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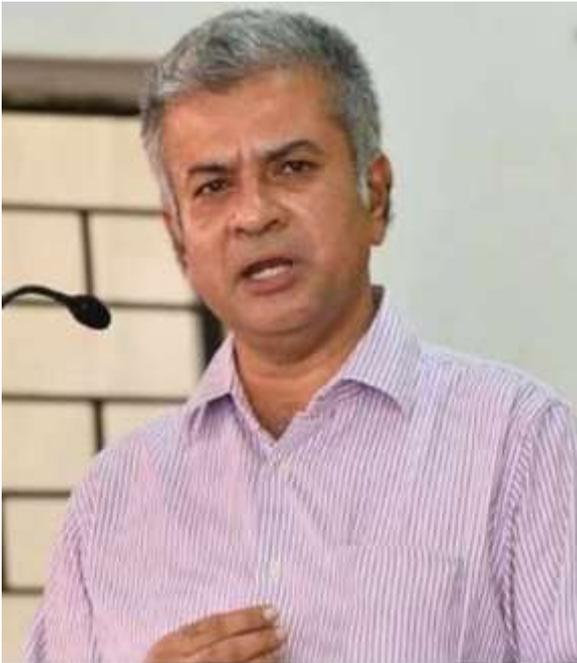
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Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

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Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CHILD PORNOGRAPHY AND THE SUPREME COURT OF INDIA

AUTHORED BY - INDRA CHAND KUMAWAT

Assistant Professor

Govt. Law College, Bundi (RAJ.)

Abstract

Child pornography is a serious crime that affects not only individual children but also society as a whole. It involves the use of children in sexual activities, creating images or videos for sexual purposes, or distributing such materials. This paper aims to explore the meaning and definition of child pornography, its impact on children and society, the existing legal framework in India, and the crucial role of the Supreme Court in addressing this heinous crime. The Indian legal system, through various laws like the Protection of Children from Sexual Offences (POCSO) Act, 2012, and the Information Technology Act, 2000, provides for strict punishment for offenders. The Supreme Court of India has consistently emphasized the need to protect children from such exploitation. In the landmark case of “Just Rights for Children Alliance v. S. Harish” (2024), the Court addressed several crucial aspects of child pornography, including the need for swift action and rehabilitation of victims.

Despite the legal framework, challenges like technological advancements, cross-border data sharing, and delayed investigations continue to hamper efforts. The paper suggests improving technology, training enforcement agencies, and creating greater awareness to tackle this menace. In conclusion, child pornography is a gross violation of human rights, and India must strengthen its legal and social frameworks to ensure that children are protected from exploitation. The active role of the Supreme Court in interpreting and enforcing the law is essential to safeguard the rights of children and ensure justice for victims.

Keywords: - Child Pornography, Digital Literacy, Exploitation, Victim Rehabilitation, Cybercrime

Introduction

Child pornography is a grave and inhumane crime that involves using children in sexual content. It includes the production, possession, and distribution of materials that depict children in sexual activities. Such acts not only violate the dignity and privacy of children but also have severe long-term effects on their physical and mental health. In the digital age, the internet and social media platforms have made it easier to create and distribute child pornography, making the problem even more complex. In India, child pornography is prohibited by law, and strict penalties are prescribed under various statutes like The Protection of Children from Sexual Offences (POCSO) Act, 2012, and The Information Technology Act, 2000. Despite these legal protections, cases of child pornography are increasing, mainly due to technological advancements and the anonymity of online platforms.

The Supreme Court of India has played a crucial role in addressing this problem. By interpreting laws and ensuring that offenders are brought to justice, the Court has worked to create a legal environment that protects children from exploitation. The recent judgment in “Just Rights for Children Alliance v. S. S. Harish” (2024) is a significant step in this direction. This research paper aims to discuss the meaning and impact of child pornography, the legal framework in India, and the role of the Supreme Court in combating this crime. It also highlights the implementation challenges and suggests measures to improve the system. The paper emphasizes the urgent need to create a safe environment for children and ensure that justice is served in all cases of exploitation.

1. Meaning and Definition of Child Pornography

Child pornography generally refers to any visual representation of a child engaged in real or simulated sexual activities or any depiction of a child’s sexual parts for sexual purposes.

Definition in Indian Context: Under Section 2(1)(da) of the POCSO Act, 2012, child pornography includes any visual depiction of sexually explicit conduct involving a child or any image that depicts a child in a sexual manner. The IT Act, 2000 (Section 67B) prohibits publishing or transmitting material that depicts children in sexually explicit acts. The definition covers: Photos, videos, or digital images involving children in sexual acts. Computer-generated images or cartoons that depict children in a sexual way. This broad definition ensures that all forms of child pornography, whether physical or digital, are punishable under Indian law.

1.2 Impact of Child Pornography: The impact of child pornography is severe and long-lasting, both for the child victim and for society.

For Children: Psychological Trauma: Children involved in such acts often suffer from anxiety, depression, and feelings of shame. Physical Harm: Many children are subjected to physical abuse and violence while producing these materials.

