



A GLOBAL QUAGMIRE: CHILD SEXUAL ABUSE AND CHILD PORNOGRAPHY

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ABSTRACT

Child sexual abuse, especially child pornography, in today's digital era is a topic of great significance and merits discussion in the background of increasing crimes against children, thereby, making it the subject of intense study. However, with the increasing engagement of countries in matters of relations and policy, this issue seems to be inconspicuous in connection with the welfare policies and the enforcement of laws per se. The ignorance exhibited by nations worldwide, towards the pressing topic of child sexual abuse, is highlighted by their aversion to ratifying international treaties concerning the same. Despite there being a universal agreement that 'something must be done' about the problem of child sexual abuse, it is unfocused. Child sexual abuse refers to the sexual exploitation of a child by enticing, forcing or persuading, which may happen with or without physical contact by an adult or someone else with the power which makes the child do sexual activities. In India, the situation is much grave as one-fifth of the world's child population resides here. With the wider reach of technology, child pornography has become as heinous a felony as other crimes. In the face of these

developments, the present legal mechanisms have proven to be inadequate. This paper brings forth the exigent need for reforms in law and constructive implementation and protection of the child rights and therefore, essentially dealing with these major themes and concerns.

KEYWORDS: Child Sexual Abuse, Child Pornography, Child Rights, Enforcement, Welfare Policies

INTRODUCTION

With the hidebound sentiments on the rise, Lorraine Nilon had rightly penned "Abuse is never deserved, it is an exploitation of innocence and physical disadvantage, which is perceived as an opportunity by the abuser". Sexual Abuse, especially child sexual abuse, is no lesser than a serious offence, consequently, raising the need for a change of mindset. Child sexual abuse is surrounded by social stigma which is accompanied by a culture of silence that prevents the victims and survivors from bringing forth their testimonies, thereby, allowing the perpetrators to run scot-free. The contemporary spasmodic trepidations of the scope of maltreatment of a child, have given rise to a mélange of legislation, conventions, case laws, treaties, guidelines, reports, and campaigns. Despite the existence of conventions and legislation recognizing and preserving the rights of a child, child sexual exploitation has continued to increase at alarming rates. A study conducted by the Ministry of Women and Child Development in 2007 noted that



50.76 percent of the respondents had faced sexual abuse and 20.9 percent reported “severe sexual abuse”.¹

These numbers are a testament to the fact, that child sexual abuse has emerged as a major threat to the development and security of children, and yet the national governments have failed to adequately address this problem. It is necessary for the state machinery to realize, that the mere signing of international treaties is not enough to resolve concerns as grave as child sexual abuse. The ratification of such treaties and formulation of national legislations in pursuance of the goals enshrined therein is equally important. One such extensively embraced treaty is the United Nations Convention on the Rights of the Child (CRC) which acts as a universal baseline for the development of other conventions and national legislations. One hundred ninety-two nations have now ratified or acceded to this landmark instrument, with the exception of the United States which has signed, but not ratified the CRC and Somalia which has signed the CRC but has no internally recognized government to ratify it.² Those countries that have integrated the CRC into their legal systems and policies accept its central notions: that children are to be recognized as individuals with their own voice; that they should be nourished through education and

healthcare; that they must receive protection from those that would hurt, exploit, or discriminate against them; and that they must be treated with their best interests at the forefront.³

Initially, in the 19th Century, no single term was used to denote the adult-child sexual contact. In the late 20th Century, i.e. the 1960s and 1970s, the all-encompassing term “child abuse” came into vogue, comprehensive of all persecution and molestation of a child. Thenceforth, in the 1980s, “child sexual abuse” attracted spotlight due to the escalating rates of sexual crimes against children. “Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not mentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity is intended to gratify or satisfy the needs of the other person. This may include but is not limited to:

- the inducement or coercion of a child to engage in any unlawful sexual activity;
- the exploitative use of a child in prostitution or other unlawful sexual practices;

¹ DR. LOVELEEN KACKER et al., STUDY ON CHILD ABUSE- INDIA 2007 (MINISTRY OF WOMEN AND CHILD DEVELOPMENT) vi (2007).

² JONATHAN TODRES et al., THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION 9 (2006).

³id.



