

# AN ANALYSIS OF CHILD PORNOGRAPHY AND VIRTUAL SEXUAL SOLICITATION

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## ABSTRACT

*Child pornography on the internet is becoming an increasingly apparent issue in today's society. Child pornographers have discovered a convenient forum for distributing terrible images of children who have been sexually assaulted due to increased home Personal Computer (PC) use and more easily accessible access to the World Wide Web during the last decade. Additionally, police and attorneys worldwide have discovered that identifying and prosecuting cyber child pornographers has become time-consuming, with a high failure rate of putting offenders in prison. When fighting online child pornography, law enforcement authorities' techniques presently in use may be deemed archaic and ineffective. This article examines the main social, legal, and technical problems that people, legislators, and law enforcement officials are confronted with regarding cyber child pornography. Thus, this paper examines how children are exposed to violence through their use of the internet, as well as the need for parents, schools, government, and all stakeholders to take protective and preventive measures to ensure children's safety in cyberspace, including through comprehensive education and child protection standards.*

**Keywords:** Child Pornography, Internet, sexual abuse, solicitation, cyber violence

## I. INTRODUCTION

Over the last several decades, the explosion of information and communication technologies (ICTs) has resulted in whole new methods for forming and sustaining connections. While the tremendously beneficial effect of new technologies and the fact that they will continue to grow is widely acknowledged, the damage done to children, in particular, is plain to observe. Children and adolescents gather in cyberspace in many venues (including chat rooms, message boards, and games). It increases the possibility for individuals with malice against children and young people to seek out and approach them to hurt them mentally and physically. Certain abusers are willing to travel considerable distances to meet children or young people with whom they have spoken online or whose presence and susceptibility have been made known to them. More children and young people will be exposed to violence and injury in cyberspace as more people access the internet and new technologies, especially when the internet is accessible through mobile phones and gaming consoles.

Families serve as the first line of defense for children and adolescents in general. However, since not all families are equally prepared to handle this job in the virtual world and the danger of individual children may vary, families and caregivers will need additional assistance. Additionally, the fact that children are often more competent and educated than the adults charged with their protection should be recognized as a strong signal to embrace

the real involvement of children and young people in problem-solving. As a result, a multi-stakeholder approach is critical for ensuring children's right to knowledge and safety from danger.<sup>1</sup>

## II. DEFINITION OF CHILD PORNOGRAPHY

Child pornography is the electronic publication and transmission of obscene content involving children. Child pornography has grown in popularity due to easy access to the internet and readily accessible films. Child pornography is the most terrible crime and has resulted in various other crimes such as sex tourism and child sexual abuse.

Child pornography may involve actual or simulated sexual encounters between children, aberrant sexual activities, bestiality, masturbation, sadomasochistic abuse, or the sexually stimulating display of genitals.

The Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography defines child pornography as any depiction of a child engaging in actual or simulated explicit sexual acts or of a child's genital organs for mainly sexual reasons.

Child pornography is proof of a child's sexual abuse, and its creation always implies the commission of a crime against the child. Child pornography objectifies and degrades children. Abusers may use kid pornography to mislead a child by stating that what is occurring in the photograph is a common occurrence associated with the 'Grooming Process'.<sup>2</sup>

Child pornography can lower the potential perpetrator's inhibitions and allow the offender to minimize and distort abusive behavior. The perpetrator may use it as a justification for his abusive behavior.

## III. CYBER VIOLENCE FORMS

Child pornography, "live" online sexual abuse for paying clients (sex tourism), online sexual solicitation, cyberstalking, harassment, and bullying, as well as access to unlawful and dangerous information, are all examples of cyber violence against minors that may take place. Furthermore, child exploiters utilize the internet to network to engage in child sex tourism and trafficking activities. Children are particularly vulnerable to these harmful activities in cyberspace, which they may encounter via the internet, mobile phones, digital cameras, peer-to-peer trades, webcams, and participating in online and offline games.

