

Child Pornography in Digital Times: Issues and Concerns

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Abstract

In the digital era, child pornography emerges as a pressing concern, posing a profound threat to the safety and welfare of children globally. This despicable crime exploits and victimizes innocent individuals, with the rapid proliferation of digital technologies exacerbating its prevalence. In India, where the protection of children is paramount, stringent legal measures have been enacted to address this issue. This paper provides a comprehensive and critical analysis of the issue of child pornography in the digital era, examining the multifaceted challenges it presents and the proactive measures undertaken by governmental and non-governmental entities. Through an exploration of the legal framework, landmark cases regarding child abuse in India, and initiatives aimed at child protection, the paper delves into the roles of internet service providers and social media platforms in combating the dissemination of child sexual abuse material. Furthermore, the importance of international cooperation and future perspectives in addressing this grave issue is underscored. By prioritizing the safety, well-being, and dignity of our children, it is imperative to confront the scourge of child pornography and uphold their fundamental rights.

Keywords: Children, Pornography, Rights, POCSO, CSAM

1.0 Introduction

Child pornography stands as a grave concern that threatens the safety and well-being of the children, the most vulnerable components of the society. In an era marked by the unprecedented expansion and advancement of the internet, both positive and negative consequences have emerged, profoundly impacting the lives of children. While the internet has revolutionized educational methodologies and facilitated day-to-day learning experiences, it has also unveiled its darker facets, including the proliferation of child abuse in various forms such as trafficking, prostitution, and kidnappings. Amidst these atrocities, child pornography emerges as one of the most abhorrent manifestations of exploitation, inflicting severe physical and psychological harm upon its victims. Unlike adult-oriented pornography,

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the involvement of children unequivocally renders it illegal across most nations, reflecting its inherently sinister nature. In India, the scourge of child pornography has witnessed a troubling escalation, exacerbated by the proliferation of online platforms, particularly during the pandemic lockdowns.

India, a nation grappling with complex socio-cultural, economic, and technological dynamics, presents a multifaceted landscape for understanding the prevalence and implications of child pornography. The incidence of child sexual abuse (CSA) in India, affecting both genders significantly, underscores the urgent need for standardized assessments to obtain accurate epidemiological estimates. Cyber child pornography looms as a significant threat, with a staggering one-third of the internet saturated with pornographic content, perpetuating the exploitation and oppression of women and children alike. The ramifications of child sexual abuse extend far beyond the physical realm, encompassing dire consequences for victims' mental, social, and behavioural well-being.

1.1 Objective and Methodology

1.1.1 Objective

The purpose of this study is to provide a comprehensive analysis of the critical landscape of child pornography in the digital age, specifically focusing on India. The study aims to examine the multifaceted challenges posed by child pornography and the proactive measures undertaken by governmental and non-governmental entities to address this issue. Through an exploration of the legal framework, landmark cases, initiatives aimed at child protection, and the roles of internet service providers and social media platforms, the study seeks to shed light on the complexities of combating the dissemination of child sexual abuse material. Additionally, the study emphasises the importance of international cooperation and offers future perspectives on addressing this grave issue. The essay adds to the literature on the subject, helps creating awareness, and emphasises the need for discussions on strategies at global platforms to protect children from online exploitation. In this sense it has policy implications also.

1.1.2 Methodology

The study has adopted secondary sources of research. A thorough review of existing literature on child pornography, child protection laws, internet regulations, and related topics is conducted. This helps establish a theoretical framework and provides insights into the current state of research on the subject. An examination of the legal frameworks and statutes related to child protection and pornography in India is undertaken. This involves analysing relevant laws, regulations, and policies at the national and state levels to understand the legal mechanisms in place for combating child pornography. Landmark cases related to child abuse and pornography in India are analysed to understand legal precedents, judicial interpretations, and the effectiveness of legal interventions in addressing the issue. Official documents, reports, and guidelines issued by governmental and non-governmental organisations concerning child protection and pornography have been consulted.

1.2 Definition of Child Pornography

The origins and contemporary understanding of pornography, trace its roots to the Greek term "pornographic," meaning writing about prostitutes. It defines pornography in modern times as sexually explicit material intended to produce sexual arousal in viewers. Specifically, child pornography involves the creation, publication, and transmission of obscene material

featuring children in electronic form (GoI 2023). The POSCO (Protection of Children from Sexual Offences Act, 2012 in its section-2(1) (da) defines "Child" is any person below the age of eighteen years, and "Child Pornography" as "any visual depiction of sexually explicit conduct involving a child which include photograph, video, digital or computer-generated image indistinguishable from an actual child and image created, adapted, or modified, but appear to depict a child" (GoI 2012:1). Child pornography is a form of sexual exploitation and abuse of children and is considered illegal in most jurisdictions worldwide.