- the exploitative use of children in pornographic performance and materials”.⁴

CHILD SEXUAL ABUSE- THE INTERNATIONAL AND NATIONAL LEGAL PATCHWORK

Strike the iron when it is hot, is one of the key secrets for addressing and resolving a gordian knot prevalent in the society. Child sexual abuse, especially child pornography leaves an indelible mark on the minds of an individual, society and the nations as a whole. Hike in the child sex crime rates has given an impetus to child rights and has thus, led to the outright need for the systematic framework of laws and conventions recognized not only on the national but also the international level. Considering this fact, an international convention was developed i.e. United Nations Conventions on the Right of the Child (CRC), which is a comprehensive framework of 42 articles and deemed as a bedrock for the rights of a child. CRC talks about the rights of children under four broad categories, namely, survival rights, membership rights, protection rights and empowerment rights. Article 26⁵ of CRC illuminates not only the survival rights but also the benefits of granting social security and social insurance along with these rights. Keeping in view the right of the child to

⁴WORLD HEALTH ORGANIZATION, CONSULTATION ON CHILD ABUSE PREVENTION 62 (1999).

⁵United Nations Convention on the Rights of the Child art. 26, Nov. 20, 1989.

survival and development, Article 6⁶ of the CRC enshrines the child’s right to survive and Article 27⁷ recognizes the right to adequate standard of living. In consonance with these Articles, Protection of Children from Sexual Offences Act (POCSO) also incorporates model guidelines under Section 39⁸. POCSO, passed in 2012, was the first step in bringing the problem of child sexual abuse to light as a heinous crime requiring exclusive regulations to prevent its occurrence and punish its perpetrators. One of the guidelines enumerates the child’s right to life and survival and to be shielded from any hardship, abuse or neglect. It also emphasizes the right of the child to harmonious and healthy development in case the child has been traumatized. Hence, CRC broadly reflects the view that child is not a chattel, but a human being in his or her own right. As such, the child is entitled to be recognized as a person under the law, which the U.S. court has so ruled.⁹

Article 34 of the CRC elucidates the draconian practice of child sexual abuse and exploitation. It essentially deals with the role of the State Parties, undertaking all the national, bilateral and multilateral measures for the protection of a child to prevent inducement or coercion by captivating a

⁶ibid, art. 6.

⁷ibid, art. 27.

⁸The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India) § 39.

⁹JONATHAN TODRES et al., THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION 10 (2006).



child to engage in any unlawful sexual activity, exploitative use of children in pornographic or child sexual abuse material. The national counterpart of Article 34 in India, is the Protection of Children from Sexual Offences Act of 2012 (POCSO), which incorporates and expands the provisions of the CRC on child sexual abuse. POCSO covers a myriad of offenses under the umbrella of child sexual abuse including penetrative sexual assault, aggravated penetrative sexual assault, aggravated sexual assault, sexual harassment and use of a child for pornographic purposes. The enactment and enforcement of POCSO have given traction to child sexual abuse as a problem plaguing the society and has dispelled the notion that child sexual abuse should be seen as a taboo. The gravity and magnitude of the prevalence of the problem are indicated by the increase in victims of child sexual abuse. The number of victims recorded under POCSO increased from 8,990 in 2014 to 36,321 in 2016¹⁰ which represents a whopping 304% increase in the total aggrieved. These numbers are also significant in pointing towards the utility of POCSO as a mechanism for reporting offences since it recognizes a wider variety of crimes against children as opposed to the situation prior to 2012, wherein several crimes went unpunished due to the lack of an organized legal structure tackling the issue of child sexual abuse. Not only child sexual abuse as explained in the

above provisions, CRC also throws light on the contribution of the States in making an effort for the prevention of the sale, trafficking and abduction of a child, stated in Article 35¹¹.

Though it is apodictic about the child sexual abuse that children must not suffer and be protected from the abuse, the role of the state which draws a margin between the 'state business' and 'parental choice', remains questionable. Article 18 of CRC shed light on the duty and responsibility of the parents and the state. It acknowledges that parents and legal guardians have the primary responsibility for the upbringing and development of a child, with the best interests of a child as their basic concern. It also states that the State has a secondary responsibility to provide appropriate assistance to parents and legal guardians in meeting their responsibilities.¹²

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention -2010) focuses on ensuring the protection of the best interests of children through prevention of abuse and exploitation, protection and assistance for victims, punishment for perpetrators, and promotion of national and international law enforcement cooperation. The Lanzarote Convention encourages an array of preventive measures combating all forms of

¹⁰ NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA: STATISTICS 2016 192 (2016); NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA: STATISTICS 2014 212 (2014).

