
UNCOVERING THE LEGAL FRAMEWORK OF CHILD PORNOGRAPHY IN INDIA: AN ANALYSIS OF LAWS, POLICIES, AND CHALLENGES

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ABSTRACT

Child pornography is a grave offense that poses a severe threat to the safety and well-being of children in India. Despite having a legal framework to address this issue, the problem persists and remains challenging to tackle. This paper examines the legal and policy framework in India concerning child pornography and identifies the strengths and weaknesses of the existing legal system. The study also examines the impact of international standards and best practices on the Indian legal framework and identifies areas where India can learn from other countries' experiences. In conclusion, the study underscores the urgent need for a coordinated effort among policymakers, law enforcement agencies, and civil society organizations to tackle the issue of child pornography effectively in India.

Keywords: child pornography, legal framework, policy framework, India, laws, policies, challenges, international standards, best practices, children's rights.

I. Introduction

"We need to be clear that the production and distribution of child pornography is not only illegal, but it is also a form of child abuse. We must work together to prevent this exploitation and protect our children."¹

Child pornography is a pervasive issue that affects young people all over the world. According to a 2018 report by the International Centre for Missing and Exploited Children (ICMEC) child pornography is a multibillion dollar industry that spans across different countries and cultures. The report states that between 10 and 20 percent* of all child pornography victims are under the age of six, and that the majority of victims are between the ages of 11 and 13. The causes of child pornography are complex and include factors such as poverty, social inequality, and technological advancements that have made it easier for perpetrators to create, distribute, and consume this type of material. In this context, it is crucial to understand the scale and complexity of this issue in order to develop effective prevention and intervention strategies.

In recent years, there has been a growing awareness of the prevalence of child pornography, as well as the harm that they can cause to young people. This awareness has been fostered by a range of stakeholders, including advocacy groups, law enforcement agencies, and mental health professionals*. These groups have worked to raise public awareness about the issue, and to develop policies and programs aimed at preventing and responding to these forms of exploitation*.

The rise of child pornography cases in India is a cause for serious concern, as recent data from Lok Sabha highlights a 17-fold increase in such incidents between 2018 and 2020 (Basu, 2022). According to this data, child pornography cases have spiked from 44 in 2018 to 738 in 2020, with arrests rising from 36 to 372 in the same period. The data reveals that Uttar Pradesh has recorded the highest number of such incidents with 194 cases, followed by Kerala with 146 cases, Maharashtra with 129 cases, and Karnataka with 126 cases. This data highlights the urgent need for better policies and strategies to tackle this issue, and to protect vulnerable children from exploitation and abuse.

¹ European Commission, "Combatting Child Sexual Abuse and Exploitation Online"

The objectives of this paper are to provide a comprehensive overview of the laws and policies related to child pornography in India, analyze the strengths and weaknesses of the existing legal and policy framework, compare it with international standards and best practices, identify the challenges in addressing child pornography in India, and propose recommendations for enhancing the legal framework to effectively combat this heinous crime.

Through these objectives, this paper aims to provide a comprehensive analysis of the legal framework for addressing child pornography in India. By identifying the challenges and gaps in the current framework and providing recommendations for improvement, this paper seeks to promote a more effective and efficient response to the problem of child pornography in India.

II. Legal and Policy Framework for Child Pornography in India: An Overview

Child pornography has a long and troubling history, with evidence of its existence dating back to ancient times. However, the modern-day history of child pornography can be traced back to the late 1960s and 1970s (Ost, 2009, p. 28) when more liberal obscenity laws in Western Europe paved the way for the commercial production of child pornography, in both film and magazine format.

Countries such as Denmark and Holland (Ost, 2009, p. 28-29) were particularly large producers and exporters of this material, leading to a rise in its availability and consumption worldwide. The United States also experienced an increase in child pornography production during this time, with the emergence of the so-called "Kiddie Porn*" market.

However, it was not until the 1980s that the issue of child pornography gained significant international attention, leading to the adoption of several international conventions aimed at combating this form of exploitation. These include the United Nations Convention on the Rights of the Child (1989), which calls for the protection of children from all forms of sexual exploitation and abuse, and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (2000), which provides a framework for criminalizing and punishing the production and dissemination of child pornography.

