Internet (Chat rooms, emails, notice boards and groups) and mobile phones (SMS/MMS)”¹

The oxford Dictionary defined the term cyber crime as “Criminal activities carried out by means of computers or the Internet.”²

“Cyber crime may be said to be those species, of which, genus is the conventional crime, and where either the computer is an object or subject of the conduct constituting crime”³

“Cyber crime means any criminal or other offence that is facilitated by or involves the use of electronic communications or information systems, including any device or the Internet or any one or more of them”⁴

The progression of the innovation has delivered new financial and political issue in the general public and on second thought of aiding the state in controlling the issue it has caused new

complex circumstance which is challenging to comprehend and, surprisingly, more hard to apply current regulation to confront what is happening. Cybercrime has become a global phenomenon, so the nationwide generalization of crime cannot be implemented in the current situation because the state machinery lacks sufficient resources and knowledge to deal with it. Cybercrime must be understood and regulated globally, not just in the United States. Only then will we be able to safeguard our society from the evil known as "Cyber Crime," which necessitates the enactment of new laws and the preparation of global preventative and defensive mechanisms. Mens Rea and Actus Reus are the two most crucial components of traditional criminal behavior. "Such result of human conduct as the law seeks to prevent,"⁵ is the definition of Actus Reus. Mens Rea means "a guilty state of mind"⁶ in this context. The second important component of crime is mentality. While the act remains the same, the state of mind renders it "reus" and, as a result, an offense. Almost every crime necessitates mental component evidence.⁷ The Information Technology Act of 2000 was enacted by the Indian government to deal with this new technology. The Information Technology Act of 2000, Section 67; deal with online obscenity and pornographic material. Section 67 of the IT Act provides:

*"Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is 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, shall be punished on first conviction with imprisonment of either description for a term which may extend to two three years and with fine which may extend to five lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees."*⁸

Classification of Cybercrime

In this chapter, the researcher looks at crimes in which technology or a computer is used as a tool. The kind of activities typically involved modifying conventional criminal activity through the use of information technology. The following is a list of common cybercrimes, some of which are widespread while others are less common. The following is a discussion of cybercrime:-

1. Cyber Pornography

The term "Pornography," which comes from the Greek words "Porne" and "Graphein," refers to works of art or literature that deal with sex and sexual themes or writing about prostitutes. Pornography is difficult to define and does not have a clear legal definition because each nation has its own traditions and customs. In some nations, pornography is legal, while in others, it is against the law and punishable.

The act of using cyberspace to create, display, distribute, import, or publish pornographic or obscene materials is referred to as cyber pornography. Online and digital pornography have largely replaced traditional pornographic content since the advent of cyberspace¹⁵. There is no clear legal definition of pornography.

2. Cyber Stalking

The act of harassing or threatening another person is known as stalking. Cyber stalking is an extension of the physical form of stalking that takes place in person but is committed online through the use of technology. When cyberstalking, the internet, e-mail, chat rooms, etc, are utilized to stalk another individual.

According to Wikipedia, cyber stalking is the use of the Internet or other electronic means to stalk or harass a person, group, or organization. As in defamation, it includes making defamatory statements or false accusations, monitoring, making threats, committing identity theft, causing damage to data or equipment, soliciting minors for sex, and gathering information that could be used to harass others.

3. Cyber Terrorism

In this generation, the phenomenon of terrorism is a very complicated issue. In the past ten years, terrorist attacks on people have increased rapidly. The violent act of terrorism has hurt everyone, from ordinary people to the country's statehood. After the end of the cold war, the world faces a challenge from the threat posed by terrorism. The state agencies are insufficient to deal with or manage the terrorist attack on humans; the inhuman act of the terrorists worldwide resulted in the deaths of numerous individuals. The international and national fronts implemented a number of countermeasures, but they were unable to contain the terrorist attack. However, the majority of these are constructed in a conventional pattern, suggesting

that they might be effective in typical terrorist attacks. However, we live in a digital age, in which computers and the internet also play a role and become useful tools for terrorists.

4. Hacking

Getting into someone else's computer without permission is all that is required to commit a computer hack. Hacking is the illegal access to another person's computer. Unapproved section into a PC having a place with another is hacking. It is identical to telephone tapping. The target computer program's flaw is discovered by hackers, who then design entry points and gain access to it. The "Firewall" technology and intrusion detection systems are examples of anti-hacking tools that can be used to prevent a computer from being hacked. Like a fire wall, a firewall prevents hacking. Interruption identification frameworks will likewise additionally attempt to distinguish the wellspring of hacking.