¹¹ United Nations Convention on the Rights of the Child art. 35, Nov. 20, 1989.

¹² *ibid*, art. 18.



sexual exploitation and sexual abuse of children.¹³

DISTINCTIVE FEATURES OF POCSO ACT, 2012

The rapid increase in child sexual abuse crimes across the globe has necessitated the strengthening and evolution of legal mechanisms, especially in the case of India, which is one of the top five countries in dire straits of sexual crimes against children. POCSO Act, 2012 hit a home run in addressing these vulnerable issues by laying down certain provisions which were previously unaddressed. One of the major lacunae in the previous legislations was the narrow ambit of “penetrative assault”. Prior to 2012, Indian laws considered only vaginal penetration by the penis as qualifying under the definition of “penetration.” This is evident from the case of State v. Pankaj Choudhary¹⁴, where, in the absence of POCSO, the accused could be prosecuted only for ‘outraging the modesty of a woman’ when he committed digital penetration of the anus and vagina of a 5-year-old child. Rape could not be proved, as the High Court observed that digital penetration was not recognized as an offense under the Indian Penal Code. The broader definition under POCSO has resulted in greater punishments for child abusers by widening the scope of the offence. Section 11(iv) of the Act defines sexual harassment

as including repeatedly or constantly following, watching or contacting a child either directly, electronically or through other means¹⁵. This is a departure from the traditional definition as it covers the harassment of a child by sexting or sexual cyberbullying as well. Furthermore, Section 16 acts as a proper deterrent by penalizing the attempt or abetment of any of the offences listed under the Act. The ‘extraordinary clause’ of the Act is Section 29, which is in stark contrast with the generally accepted norms of the justice system and provides that the accused be presumed guilty, until proven innocent. Before the enactment of the POCSO Act, all cases of pornography were investigated under Section 67, 67A, 67B and 67C of the Information Technology Act, 2000, which was considered a grey law and was inefficient in dealing with the problem of child pornography due to the lack of special focus on children. The advent of POCSO has enabled speedy and systematic redressal and it tries to go to the bottom of these sensitive issues. The incorporation of Section 13, 14 and 15 in the legislation has provided specific guidelines to deal with the grave issue of child pornography and provides stringent punishments for committing such an offence. One of the biggest achievements of POCSO in battling the menace of child pornography was evidenced by Kamlesh Vaswani v. Union of India¹⁶, where the court mandated the banning of all websites publishing sexually

¹³ INTERNATIONAL CENTRE FOR MISSING AND EXPLOITED CHILDREN, FRAMING IMPLEMENTATION: A SUPPLEMENT TO CHILD PORNOGRAPHY: MODEL LEGISLATION & GLOBAL REVIEW 16 (2017).

¹⁴State v. Pankaj Choudhary, (2011) Delhi H.C. para 24 (India).

¹⁵The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India) § 11(iv).

¹⁶Kamlesh Vaswani v. Union of India, (2014) 6 S.C.C. 705.



explicit content involving children, especially those aged between 14-18 years.

CHILD PORNOGRAPHY: A WORLDWIDE CRIME

The present time is considered to be the ‘heyday’ of technology and digitalization but has given way to many serious crimes spread worldwide. Like child sexual abuse, Child pornography is a problem with international implications which constitutes the production, exhibition, distribution, and collection of child sexual abuse material, alternatively referred to as child pornographic material. The term “child sexual abuse material” is now preferred over “child pornography” to dispel the notion of willingness on the part of the child in any way and to reflect the grave nature of the content.¹⁷ In the mid-1990s, one distinguished expert on child protection was able to describe the traffic in child sexual abuse material as being “a cottage industry”.¹⁸ There are many intricacies involved in evolving a standard definition for “child pornography” due to various dissensions on determining the universally accepted definition of “child”. According to CRC, a “child” is recognized as any person under 18 years of age, whereas, dubiousness is involved in the international recognition of the definition, for instance, child pornography legislations of all Australian States and Territories determine “child” as a

person under 18 years of age. In other jurisdictions such as the United States, children even at 15 years of age, can consent to engage in sexual activities with an adult. However, this does not give such adult, the freedom to create, distribute or possess visual recordings of such sexual activity because the federal statutes define a child as a person under 18 years of age.¹⁹

