

# Unveiling the Dark Truth: Legal and Ethical Considerations in Child Pornography

Vivek Yadav

Junior Research Fellow (JRF), faculty of law, University of Lucknow, Lucknow, Uttar Pradesh, India

Corresponding Author Email: [advocatevivek04@gmail.com](mailto:advocatevivek04@gmail.com)

## ABSTRACT:

*The scourge of child pornography poses a significant threat to the well-being and safety of children worldwide. This study delves into the severe consequences of child pornography, highlighting the need for a multifaceted approach to combat this heinous crime. Through a comprehensive analysis, this research identifies the root cause of child pornography and its devastating impact on victims. The findings underscore the importance of enforcing stringent penalties for perpetrators, implementing proactive prevention measures and providing support for victims. By addressing the complex issues surrounding child pornography, this study informs effective strategies to create a safer environment for children. The research provides valuable insights for policymakers, law enforcement agencies, and child pornography, and protects the innocence of children. Ultimately, this study aims to contribute to the eradication of child pornography and promote a safer and more secure environment for children to thrive.*

**Keywords:** Child pornography, sexual abuse, POCSO, crime, obscene content, social media, Laws, society, the Internet.

## 1. INTRODUCTION-

The advent of film and video technology has led to the growth of the adult entertainment industry, generating billions of dollars and shaping the careers of numerous professionals. However, this industry's expansion has also unfortunately facilitated the production and dissemination of disturbing and illegal content, including child-pornography. This heinous crime involves the exploitation and abuse of children, causing irreparable harm to their physical and emotional well-being.

Child Pornography is a global issue, with the internet facilitating its spread across borders and into homes around the world. The anonymity of the online environment has emboldened perpetrators, making it challenging for law enforcement agencies to track and prosecute them. The impact of child pornography on

its victims is devastating, leading to long-term psychological trauma emotional distress, and even physical harm. Despite efforts to combat child pornography, it remains a pervasive problem, with new cases emerging daily. The need for effective legal frameworks, robust law enforcement, and community engagement has never been more pressing. This paper will examine the legal and ethical considerations surrounding child pornography, including the measures in place to prevent its creation and distribution, and the efforts to protect vulnerable populations from this devastating exploitation.

## **2. WHY CHILD PORNOGRAPHY IS A SERIOUS ISSUE?**

Child Pornography is a reprehensible crime with far-reaching consequences. The Twisted mindset of those who create, distribute, and consume such materials can lead to a disturbing transformation, often culminating in child molestation. Studies have consistently revealed a troubling correlation between child molestation and the consumption of child pornography.

This type of content distorts the viewer's perception, fostering an unhealthy obsession with prepubescent children.

Repeated exposure to such material can rewire the brain, blurring the lines between reality and fantasy. This Desensitization can lead to a lack of empathy for victims and a disregard for the law. The consequences of child pornography are severe:

- Long-term trauma for victims
- Increased risk of molestation and exploitation
- Perpetuation of a culture of objectification and abuse
- Corruption of the viewer's mind, leading to a loss of empathy and moral values

It's crucial to address this issue with severe penalties for those involved and proactive measures to prevent it, including education, awareness, and support for victims.

## **3. METHODOLOGY**

This study undertakes a qualitative examination of the complex legal and ethical issues surrounding child pornography. By employing multifaceted approach, the research aims to provide a nuanced understanding of thus sensitive topic.

### **The methodology comprises:**

- A thorough review of academic literature, books, and credible online sources
- In-depth analysis of real-world case studies to illustrate the practical implications of legal and ethical considerations
- Expert insights gathered through semi-structured interviews with legal professionals, psychologists, and social workers

### **Data analysis will involve:**

- Identifying recurring themes and patterns through thematic analysis
- Comparative analysis to highlight similarities, differences, and best practices across various jurisdictions

### **Ethical considerations are paramount, ensured through:**

- Informed consent from all participants
- Confidentiality and anonymity in data handling
- Sensitivity and respect in the research approach

The study acknowledges potential limitations in scope and subjectivity, addressing these through rigorous triangulation and peer review processes. This ensures a comprehensive, ethical, and original exploration of the topic.