Unfortunately, children and young people are exposed to the same risks in virtual environments in real-world environments. That is because when an adult or peer known or unknown to the target kid initiates violence via psychological methods to impact the

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<sup>1</sup> HERJANIC, B. & WILBOIS, R. P., Sexual abuse of children. *J. Amer. Med.* (1978).

<sup>2</sup> Georgia M. Winters & Elizabeth L. Jeglic, *Stages of Sexual Grooming: Recognizing Potentially Predatory Behaviors of Child Molesters*, *Deviant Behavior*, 38:6, 724-733 (2017).

youngster negatively, this contact may and often does escalate into threatening or actual violence in physical locations.<sup>3</sup>

### **Internet facilitates the practice of child pornography**

The trade-in of child pornography is a worldwide issue accelerating its growth. Computers are now being used to conduct crimes using this illicit content, whether through email, commercial websites, chat rooms, peer-to-peer technology, or webcams, since the internet has no boundaries.

Our nations' law enforcement operations often uncover links between criminals from other countries. There are too frequent international networks of sexually graphic picture makers, dealers, and collectors. As a result, individuals seeking to sell these pictures, often associated with organized crime and money laundering, will find a ready worldwide market.

When examining the nature and scope of child pornography, it is clear that the nature of child pornography is that it involves some child sexual abuse.<sup>4</sup>

### **Recognizing the Harms of Child Pornography**

The creation, dissemination, and ownership of pornographic pictures of children and adolescents is a national issue that has irreversible consequences for children and society. Courts have long acknowledged this damage, often mentioning children's life-long psychological anguish due to child pornography creation. In the United States, The Supreme Court, and later lower courts and Congress, have recognized the special damages that children suffer due to the dissemination and possession of their pornographic pictures, noting that children portrayed in pornography are victims of both creators and possessors of pornography. In the historic 1982 decision of *New York v. Ferber*, the United States Supreme Court acknowledged the physiological, emotional, and mental damage caused by child pornography for the first time.<sup>5</sup> The Court began by discussing the repercussions of child sexual abuse, noting that sexually exploited children are “unable to develop healthy affectionate relationships in later life, have sexual dysfunctions, and have a tendency to become sexual abusers as adults.” The Court discussed the repercussions of child pornography possession, noting the intrinsic relationship between the sexual abuse of children and the distribution and possession of photographs and films depicting their abuse. The Supreme Court reinforced these findings in its 2002 decision *Ashcroft v. Free Speech Coalition*<sup>6</sup> Stating that victims of child pornography are initially harmed by creating the images and continue each time the images are distributed.<sup>7</sup>

## **IV. INDIA'S CHILD PROTECTION LEGISLATION**

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<sup>3</sup> McCarthy, J. A., *Internet sexual activity: A comparison between contact and noncontact child pornography offenders*, *Journal of Sexual Aggression*, 16(2), 181–195 (2010).

<sup>4</sup> K. SUBBA RAO, *SOCIAL JUSTICE AND LAW 23* (Delhi: National Publishing house, 1974).

<sup>5</sup> 458 U.S. 747 (1982).

<sup>6</sup> 535 U.S. 234, 249 (2002).

<sup>7</sup> David Finkelhor & Richard Ormrod, *Child Pornography: Patterns from NIBRS*, *Juv. Just. Bull.* (U.S. Dept. of Justice), (Jan. 29, 2021, 10:04 AM), <http://www.ncjrs.gov/pdffiles1/ojjdp/204911.pdf>.

India has several regulations to protect and develop the country's children. Article 21 of the Constitution guarantees the right to life and liberty, whereas Article 24 prohibits minors under the age of fourteen from working in mines, factories, or other dangerous jobs. Article 39(f) requires the State to direct its policy toward ensuring the health and strength of children and providing them with opportunities and facilities to develop healthily. Article 45 mandates that the State provide early childhood care and education to children under six. The Immoral Traffic (Prevention) Act, 1986, the Child Marriage Restraint Act, the Child Labour (Prohibition and Regulation) Act, 1986, and the Juvenile Justice (Care and Protection of Children) Act, 2000 are all specific laws that apply to crimes against children.