Though national differences exist in determining the meaning of child pornography, international bodies have attempted to arrive at a commonly accepted definition. The definitions so evolved, concentrate more on the visual, rather than the written material. The Council of Europe defines child pornography as “any audiovisual material which uses children in a sexual context.” Council of Europe, Recommendation R(91)11 and Report of the European Committee on Crime Problems (1993).²⁰ The International Criminal Police Organization (INTERPOL) delegates, define child pornography as “the visual depiction of the sexual exploitation of a child, focusing on the child's sexual behavior or genitals.”²¹

¹⁷ UNICEF, CHILD ONLINE PROTECTION IN INDIA 1 (2016).

¹⁸ COMMONWEALTH TELECOMMUNICATIONS ORGANIZATION, ONLINE CHILD PROTECTION: COMBATING CHILD SEXUAL ABUSE MATERIAL ON THE INTERNET 5 (2017).

¹⁹ Margaret A. Healy, *Child Pornography: An International Perspective*, COMPUTER CRIME RESEARCH CENTER (May 23, 2018, 1: 03 PM), <http://www.crime-research.org/articles/536/3>.

²⁰ *Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation*, COUNCIL OF EUROPE COMMITTEE OF MINISTERS (May 24, 2018, 5:15 PM), <https://rm.coe.int/16804fda79>.

²¹ Margaret A. Healy, *Child Pornography: An International Perspective*, COMPUTER CRIME



The rudimentary requirement for the development and dissemination of child sexual abuse material is the access to information. Article 17 of CRC provides for regulations to the States, which ensures that the child has access to information and materials from a diversity of national and international sources, especially those aimed at the promotion of his/her social, spiritual and moral well-being and physical and mental health.²² However, this information should be subjected to the reasonable restrictions and limitations as some information might be detrimental to the development of a child. The information so provided must be in harmony with the motive of the social, psychological and educational development of a child as provided in Article 29 of the CRC. Therefore, the right to access information should not be absolute. On similar lines, Article 13 also fortifies the child's right to freedom of expression which shall include the right to seek, receive and impart information and ideas of all kinds, through any medium, depending upon the discretion of a child. Likewise Article 17, it also talks about the imposition of rational limitations. Right to access to information in Article 17, is inextricably related to the right to seek and impart information in Article 13²³. Considering the interpretation of both these

Articles, it is axiomatic that the focal point of both of them is to ensure that the child has access to information, especially such information that is beneficial for his/her health and well-being

One of the major challenges faced by the society and nation as a whole is considering a discussion of "sex" and "sexual abuse" a social taboo. According to Article 18, which is in accordance with Article 17, parents have the primary responsibility in imparting education, especially sex education, for the better build-out of their personality. Sex education also plays an important role in dissipating the hesitation that children have while discussing the issues related to sex and sexual abuse. In addition to this, the State should guide the parents for providing sufficient information about the contents of TV and other social media and should supervise the child's use of such media. This guidance by the State is of utmost importance considering the findings of a survey, which reported that 51% of parents either do not have or do not know if they have software on their computer to monitor their teenagers' online navigation and interactions.²⁴ It has also been reported that, 75% of child pornography victims are living at home when they are photographed, which blazons that parents themselves are often responsible for such plight of children.²⁵ In

RESEARCH CENTER (May 23, 2018, 1: 03 PM), <http://www.crime-research.org/articles/536/3>.

²²JONATHAN TODRES et al., THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION 177 (2006).

²³United Nations Convention on the Rights of the Child art. 13, Nov. 20, 1989.