Loss of Dignity: The circulation of these materials violates a child's dignity and privacy.

For Society: Moral Degradation: It promotes a culture of exploitation and sexual abuse of children. Criminal Activities: Child pornography is often linked to larger criminal networks involved in trafficking and organized crime. Permanent Harm: Once images are shared online, they are difficult to remove, causing lifelong trauma to the victim. The serious impact of child pornography calls for urgent and strong measures to protect children and ensure accountability for offenders.

1.3 Legal Framework in India

India has recognized the serious nature of child pornography and has developed a strong legal framework to prevent, punish, and eliminate it. The laws cover the production, possession, and distribution of child pornographic content and ensure strict penalties for offenders. Let's understand the key laws and their provisions.

1. "The Protection of Children from Sexual Offences (POCSO) Act, 2012"

The POCSO Act is a comprehensive law specifically for protecting children (under 18 years) from sexual offences, including child pornography.

Key sections:

Section 13: Defines the use of a child for pornographic purposes. This includes any act that involves a child in real or simulated sexual activity or the depiction of sexual parts for sexual purposes.

Section 14: Provides punishment for using a child for pornographic purposes. It prescribes imprisonment which may extend up to 5 years for the first offence and up to 7 years for subsequent offences.

Section 15: Deals with storage of pornographic material involving children for commercial purposes and prescribes imprisonment up to 3 years or a fine, or both.

The Act also has provisions to ensure:

- Mandatory reporting of child sexual abuse (Section 19).

- Confidentiality of the victim's identity (Section 23).
- Child-friendly procedures for recording evidence and investigation.

2. “The Information Technology Act, 2000”

The IT Act is crucial in dealing with online child pornography, especially in the digital era.

Key section:

Section 67B: Punishes publishing, transmitting, browsing, or possessing material that depicts children in sexually explicit acts.

Punishment:

First conviction: Imprisonment up to 5 years and fine up to ₹10 lakh.

Second/subsequent convictions: Imprisonment up to 7 years and fine up to ₹10 lakh.

Section 69A: Empowers the government to block access to websites that host child pornographic content. The IT Act ensures that even those who watch, share, or store such material are held accountable.

3. “The Bharatiya Nyaya Sanhita (BNS), 2023”

While the BNS does not directly use the term “child pornography,” it has provisions that deal with obscenity and sexual exploitation:

Section 294: Punishes sale, distribution, public exhibition, and circulation of obscene materials, including child pornographic content.

Section 295: Specifically targets the sale of obscene material to children under 18 years, including images and videos.

4. “The Juvenile Justice (Care and Protection of Children) Act, 2015”

The JJ Act focuses on the care, protection, and rehabilitation of children. It also indirectly addresses child pornography through provisions on child sexual abuse and exploitation.

5. Constitutional Provisions

The Indian Constitution guarantees protection of children: Article 21: Right to life and personal liberty, including protection of dignity and privacy. Article 39(e) & (f): Directive Principles direct the State to protect children from abuse and ensure they develop in a healthy manner. The Supreme Court has used these constitutional provisions to interpret and strengthen the fight against child pornography.

1.4 Key Supreme Court Judgments on Child Pornography

The Supreme Court of India has actively played a role in interpreting and enforcing laws against child pornography, ensuring children's rights are protected. Let's look at the major judgments that have shaped the legal landscape:

1. "Kamlesh Vaswani v. Union of India (2014)"

Facts:

This case arose from a Public Interest Litigation (PIL) filed by Kamlesh Vaswani, seeking a ban on websites hosting pornographic content, including child pornography.

Issues:

Whether the State should ban pornography on the internet?

What steps can be taken to control access to such materials?

Supreme Court Directions:

The Court recognized that child pornography is an extreme form of sexual exploitation and a violation of children's rights. It directed the Union of India to take appropriate steps to block child pornographic sites under the Information Technology Act, 2000. The Ministry of Electronics and Information Technology was asked to frame guidelines and ensure that search engines like Google, Yahoo, and Bing do not show child pornographic content in search results.

Significance:

This judgment strengthened the use of technology and administrative measures to control the spread of child pornography.

2. "In Re: Prajwala Letter v. Union of India (2015)"

Facts:

This case began as a suo moto PIL based on a letter from Prajwala, an NGO, highlighting the easy availability of rape videos, child sexual abuse material, and other pornographic content online.

Supreme Court Action:

The Court directed internet search engines to develop mechanisms to block and take down child pornographic and rape videos. It ordered the formation of a permanent committee under the Ministry of Home Affairs to handle complaints and coordinate with ISPs and social media platforms. The Court emphasized the need for a national-level policy to combat cybercrimes against children.

Significance:

The case showcased the proactive role of the judiciary in ensuring the removal of child pornography from digital platforms.