The content and procedural aspects of criminal crimes, particularly those involving minors, are governed by the Penal Code of 1860 and the Criminal Procedure Code of 1973. Because there are no specific rules regulating child abuse, the same laws apply to both adults and children in the nation. Sections 375 (rape) and 354 (endangering the modesty of women) of the Penal Code regulate sexual crimes. There are additional crimes against underage girls, such as Section 366-A (inducing, forcing, or seducing to illicit intercourse), Section 372 (selling of girls for prostitution), and Section 373 (inducing, forcing, or seducing to illicit intercourse) (buying of girls for prostitution). However, these rules are insufficient to deal with such serious crimes involving children of such a young age. These regulations are also slanted toward women and are insufficient to accommodate the special requirements of sexually abused children, both substantively and procedurally.

Despite such broad rules, the State of Goa enacted the Goa Children's Act, 2003, to protect, promote, and maintain children's interests in Goa and build a proud community of its child-friendly reputation. The Act classifies sexual assault into three categories: serious sexual assault, which includes various types of intercourse—vaginal, oral, anal, and the use of objects—as well as coercing minors to have sex with one another, intentionally injuring the sexual organs, and coercing children to pose for pornographic photographs or films; sexual assault, which includes sexual touching with the use of any body part or object, voyeurism, and exhibitionism; and sexual. As a result, India's sole legislation was confined to Goa, where specific regulations protected minors from sexual assault. The lack of adequate laws was also mentioned in various cases before the Supreme Court of India. In *Bachpan Bachao Andolan v. Union of India*,<sup>8</sup> the petitioners wanted the intra-State trafficking of young children, their bondage and forcible confinements, regular sexual harassment, and abuses to be made cognizable under the Indian Penal Code. The Supreme Court of India also referred to the Law Commission of India on matters of child sexual abuse.

In the absence of stricter guidelines for victim protection, the Supreme Court itself formulated various guidelines for the rape victim. The Court stated that due to the inducement of extreme fear or due to the shocked state of the victim, the victim might not be able to give full details of the incident, which may lead to a miscarriage of justice. The questions thus posed to the victim in Court may lead to embarrassment of the victim, due to which a victim may not be comfortable, and thus, the Court asked the Presiding Officer rather

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<sup>8</sup> INSC 403 (2011).

than the opposing counsel to pose the relevant questions to the victim., The Court also asked the victims to be allowed breaks and ample time to answer the questions. The Court also suggested holding such trials in the camera to make the victim more comfortable and ensure that the victim can answer the questions with ease and so that the victim is not hesitant and is telling the truth.

Another example of our insufficient legislation is the National Crime Records Bureau's report on child sexual abuse. 5484 child rape occurrences were reported in 2010, up from 5368 in 2009; 679 instances of underage female prostitution were reported in 2000, up from 237 in 2009. In 2010, 78 girls were acquired, and 130 were sold for prostitution, up from 32 and 57 in 2009.

From March 2020 onwards, the following number of child sexual assault incidents has been recorded on different platforms:

According to the National Crime Records Bureau (NCRB), from 01.03.2020 to 18.09.2020, the total number of child pornography/rape and gang rape reports was filed in the National Cybercrime Reporting Portal (NCRP) is 13244.

According to the National Commission for the Protection of Child Rights (NCPCR), the NCPCR received information on 420 instances of child sexual abuse from Mar. 1 to Aug. 31, 2020, through online portals, helplines, and other media.