5. Virus and Contaminants

Computer viruses and contaminants have a long history. In 1949, self-replicating program theories were first developed. Apple Viruses 1, 2, and 3 were discovered on the Apple II operating system in 1981. Pirated video games had helped spread these viruses. The virus was extremely destructive, affecting not only the files but also the chip in the computers that were infected

6. Cyber Crimes related to Finance,

7. Phishing and Vishing,

8. Denial of Service Attack,

9. Data Theft

10. Data Diddling etc

Child Pornography

To comprehend the gravity and impact of sexual entertainment and vulgarity on society, we want to grasp these terms in their vastest conceivable plentifulness. In any region of the world, the term "pornography" has not been legally defined. The fundamental reason for this is straightforward: We do not have a uniform moral, cultural, and ethical standard, nor do we have a uniform legal standard. Materials that depict nudity, sex, or excrement are clearly offensive and have no artistic or scientific value, making them obscene and subject to

regulation or criminalization. Sections 292-294 of the Indian Penal Code of 1860 contain the traditional Indian law on the topic. The English statute gave the IPC the term "obscenity." It should be mentioned that the terms "pornography" and "obscenity" are frequently used interchangeably. Section 67 of the IT Act 2000 is similar to Section 292 of the IPC 1860 in that mere possession of obscene material for one's own personal use may not be construed as an offense. However, it is advisable to be aware that the prosecution may take a plea of abetment in such a case.

The Supreme Court ruled in **Samresh Bose v. Amal Mitra**⁹ that "a vulgar writing is not necessarily obscene." Obscenity, on the other hand, has a tendency to deprave and corrupt those whose minds are open to such immoral influences. While vulgarity arouses a feeling of disgust and revulsion as well as boredom, it does not have the effect of depraving, debasing, or corrupting the morals of any reader of the novels. The court distinguished between vulgarity and obscenity in this case. In **Ranjit D. Udeshi v. State of Maharashtra**¹⁰, it was decided that, in contrast to other provisions that use words like "Knowingly" or "Negligently," which make Mens Rea a prerequisite for proving guilt, this one does not. IPC Section 292 does not include obscenity knowledge as a component of the offense.

In today's world, children, particularly adolescents, want to explore everything on the information highway. The internet and computers are part of their education, and the children of today have access to them at home. They are exposed to the risk posed by the internet because they have access to computers and the internet. However, to the extent that digital wrongdoing or wrongdoing connected with web is concerned the actual guardians have close to zero insight into the issues or risk presented by different assistance presented over the web. The pedophiles take advantage of these things to entice children and gain their trust before taking advantage of them because their parents or teachers don't tell them what's right and wrong online.

In **Jayesh S. Thakkar v. State of Maharashtra**¹¹, the petitioners addressed a letter to the Bombay High Court Chief Justice regarding online pornographic websites. The letter was treated as a writ petition on its own. A committee to suggest and recommend preventative and controlling measures to prevent children from accessing pornographic and obscene content online was appointed by the Bombay High Court.

In the case of **Kamlesh Vaswani v. Union of India & Ors**¹², which was decided on February 27, 2016, the Supreme Court of India instructed the Centre to take measures and establish regulations to prevent access to websites that featured child pornography because they were deemed “obscene” and a threat to social morality.

In the case of **Prakash (Dr.) v. State of Tamil Nadu**¹³, Supreme Court has held that, “ It is important that while interpreting section 67 IT Act, 2000 the court may exercise its powers in the interests of the contemporary society and particularly the influence of the ‘obscene material in electronic form’ on it. For the purpose, even the State Governments may have to apprehend perpetrators of cyber obscenity by invoking local State legislations accordingly.

Protection of Children from Sexual Offences Act, 2012 (POCSO Act 2012)

Cyber pornographic sexual abuse of children is on the rise in India, and the country's current legal framework does not appear to be sufficient to address the issue. The only statutes that deal with women and child pornography, in addition to other relevant general provisions of criminal law, are the Information Technology Act of 2000 (IT Act) and the Protection of Children Against Sexual Offences Act of 2012 (POCSO). Even though these laws exist, the threat of cyber pornography is still growing, and millions of children, particularly female children, are falling victim to it. The laws that were passed need to be put into action well, so it was felt that the POCSO needed to be changed to specifically include provisions for doing so. The question of whether or not courts have the authority to prosecute crimes like child pornography is one of many issues that need to be addressed in order to curb the practice. This is especially true in the age of the internet, which raises concerns about the scope of cyberspace.