3. “Just Rights for Children Alliance & Anr. v. S. Harish & Ors. (2024)”

This is the latest and landmark judgment on child pornography. Let’s explore this in detail:

Facts:

An NGO named Just Rights for Children Alliance approached the Supreme Court after a social media account was found distributing child pornography videos and images. The NGO sought:

- ❖ **Removal of the content from online platforms.**
- ❖ **Swift investigation.**
- ❖ **Victim rehabilitation and compensation.**

Supreme Court Observations:

The Court recognized that child pornography is a serious violation of the fundamental rights of children, including the right to privacy and dignity.

It noted that victims suffer long-term psychological trauma due to the permanent nature of digital content.

Directions Issued:

- The creation of special cyber units in police departments to monitor and remove child pornographic material.
- Fast-track investigation of such cases, with monthly progress reports to be filed in trial courts.
- Victim rehabilitation, Mandatory counselling, compensation, and protection of identity during proceedings.
- The Court stressed the need for international cooperation to deal with cross-border hosting of child pornography.

Significance:

This judgment reaffirms the Supreme Court’s victim-centric approach and strengthens the legal framework for handling child pornography cases.

Additional Supreme Court Emphasis

Apart from these landmark cases, the Supreme Court has consistently emphasized:

Children’s right to a safe environment under Article 21 of the Constitution.

The need for sensitization of investigating agencies and the judiciary to handle child pornography cases with care and empathy. The importance of public awareness campaigns to educate parents and children about the risks and reporting mechanisms.

1.5 Challenges

Several challenges hinder effective control of child pornography:

- **Technological Challenges:** Use of encrypted apps and dark web makes detection difficult.
- **Delayed Investigations:** Lack of trained officers and slow investigations hamper justice.
- **Victim Trauma:** Victims face stigma and psychological trauma, discouraging them from seeking help.
- **Cross-Border Nature:** Child pornography often involves foreign websites and servers, making jurisdiction difficult.
- **Limited Awareness:** Many parents and children are unaware of the dangers and reporting methods.

1.6 Suggestions

To address these challenges, the following measures are suggested:

Strengthen Cyber Monitoring: Use AI and advanced technology to detect child pornographic material. **Training for Police:** Specialized training for law enforcement to investigate such cases effectively. **Fast-Track Courts:** Establish more fast-track courts for swift trials and justice. **International Cooperation:** Work with global agencies to curb cross-border sharing of child pornography. **Victim Rehabilitation:** Create safe spaces and support systems for victims, including counselling and legal aid. **Awareness Campaigns:** Promote digital safety and reporting mechanisms in schools and communities.

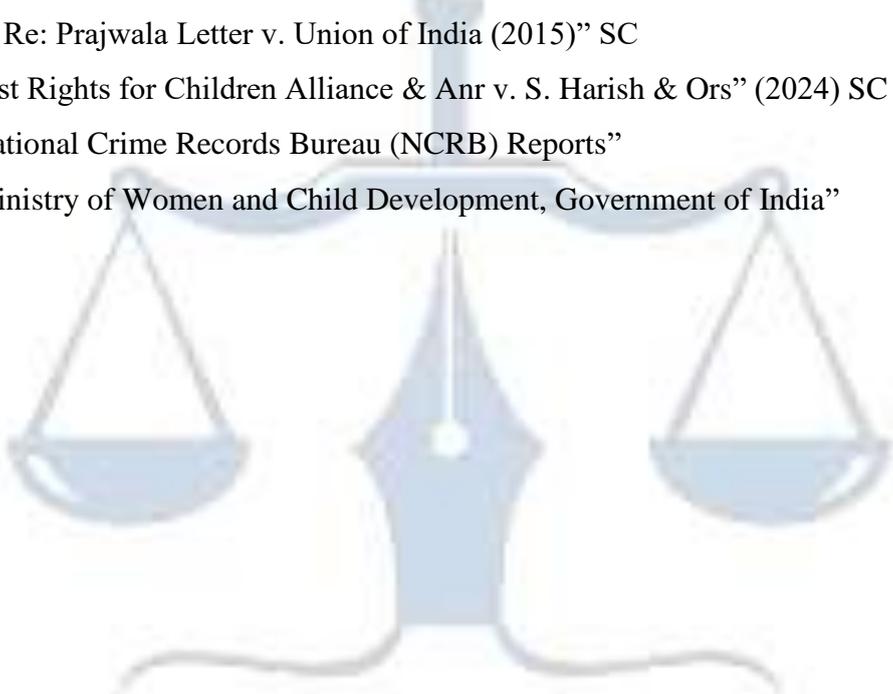
Conclusion

Child pornography is a serious violation of children's rights and dignity. The Indian legal system, backed by the Supreme Court's proactive role, has made significant progress in addressing this issue. The landmark case "Just Rights for Children Alliance v. S. Harish" highlights the judiciary's commitment to protecting children from exploitation. However, more needs to be done. Technological advancements have made the problem complex, requiring continuous innovation in legal and enforcement strategies. Strengthening victim rehabilitation, international cooperation, and public awareness are crucial steps in combating child

pornography. India must ensure that every child grows up in a safe environment, free from exploitation and abuse. By working together, the law, the courts, and society can protect children and ensure justice for every victim.

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