According to Childline India Foundation (CIF), between Mar. 1 and Sept. 15, 2020, CIF received 3941 calls regarding child sexual abuse cases.<sup>9</sup>

*The study of Child Abuse by the Government of India in the year 2007 gave some shocking revelations. It was found that 53.22% of children had faced one or more forms of sexual abuse, and 50% of such abuses were from persons known to the child or were persons in a position of trust and responsibility.*<sup>10</sup>

In the light of the grave situation facing children in India today, the Protection of Children from Sexual Offences Bill was made in 2006 and was finally passed by the Indian Parliament in 2012.

## **V. LEGISLATIVE APPROACH**

### **Protection of Children from Sexual Offences Act, 2012**

The Protection of Children from Sexual Crimes Act, 2012 was established to safeguard children from sexual assault, sexual harassment, and pornography and create Special Courts to try such offenses and issues associated with or incidental to them. The Act draws its authority from Article 15(3) of the Indian Constitution, which gives the State the authority to create specific arrangements for children. Article 39(f) of the Indian Constitution directs the

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<sup>9</sup> (Jan. 20, 2021, 10:09 AM)

<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1657679#:~:text=As%20reported%20by%20National%20Crime,2020%20is%2013244.>

<sup>10</sup> Ministry of Women and Child Development, New Delhi.

State to orient its policy toward safeguarding children throughout their light-years, ensuring that they are not mistreated and that their childhood and youth be safeguarded from exploitation. Additionally, the State seeks to fulfill its commitment to the Convention on the Child's Rights, to which India acceded on 11-12-1992.

The Convention outlines the measures that the State must take to prevent the following: (1) inducing or coercing a child to engage in any unlawful sexual activity; (2) exploitative use of children in prostitution or other unlawful sexual practices; and (3) exploitative use of children in pornographic performances and materials.

Similarly, anybody who keeps pornographic material for commercial reasons in any form involving a kid faces up to three years in jail or a fine, or both. The law penalizes the criminal who performs such crimes and those who aid or try to perpetrate such acts. A person who aids in committing the crime by inciting, plotting, or deliberately assisting via any act or omission is guilty of the offense and faces up to one year in prison, a fine, or both.

The Act seems to be a sizable piece of law. The Act begins by identifying different crimes and ends with punishing those who aid and abet such an offense. The Act's centerpiece is the process and protections designed to protect and reassure the kid, ensuring that the youngster suffers minimum long-term consequences from the horrific crime.<sup>11</sup>

Child sexual abuse content has been recognized as a global problem at the international level. Therefore several international policies have been made to address the problem by the United Nations. As the largest existing international organization, with 192 Member States, the United Nations has conducted extensive research on the issues of child sexual exploitation and child sexual abuse content and developed international standards for protecting the child from all forms of sexual exploitation and sexual abuse. Among those developments, the United Nations Convention on the Rights of the Child<sup>12</sup> and the United Nations Optional Protocol to the Convention on the Child's Rights on the Sale of Children, Child Prostitution, and Child Pornography remain the two most critical significant policies.

### **The 1989 United Nations Convention on the Rights of the Child**

As the first international instrument to incorporate the full range of human rights - civil, cultural, economic, political, and social rights - applicable to children, the 1989 United Nations Convention on the Rights of the Child states unequivocally that children have a right to protection against all forms of violence and abuse, including sexual exploitation and abuse. To begin, Article 1 of the Convention defines a child as a "human being under the age of 18 years, unless the child reaches majority earlier under the child's relevant legislation." Article 3 then emphasizes the obligation of States Parties to design and implement all measures and policies in the child's "best interests." The Convention also states in Article 19 that States Parties shall take all necessary legislative, administrative, social, and educational measures to protect children from all forms of physical or mental violence, injury or abuse,

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<sup>11</sup>(Jan. 30, 2021, 11:02 PM), <https://blogs.lse.ac.uk/southasia/2015/12/18/reviewing-indias-protection-of-children-from-sexual-offences-act-three-years-on/>.