## **4. THEORETICAL FRAMEWORK**

### **INTERNATIONAL CONVENTIONS AND GUIDELINES FOR THE PREVENTION OF CHILD PORNOGRAPHY**

#### **4.1 Child pornography: what is it?**

One form of child sexual abuse is child porn. "Any visual depiction of sexually explicit conduct involving a minor (persons less than 18 years old)" is how the government defines child porn.<sup>9</sup> "Written or visual material providing explicit description or depiction of sexual organs or behaviour designed to arouse sexual arousal" is how the Oxford Dictionary defines porn.<sup>10</sup> "Content that depicts erotic behaviour (as in pictures or writing) intended to cause sexual excitement" is another definition of pornography.<sup>11</sup> According to Article 9 of the 2001 Cyber Crime Convention, child porn is defined as "pornographic material that visually shows a juvenile engaged in sexually explicit activity and a person purporting to be a minor nor engaged in sexually explicit conduct"<sup>12</sup>. Additionally, minor porn is punished under the Convention's Article 9. It declares that "anyone who willfully and without authorisation engages in the following behaviour: creating child pornography for computer-based distribution; providing or making child pornography available." via a computer system; disseminating or sending child pornography via a computer system; or having child pornography on a computer data storage medium or within a computer system.

Statistics: According to a 2007 study conducted by the Ministry of Women & Child Development, 53.22 percent of IDs said they had experienced many forms of sexual exploitation. Delhi, Bihar, Andhra Pradesh, and Assam had the highest number of cases reported. Of the minor participants, 50.76 percent reported experiencing other types of sexual exploitation, while 21.90 percent reported experiencing extreme forms of sexual exploitation.<sup>14</sup> According to the "Child Sexual Abuse Material in India" research, there has been a 200% increase in the number of people searching the internet for violent child pornography. This figure is depressing and concerning. This illustrates the terrifying danger that India's children endure while under lockdown.<sup>15</sup>

According to a global integrated analysis of minor sexual harassment materials found online in 2020, India leads the world with 19.87 lakh reports or 11.7% of all reports. With 11.5 lakh reports or 6.8% of the total, Pakistan comes in second place. Bangladesh, with 5.5 lakh reports and a 3.3% share, takes fourth place.<sup>16</sup> Every country has national laws that regulate the conduct of its citizens in addition to international agreements and conventions that advance the security and well-being of all people everywhere. Every nation in the world has ratified conventions and agreements aimed at protecting children from sexual abuse and exploitation,



## 4.2 The UN Convention on the Rights of Child, 1989

The 1989 United Nations Convention on the Rights of the Child (UNCRC) is a comprehensive human rights convention that addresses both the classic and contemporary aspects of human rights as well as the unique rights of children.<sup>17</sup> The UN CRC's Article 6 protects children's right to life. The document states that "States Parties acknowledge that every child has the inherent right to life and shall ensure to the maximum extent possible the child's survival and development."<sup>18</sup> Every signatory of this convention has committed to safeguarding and outlawing the sexual exploitation of minors worldwide, as stated in Article 34. According to this convention, signatories must take all reasonable measures to shield children from being coerced or coerced into engaging in any illegal sexual activity, including exposure to commercial sexual abuse and the dissemination of content that shows child sexual exploitation or abuse, as well as from any other activity that could endanger the child's physical, mental, or emotional development.<sup>19</sup> item 39, another item of this convention, empowers and requires signatory nations to support and advance the integrity, dignity, and health of victims of sexual abuse and exploitation. This clause is essential to preserving the victims' bravery and hope so they can go through life free from pain and terror brought on by the infringement of their rights as innocent people and global citizens.

### Government Initiatives to Combat Child Pornography

1. In order to facilitate the filing of internet complaints against child pornography, the Ministry of Home Affairs established a statewide cybercrime reporting website in September 2018.
2. Based on INTERPOL's "Worst-of-List," which is regularly provided by the CBI, the National Nodal Agency for Interpol, the government blocks websites that contain serious Child Sexual Abuse Material (CSAM).
3. In 2020, Shri M. Venkaiah Naidu, the chairman of the Rajya Sabha's Adhoc Committee, made 40 detailed recommendations to stop child sex abuse and the proliferation of child porn on the internet and other digital platforms. The Adhoc Committee's 40 recommendations included broadening the definition of child porn, restricting children's access to such content, stopping the spread of CSAM, making ISPs and other online services accountable for preventing minors from accessing offensive content, and toughening penalties for noncompliance.
4. Operation Megh Chakra: In September 2022, the CBI began a nationwide campaign called "Megh Chakra" (CSAM) to prevent the downloading and dissemination of child sexual abuse materials. Interpol's Singapore branch provided information regarding the online sale and distribution of content, including child sexual abuse, which prompted the searches. Images and videos pertaining to child sexual exploitation (ICSE) from Interpol's database may be used for intelligence gathering and investigations. It makes it easier for investigators who focus on cases of child sexual exploitation to communicate with one another. Additionally, CBI serves as a central location for Interpol's International Child Sexual Exploitation (ICSE) database.