Article 2 (c) of the OPSC defines 'Child Pornography' as "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" (OHCHR 2000:248). This definition inherently involves a child and a paedophile, typically a male (and occasionally a female), who imposes sexual desires onto a child. Paedophilia denotes "sexual urges and sexually arousing fantasies... involving sexual activity with a prepubescent child" (Lanning 1992:3). The urge in the paedophile is a mark of disorder in sexual behaviour. As per Article 9 of the Cyber Crime Convention, 2001, child pornography encompasses pornographic material depicting minors or individuals appearing to be minors, who are engaged in sexually explicit conduct (CoE 2001:5). Children, being intellectually delicate and vulnerable, face challenges in navigating the negative aspects of modern technology. Social media, particularly, becomes a prominent platform where children can fall prey to individuals seeking minors to gratify their sexual desires. This vulnerability facilitates the targeting and brainwashing of innocent children, leading to egregious crimes such as child pornography.

The phrase "Child Pornography currently used in federal statutes, is defined as any visual depiction of sexually explicit conduct involving a person under 18 years of age. However, there's a shift towards using "child sexual abuse material" (CSAM) as the preferred terminology. This change better reflects the abusive nature portrayed in the images and videos, as well as the trauma it causes for the child victims. In 2016, an international collaborative effort involving various countries and international organisations committed to combating child exploitation officially recognised preferred term "child sexual abuse material" (CSAM) as it aims to underscore the severity of the issue and the urgent need for collective action to combat it effectively (DoJ 2023). The National Human Rights Commission (NHRC) issued an advisory report in 2023 to protect the rights of children in the digital phenomena, "Advisory for Protection of the Rights of Children against Production, Distribution and Consumption of Child Sexual Abuse Material (CSAM)" to Union/ State Government(s) and UT administration(s) and stated that the "Child Pornography" should be replaced with "Child Sexual Abuse Material" mentioned in section-2(1) (da) of the POCSO ACT, 2012 (NHRC 2023).

1.3 Prevalence of Child Pornography in India

Pavan Duggal, a cyber-law expert points to the limitations in tracking down porn sites due to evolving technology. It acts as a shield against the authorities in India who are trying to figure out ways to put ban on these sites. Additionally, globalisation and restrictive internet jurisdiction do not exclusively allow a national government like India to fight the issue of all alone (Mittal n.d.). A study conducted by the Ministry of Women and Child Development in 2007 revealed that over 53.22% of cases came from states like Andhra Pradesh, Assam, Bihar, and Delhi. Notably, instances of severe abuse were often perpetrated by individuals known to the child, including parents. Severe forms of sexual abuse were reported by 21.90% of child respondents, while 50.76% was reported facing other forms of sexual abuse. Among

the highest number of incidences reported was by children living on the streets, children in labour and children in institutional care (WCD 2007).

In August 2018, the Government of India presented alarming statistics to the Supreme Court. The statistics recorded 1,575 minors who were victims of sexual abuse and 189 who were victims of pornography. The numbers of victims are identified from 9,589 Child Care Institutions (CCIs) across the country (PTI 2018). Information regarding registration of cases under the POCSO Act, 2012, 1,575 children, comprising 1,286 girls and 286 boys, were identified as victims of sexual abuse. Additionally, 189 children, including 40 girls and 149 boys, were found to be victims of pornography (PTI 2018). According to the National Crime Records Bureau (NCRB) data, there were total 969 cases related to the online transmission of Child Sexual Abuse Material (Chauhan 2023). The number of cases stood at 164 in 2019, 842 in 2020 and 805 in 2021. The NHRC cites data from the National Centre for Missing & Exploited Children which shows that 5.6 million reports of CSAM out of 32 million annual global reports came from India. The rights body reported 4, 50,207 cases of CSAM in 2023 before concluding of the year. In 2022, 2,04,056 cases were reported which showed an increase from 1,63,633 cases reported in 2021 (NHRC 2023).

