

Prevention of Child Pornography

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Abstract

Nowadays children are being exploited on internet through various malpractices in which of the major one is child pornography. Such type of practices hampers the minds of the small children and deviates their mind from doing any constructive work. There are various laws enacted for the protection of children but hardly such laws are implemented. So, there should be proper implementation of laws for the protection of children. Social sites or the internet sites which shows such things should be blocked and proper penalty should be imposed on those who carry out such types of practices. Children should be protected from sex abuse which is being shown on the internet very easily. They should not be used for carrying out such type of mal practices. Nobody has a right to take advantage of the innocent children as they are very important for our country, their state of mind should not be disturbed. Children are the upcoming future of our Nation so their rights should be protected rather than being hampered in each and every way and there should be proper laws enacted for it and it should be properly implemented.

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This paper discusses in detail about child abuse, violation of rights of the child, exploitation of children on the internet through child pornography.

Introduction

Child abuse on Internet

Through internet there are many technologies, the commercial and communication sectors of the economy are revolutionized. Internet is a world-wide broadcasting capability and there are many techniques which have been introduced and one of the greatest one is sexual abuse, theft, fraud and there several many other acts developing day by day on the social media and internet. There are scams such as gambling, drug smuggling, virus attacks, money laundering, cyber stalking, hacking, child exploitation which is the most serious issue these days for the innocent children.

Child Exploitation

The word “exploit” fairly means that “to use unfairly for one’s own advantage. Sexual abuse to a child and child exploitation can be done by photographing a child forcefully and then using the photos for their own sexual stimulation or to sell the photos as pornography. It can also mean kidnapping and selling children into prostitution.²

Pornography

The word “*pornography*” has its origin from the Greeks. It described writing about prostitutes. It can be defined simply as “**sexually explicit material designed to produce sexual arousal**” to consumers.³

Paedophile

²West C, 2004, “*Pornography & Censorship*”, <http://plato.stanford.edu/entries/pornography-censorship/>, Last accessed, Date-22/03/2016, Time-18:00hrs

³ West C, 2004, “*Pornography & Censorship*”<http://plato.stanford.edu/entries/pornography-censorship/>, Last accessed, Date-22/03/2016, Time-18:30hrs.

The word originated from the Greeks and means "*lover of children*". It was appropriated by people with sexual urges towards children. **Paedophilia** can be defined as "**sexual attraction in an adult towards children**", a person who has attractions towards children is a paedophile. Paedophile offences are framed in terms of rape, sexual assault, indecency, making or possessing child pornography.⁴

Child Pornography

Child Pornography basically involves the production and distribution of child abusive images. By the help of internet it has become very cheap and inexpensive. The internet has made this very cheap and inexpensive. By the help of internet it has become very easy to reproduce and distribute images, photographs and digitized movies to a large number of individuals by just a click of a button. Internet technology available such as websites, instant messaging, email, Internet relay Chat and many more has made very easy to exchange or sell images and videos. The technological ease and lack of expense has increases the volume of child pornography.

POCSO ACT (2012)

The Protection of Children from Sexual Offences Act (POCSO Act) 2012 was formulated so as to effectively address sexual abuse and sexual exploitation of children. This Act received assent from President on 19th June 2012 and got notified on 20th June, 2012 in the Gazette of India.⁵

In this Act it is defined that child as any person below eighteen years of age. It also defines the different forms of sexual abuse, including penetrative and non-penetrative assault as well as harassment and pornography too. It is given in this Act that sexual assault as "aggravated" under some circumstances as when the abused child is ill or if by the abuse is committed by a person in a position of trust or authority like a family member, teacher, doctor or police officer.

In this Act it's given that police has a great role during the investigative process. The police personnel who receives report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency

⁴<http://www.australianparentsformeganslaw.com/docs/whatis.tpl>, Last accessed, Date-22/03/2016, Time-19:00hrs.

⁵<http://arpan.org.in/protection-of-children-from-sexual-offences-act-pocso/>, Last accessed, Date-22/03/2016, Time-18:30hrs.

medical treatment for the child and placing a child in a shelter home, and then bringing the matter in front of the CWC. The Act had further such provision that to avoid re-victimization of the child in the judicial proceedings. It also provides special courts to conduct trial in-camera and without revealing identity of the child in a manner which is child-friendly as possible. The child have parent or other trusted person present at the time of testifying and interpreting, special educator or any other professional while giving evidence.