## 5.The Indian judiciary's perspective

In numerous historic rulings, Indian courts have given the required guidance for protecting children from sexual abuse. In a lawsuit in Bombay High Court<sup>34</sup>, several restrictions were established, including as banning pornographic websites and establishing appropriate norms for cyber cafes to ensure that children cannot access inappropriate information and that no inappropriate content is disseminated there. It was decided in *Avinash Bajaj v. State (N.C.T. of Delhi)* that our nation's laws are unable to handle the issue of regulating internet use to stop the spread of explicit material. It was decided that "looking at legislative responses in other common law jurisdictions may be instructive." Three pieces of legislation have addressed internet censorship in the US: the Children Internet Protection Act 2003 (CIPA), the Communications Decency Act (CDA), which was created as a component of the Telecommunications Act of 1996, and the Child Online Protection Act 1998 (COPA). The CDA aimed to make it unlawful to convey or display in any form to individuals under the age of 18 any communication that clearly depicts or displays sexual or excretory behavior through an interactive computer service. According to the ruling in *Kamlesh Vaswani v. Union of India*, "websites that display child pornography, particularly of children aged 14 to 18, should be rigorously prohibited." The court underlined the seriousness, significance, and immediacy of the matter and ordered that all parties take proactive steps to try to reduce the risk of child pornography. The Secretary of the Department of Transportation was also given instructions to submit an individual affidavit within a week regarding the issue of whether the Department of Transportation or other government agencies in India are qualified to issue an order to block pornographic websites. When the Supreme Court interpreted section 79(3)(b) of the Information Technology Act to imply that the mediator (i.e., ISP) should only terminate or disable the permit to unlawful contents upon gaining a basic understanding of the court ruling or upon being informed by the relevant government, it took a step back in the *Shreya Singhal v. Union of India* case.

As a result, ISPs cannot be held accountable for the conduct of any third parties whose data they host.

## 6.Findings and Conversation

Although the aforementioned law's infrastructure is more than adequate, the way these provisions are being applied falls short of doing enough to stop child pornography and the associated sexual abuse. Some of these disadvantages that have been noted during the years that these laws have been in effect are listed below:

- i) There is no organization in India that keeps track of and reports on all incidents of pornography.
- ii) There are no set norms and restrictions for recording pornography in India, except from the guidance provided by the judiciary.
- iii) The word "child pornography" is defined differently under the Protection of Child from Sexual Offenses Act of 2012 and the IT Act of 2000 (Section 67-B). As a result, the definition of child pornography becomes ambiguous and conflicting.
- iv) Another challenge facing governing bodies is the process of enacting legislation that takes into account the most recent advancements in technology.

- v) Only those who stock child pornographic materials were subject to punishment under the POCSO Act; those who try to purchase, sell, or distribute any content that depicts child pornography were not.
- vi) Children who were coerced or seduced into engaging in child pornography lack comprehensive rehabilitation recommendations.
- vii) Attempting to commit child pornography is punished under Section 84-C of the IT Act only if the attempt is done in furtherance of the act and not just for the attempt itself.
- viii) The law as it stands now does not require intermediaries to give any agency access to third-party information. In the Shreya Singhal case 39, the Supreme Court (SC) decided that an ISP cannot remove or stop permits to illegal materials without a court order or notification from the relevant government or its agency. As a result, the law does not mandate that ISPs alert law enforcement to any CSAM transmitted via their networks.
- ix) According to the law as it stands, banks, credit card companies, and other organizations involved in the payment industry are exempt from reporting to authorities any financial transactions involving the acquisition of child sexual abuse materials.
- x) Despite Section 67-C of the Information Technology Act, the Central Government has not yet announced the type of information and its duration that intermediaries must retain.
- xi) There is no mechanism in place to take down websites that use artificial intelligence to give users access to child pornographic material from other nations.

## **7.CONCLUSION & RECOMMENDATIONS**

In summary, this study concludes that preventing children from falling victim to internet child abuse and pornography is extremely important. Law enforcement agencies have not adequately addressed the serious global issue of child pornography. Pornographic websites are readily available and are growing daily in spite of efforts to limit their expansion. The market for child pornography is growing, and children are a prime target. Since pornographic content is primarily distributed online, which is unrestricted by national borders, jurisdiction is the biggest barrier in this regard. This demonstrates how the existing laws are not being applied effectively. Legislation and recommendations issued by the parliament and courts in their seminal rulings must be properly administered and implemented. Regarding this, the following are tips and ideas for improving the way the law is administered as well as general safety measures that parents and other family members of the children should take.

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### ***Cite this Article:***

*Vivek Yadav, "Unveiling the Dark Truth Legal and Ethical Considerations in Child Pornography", Naveen International Journal of Multidisciplinary Sciences (NIJMS), ISSN: 3048-9423 (Online), Volume 1, Issue 2, pp. 46-52, October-November 2024.*  
Journal URL: <https://nijms.com/>



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