²⁴ John Walsh, *Parental Internet Monitoring Survey*, NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN AND COX COMMUNICATIONS PARENTAL INTERNET MONITORING SURVEY

²⁵Michael B. Mukasey et al., *COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: WHAT DO WE KNOW AND WHAT DO WE DO ABOUT IT?* (US DEPARTMENT OF JUSTICE) 7 (2007).



the 13th session of the Committee on the Rights of the Child, a discussion was made about “child and media” and 12 recommendations were proposed by the Committee. The proposed recommendations suggest voluntary, rather than legislative, controls in developing guidelines to protect children from harmful information. One recommendation is that state parties work with media companies to protect children from harmful influences and institute measure which is not broadcasting violent program during certain hours, providing clear presentation before programs about their content, and developing technological devices such as V-chips to help consumers block out certain programs. Another recommendation calls for the national plan of action to empower parents in the media market and support them in their role as guides to their children by encouraging greater media knowledge.²⁶

While understanding the hazards of child sexual abuse material to the development of the individual and to the society as a whole, it becomes imperative to question the basis of the appeal of the manufacture, distribution, and collection of pornographic material for those who engage in such activities. It is of paramount importance because in order to curb this dreadful issue there is a need to remove the motive behind an undesired activity which seems to be the root cause. Margaret A Healy, in a working document prepared for ECPAT²⁷, highlights

the usages of child sexual abuse material. Firstly, pornographic material of any kind is mostly consumed for the purposes of arousal and gratification. Child pornography, in particular, may be used as a precursor to actual sexual activity with a child, apart from using it to stimulate the sexual drive. Secondly, child sexual abuse material also acts as a validation and justification for pedophilic behavior. Viewing such pornographic content causes a pedophile to believe that his/ her actions are not abnormal and are shared and accepted by other people worldwide. Thirdly, such material allows child exploiters to lower the inhibitions of children. Through pornographic content, they encourage reluctant children to engage in sexual activities and indicate what they want the victim to do. It is to be noted that child abusers play with the psychology of a child by luring and exposing him/her with a kind of images based on the age and their sexual preferences. Fourthly, and most dangerously, child pornographic material may be used to blackmail a child victim into silence. Child abusers may exploit the child by threatening to show the pictures or video graphic content to parents or peers. Further, this kind of content also helps exploiters in establishing connections with other pedophiles and gain access to other markets or to other children. Finally, profit also acts as a motivating factor, while most producers of such material do not sell it, some may engage in the sale of self-produced materials to finance trips to popular sex tourist destinations. It is thus, an amalgamation of these factors that motivates and encourages

²⁶JONATHAN TODRES et al., THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION 180 (2006).

²⁷ Margaret A. Healy, *Child Pornography: An International Perspective*, COMPUTER CRIME

RESEARCH CENTER (May 23, 2018, 1: 03 PM), <http://www.crime-research.org/articles/536/3>.



an exploiter to engage in the production and dissemination of child sexual abuse material.

As discussed above, international organizations have made conscious efforts in addressing the motives behind the menace of child pornography, but this exercise also has its fair share of challenges. Firstly, there is a lack of any uniform definition of what child pornography entails. Secondly, this area of study suffers from a lack of data regarding the production and distribution of child pornography in many parts of the world, particularly Africa and Latin America. Lastly, there has been a shift in global patterns of production and consumption of child pornography. In order to deter these challenges, some international organizations, not only the governmental organizations but also the non-governmental institutions, have risen above these and come up with the statistical reports to investigate this baleful issue.

ECPAT International came out with a report in 2002, that estimated the existence of 100,000 child pornography websites in 2001. In 2003, the National Criminal Intelligence Service in the U.K. recorded that the number of such websites had doubled globally. In 2001, the number of reports received by the CyberTipline of the U.S.-based National Center for Missing & Exploited Children stood at 24,400 which increased to more than 340,000 at the outset of 2006. International Resource Centre (IRC) was formed in 2006, as a result of the combined effort of International Centre for Missing and Exploited Children (ICMEC) and INTERPOL for the effective law enforcement by furnishing both public information and private investigative resources and conducted the built-in training

program for the same. These efforts were made to combat the insidious challenge of child pornography prevalent worldwide.²⁸