To address the growing issue of child sexual abuse, the government has recently passed the Protection of Children from Sexual Offences Act. The POCSO Act of 2012 is a comprehensive law that incorporates child-friendly mechanisms for reporting, recording evidence, investigation, and speedy trial of offenses through designated courts. It also safeguards the interests of the child at every stage of the judicial process by providing for the protection of children from sexual assault, sexual harassment, and pornography.

Anyone who uses a child for sexual gratification in any media, electronic or otherwise, is subject to prosecution under Section 13 of the Act. This constitutes an offense regardless of

whether the use was intended for distribution or personal use. The definition of "sexual gratification" is clarified in this section to include:

- (a) A representation of a child's sexual organs;
- b) The use of a child in real or fictitious sexual relationships (with or without penetration);
- c) Depicting a child in an indecent or obscene way. The term "use a child" refers to involving a child in the preparation, production, offering, transmitting, publishing, facilitation, and distribution of pornographic material through any medium, including print, electronic, computer, or other technology. According to Section 14 of the Act of 2012, the offense entails five years in prison, a fine, and, upon a second or subsequent conviction, up to seven years in prison.

In light of the fact that the majority of cases in which child pornography is committed are accompanied by the perpetrator's sexual abuse and exploitation of the child, the statute has also elaborated certain aggravated forms of the offense. As a result, the penalty is increased to ten years in prison or life in prison if the accused uses a child for pornographic purposes as well as for penetrative sexual assault; or if the accused uses a child for pornographic purposes and also commits aggravated penetrative sexual assault, the sentence is increased to life in prison.

In the case of **State of A.P. vs. Mangali Yadagirithi**¹⁴ matter was in High Court of Hyderabad where a SC/ST girl of 14 years was raped by few persons and then pictures were taken. She was even threatened that if she comes out then the perpetrators said that they would make it public so she was hindered from complaining for some time. Here the matter was referenced to the High Court that the case shall be tried in POCSO special court or SC/ST Court, here the court made that it shall be tried in the POCSO Special Court.

In the case of **Shashi and Ors. vs. The State of Karnataka**¹⁵ where the facts are that some friends of victim's father came to their house and then asked victim to collect firewood from the Jungle where afterwards the perpetrators went and raped her and also made video of the preposterous act. They were charged under POSCO and IT Act and the matter was made but the High Court of Karnataka granted them with bail and the final order is still awaited.

In **Hector Firdaus Kothavala v. State of Maharashtra**¹⁶, the issue of anticipatory bail for a POCSO act-related offense was at issue. In this appalling instance, the father of two children

was making sexual advances toward them. The heinous act was discovered by her wife, and the case was made, but children aged 4 and 6 did not have a greater understanding of the situation. The court granted the accused anticipatory bail.

Amendment to the POCSO Act of 2012

In August 2019, the Protection of Children from Sexual Offenses Act of 2012 was amended by the Indian Parliament. The new bill aims to increase the death penalty for minors convicted of sexual offenses. The Bill says that anyone who uses a child for sexual purposes will be punished with up to five years in prison and a fine to stop child pornography. However, in the event of a second or subsequent conviction, the penalty would be a fine and up to seven years in prison. Any visual representation of sexually explicit behavior involving a child, including photographs, video, and digital or computer-generated images that cannot be distinguished from a child, is considered child pornography under the Bill.

IT Act 2000

The publication or transmission of obscene content via electronic means is illegal under the Information Technology Act of 2000. Child pornography was not specifically addressed in the previous Act; Section 67 of the prior Act dealt with all instances of pornography. However, it is essential to note that the IT Act of 2000 marked a significant advancement over previous legislation. In the past, the Indian Penal Code of 1860 and the Indecent Representation of Women (Prohibition) Act of 1986 were used to deal with all instances of pornography, online or offline. Obscene content transmission or publication carries a maximum sentence of two years and five months in prison, and any subsequent conviction carries a maximum sentence of five years in prison and a fine of up to ten lakh rupees.

Child pornography is one of the crimes that are specifically punished in the 2008 amendment to the 2000 Act. Publishing or transmitting content that depicts children engaging in sexually explicit behavior is punishable. In addition, it penalizes the browsing, collection, dissemination, and production of any child-oriented sexually explicit content. It is illegal to have an online relationship with children, to facilitate child abuse online, and to electronically record sexual abuse of children. The Act stipulates that the first conviction carries a penalty of five years in prison and a fine of up to five lakh rupees, while the second conviction carries a penalty of seven years in prison and a fine of up to ten lakh rupees. The Act's offense is

cognizable and not subject to bail. Intermediaries are held accountable for the storage and dissemination of information under Section 67C. Also changed was Section 79; it lays out the conditions under which intermediaries will not be held liable.

