

Child Pornography: A Nuisance

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Abstract: *Child pornography is not a new term. It is giving way to prostitution by way of young children by deceiving their young minds. It is a mental and a physical pain that a child has to go through which becomes a black memory for the rest of their life. A child nurtured in such a manner may have several psychological disorders in the long run. Thus strict norms should prevail that deter and put fear in the minds of the wrongdoers before committing such an act. Such a person should also be blacklisted and boycotted from the society. The Indian Judicial System is making way and imposing strict punishments in such cases which have been discussed in the paper. The paper also highlights the definition and contents of obscenity. It also throws a light on the long term effects on a child's future. Lastly what could be the norms to taken to prevent such ill-mannered act.*

Keywords: Child Pornography, Information Technology

1. Introduction

Child pornography relates to publishing and transmitting of any obscene material of children in electronic form. In the past child pornography has tremendously increased due to the application of the internet, & videos available on the porn sites. Child pornography is considered as one of the most heinous crime which occurs and is also giving way to crimes such as sex tourism, sexual abuse of the child etc.

The laws provide severe penalties for producer, distributors, any agent or intermediate involved in almost all societies, which includes imprisonment with or without fine with shorter duration of sentences where the offense is non-commercial in nature depending on the degree and content of the material used. Any kind of possession of child pornography includes imprisonment sentences which are converted to probation for first-time offenders. [1]

Child pornography is considered a crime in India. Information Technology Act, 2000 & Indian Penal Code, 1860 provides protection to children from child pornography. Child is defined as the person who is below the age of 18 years. The Indian Parliament passed the Information Technology Bill in February 2009, which made production, creation and transmission of child pornography illegal and punishable. The Information Technology Bill not only makes illegal to create and transmit child pornography in any electronic form, but also browsing of any child pornography illegal. The punishment prescribed for a first time offence of publishing, creating, exchanging, downloading or browsing any electronic depiction of children attracts five years in jail and a fine of Rs 10 lakh.

Section 67 of the act deals with "publishing obscene information in electronic form" [2]. The section does not define "pornography" neither makes it an offence and also does not include "child pornography" at all. But in its amendment, Section 67B proposes punishment for involvement in sexually explicit online material or electronic content that shows children. It also amounts to an offence to "cultivate, entice or induce children to online relationship with other children for a sexual act". Punishment attracts conviction for the first time offense with imprisonment up to

3 years & fine up to 5 lakh rupees. Punishment for continuous offence attracts imprisonment for 5 years & fine which may extend to 10 lakh rupees.

2. Defining Obscenity

The law does not provide any definition for "pornography" or "obscenity". The law varies from country to country and a country might consider a material sexually explicit but not obscene in one country may well be taken as obscene in India. The Indian Penal Code does not describe "obscene" but simply talks about selling and distribution of obscene material etc. The problem is much more offensive when it comes to cyber obscenity. For that we need to see what obscenity off-line is. Off-line obscenity covers any language, literature or representation dealing with erotic, pornographic and sexually perverted subjects. But the matter of obscenity lies in the reader's mind or viewer more than in any definable quality of the matter itself. It is therefore difficult to define obscenity whether off-line or on-

3. Judicial Pronouncements

The test for obscenity was first laid down the **Regina v. Hicklin** [3] as a "tendency to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall". Lord CJ Cockburn in his opinion in the Hicklin case explained that the danger of prurient literature was that it "would suggest to the minds of the young of either sex, and even to persons of more advanced years, thoughts of a most impure and libidinous character". The Supreme Court of India in the case of **Ranjit D. Udeshi v. State of Maharashtra** [4] also observed that the test laid down by Cockburn, C.J. should not be discarded and is a relevant test.

In the case of **Samresh Bose v. AmalMitra** [5] the court held that the concept and perception of obscenity would differ and might vary from country to country depending on the standards of morals of contemporary society. What might be sexually obscene for a country might not amount to obscenity for another country, obscenity is perception of the minds of the people of a country and the degree might fluctuate from one state to the other. The law has another

test laid down for obscenity in the United States Supreme Court in the case of **Miller v. California** [6]. There are three-prong test for obscenity:

- 1) Whether the “average person”, applying community standards would find the work, taken as a whole, appeals to the prurient interest;
- 2) Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically denied by state law;
- 3) Whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value [7].

The third-prong of Miller test needs a more precise evaluation of the “reasonable person” test. This test was allowed by the Supreme Court in the case of **Director General of Doordarshan v. AnandPatwardhan** [8] and also in the case of **Ajay Goswami v. Union of India**, [9] where the court said that an ordinary and a prudent man should use his common sense to judge the work whether it amounts to obscenity not an “out of the ordinary or hypersensitive person”. In the previous years the legislature is not able to the applicability of these tests for deciding obscenity in an electronic environment field.

4. Obscenity In Electronic Form

Section 67 of the Information Technology Act regulates obscene material in electronic form. The relevant ingredients of this section read as follows:

- Publication or transmission in the electronic form.
- Lascivious material appealing to prurient interests.
- Tendency to deprave and corrupt persons.
- Likely-audience
- To read, see or hear the matter contained or embodied electronic form.