State/UT-wise Cases Registered (CR), Cases Charge sheeted (CCS), Cases Convicted (CON), Persons Arrested (PAR), Persons Charge sheeted (PCS) and Persons Convicted (PCV) for Cyber Pornography/ Hosting or Publishing Obscene Sexual Materials depicting children under Cyber Crimes against Children during 2018-2020 is presented in table 1.

1.4 Legal Framework and Challenges

India did not have specific legislation targeting online child pornography prior to the enactment of the Information Technology (Amendment) Act, 2008 (IT Act). Instead, child pornography fell under obscenity laws. The absence of a specific law was felt by Justice S. Muralidhar of Delhi High Court. A case involving the circulation of a pornographic MMS of children on a popular website was filed in Delhi High Court in 2008. The accused was charged under Section 67 of the IT Act (Publication and transmission of obscene material) and Section 292 of the Indian Penal Code (Sale of obscene material) (Avnish Bajaj v. State, Criminal 2012). The Judge S. Muralidhar noted the absence of specific legislation to try a case of the above nature and remarked, "India may want to develop a different legislative model to regulate the use of the internet with a view to prohibiting its use for disseminating child pornographic materials... the task deserves the utmost priority" (cited in Ahmed and Faujdar 2022:271). During this period, there was a growing international consensus on the necessity of universally criminalising the production and distribution of online child pornography (Mukherjee 2007). The Optional Protocol to the Convention on the Rights of the Child on the Sale of Child Prostitution and Child Pornography (CRC-OP) urged state parties to penalize child pornography (OHCHR 2000). India signed the protocol on 15 November 2004, and ratified it on August 16, 2005 (ibid.).

In India, the legal framework for addressing child pornography primarily consists of the Information Technology Act, the Protection of Children from Sexual Offences (POCSO) Act and relevant sections of the Indian Penal Code. Section 67B of the Information Technology (IT) Act, effective from 29 October 27 2009 (Hemrajani 2019) targets child pornography in particular by criminalising its production, publication, and distribution. The Act broadly defines production to include various forms of media such as text, digital images, videos, audio recordings, and photographs portraying children in obscene, indecent, or sexually explicit contexts. This definition extends to encompass materials like comics, erotica

novels, or cartoons depicting children engaged in sexual activities. The legislation also prohibits the publication, transmission, advertisement, promotion, exchange, and distribution of any material depicting children in sexually explicit manners. Notably, while the consumption of adult pornography remains legal, Section 67B (b) expressly criminalises actions like seeking, downloading, browsing, or storing child pornography. Offenders face imprisonment for a period up to five years for initial offenses and up to seven years for subsequent violations. Limited exceptions exist for materials used in the interest of science, literature, art, learning, or for bona fide heritage or religious purposes.

Subsequently, the Indian government enacted the Protection of Children from Sexual Offences Act, 2012 (GoI 2012), which also addresses child pornography. Section 14 of POCSO focuses on the subject by prohibiting and criminalising the use of children for pornographic purposes. This creates distinct forms of criminal liability irrespective of the child's consent. POCSO targets various forms of media, including representations of sexual organs, children engaged in real or simulated sexual acts, and indecent or obscene portrayals of children. Offenders face imprisonment ranging from six years to life, depending on the severity of the offense. Additionally, the Act criminalises the storage of any pornographic material involving a child for commercial purposes, while non-commercial consumption of child pornography remains unpunished under POCSO. The Protection of Children from Sexual Offences (POCSO) Act, 2012 was amended in 2019 to make penalty more severe. Section 14 of the Protection of Children from Sexual Offences (POCSO) Act outlines the punishment for using a child for pornographic purposes.

1. Any individual who utilizes a child for pornographic purposes faces imprisonment for a minimum of five years and may also be fined. Upon a second or subsequent conviction, the imprisonment term increases to a minimum of seven years, along with potential fines.
2. If the person using a child for pornographic purposes directly participates in pornographic acts that constitute offenses under sections 3, 5, 7, or 9 of the POCSO Act, they face additional punishment under sections 4, 6, 8, and 10, respectively. This additional punishment is in addition to the penalties outlined in subsection (1).

Section 15 of the POCSO Act addresses the punishment for the storage of pornographic material involving a child.