<sup>12</sup> (1989).

neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of their parent(s), legal guardian(s), or any other person charged with the child's care. Regarding sexual exploitation and sexual abuse involving children, Article 34 explicitly states that States Parties are obliged to protect the child from all forms of sexual exploitation and sexual abuse. States Parties shall take all necessary national, bilateral, and multilateral measures to prevent children from being induced or coerced into engaging in any unlawful sexual activity, being exploited in prostitution or other unlawful sexual practices, and being exploited in pornographic performances and materials.

### **The United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, Child Pornography**

While child sexual abuse content is not defined in the 1989 United Nations Convention on the Rights of the Child, provisions in the 2000 United Nations Optional Protocol to the Convention on the Child's Rights on the Sale of Children, Child Prostitution and Child Pornography complemented that. In the Optional Protocol, the definition of child sexual abuse content (child pornography) is given 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." Optional Protocol creates an obligation on State Parties to criminalize production, distribution, dissemination, importing, exporting, offering, selling, or possession of child sexual abuse content, whether committed domestically or transnationally or on an individual or organized basis.<sup>13</sup> In addition, Article 3(1) (c) requires State Parties to criminalize simple possession regardless of the intent to distribute. Furthermore, Article 3(4) addresses the liability of legal persons and encourages each State Party to establish such liability for offenses specific to child sexual abuse content, indicating the importance of industry involvement in the battle against child sexual abuse activities. International cooperation is stressed in Article 10, paragraph 1, of the Optional Protocol. States Parties are required to promote international cooperation in order to prevent, detect, investigate, and punish child sexual abuse content, as well as to address the root causes of, among other things, child sexual abuse and to assist child victims because illegal activities involving children are frequently transnational, particularly with the advancement of the internet and other evolving technologies.

### **Other Developments at the United Nations Level**

Following the 1989 United Nations Convention, the United Nations Commission on Human Rights decided to appoint a Special Rapporteur to consider the sale of children, child prostitution, and child sexual abuse content. The Special Rapporteur must submit a report every year to the General Assembly of the United Nations presenting their findings and containing their conclusions and recommendations. For this purpose, the reports called for

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<sup>13</sup> Article 3(1) of The United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, Child Pornography.

increased international cooperation, including establishing an international mechanism for reporting internet-related offenses.<sup>14</sup>

### **Child sexual abuse/ exploitation material:**

The "representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or representation of the sexual parts of a child for primarily sexual purposes" (Article 2, UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography of 2000), "as well as the use of a child to create such a representation" is known as *child pornography*.<sup>15</sup> Given that what is being depicted in the material is the sexual abuse of a child and *not* sexual activities, the terms *child sexual abuse material* or *child sexual exploitation material* is preferred to remove any connotations that can surround the use of the term pornography. The word "child sexual abuse material" is used to refer to media depicting child sexual abuse, which is a subset of "child sexual exploitation material," and the term "child sexual exploitation material" is used to refer to "all other sexualized material depicting children." Regional laws relating to the sexual exploitation of children have separated child sexual abuse material from child sexual exploitation.<sup>16</sup>

International organizations, law enforcement agencies, academics, and child protection professionals have all rejected the term "child pornography" because it minimizes the severe form of violence against children it represents; it can blame the child rather than the offender. It risks conveying that what is occurring is consensual. Despite this rejection, the term "child pornography" features prominently in less recent legal instruments from the past decade (e.g., the Convention on the Rights of the Child of 1989; the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography of 2000; the Council of Europe's Convention on Cybercrime of 2001; and the Lanzarote Convention of 2007). National, regional and international laws vary concerning their definitions of child sexual abuse material. In certain countries, only the depiction of real children in the material is considered a form of child sexual abuse. Specifically, countries vary concerning whether they proscribe "computer-generated child sexual abuse material," which refers to "the production, through digital media, of child sexual abuse material and other wholly or partly artificially or digitally created sexualized images of children."