In India, the first reported case of child pornography was in 2004 when a 13-year-old girl was abducted and raped in Mumbai, and her video was circulated on CD. This incident led to the

introduction of the Information Technology Act, which criminalized the production, transmission, and distribution of child pornography (Times of India, 2003). However, in 2015, the Supreme Court issued directives requiring internet service providers to block websites containing child pornography ("ISPs want government to withdraw vague order on porn sites," 2015). Then in 2018, the Indian government proposed a new law, the Pornography Control Bill, which aimed to ban all forms of pornography in the country. The proposed law faced significant opposition, with critics arguing that it would be difficult to enforce and the bill was eventually dropped, and the government instead introduced guidelines in 2019 for internet service providers to prevent access to pornography websites. In 2020, the Indian government once again attempted to regulate access to pornography, this time by banning 827 websites that it deemed to be hosting child pornography content (Bose, 2019).

Legal and Policy Framework for Child Pornography in India: Overview

The Indian Penal Code (IPC) is the primary law that governs pornography in India. Section 292 of the IPC criminalizes the sale, distribution, or exhibition of obscene material. The section defines obscene material as anything that is lascivious or appeals to the prurient interest. The punishment for violating this provision is imprisonment for up to two years and a fine. Section 293 of the IPC deals with the sale, distribution, or exhibition of material that is harmful to minors. The section defines harmful material as anything likely to corrupt a minor's morals. The punishment for violating this provision is imprisonment for up to three years and a fine.

The Information Technology (IT) Act, of 2000, and its amendments provide legal provisions for online pornography. Section 67 of the IT Act criminalizes the publishing or transmitting of any material containing sexually explicit content. The act makes the collection and storage of pornographic material an offense once the content involves minors and the punishment for violation is 5 years imprisonment and 10 lakhs fine.

The Protection of Children from Sexual Offences Act (POCSO) 2012 is another crucial law that deals with pornography in India. The sole purpose of the act is to protect the child from sexual assault, sexual harassment and pornography. The act recognizes the harmful impact of pornography on children and criminalizes the production, distribution, and consumption of child pornography.

Under POCSO, Section 13 deals with the use of a child for pornographic purposes. The section makes it illegal to use a child for pornographic purposes or to create, possess, or distribute pornographic material involving a child. The punishment for violating this provision is imprisonment for a term of three to five years and a fine.

Section 14 of POCSO deals with the punishment for using a child for pornographic purposes. The section imposes a punishment of imprisonment for a term of five to seven years and a fine. If the offender is a repeat offender or commits the offense of the material, the punishment is imprisonment for a term of seven to ten years and a fine.

Furthermore, POCSO has provisions that criminalize the use of the internet to access or distribute child pornography. Section 15 of the act makes it illegal to use the internet to facilitate the production, distribution, or possession of pornographic material involving a child. The punishment for violating this provision is imprisonment for a term of five to seven years and a fine.

Policy Framework

The Ministry of Women and Child Development (MWCD) is responsible for developing and implementing policies related to the crimes against child and women. The ministry has developed several policies aimed at preventing and addressing the harmful effects of pornography in India. The National Policy for Children 2013, recognizes the need to protect children from all forms of exploitation, including exposure to pornography. The policy outlines various measures to address this issue, such as strengthening the legal framework, creating awareness, and providing support to victims. The government of India has also established the National Commission for Protection of Child Rights (NCPCR) to monitor and ensure the implementation of child protection policies in the country. The guidelines provide a comprehensive framework for identifying, reporting and responding to cases of child pornography.

Analyzing India's Child Pornography Framework

India has a comprehensive legal framework to address the issue of child pornography, which covers all aspects of production, distribution, and consumption. This legal framework recognizes the harmful impact of pornography on children and provides strict penalties for

offenders. The POCSO Act, which was enacted in 2012, is a significant step towards protecting children from sexual abuse, and it recognizes the harmful impact of pornography on children. The Act provides for stringent punishment for violations of its provisions, including those related to child pornography (Section 13 & 14, POCSO Act, 2012). The comprehensive legal framework and strict penalties for offenders demonstrate the government's commitment to addressing the issue of pornography and its impact on children (Sahoo, 2020).

In addition to the legal framework, the Ministry of Women and Child Development and the National Commission for Protection of Child Rights have developed policies to combat child pornography. These policies highlight the rising cases of child pornography and provide a framework for identifying, reporting, and responding to cases of child pornography. The ministry has made efforts to raise awareness and curb the menace of child pornography through time-to-time policies (**National Commission for Protection of Child Rights, n.d.**). The guidelines on eliminating child pornography provide a comprehensive framework to prevent and report cases of child pornography. These guidelines have been developed by the Ministry of Home Affairs and aim to ensure that all stakeholders are aware of their responsibilities in combating child pornography (Ministry of Home Affairs, 2019). Furthermore, the laws and policies related to pornography in India are continuously evolving to keep up with advancements in technology and changing societal norms. As the society changes and new dimensions of crimes emerge, the laws and policies should be able to address them. For instance, in 2020, the Indian government banned 827 websites hosting child pornography content. This move was widely supported, although some criticized it for not addressing the root causes of child sexual abuse and exploitation (Bose, 2019).