1. Individuals who store or possess pornographic material involving a child but fail to delete, destroy, or report it to the designated authority with the intention of sharing or transmitting child pornography face fines of not less than five thousand rupees. Upon second or subsequent offenses, the fines increase to not less than ten thousand rupees.
2. Those who store or possess pornographic material involving a child for purposes other than reporting or using it as evidence in court face imprisonment for up to three years, fines, or both.
3. Individuals who store or possess pornographic material involving a child for commercial purposes face imprisonment for a minimum of three years, which may extend to five years, fines, or both upon first conviction. For second or subsequent convictions, imprisonment extends from a minimum of five years to seven years, along with potential fines.

Table 1: Cyber Crimes against Children during 2018-2020

Sl.	State/ UT	2018						2019						2020					
		C R	C C S	C O N	P A R	P C S	P C V	C R	C C S	C O N	P A R	P C S	P C V	C R	C C S	C O N	P A R	P C S	P C V
1	Andhra Pradesh	0	0	0	0	0	0	2	1	0	2	1	0	15	0	0	2	0	0
2	Arunachal Pradesh	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
3	Assam	1	0	0	1	0	0	6	2	0	5	3	0	21	6	0	6	10	0
4	Bihar	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
5	Chhattisgarh	0	0	0	0	0	0	3	3	0	2	3	0	3	3	0	5	5	0
6	Goa	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
7	Gujarat	0	0	0	0	0	0	1	0	0	0	0	0	1	1	0	4	4	0
8	Haryana	0	0	0	0	0	0	3	1	0	5	3	0	16	8	0	11	10	0
9	Himachal Pradesh	1	0	0	0	0	0	8	1	0	1	1	0	17	5	0	9	6	0
10	Jharkhand	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
11	Karnataka	2	0	0	2	0	0	2	1	0	3	1	0	122	10	0	31	10	0
12	Kerala	18	8	1	14	8	1	27	9	0	22	14	0	101	26	0	103	27	0
13	Madhya Pradesh	1	1	0	1	1	0	8	9	0	13	10	0	20	14	0	17	21	0
14	Maharashtra	0	0	0	0	0	0	6	4	0	3	4	0	123	31	0	56	38	0
15	Manipur	0	0	0	0	0	0	1	0	0	1	0	0	3	0	0	0	0	0
16	Meghalaya	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
17	Mizoram	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
18	Nagaland	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
19	Odisha	7	7	0	7	7	0	2	0	0	0	0	0	71	46	0	77	77	0
20	Punjab	0	0	0	0	0	0	1	0	0	0	0	0	8	8	0	8	8	0
21	Rajasthan	0	0	0	0	0	0	3	3	1	8	8	3	6	4	0	9	9	0
22	Sikkim	1	1	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0
23	Tamil Nadu	1	0	0	0	0	0	3	1	0	2	1	0	28	5	0	11	5	0
24	Telangana	0	0	0	0	0	0	0	0	0	0	0	0	7	0	0	7	0	0
25	Tripura	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
26	Uttar Pradesh	8	4	0	8	7	0	25	23	1	37	37	1	161	99	0	12	147	0
27	Uttarakhand	1	1	0	2	2	0	0	0	0	0	0	0	11	4	0	4	4	0
28	West Bengal	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
	TOTAL STATE(S)	42	22	1	36	26	1	102	58	2	-	86	4	735	270	0	372	381	0
29	A&N Islands	1	0	0	0	0	0	0	0	0	0	0	0	1	2	0	0	2	0
30	Chandigarh	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0

31	D&N Haveli and Daman & Diu+	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
32	Delhi	1	0	0	0	0	0	1	0	0	0	0	0	1	0	0	0	0	0
33	Jammu & Kashmir*	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
34	Ladakh	-	-	-	-	-	-	-	-	-	-	-	-	0	0	0	0	0	0
35	Lakshadweep	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
36	Puducherry	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL UT(S)		2	0	0	0	0	0	1	0	0	0	0	0	3	2	0	0	2	0
TOTAL (ALL INDIA)		44	22	1	36	26	1	103	58	2	104	86	4	738	272	0	372	383	0

Source: Govt. of India

1.5 Government Initiatives

There are various government initiatives underscore a comprehensive approach to combating sexual offences against children and cybercrimes targeting children. The Government of India, through the National Crime Record Bureau (NCRB) has signed a Memorandum of Understanding with the National Centre for Missing and Exploited Children (NCMEC), USA, which provides to access more than one lakh cyber tip line (the place to report child sexual exploitation) accessible through the National Centre for Missing & Exploited Children (NCMEC) in the USA (GoI 2022). This agreement intends to assist law enforcement agencies in India in combating child pornography and child sexual abuse material. The MoU lays the groundwork for establishing an innovative mechanism to exchange information regarding these illicit activities and to take legal measures against perpetrators (GoI 2022).

