



## CHILD PORNOGRAPHY IN VIRTUAL WORLD: A NATIONAL AND INTERNATIONAL LEGAL PERSPECTIVES

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**“A nation’s children are its supremely important asset and nation’s future lies in their proper development. An investment in children is indeed an investment in future. A healthy and educated child of today is the active and intelligent citizen of tomorrow.”**

----- Rabindranath Tagore

### ABSTRACT:

The information technology has brought drastic changes in human life. Due to advancement of technology the human life becomes easy in every aspects, but it causing multiple problems in everyday life. The consumption of porn has increased due to easy access of internet. Publishing and transmitting pornographic material is illegal in country like India. There are certain sort of limitations in form of morality, decency and other similar standard in every form of society. Controlling pornography on the internet is problematic, so it may easily accessible to everyone. Today internet used for entertainment, educational, commercial purposes. It offers number of good things at the same time it is used as source of crime. The children or adolescents becomes victims of internet crimes and they subject to negative or bad impact of these technological innovations.

Due to expansion of technology, Pornography is not only subject of morality but it subject to certain legal issues. Child pornography is illegal in many countries. In recent years, child pornography increasing rapidly. It is one of the major issue at national and international level. It is falls under the category of heinous crime because it encourages sexual abuse of children, sex tourism, human trafficking etc. The first legally binding treaty on the rights of the children is, The United nations Convention on the Rights of the Child, 1989, Article 34 of convention stated that the states to undertake all appropriate national, bilateral and multinational measures for the protection of children from all forms of sexual exploitation and abuse. Despites of all national and international treaties, convention and national legislations, there is need for combating child pornography on virtual world.

In this paper, the researcher analyses various aspects of child pornography in virtual world in the context of national and international legal and judicial framework.

**Keywords :** Pornography, virtual world, Exploitation

### INTRODUCTION :

In the recent era, the progression of civilization and information technology has occupied prominent place in our every aspect of life. Users are connecting globally by accessing information technology. These activity creating new standards of speed, efficacy and accuracy in communication, and leads for boosting innovations, creativity and increasing overall productivity which are beneficial to the society. The globe in cyber space is under the one roof and on the one click all ideas and information flow from one corner to the other corner of the world. . The inherent nature of human being is

that he is a social animal. The maintenance of peace and order in the society as well as to protect personal safety which includes security of life, liberty and property. The rapid growth of information technology and use of internet leads to the growth of new forms of transnational crimes on internet worldwide, in which due to easy access of internet and smartphones consumption of porn has increased. Internet becomes the tool which provided medium for facilitating pornography. Today, pornography has occurs prominent place on internet and causes major conflicts relating to sexual abuse

and sex crimes in the society. Every society imposes certain sort of limitations and restrictions on morality, decency and other similar standards. The pornographic material is banned in some countries and it is allowed in other countries, but cyber space has no jurisdiction or physical boundary so it is available to every uses on one click on internet. Cyber place is the proper place in spread of pornographic material and can be abused in several ways. Pornography is now becomes black marketing multibillion dollar industry in all over the world.

### **Child Pornography in virtual world**

Due to expansion of virtual world there is ample of opportunities for the children to expanding their horizons. Children's sometimes interested and curious about sexuality and sexually explicit material. Sex offenders take advantages of these characteristics and need of children and target them. Internet is the medium for offenders to reach them and abuse the children sexually, hence it is made the children a viable victim to the cybercrimes. Child pornography is publishing and transmitting obscene material of children in electronic form. Pornography in virtual world is easily available and accessible to anyone. Child pornography is one of the type of sexual abuse against the children by way of audio, video, or any other type of descriptive depiction of a child engaged in any sexual activity with any adult or with the other children. There is another complex issue regarding child pornography is that in various countries the standards applied for it are subjective and its depend upon their various religious, moral, social, cultural and sexual beliefs. Even the legal definition of child is differs in different countries. The United Nations Convention on the Rights of the Child (UNCRC) defines that the person who is under the age of 18 years. But it is not universally accepted definition in all over the world, for eg.in USA

minor is the person below 15 years of age and may legally give the consent to sexual activity. In Australia, child is a person who is below 16 years. In India and Canada, it is below 18 years. It is very difficult to distinguish the term vulgarity or indecency in one nation as in another.