## **VI. CONCLUSION AND SUGGESTIONS**

The legal and administrative obstacles to protecting children's interests on the internet are perplexing. Difficulties in defining terms and differences in cultural and social norms contribute to the difficulty of developing an effective worldwide framework for safeguarding children online. The difficulties are exacerbated further by the disparate methods taken to exercise criminal jurisdiction over acts done over the internet, extradition, and collecting

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<sup>14</sup> Special Rapporteur (Mr. Juan Miguel Petit) Report of the Commission on the Sale of Children, Child Prostitution and Child Pornography, Rights of the Child, E/CN.4/2005/78, Dec. 23, 2004, presented at the sixty-first session of the General Assembly of the United Nations, p.2

<sup>15</sup> International Centre for Missing and Exploited Children, 2016, p. vii).

<sup>16</sup> Directive 2011/92/EU and Article 27 of the African Charter on the Rights and Welfare of the Child of 1990).



evidence. The absence of a uniform and harmonized framework governing privacy, content regulation, and pornography also serves as a significant impediment to implementing a viable worldwide plan to safeguard children's online interests. The challenges, however, are not insurmountable, as the debate also tries to demonstrate. However, what is critical is that all nations demonstrate a commitment to child protection to develop an adequate legislative framework. With some judicial ingenuity in applying a broad reading to existing offense-creating provisions in existing criminal statutes, timely legislative intervention to close loopholes, and a fair amount of concerted global cooperation in the field, much can be accomplished in the ongoing battle to protect children. Perhaps it is appropriate to conclude the debate by repeating a statement that gets straight to the point and helps put the problems into context: The children's lives are much more vital than trivial worries about civil rights and entrapment. These are critical issues, but when weighed against a child's life and psychological well-being, there is only one viable response. Numerous studies conducted in recent years on the State of child pornography laws around the globe have shown that gradual but steady progress is being made. Numerous international legal mechanisms are in place, which has aided in raising awareness and giving this cause a new sense of urgency. However, more nations must act now to ensure a safer future for the world's children. While fighting child pornography at home and abroad is a monumental undertaking, it is critical to harmonize legislation to properly handle this increasingly global problem.

It is difficult to define the word 'obscenity' precisely. What is deemed obscene in one nation may not be deemed such in another. It is mainly determined by the moral and ethical ideals of the people who live in a particular nation. However, the broad meaning of obscenity refers to any act, speech, or object that has the potential to corrupt the general public's morals due to its indecency or lewdness in content or form.

In most nations, the display of anything repugnant to modesty or decency, expressing unchaste or lusty thoughts, or being indecent or vulgar is deemed obscene. In our opinion, the only way to effectively manage child pornography is to prohibit pornographic websites. This rigorous measure has the potential to resolve the issue to a greater degree. It would allow us time to consider and prepare new strategies for eradicating child pornography globally. Indian legislation should prohibit depicting both actual and virtual children and adults posing as minors in electronic child pornography. Stringent steps must be implemented to counteract such terrible abuse.

Recommendations: The following primary methods for combating child pornography include the following:

1. Promote multi-agency international cooperation to fight child sexual exploitation on the internet at the international, national, and local levels.
2. Confront the social denial, minimization, and misconceptions surrounding child sexual abuse and exploitation.
3. Ensure that the National Commission for the Protection of Child Rights has enough resources to monitor the efficacy of child sexual abuse prevention.

4. Adopt and execute a plan for the medical care and assessment of child sexual abuse victims that adhere to the standards.
5. Appointment of competent and self-sufficient members to child welfare committees.
6. The media should abstain from demonstrating criminal technique, sensationalizing it, and giving the offender excessive attention.
7. In all reporting, the media must adhere to the kid's best interests, as mandated by the child rights convention.
8. Incorporating existing evidence of consenting sexual interaction among teenagers under eighteen into legislation writing.