Indian Penal Code, 1860

In Indian Penal Code there is no such definition of child abuse but it is defined as any specific offence and there is no legal remedy and punishment for the child abuse. IPC give punishment for the offences which are related to rape or sodomy or unnatural sex. Laws defined in IPC rarely cover all the range of child sexual abuse, the law relating to ‘sodomy’ or ‘rape’ are too much specific and does not apply to acts like filming children for pornographic purposes, etc.⁶

Juvenile Justice Act, 2000

In this Act also which is made for the welfare of the children does not define the issue of child sexual abuse. It is really difficult to apply all the existing laws in any case of child abuse. There is an urgent need to amend all the laws or make certain provisions for child abuse and pornography.

We need certain legislations which specifically address the child abuse. The new legislation which should be formed must include all the forms of sexual abuse, including child prostitution and child pornography. It should also deal with the physical abuse and include bullying and trafficking of children. So, there is an urgent need and also to have the proper functioning administrative system to the record and register child abuse cases. There is a major issue that most of the child abuse cases do not get any report so there should be certain rules and laws which should provide certain peoplereponsible for recording child abuse report. Children must

⁶ <https://www.savethechildren.in/87-news-releases/120-saving-children-from-legal-lacuna.html>, Last accessed, Date-22/03/2016, Time-18:30hrs.

have that person who can understand their problem and should protect them and they also can take action on their behalf.

INTERNATIONAL CONVENTIONS WHICH PROTECT CHILDREN'S RIGHTS

It was not until the late of nineteenth century that nascent children's rights' protection movement countered the wide and held the view that children were quasi-property and economic assets. In the United States, the Progressive movement challenged courts' reluctance to interfere in family matters, promoted broad child welfare reforms, and was also successful in having laws passed to regulate child labor and provide for the compulsory education. Also it raises awareness of children's issues and established a juvenile court system. Another push for the children's rights occurred in the 1960s and 1970s, when children were viewed by some of the advocates as victims of discrimination or as an oppressed group. In the international context, "The growth of children's rights in international and transnational law is being identified as a striking change in the post-war legal landscape."⁷The purpose of this overview is that to describe the provisions of certain major international legal instruments on children's rights that form part of that landscape. Therefore with the help of all these there can be made changes in Indian laws too.

Declaration of the Rights of the Child 1959

The U.N. Declaration of the Rights of the Child (DRC) ⁸builds upon the rights which had been set in the League of Nations Declaration of 1924. The Preamble also notes that the children need "special safeguards and care, including all appropriate legal protection, before as well as after birth," reiterates the 1924 Declaration's pledge that the "mankind owes to the child the best it which has to give," local authorities also strives for the observance of children's rights.⁹One of the key principles in the DRC is that a child has a right to enjoy "special protection" as well as

⁷Stephen R. Arnott, *Family Law: Autonomy, Standing, and Children's Rights*, 33 William Mitchell Law Review 809 (2007). Arnott notes that "the very term 'children's rights' is both broad and loose," *id.* at 808

⁸The U.N. Declaration of the Rights of the Child comprises a Preamble and ten principles. G.A. Res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354. For an online text of the Declaration, see the Office of the U.N. High Commissioner for Human Rights (UNHCHR) Web site, <http://www.unhchr.ch/html/menu3/b/25.htm> (unofficial source). A list of the Status of Ratification of the Principal International Human Rights Treaties as of July 14, 2006, is available at <http://www2.ohchr.org/english/bodies/docs/status.pdf>

⁹Geraldine Van Bueren, *The International Law on the Rights of the Child 10-11* (Dordrecht/Boston/London, MartinusNijhoff Publishers, 1995. 35 International Studies in Human Rights)

the “opportunities and facilities, by law and also by other means,” and for healthy and normal physical, mental, moral, spiritual, and social development “in the conditions of freedom and dignity.” The “paramount consideration” in enacting laws for this purpose is that “the best interests of the child”. Among other DRC principles, a child is entitled to a name and nationality; to adequate nutrition, housing, recreation, and medical services; to an education; and, for the handicapped, to “special treatment, education and care.” There are some other principles are on protection against “neglect, cruelty and exploitation, trafficking, underage labor, and discrimination.”

U.N. Convention on the Rights of the Child 1989

The Convention on the Rights of the Child (CRC) is one of the most comprehensive documents on the rights of children.¹⁰ The CRC is also playing a significant role because it enshrines, “for the first time in binding the international law and the principles upon which adoption is based and also viewed from the child’s perspective.”¹¹ The CRC is primarily concerned with four aspects of the children’s rights (“the four ‘P’s”): participation by children in decisions affecting them; **protection of children against discrimination and all forms of the neglect and exploitation; prevention of harming them; and provision of assistance to children for their basicneeds.**¹² For the purposes of the CRC, a child is defined, “every human being below the age of eighteen years unless under the law which is applicable to the child, majority is attained earlier” (article 1).