Notwithstanding the prevalence of Global Child Protection laws, many countries still do not consider child pornography a crime. This can be substantiated by the ICMEC Report, 2006 conducted in 184 countries which found that only 27 countries had laws sufficient to protect children from child pornography. With the passing of the time, the situation took a turn in the affirmative direction, where 100 countries have enacted at least one of the organization's recommended criteria in which 51 of the countries that had no law in 2006 have law today and the number of countries deemed to have sufficient law has climbed from 27 in 2006 to 69 in 2012. Yet, 53 countries still have no law at all that specifically criminalizes child pornography.²⁹

DIFFERENT FORMS OF CHILD PORNOGRAPHY UNDER CHILD SEXUAL ABUSE

Child sexual abuse has taken many forms which have the potential to damage a child. The technology and the internet have introduced a new dimension which it is

²⁸*New Study Reveals Child Pornography Not a Crime In Most Countries*, ICMEC (May 21, 2018, 6:00 PM) <https://www.icmec.org/press/new-study-reveals-child-pornography-not-a-crime-in-most-countries/>.

²⁹ ICMEC, *Despite Increase in Global Child Protection Laws Many Countries Still Do Not Consider Child Pornography A Crime* (May 25, 2018, 5:17 PM), <https://www.icmec.org/press/despite-increase-in-global-child-protection-laws-many-countries-still-do-not-consider-child-pornography-a-crime/>.



abusive to a child. This has magnified the problem, for instance, further or repeated publication of the images re-abuses and re-victimizes the child which is aggravated by actions of the people who deliberately engage in viewing or downloading the images and are in reality child abusers by proxy. As a result of this, child self-confidence and esteem are lowered. This is the first major reason why such images should be immediately removed because a child may never know and never be certain who might have seen or downloaded these pornographic images. Downloading these images adds fuel to fire for committing an illegal act by intensifying the downloader's sexual fantasies. This is the second major reason why pornographic images of children should be hastily removed.

Every coin has two faces, but when the negative face outweighs the positive one, it portrays a shoddy image and is considered a bane in the society. This is true for the internet as well, because, on the one hand, it is a hub of knowledge, while on the other it acts as the breeding ground to the antagonists and evildoers due to the garb of anonymity that it provides. One of the poignant examples of this is the "internet chat rooms". These are online channels that act as facilitators for communication between knowns and unknowns on the internet. The major reason for internet chat-rooms being the prime home to child abusers is the facelessness it provides to them which enables them to communicate with their scapegoats by attuning to their fabricated age and sexual preferences. The abuser in an internet chatroom takes undue advantage of a gullible child by a rattrap of trust. Research in 2000 found that 19% of

young people reported being approached for sex at least once a year.³⁰ Also, one in five children (aged 10 to 17) receives a sexual solicitation or approach via the Internet in a one-year period,³¹ which is enough evidence to show the impact of internet chat-rooms.

Grooming acts as a viaduct to online sexual abuse, involving a series of stages. The groomer initially tries to understand the mental state of the victim and analyzes whether he/she wants to move from the public mode to a private mode of conversation. Following this, he adopts mannerisms that he thinks the child would admire and attempts to evolve a relationship, which can be in the form of a friendship, to acquire information by engaging in conversation with the victim through the exchange of messages. Grooming entails luring a child into sexual conversations to prepare him or her for sexual abuse and exploitation and other illegal activities.³² These sexually explicit conversations are detrimental to the child, as they lead to enhanced sexual drive at a young age which causes him/ her to engage in other potentially harmful activities like sexting. Sexting means sending or posting sexually suggestive images, including nude or semi-nude photographs, via mobiles or over the Internet. Research found that 61% of

³⁰W. GREEN, CHILD ABUSE: CHILD PROTECTION & THE LAW 173 (2008).

³¹*Statistics: Kids Online are in Danger*, INTERNET KEEP SAFE COALITION (MAY 21, 2018, 7:09 PM) <https://www.optimist.org/InternetSafety/iKeepSafe-Statistics.pdf>.