So by virtue of this Section any person who commits an offence under this section is liable to be punished for imprisonment extended up to five years and fine of Rupees one lakh for the first conviction and punishment extended up to ten years and fine extended up to ten lakh rupees for the subsequent conviction. *any person* who create and maintain the pornographic websites are liable and in some cases cyber café owners and managers may also be liable in case they knowingly allow their customers to access the pornographic websites [10]. But this issue is ever increasing as the provision of law is silent on the point as to how to identify obscenity online or which is in electronic form. Relying on these *tests* and *rational* behind the **Section 292 of IPC**, the Indian Law i.e. **Section 67 of the Information Technology Act, 2000** and also **amended Act of 2008** prohibits “obscenity on internet or in electronic form”

The law nowhere defines the word “publish” under this Act. But, The Supreme Court in the matter of **Bennett Coleman & Co. v. Union of India** [11] held that publish means “Dissemination and circulation”. Dissemination, storage and circulation mean publication and transmission of information in electronic form. Section 2 (1) (v) defines information as “information” includes data, text, images, sound, voice, codes, computer programmes, software and

data bases or micro film or computer generated micro fiche. So by virtue of section 67 any of these material can be an obscene material and offensive.

4.1 The Problem of Child Pornography on the Internet

Treating a child as sexual objects existed through the ages and it included erotic literature and drawings involving children. But with the invention of camera child pornography has taken a new phase during the early nineteenth century. Internet child pornography is apart and distinct as most other crimes that local police departments handle. A citizen of a country may access child pornography videos, images that were produced and distributed and/or stored in another city or on another continent. So this crime is globally connected and inter-related. Surely, they do have access to any obscene material in form of images and clips that are downloaded by citizens thousands of miles away. Thus an investigation which begins in one police district will defiantly cross jurisdictional, boundaries of that region or that county. Hence all the major investigations of Internet on child pornography need cooperation among police officers of those particular jurisdictions, often at an international level.

4.2 Effects of Child Pornography on children portrayed

A major chunk of the children who are in sight of child pornography are not physically forced to participate. In many cases it is their own relatives who get involved into this crime for some penny and also they are manipulated into taking part by more clever means. The focus is that child pornography has a blunt, devastating physical, mental, social, and psychological effect on intellect of the child. The children are first victimized to make child pornography and thereafter when their abuse is perpetrated and recorded they are further blackmailed with their record every time is accessed.

A report showed where 34100 victims of child pornography were interviewed of the effects of their exploitation and harassment and the consequences and its effect were seen at coming years. When the abuse is taking place the victims go through utter physical pain, say around the genitals, accompanying somatic symptoms including headaches, loss of desire for food, and sleeplessness and psychological distress such as emotionally isolated, anxiety, and fear of abuse happening again. Eventually, only five cases were reported to authorities. Later, the victims reported that the feeling of shame never ended nor faded but intensified to feelings of depression, worthlessness, and hopelessness [12].

5. Suggestions and Recommendation

A few basic regulations would assist in stopping the menace of internet child pornography. There are a few challenges ahead. First of such issue is the decentralization of the network controlling agency. It becomes difficult to control as there is no single centralized controlling agency. The ambiguity of the jurisdiction also makes the task complex to track the offender and proper laws and regulations need to be framed and executed control the same. Then there is disparity in regulation and law varies from country to

country thus a proper systematic mechanism is also required to have coordination among the laws and the authorities. The skill of offenders, as the typology of Internet criminal behavior suggests, offenders are well aware of the intricate security measure which they employ through which they can be detected and caught and the degree of security level varies from technology from region to region to prevent detection. It also becomes impossible to track down every culprit who visits child pornography due to the increasing ambit of Internet activity and the sheer quantity of traffic in child pornography is increasing.

This is the most disturbing issues the whole world is facing, since it has been used on internet for abusing the child and therefore it is distinguished as issue of *child abuse* [13]. A few very significant norms as laid by the Bombay High Court Committee on Protecting Children from Online Pornography, suggested following recommendations in their Report [14] on Protecting Children from Online Pornography:

- 1) Blocking of sites;
- 2) Preventing minors from accessing unsuitable material from Cyber Cafes;
- 3) Preventing the publication or propagation of pornography from Cyber Cafes

6. Concluding Remark

Thus what may be obscene for one person may not be similar to another. This depends upon the values and ethics of a person of a country to which he belongs. Having a precise definition of obscenity is also difficult. Though in general sense, obscenity refers to indecency or lewdness in content or form which is corrupt for the general public. In the opinion of the author, it depends on the values and principles to which a person can fall and commit such a heinous crime or to the level to which a respected gentleman can rise and stop the society from engaging such activities. First the support of the local society, Second the government, Third the police authority, Fourth the cyber domain expert, Fifth the international cooperation by the countries and lastly the individual play a vital role in stopping the menace.

References

- [1] Akdeniz, Yaman (2008), "Internet child pornography and the law: national and international responses". Ashgate Publishing, Ltd. p. 11
- [2] Section 67, Information Technology Act, 2000
- [3] 868 LR 3 QB 360, 371 See: Ratanlal & Dhirajlal, INDIAN PENAL CODE, 23rd Ed., 2005, LexisNexis Butterworth's Wadhwa, Nagpur.
- [4] AIR 1965 SC 881
- [5] AIR 1970 SC 1390
- [6] 413 US 15 (1973)
- [7] http://www.law.cornell.edu/supct/html/historics/USSC_CR_0413_0015_ZS.html accessed on August 14, 2014)
- [8] (2006) 8 SCC 433.
- [9] (2007) 1 SCC 169
- [10] Rohan Nagpal, "Introduction to Cyber Crime: Investigation", Asian School of Cyber Laws Publication, p.40. (1972) 2 SCC 788.
- [11] Richard Wortley and Stephen Smallbone, "Situational prevention of child sexual abuse", William Publication, 2006.
- [12] Ratanlal & Dhirajlal, INDIAN PENAL CODE, Page No. 429, 23rd Ed. 2005, LexisNexis Butterworths Wadhwa, Nagpur
- [13] ibid