It is globally admitted fact that the child pornography in virtual world itself is a problem in violation of the fundamental and human rights of the children. It affects the behavior and attitude of the child and sometimes it encourages the immorality, sexual violence and negative attitude towards women.it also subject the child to physical injuries, pain, sexual transmission diseases and also creates a physiological impact on them which causes anger, depression, anxiety etc.it is more serious offence today, there is need to protect the best interest of the child in virtual world.

### **International and National perspectives**

Child pornography in virtual world is multi-jurisdictional issue, hence there is need of uniform comprehensive regulation to be taken in to consideration to protect the children from sexual abuse. In the context of International law, the first convention of children's right was Convention on Rights of Children (CRC), which gives the uniform definition of child and also laid down the guidelines on the protection of rights of the children in every aspect. The Universal Declaration of Human rights (UDHR) under article 25 (2) declares that every children born out or without wedlock needs to be equally protected. The International Convention on Civil and Political rights under article 24(1) which states that every child will be protected without any discrimination in respect of race, sex, colour accordingly and as it is required by its status as a minor on the part of his family and society.

In 1994, United Nations and European Union took special initiative to review its criminal policy to control and prevent the online

crimes. In 1999, UN had taken a significant step to combat child pornography on internet, online sexual abuse, pedophilia etc. and also adopt uniform legal system for such offences. In August 1996, the First World congress was held in Stockholm to prevent and control commercial sexual exploitation of children at globe, because these problems are increasing worldwide due to easy access of internet. On 15th January 2001, the European Council's Committee with the initiative of 41 nations adopted the draft on Convention on cybercrimes problems (Draft N/25) is containing 29 articles, in which, section 1 title 3 article 9 are deals with the prohibition of child pornography in cyberspace. Section 2 and 3 of the convention along with its preamble provides certain guidelines and directives for international co-operation to combat cybercrimes and child pornography. The United Nations Convention on the Rights of the Child (UNCRC) under article 34, stated that all the signatories shall take appropriate measures to prevent the exploitative use of children in pornographic performance and materials. In 2002, the Council of European Convention on the Protection of Children against Sexual Exploitation and Abuse, stated that the member countries or states to criminalize child pornography in every aspects. One optional protocol also added that requires that all signatories states in the legislation make the provisions on the producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornographic material.

INTERPOL has cited that Germany as one of the major producers of child pornography, and the Netherlands and the United Kingdom as the major distribution centers. The United States is one of the largest markets of demand for child pornography, though more interest has shifted to Southeast Asia in recent years.

The international organization, International Center for Missing and Exploited Child (ICMEC) deals with the combating child pornography, child sexual exploitation and child abduction, which had set up model legislation on child pornography. End Child Prostitution and Trafficking (ECPAT), is one of the international NGO network, with its sole object, to fight against the sexual exploitation of the children.

#### **United States of America**

In USA virtual or internet pornography is still complex issue. The legality of pornography is depend upon local community whether the pornographic work is to meet the standards of obscenity then it could be banned. If any pornographic material or work is illegal in California it could be legal in Alabama. But these norms create an issues when it comes on internet. In USA the pornography on internet was first time regulate by enacting Federal Communications Decency Act, 1996, which prohibits the knowing transmission of indecent messages to the minor and also prohibits the publication of pornographic material. After that Child Online Protection Act, 1998 (COPA) was enacted which forced all commercial distributors to protect their sites from access by minors from harmful materials. But this Act was struck down in 2007 by first and fifth amendments of United States Constitution. The first amendments of constitution gave emphasis on protection of right to privacy without affecting the others. In USA following statutes prohibiting the online or internet child pornography are as under-

- The Communication Decency Act, 1996
- The Child Pornography Prevention Act, 1996
- The Child Online Protection Act, 1998
- The Protection of Children From Sexual Predators Act, 1998
- Title 18 Us Code Sec. 302
- Title 18 of US Code Sec. 2252 (a)(2)(A)

