

# VICTIMIZATION OF CHILDREN IN THE OFFENCE OF CHILD PORNOGRAPHY: THE ROLE OF POCSO ACT, 2012



*“Unfortunately, we have also seen a historic rise in the distribution of child pornography, in the number of images being shared online, and in the level of violence associated with child exploitation and sexual abuse crimes. Tragically, the only place we have seen a decrease is in the age of victims.”*

*Attorney General Eric Holder*

Child pornography is publishing and transmitting obscene material of children in electronic form. Child pornography is increasingly prevalent in today's society and is now one of the fastest-growing internet activities. Child pornography is the most heinous crime which occurs and has led to various other crimes such as sex tourism, sexual abuse of the child, etc. The existing society is so technologically dependent that, it is glued to their electronic gadgets in quest of everything. On one side technology has helped us in solving crimes, on the other hand, it has given birth to many new ones too.

Pornography is an offense with grave moral implications. There isn't any well-settled definition for the offense of 'pornography'. It has rather been related to something which is obscene in nature. There are three main international legal instruments that address child pornography:- The Optional Protocol to the (U.N.) Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, The Council of European Convention on Cybercrime; and the Council of European Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

However, the porn industry has been highly lucrative these days and is spreading across the globe in an exceedingly coordinated manner. It is a multi-million-dollar industry that has made young children its most vulnerable victims. According to a Microsoft study in June 2012 that more than 50% of the children in India using the net are either threatened or harassed online. The 'Global Youth Online Behaviour Survey' conducted by Microsoft, revealed that 53% of the surveyed children aged between 8 to 17 in India admitted they were victims of cyber bullying. According to market figures from the National Center for Sexual Abuse, child pornography is one of the fastest growing online businesses and India is among its biggest consumers and contributors. In India, a pornographic video is captured every 40 seconds, about 38 percent of which are linked to child sexual abuse. The director of the Indian Cyber Army stated that, around 25% of all the search engine queries in India are related to child pornography. A recent study by the US National Center for Missing and Exploited Children (NCMEC) and the Indian National Crime Records Bureau (NCRB) found that more than 25,000 pieces of alleged child sexual abuse content have been uploaded to social media platforms in India over the last 5 months till 2<sup>nd</sup> May, 2020.

The criminal law in India is inadequate in many respects to deal with the sensitive and serious issue of sexual offences against children. The 172th Law Commission report has reviewed all the laws dealing with sexual offences after the *Sakshi v Union of India* AIR 2004 SC 3566. Case. After which, the said Commission appealed for numerous amendments to the laws dealing with this subject. Until May 2012, various provisions of IPC, like Section 354, 376 and 377 which dealt with 'sexual offences' were also applied to the cases of child sexual abuse. This resulted in a serious miscarriage of justice as those provisions were not reasonably sufficient for their application to cases of child sexual abuse. However, certain amendments were made in the IPC after the *Nirbhaya case* under the 2013 Criminal Law Amendment Act. Nonetheless, it is still incomplete and has failed to deal with the sexual offences involving children.

When it comes to Section 67B of Information Technology Act, 2000, the legislature has taken special care of online abuse of a child in the Cyberspace which is so rampant & easy owing to certain advantages of Information Technology. Along with publication or transmission of impugned material, as per Information Technology Act, 2000, even browsing and downloading of material depicting or containing a child in an obscene or indecent or in a sexually explicit act, or abusing children online, etc. is now an offence with severe punishment. 'Child pornography', is also part and parcel of 'Code of obscenity' as reflected in the Information Technology Act, 2000, through various wrongs. But then, despite having such an outstanding arrangement dealing with child pornography, child pornography was rampant and being committed online with very ease and with far-reaching implications, which led to its inclusion in the POCSO Act, 2012 also.

The increased issues of child crimes and thus activism for the protection of children in media and public discourse are one of the important reasons which accounted for the Government of India to pass a special law, namely; The Protection of Children from Sexual Offences Act, 2012. This Act criminalizes sexual assault, sexual harassment, and child pornography. Section 14 of the POCSO Act 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. Under the POCSO Act, the storage of child pornographic material for commercial purposes is criminalized but storage for non-commercial purposes is not. All forms of child sexual abuses are specific offenses with specific punishments for the perpetrators. It has laid down certain guidelines for police and court

authorities to deal with the victims. Special child courts are also setup to deal with the issue; however, the effective application of these guidelines remains a point of concern. The problem of implementation has highly hampered the protection of children from sexual abuse in the country. Furthermore, National Commission for the Protection of Child Rights which was established as an independent body in 2007 which ensures that all such laws, policies, and programmes, are in agreement with the child rights enshrined in the Constitution of India and the UN Convention on the Rights of the Child.

The Commission has also been assigned the task of overseeing the implementation of the POSCO Act. Many forms of sexual abuse, like showing pornography to children could not be prosecuted; unless there was penetrative sexual assault and there were no provisions that could prosecute sexual offences against boys, but all these have been included in the POCSO Act. Sexual Harassment under this Act states that, any person who shows objects to a child in any form or media for pornographic purposes, or enticing a child for pornographic purposes or gives gratification, or constantly watches a child either directly or through electronic, digital or any other means, or threatens to use a real or fabricated depiction through electronic, digital or any other mode of any part of the body of the child or involvement of the child in a sexual act shall be punished with an imprisonment of either description extending to 3 years. Furthermore, the Act also specifically mentions about punishing any person for using a child for sexual gratification; like representation of the sexual organs of a child or using his/her for real or simulated sexual acts, with or without any kind of penetration or the indecent or obscene representation of child, with an imprisonment of either description extending to 5 years, and in case of any subsequent conviction, imprisonment shall be extending to 7 years and fine.

While Section 67B of the IT Act targets the object of child pornography by criminalizing the pornographic depiction of a child, Section 14 of the POCSO Act targets the subject of child pornography by criminalizing the use of a child for the purpose of pornography. The consent of a child is irrelevant under both the laws as a child is deemed unable to give consent.

Last year in 2020 the Union government has notified the Protection of Children from Sexual Offences Rules, 2020 enabling implementation of recent amendments of 2019 to the Act that made punishment provisions more stringent and also defined child pornography and provided the rules which states that “any person who has received any pornographic material

involving a child or any information regarding such pornographic material being stored, possessed, distributed, circulated, transmitted, facilitated, propagated or displayed, or is likely to be distributed, facilitated or transmitted in any manner shall report the contents to the special juvenile police unit (SJPU) or police, or the cybercrime portal". Under the rules, the state governments have been asked to formulate a child protection policy based on the principle of "zero-tolerance" to violence against children, which shall be adopted by all institutions, organisations, or any other agency working with, or coming in contact with children. The central government and every state government shall provide periodic training including orientation programmes, sensitisation workshops and refresher courses to all persons, whether regular or contractual, coming in contact with the children, to sensitise them about child safety and protection and educate them regarding their responsibility under the Act. The POCSO (Amendment) Act, 2019 also amended section 6 " (1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death. (2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."

Child pornography is not only a legal issue, but also a moral issue as it has the propensity to adversely alter a child's perception of humanity. The repeated circulation of pornographic content over the internet worsens the trauma of child victims by keeping the wounds fresh.

### **SUGGESTIONS**

- i. There should be increase in rate of convictions in regard to child pornography.
- ii. Strengthening of collaboration with foreign investigative authorities.
- iii. Counseling by Child Psychologists and guidance and assistance by Child Welfare Officers.
- iv. Acquire technical knowledge and expertise in Internet pornography.

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