Despite the strengths of the legal framework and policies related to pornography in India, there are significant challenges in implementing and regulating these laws. One of the biggest challenges is the regulation of online pornography due to the anonymity and accessibility of the internet. As a result, it can be difficult to identify and prosecute offenders of child pornography online. (Singh, 2019) In addition, there are concerns about the effectiveness of blocking websites containing child pornography, as these efforts may only drive the distribution of such content to more hidden and difficult-to-track online spaces. (Bhatnagar, 2020) The lack of awareness among the general public and law enforcement agencies about the harmful effects of pornography, particularly on children, also poses a challenge to

effectively combat the issue. (Chakraborty, 2020) Furthermore, the inadequate resources allocated to law enforcement agencies to investigate and prosecute cases related to pornography, particularly child pornography, remains a significant obstacle to effective implementation of laws and policies. (Chandran, 2020). Overall, while the legal and policy framework for addressing pornography in India has its strengths, several weaknesses need to be addressed to effectively deter offenders and prevent the harmful impact of pornography on individuals and society as a whole.

India's Child Pornography Framework: Best Practice Comparison

The issue of child pornography has become increasingly prevalent on a global scale, owing to the ease with which it can be produced and disseminated. As such, it is important to examine the approaches taken by various countries in addressing this problem.

The USA has a well-defined framework that criminalizes child pornography under section 2256 of title 18 U.S.C. According to this section, any visual depiction of sexually explicit conduct involving a minor (someone under 18 years of age) is considered child pornography. The section also includes photographs, videos, and digital or computer-generated images that appear to depict an identifiable, actual minor. Moreover, the section specifies that persuading, inducing, enticing, or coercing a minor to engage in sexually exploitative conduct majorly to produce a visual that results in child pornography are illegal. The USA also has strong retribution for offenders of child pornography, with penalties ranging from fines to imprisonment for a minimum of 15 years to a maximum of 30 years.

The UK has a principal legislation supervising the problem of child pornography known as the Protection of Children Act, 1978 (PCA). This legislation defines child pornography as any indecent photograph or pseudo-photograph of a child. The Criminal Justice Act, of 1988 (CJA) criminalized the mere possession of pornographic content by children. Another enactment known as The Sexual Offence Act, 2003 (SOA) deals with the threat of child porn. The UK has strong penalties for offenders of child pornography, with imprisonment for up to ten years for possession and a maximum sentence of life imprisonment for distribution

India criminalizes child pornography under section 67B of the Information Technology Act, 2000, and the Protection of Children from Sexual Offences Act (POCSO), 2012. Section 67B of the Information Technology Act, of 2000, punishes the creation, transmission, and

distribution of child pornography material electronically. POCSO, on the other hand, criminalizes sexual offenses against children, including child pornography. POCSO imposes harsh penalties for offenders, with imprisonment ranging from three years to life imprisonment, along with fines.

When comparing the frameworks adopted by these three countries, it is evident that they all criminalize child pornography and impose severe penalties on offenders. However, the USA has a more extensive framework that defines child pornography more explicitly and provides stronger retribution for offenders. The UK and India, on the other hand, have similar frameworks that criminalize child pornography and impose severe penalties, but their definitions of child pornography are not as extensive as that of the USA.

Child pornography is a monstrous crime that should not be tolerated in any society. The frameworks adopted by these countries show a commitment to dealing with the problem effectively.

III. Challenges in Addressing Child Pornography in India

India, like many other countries, faces significant challenges in addressing child pornography. Despite several legal and policy frameworks, the issue persists due to several factors such as technological advancements, cultural attitudes, and inadequate law enforcement mechanisms. One of the major challenges in addressing child pornography in India is the lack of awareness and sensitivity toward the issue. Child pornography is still considered a taboo topic, and many people do not fully understand the gravity of the problem. This lack of awareness results in under reporting of cases and a lack of cooperation from the public. Additionally, the general perception that child pornography is a Western phenomenon, and it does not exist in India, further contributes to the lack of attention to the issue (Sahoo, 2020).

Another challenge is the rapid advancement in technology that facilitates the production, dissemination, and access of child pornography. The internet has made it easier to create, share and distribute images and videos, thereby increasing the demand for child pornography. The dark web and peer-to-peer networks provide a secure platform for sharing illegal content, making it difficult for law enforcement agencies to track down offenders. The use of encryption technologies also poses a significant challenge in identifying and prosecuting offenders (Kumar, 2019).