### United Kingdom

Until 2000, the sale and distribution of hardcore pornography through any channel was prohibited. As per UK laws, except child pornography, the citizens can access content on sites overseas without breaking any laws. The UK government plans to criminalize the possession of extreme pornography. In UK, child is the person who is under 18 years of age but the age of the consent in the UK is 16.. Child pornography is illegal. To possess, make and distribute any electronic copies, is punishable up to 10 years custodial sentence on conviction. UK also amended its Criminal Justice and Public Order Act, 1994 to control child pornography. The Act prohibits the indecent child pornography and prohibits the possession and distribution of pornographic materials. The provisions of this Act is consistent with the other enactment like-

The Obscene Publication Act, 1959

The Protection of Children Act, 1978

The data Protection Act, 1984

The Computer Misuse Act, 1990

### India

In India, regulation of child pornography on internet is the serious challenge before the government. Sexual maltreatment of children is very common issue. In India, there are various laws to protect the rights and promote the wellbeing of children of the country. Article 21 of the Indian constitution provides for the right to life and personal liberty, Article 24 does not allow children below fourteen years to work in a mine, factory or engage in hazardous employment. Article 39(f) makes it obligatory for the State to direct its policy towards securing the health and strength of children and to give them opportunities and facilities to develop healthily and Article 45 provides that the State shall endeavor to provide early childhood care and education to children below the age of six years. There are also special enactments to

protect the rights of children and to prevent the offences against children, such as--

- The Immoral Traffic (Prevention) Act, 1986,
- The Child Marriage Restraint Act,
- The Child Labour (Prohibition and Regulation) Act, 1986
- The Juvenile Justice (Care and Protection of Children) Act, 2000.
- Indian penal Code, 1860
- Indecent Representation of Women Act, 1986, section 3 and 4 deals with the pornography.
- The Information technology Act,2000 the Act was amended in 2008, Section 67A amendment deals with the electronic transmission of material containing sexually explicit acts. Section 67B of the act deals with child pornography and provides punishment for, Anyone who “publishes or transmits or causes to be published or transmitted in the electronic form” any obscene material can be punished with a jail term of 5 years along with a fine of Rs 10 lakh.
- The Protection of Children from Sexual Offences Act, 2012 this Act was enacted with the object to protect the children from offenses of sexual assault, sexual harassment, pornography and to provide for the establishment of Special Courts for the trial of such offenses and matters connected therewith or incidental thereto. According to the provisions of the Act, the use of the child in any such form of media including program or advertisement by television channels, internet or any other electronic form or the printed form which may or may not be for personal use or distribution may be an offense if it is used for sexual gratification. Similarly, a person who stores pornographic material for commercial purposes in any form involving a child shall be punished with imprisonment extending up to three years or fine or both. The legislation not only punishes the offender who commits such acts but also

persons who abet or attempt to commit such an act. A person who abets the commission of the offense by instigating, conspiring, intentionally aiding by any act or omission would be liable for the offense and would be punishable for up to one year or with fine or both.

India, Introduced the Protection of Children from Sexual Offences (Amendment) Bill, 2019 which proposed the changes in existing Act. The section 4, 5. And 6 of the Act proposed stringent punishment including death punishment for committing aggravated penetrative sexual assault on child. And also provides for fines and imprisonment to curb the child pornography. The bill ensures the safety, security and dignified childhood for every child. It also amends punishment for various offences, so as to deter the perpetrator.

#### CONCLUSION :

The growth of information and communication technology, the whole world becomes the global village. The physical boundaries are compressed by the virtual concept of cyberspace, but it has created number of legal issues, which cannot be resolved by existing laws and procedure to deal with the virtual world. The perception about the pornography is having different aspects in different countries. Child pornography in virtual world is one of the evil due to easy accessibility and availability pornographic material on internet. It leads to other crime against the children like, child trafficking, sex tourism child abuse etc. There are various legitimate instruments are there in almost all the countries to prohibit and deter from these issues at their own perspectives, but there is a need to take efforts by all the countries and international communities to curb these menace at a glance. To combat the child pornography on internet, all the international community and the countries ought to totally banned these child pornographic sites on internet. There must be the stringent punishment should be provided for the

distributing, storing pornographic material on internet. There is necessity to enact the gender neutral legislations in regards to protection of best interest of the children in virtual world. It is very necessary to ensure the emotional, intellectual, physical and social wellbeing of the children of every nation.

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