Optional Protocols to the CRC on Sex Trafficking, Armed Conflict¹³

The United Nations **adopted two protocols** to the CRC on May 25, 2000, the Optional Protocol to **CRC on the Sale of Children, Child Prostitution, and Child Pornography 2000 (Sex Trafficking Protocol)** and the Optional Protocol to the Convention on the Rights of the Child on

¹¹ Van Bueren, supra note 3, at 16, 101.

¹²Id. at 15. Van Bueren calls these “the four ‘P’s””; other scholars refer to the Convention as being concerned with the three types of children’s rights, called the three ‘P’s”: provision, protection, and participation. See, for example, Jean Koh Peters, *How Children Are Heard in Child Protective Proceedings, in the United States and Around the World in 2005: Survey Findings, Initial Observations, and Areas for Further Study* [Special Issue on Legal Representation of Children], 6 Nevada Law Journal 971 (Spring 2006).

¹³<http://www.ohchr.org/english/law/crc-conflict.htm>, Last accessed, Date-22/03/2016, Time-18:30hrs.

Involvement of Children in Armed Conflict (Child Soldiers Protocol). The Sex Trafficking Protocol¹⁴(STP) also addresses the problem of sex trafficking and one among many purposes for the which children who are bought and sold, including, in addition, adoption, participation in the armed conflicts, marriage, and organ trade.

The Child Soldiers Protocol¹⁵ reaffirms in its Preamble that “the rights of children require special protection,” notes “the harmful and widespread impact of armed conflict on children,” and condemns their being targeted in such situations. It also refers to inclusion as a war crime in the Rome Statute of the International Criminal Court “the conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts.” The Preamble takes note of the definition of a child in article 1 of the CRC and expresses the conviction that raising the age of possible recruitment will contribute effectively to implementing the principle of the best interests of the child as a primary consideration in all actions concerning children.¹⁶

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 entered into force on 18 January 2000

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Have agreed as follows:¹⁷

¹⁴ Sex Trafficking Protocol comprises a preamble and 17 articles. G.A. Res. A/RES/54/263 of 25 May 2000. It entered into force on January 18, 2002. For an online text, *see* the UNHCHR Web site, <http://www.unhchr.ch/html/menu2/dopchild.htm>Last accessed, Date-22/03/2016, Time-20:30hrs.

¹⁵The Child Soldiers Protocol, comprising a Preamble and 13 articles, entered into force on February 12, 2002. G.A. Res. A/RES/54/263 of 25 May 2000. For an online text, *see* the OHCHR Web site, <http://www.ohchr.org/english/law/crc-conflict.htm>,Last accessed, Date-22/03/2016, Time-18:30hrs.

¹⁶http://en.wikipedia.org/wiki/Optional_Protocol_on_the_Sale_of_Children,_Child_Prostitution_and_Child_Pornography,Last accessed, Date-22/03/2016, Time-22:30hrs.

¹⁷ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>,Last accessed, Date-22/03/2016, Time-20:30hrs.

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purposes of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means 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.¹⁸

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

a. Sexual exploitation of the child;

b. Transfer of organs of the child for profit;

c. Engagement of the child in forced labour;

¹⁸ United Nations Treaty Collection: [Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography](#)

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 12

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Conclusion

Child pornography on the Internet which has resulted in police, Internet Service Providers and NGOs having considerably upgraded their own skills in tracking the movements of child pornography and identifying its sources and bringing to the court those who upload and download it. The Internet does not acknowledge the national borders and international co-operation between Law Enforcement Agencies and Hotlines is of the vital importance. There are several other high profile police-operations which have led to the infiltration and the legal action against the international child pornography/abuse networks. This does appear to suggest that the international co-operation between the Law Enforcement Agencies can result in the arrest and conviction of the child sexual abusers using the Internet as means of the communication and abuse if trained officers work together.

In the United Kingdom, the Government has introduced a multi-disciplinary Task that force on Child protection on the Internet. This initiative has brought together the police, the Internet Service Providers, child protection organizations and NGOs and other organizations also. The Home Office recommends that computer awareness training for the police and child protection practitioners; to ensure that all the officers know how computers can assist in the detection and investigation of crime and also how to collect and preserve the integrity of the digital evidence. Such training should be incorporated into the basic core curriculum for the new police recruits, and be a priority for serving all the officers, social workers and other practitioners engaged in child protection. (Home Office, 2001, United Kingdom) Save the Children would also endorse that such child protection measures and would like to see similar initiatives in other countries.

The home is the first place where a child can be educated and empowered about the risks on internet. A child should be given restricted access to internet with proper supervision and also he should be aware about the crimes done on internet.

According to Aristotle,

“Those who educate children well are more to be honored than they who produce them; for these only gave them life, that art of living well”.¹⁹



¹⁹<http://wcd.nic.in/childact/childprotection31072012.pdf>, Last accessed, Date-22/03/2016, Time-18:30hrs.