The POCSO Rules, 2020 mandate the dissemination of suitable material and information by respective governments in various public places such as *panchayat bhavans* (panchayat hall), community centres, educational institutions, transportation hubs, cinema halls, and online platforms like the internet and social media. This dissemination aims to raise awareness and educate the public about preventing and addressing sexual offenses against children. The Ministry of Home Affairs (MHA) is implementing a new scheme under the Nirbhaya Fund, namely 'the Cyber Crime Prevention against Women and Children' (CCPWC) with a total outlay of Rs. 223.19 crore (PIB 2022). Under the CCPWC scheme, the MHA provides grants to states and union territories (UTs) to establish cyber forensic cum training laboratories. Additionally, funds are allocated for hiring Junior Cyber Consultants and for training and capacity building of law enforcement agencies (LEAs) investigators, prosecutors, and judicial officers. As of the latest data, 33 states and UTs have successfully set up Cyber Forensic Training Laboratories. More than 20,300 LEAs, police personnel, prosecutors, and judicial officers have undergone training sessions, enhancing their proficiency in combating cybercrimes (GoI 2023). The development of the "CyTrain" portal, a Massive Open Online Courses (MOOC) platform under the Indian Cyber Crime Coordination Centre (I4C), marks a significant step in enhancing cyber security knowledge among law enforcement personnel. So far, 31,000 police officers from various States/UTs have registered on the portal, with more than 8,300 certificates issued, indicating successful completion of courses or training modules. Several measures have been undertaken to raise

awareness about cybercrime including issuance of alerts and advisories, dissemination of messages through SMS, social media platforms such as Twitter, Facebook, Instagram, and Telegram via Indian Cyber Crime Coordination Centre (I4C)'s dedicated accounts, radio campaign, publishing of Handbook, organizing awareness camp etc. (GoI 2023). The government periodically blocks websites containing child sexual abuse material (CSAM) based on lists provided by Interpol through the Central Bureau of Investigation, India's national nodal agency for Interpol. Furthermore, an order has been issued to Internet Service Providers (ISPs) directing them to implement the Internet Watch Foundation, United Kingdom or Project Arachnid, Canada list of CSAM websites/webpages dynamically and block access to such content (GoI 2022).

1.6 Analysis

The impact of pornography varies significantly between children from lower socioeconomic backgrounds and those from higher socioeconomic backgrounds, necessitating tailored approaches for effective intervention. A singular solution is inadequate to address this multifaceted issue. Notably, the absence of comprehensive sex education programs and workshops in schools exacerbates the problem. In Indian society, there exists a pervasive perception of sex as taboo, leading to a lack of open dialogue within families regarding sexual matters. Consequently, children seek information externally, often resulting in pornography addiction. Detecting and effectively monitoring instances of child pornography pose significant challenges for relevant agencies. Moreover, the prevalence of pornographic content across mainstream websites and over-the-top (OTT) platforms like Amazon Prime, Netflix, and Hotstar complicates the distinction between non-explicit material and explicit content (Pandey 2020).

Crafting a precise definition of "obscenity" proves challenging due to its subjective nature; what one nation deems obscene may not hold the same classification in another. The concept is primarily shaped by the moral and ethical principles upheld within a particular society. Implementing stringent measures to curb such manifestations could provide a temporary solution, affording time for deliberation and the formulation of innovative strategies for combating Indian child pornography. Notably, it is imperative for Indian authorities to prohibit the portrayal of children, both actual and virtual, as well as individuals appearing to be minors, within online child pornography materials. Stringent action must be taken to address this heinous abuse.

The study identified a substantial increase in cases pertaining to child pornography and child sexual abuse material (CSAM) as documented by the National Crime Records Bureau (NCRB). This upward trend in figures highlights the alarming prevalence of child sexual exploitation and the urgent need for intervention and protection measures.

1.7 Conclusion

In conclusion, the issue of child pornography in India, demands urgent attention and concerted action from all stakeholders. By addressing the underlying socio-cultural, legal, and technological challenges, society can strive towards the prevention and elimination of this heinous crime, safeguarding the well-being and dignity of children across the country. However, the implementation and enforcement of these laws face numerous challenges in India, including limited resources, inadequate infrastructure, and a lack of awareness among law enforcement agencies and the general public.

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