³²UNICEF, CHILD ONLINE PROTECTION IN INDIA 46 (2016).



secondary school head teachers reported this as a greater concern than smoking, drugs, obesity or offline bullying.³³

The above mentioned online child sexual abuse techniques, an increase in online communication between the abusee and the abuser gives rise to another aspect of child sexual abuse, which is termed as 'child sex tourism'. It refers to the sexual exploitation of children done by domestic or international tourists who travel with the intention of having sexual contact with that child. Under CST, perpetrators take undue sexual advantage under the veil of accommodation, transportation or any other tourist activity which involves a child, to remain unnoticeable in the circumstance. Child sex tourism is still a developing phenomenon. While it has been recorded as a recurrent problem in several destinations for over five years, it is still an emerging trend in other destinations. Countries like Brazil and Mexico have been identified as long-affected CST destinations. In recent times, Argentina, Peru, Colombia and South Africa have been pinpointed as emerging CST countries. In addition to this, India has also come to the fore as a lucrative destination for child sex tourists.³⁴

As human behavior has been diverted from the notion of forgiveness to retaliation, there is a sudden porn bombing which has actually resulted in the emergence of

revenge porn. Revenge Porn is the sharing of private, sexual materials, either photos or videos, of another person without their consent and with the purpose of causing embarrassment or distress. The images are sometimes accompanied by personal information about the subject, including their full name, address, and links to their social media profiles.³⁵ It has been illustrated through an incident that happened in India. In April 2015, a 21-year-old man was booked by the police in Gujarat for allegedly spreading photographs of his teenage ex-girlfriend in compromising positions on popular social media sites. The pictures were reportedly taken on a mobile phone but were posted by the accused when the girl's parents were looking for a groom for the girl. The accused was charged with molestation under different sections of the Information Technology Act and the Protection of Children from Sexual Offences Act.³⁶

Using 1995 as the baseline, INTERPOL reported knowing of only around 4,000 unique child pornographic images in total worldwide. For determining the present situation, reliable data does not exist it is estimated that around 100,000 child pornographic images are there on the internet, whereas 50,000 new images are going into circulation each year. In June 2009, in a single action, police in Mexico

³³ UK COUNCIL FOR CHILD INTERNET SAFETY REPORT, TEXTING IN SCHOOLS AND COLLEGES: RESPONDING TO INCIDENTS AND SAFEGUARDING YOUNG PEOPLE 7 (2016).

³⁴ECPAT INTERNATIONAL, COMBATING CHILD SEX TOURISM: QUESTIONS & ANSWERS 7 (2008).

³⁵*Revenge Porn: The Facts*(May 25, 2018, 4:01 PM), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/405286/revenge-porn-factsheet.pdf.

³⁶ Reagan Gavin Rasquinha, *Are you a victim of revenge porn?*,TIMES OF INDIA, Apr. 19, 2015.



arrested a Canadian citizen, Arthur Leland Saylor, in possession of 4 million images.³⁷

To overcome the challenge of insufficiency of data and to improve the efficacy of the existing conventions and protocols, international organization - United Nations has come up with the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Article 3(1)(c)³⁸ of this protocol, concerns itself with the import, export, sale and possession of child pornographic material. Furthermore, Article 10³⁹ urges the State Parties to take steps to curb child pornography and child sex tourism by strengthening international cooperation. It also recognizes, that different country would have to adopt different methods to tackle these challenges as developed and developing countries face distinct situations. While in developed countries, child pornography is perceived as a lucrative industry to flourish on, whereas, in developing countries, it is a result of extreme destitution, staggering infant mortality rates, hunger, and prevalence of illiteracy.

SHORTCOMINGS AND PROGRAMS INITIATED

³⁷ COMMONWEALTH TELECOMMUNICATIONS ORGANIZATION, ONLINE CHILD PROTECTION: COMBATING CHILD SEXUAL ABUSE MATERIAL ON THE INTERNET 6 (2017).

³⁸Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography art. 3(1)(c), Jan. 18, 2002.

³⁹Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography art. 10, Jan. 18, 2002.