The low rate of prosecution and conviction is another significant challenge in addressing child pornography in India (Dhawan, 2015). While several laws criminalize the production, distribution, and possession of child pornography, the rate of prosecution is low, and the punishment is often inadequate. The investigation process is lengthy*, and forensic expertise is scarce, leading to delays in prosecuting offenders. Furthermore, many cases are settled out of court, and the punishment is lenient, which sends the message that child pornography is not a serious crime (Bhattacharjee, 2019).

Another factor contributing to the challenges in addressing child pornography is the lack of resources and coordination among law enforcement agencies. The police force is often understaffed, undertrained, and lacks technical expertise, leading to a low rate of success in detecting and investigating cases of child pornography. The limited coordination among the various agencies responsible for investigating child pornography also hinders the effectiveness of the efforts to address the issue (Roy, 2019).

The existing efforts to address child pornography in India are primarily focused on legal and policy frameworks. The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and the Information Technology (Amendment) Act, 2008, criminalize the production, distribution, and possession of child pornography. The National Commission for Protection of Child Rights (NCPCR) and the Central Bureau of Investigation (CBI) are the primary agencies responsible for investigating child pornography cases. However, these efforts have not been entirely successful in addressing the issue.

The government of India has taken some steps to address the challenges. For example, the Ministry of Home Affairs has issued guidelines on eliminating child pornography, which includes measures such as capacity building for law enforcement agencies, sensitization of the public, and collaboration with international organizations to tackle the issue (Ministry of Home Affairs, 2019).

IV. Enhancing the Legal Framework for Child Pornography in India

The Indian legal and policy framework on child pornography comprises various laws, guidelines, and policies, including the POCSO Act, the IT Act, the National Action Plan for Children, and the Guidelines on Eliminating Child Pornography. These laws and policies aim

to prevent, investigate, and prosecute cases of child pornography. However, there are still gaps in the legal and policy framework that need to be addressed.

One way to enhance the legal and policy framework is to strengthen the existing laws and policies. This can be done by amending the POCSO Act and the IT Act to include specific provisions on child pornography. The amendments should define child pornography, and its various forms, and provide for strict punishment for offenders. The National Action Plan for Children should also be revised to include specific measures to combat child pornography.

Another way to enhance the legal and policy framework is to improve the implementation of the existing laws and policies. This can be done by increasing the resources and capacity of law enforcement agencies to investigate and prosecute cases of child pornography. There is also a need to create specialized units within law enforcement agencies to handle cases of child pornography. Moreover, the Guidelines on Eliminating Child Pornography should be widely disseminated and implemented by all stakeholders.

Recommendations for Strengthening the Legal and Policy Framework:

Based on the analysis of international best practices and recommendations, there are several recommendations for strengthening the legal and policy framework for child pornography in India. These include:

1. Developing specialized training programs for law enforcement agencies to investigate and prosecute child pornography cases.
2. Conducting public awareness campaigns to educate the public about the dangers of child pornography and how to report such cases.
3. Providing support services to victims of child pornography, including counseling, medical care, and legal aid.
4. Developing international partnerships to combat child pornography, including sharing best practices and information on offenders.
5. Strengthening cooperation between law enforcement agencies, internet service providers, and social media companies to detect and remove child pornography content

online.

The proposed measures have the potential to enhance the legal and policy framework for child pornography in India significantly. By strengthening the existing laws and policies, increasing resources and capacity, and improving implementation, the proposed measures can prevent, investigate, and prosecute cases of child pornography effectively.

V. Conclusion

This paper has examined the legal and policy framework for addressing child pornography in India. The analysis reveals that India has a strong legal framework for addressing child pornography, including several laws and policies at the national and state levels.

The findings of this paper have several implications for policy and practice in India. First, there is a need to enhance the legal and policy framework for child pornography in India, particularly in terms of strengthening the laws and increasing awareness and capacity building. This can be done by adopting international best practices and recommendations, as well as improving coordination among stakeholders. Second, there is a need for better coordination among stakeholders involved in preventing and addressing child pornography in India. This can be achieved by establishing effective communication channels and collaboration mechanisms. Third, there is a need to allocate more resources and increase capacity-building efforts to effectively address child pornography in India. This can be done by providing training and education to law enforcement agencies and other stakeholders, as well as allocating more financial resources to support the implementation of laws and policies. In conclusion, the legal and policy framework for addressing child pornography in India is strong but faces several challenges in its implementation.

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