P. Shanmugavel Raj v. the State and Others¹⁷, This was a Criminal Revision petition opposing the trial in the case of a 13-year-old girl's rape. The case was pending in the session court at the time, but the High Court of Madras ordered that it be tried in the special court because the act required the establishment of a special court. It was also discussed which court agreed with the previous conclusion regarding the Special Prosecutor.

It is difficult to stop child pornography, despite having such extensive legal provisions that punish it. The technology currently in use is not sufficiently advanced to produce child pornography from the vast pornographic field. It is necessary to distinguish them on digital media because the issue of pornography must be viewed in light of the Right to Freedom of Expression

Conclusion & Suggestions

A new generation of criminals has turned to computers to help them create and hide their illegal activities as cyberspace and online file sharing grow. The new field of digital child pornography, which is recognized by governments worldwide as a growing concern, has emerged in the age of digital communications. As technology spreads globally, this illegal market is expanding and will continue to do so. In order to take a proactive approach to apprehending digital criminals, law enforcement agencies will need to maintain intelligence on technological advancements that could be advantageous to offenders in order to combat online child exploitation. According to our analysis, it is evident that technological and legal advancements since the 1990's have created a challenging environment for law enforcement. Additionally, we can anticipate that information technologies will further enable child pornographers to commit crimes due to the rapid advancement of technology. The overall goal of this paper is to raise public awareness of the technology-law gap among policymakers and law enforcement. In this sense, law enforcement personnel ought to be made aware of the necessity of continuing their education in current technologies; not only the technologies used by child pornographers but also those that might help law enforcement catch online child predators.

The Delhi High Court stated, "The nature of the medium has posed a serious challenge to governments and legislatures that the regulation of pornography on the internet has posed." The difficulty is made even more difficult by the lack of effective filters to prevent objectionable content from being accessed and the easy availability of pornographic material in digital form, including video clips, even to children. "Controlling pornography on the internet is problematic because we may not know from whom or from where the material originates, how many people are receiving the information, or if the material is crossing international boundaries,"¹⁷ is one of the statements that have been made.

As a result, obscene images and pornographic films should be severely restricted by the international community. In addition, the paper suggests that the government create a speedy and efficient software tracker for parents and other law enforcement agencies. Both sexual exploitation of children and child pornography are extremely serious violations of human rights and the fundamental right of the child to a harmonious education and development.

Even though there is a need to define "an image in a form of violent," the paper suggests that the international community should vehemently propose a blockage policy against pornography films and also outlaw depictions of an image in a form of violence. The paper also suggests that the government should explicitly regulate the application of internet service providers in such a way that there will be conditions for subscribers and that they should also provide software to track pornographic movies on the internet. Notwithstanding this suggests a code of training in examining pictures of sexual entertainment and whether a film has passed blue-penciled. With the introduction and amendment of the Information Technology Act and the most recent Protection of Children from Sexual Offences Act, Indian laws have undergone a number of changes over time. It is anticipated that the issue of pornography will soon be under control.

As a result, the children are left with an unprotected and unregulated cyber world in which pornographic companies and pedophiles profited by luring children down dangerous paths. Due to their vulnerability and the emergence of these crimes, the nations and international organizations have become increasingly concerned about the protection of children's rights worldwide. In order to combat this threat, a legal framework needs to be in place at the international, regional, and national levels. The national government must now ensure that

these legal institutions are fully operational. The issues surrounding its regulation are numerous, and some suggestions in this regard are as follows:

- a) Develop technical expertise and knowledge of Internet pornography.
- b) Establish connections with other organizations and authorities.
- c) Make connections with ISPs.
- d) To establish a proper communication channel and strengthen the central authority.
- e) To learn about the peculiarities of law and how the POCSO court applies the IT Act.
- f) Teachers and parents should be friendly to children.
- g) The government also takes the necessary measures to make child pornography illegal.

The spread of child pornography is greatly influenced by developments in computer technology and the internet. A combination of statutory measures, filtering technologies, and self-regulation is the only way to defeat online child pornography.

In this century, numerous international and national efforts to curb child pornography have been implemented, as previously mentioned. However, achieving this objective still requires a great deal of effort. To remove child pornography from the internet, the current technology needs to be improved. Additionally, just like technology, law enforcement personnel must adapt over time to meet society's needs and safeguard children's interests.

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