Augmenting crime rates and the lack of an adequate mechanism to tackle them, has given hiatus to the efficacious development of the society. The major reason for this, was the lack of awareness and knowledge. Though the national and international organisations need to be lauded for their efforts in attempting to formulate and enact laws that tackle these challenges, the shortcomings of such legislations cannot be overlooked. At the national level, the POCSO Act was a breakthrough legislation in providing justice to victims of child sexual abuse but the stringent legislation failed to take into account the sexual autonomy of a child. POCSO criminalizes all forms of sexual relations with a child, irrespective of his/ her consent. This effectively means, that a child does not have the right on his/ her own body. This lacuna has been recognized by the judiciary as a court observed that the body of every individual under 18 cannot be considered the property of the State.⁴⁰ Another aspect of this, is the “victim-perpetrator” dilemma, that arises in cases where both parties involved in a consenting sexual act, are children. Since both of them are incapable to consent according to the existing laws, it is practically impossible to determine who would be the victim and who would be the perpetrator in such cases. Section 19 of the POCSO Act makes the reporting of CSA cases mandatory by any citizen, especially those working with children and young people in the education, social, religious and health sectors. This obligatory reporting though well-intended, has a consequential flip side which acts as a curtailment to the

⁴⁰Consensual Sex with Minor Not A Crime, TIMES OF INDIA, Aug. 26, 2013.



autonomy of people working with, or related to children in making independent decisions. This acts as an impediment to their self-governing and self-determining actions. Criminalizing sex under 18 years virtually pushes it beyond the purview of health professionals and school counsellors who might be reluctant to impart safe sex advice or treat effects of unsafe or reckless sexual practices, without breaching patient confidentiality and/or getting involved with reporting it to the authorities.⁴¹ A legislation such as POCSO, is highly dependent on accurate determination of the age of the victim and the accused. The applicability of this law depends upon, whether or not, the person is below 18 years of age. In a country like India, which is ridden with poverty and illiteracy, the lack of documentation is a ubiquitous problem. This aspect was pointed out by the court in the case of BablooPasi v. State of Jharkhand and Anr⁴², where the court observed that age determination was very difficult in the absence of birth certificates or other official documentation. In the international framework of laws in relation to the CSA, the major loophole seems to be the lack of a uniform set of rules and regulations which can be adopted by the countries. This puts the nations in a dilemma of adoption of the heterogeneous existing laws and the formulation of a supplement legislation in harmony with the existing ones.

⁴¹Jyoti Belur & Brijesh Bahadur Singh, *Child Sexual Abuse and the Law in India: A Commentary*, CRIME SCIENCE JOURNAL (May 22, 2018, 2:18 PM) <https://crimesciencejournal.springeropen.com/articles/10.1186/s40163-015-0037-2#Sec6>.

⁴²BablooPasi v. State of Jharkhand and Anr. SC 2008 (India).

In order to vanquish the draconian problem of child sexual abuse and triumph over the above-mentioned shortcomings and lacunae, international organizations and national activists have initiated fruitful campaigns and programs. One of the prominent examples of this, at the national level, is the organization “Recovery and Healing from Incest” (RAHI) which was the first organization to deal with these issues. It is a center for adult women survivors of incest and child sexual abuse. The epidemic of child sexual abuse in India compelled Kailash Satyarthi, a Nobel prize winner, to combat this grave problem which led to the initiation of the “Full Stop” campaign to expand the arena of awareness by educating the people and make them vigilant against such crimes. On the international front, one such initiative was “Project Spade”, which began in October 2010 and was an investigative program into child pornography by the international police in Toronto, Canada. It eventually panned out over 50 countries, leading to almost 350 arrests and around 386 children being rescued. These campaigns and successful measures set up a paradigm for further affirmative actions.

CONCLUSION

Child sexual abuse, which covers the grave problem of child pornography as well, is indeed a global quagmire that is an outcome of a plethora of causes. The research tries to establish a link between the black letter law and what actually happens, as one indicator of the legitimacy of that law. One should realize, that the above-discussed child protection laws would be futile if they cannot be implemented effectively. They will merely be regarded as ‘paper tigers’



which have theoretical authority but lack practical implementation. This article tried to distill and compares the crux of the concerned legislations of much complexed social and legal issues prevalent across the juridical and geographical boundaries. This comparison was aimed at bringing to the fore, the positives and negatives of both, the national and international regulations so that the plusses can be combined to form a condensed version of the existing legislations which would aid in the effective tackling of the vice of child sexual abuse.

It is well-established that every change, be it social, legal or political, comes from the efforts of an individual. No amount of governmental laws would suffice if people do not take up the cause of their own volition. Therefore, it has been rightly penned by an eminent personality, Joe Biden, “No fundamental social change occurs merely because government acts. It's because civil society, the conscience of a country, begins to rise up and demand demand - demand change”.

