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## ROLE OF INTERNET IN THE CRIME OF CHILD PORNOGRAPHY – A CRITICAL ANALYSIS

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### Abstract

The internet revolution has escorted in an era of change in every one lives. There is significant increase in the use of internet among the children as well as adolescents. Internet access has become easier and more affordable than ever before. Internet has become helpful in every field whether it is research or home work of students, chat rooms, e-mail etc. Despites many advantages internet is still to be considered to be unsafe zone for the children and adolescents, as there are chances that they will become victims of crimes. Children have been lured by paedophiles posing as good Samaritans and have been physically abused and molested. High adolescent consumption of pornography also affects behaviour. Male pornography use is linked to significantly increased sexual intercourse with non-romantic friends, and is likely a correlate of the so-called “hook-up” culture Exposure to pornographic sexual content can be a significant factor in teenage pregnancy. The main purpose of this paper is to record and analyze all these social and psychological effects that appears to users due to the extensive use of the Internet.

Over the past two decades there was an upsurge of the use of Internet in human life. With this continuous development, Internet users are able to communicate with any part of the globe, to shop online, to use it as a mean of education, to work remotely and to conduct financial transactions. Unfortunately, this rapid development of the Internet has a detrimental impact in our life, which leads to various phenomena such as cyber bullying, cyber porn, cyber suicide, Internet addiction, social isolation, cyber racism etc.<sup>1</sup> The internet revolution has escorted in

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1. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4789623/>(Visited on 2017-12-05).



an era of change in every one lives. There is significant increase in the use of internet among the children as well as adolescents. Internet access has become easier and more affordable than ever before. Internet has become helpful in every field whether it is research or home work of students, chat rooms, e-mail etc. The internet is an ocean of information where in you can find information on any matter. It is best window to gain knowledge and information along with being in constant touch with your dear ones. It is having multi tool applications on each and every aspect of lives. Despites many advantages internet is still to be considered to be unsafe zone for the children and adolescents, as there are chances that they will become victims of crimes.

It has been established that children who are spending more of their time on the Internet and indulging in the virtual world. Surveys conducted over the years have found that most people who suffer from Internet addiction disorder are children and adolescent, who easily fall into this world to the lure of exploring that is easily available on the Internet. In America alone, it has been estimated that around 10-15 million people are suffering from Internet addiction disorder, and the ratio is increasing day by day. There are various games to play on the Internet whose result in today scenario most children are diverting from outdoor activity. In the absence of physical activity, children can easily fall prey to a lot of lifestyle related diseases such as obesity, apart from failing to develop interpersonal skills. Apart from these factors, sitting continuously in front of a computer, can seriously harm our eyes and put a strain on our neck and shoulders. Children are in their developing years but these factors can create life-long muddle.

### **VULNERABILITY TO CYBER CRIME**

If we will follow news lately then we must know that, Children have been lured by paedophiles posing as good Samaritans and have been physically abused and molested. Internet has also made it easy for unscrupulous elements to get in touch with children and this has led to an increase in the cases of kidnapping and identity thefts. About 60% young teens in the United States have admitted to responding to messages from strangers. This kind of behaviour is extremely risky and has made children extremely vulnerable to become victims of cyber-crime.



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## **CYBER OBSCENITY AND PORNOGRAPHY**

According to Wall (2007), there has increased interest in search for pornographically material on the internet, because of only one reason and that is: introduction of new types of porn material that is easily accessible on internet like cam-girls, on-line sex option. The virtual hard core pornography is said to be operated by cyber pimps, who help the, in providing resources through these websites and linked them to cam girl networks and sex-portals. The online sex trade slowly is turning into sexual information services and this is encouraging the technological advancement (Wall, 2007). According to Viano (2017), “Cyber pornography and obscenity encompasses the range of sexual expressions enabled by information and computer technologies (ICT); computer mediated communications (CMC) and the distribution of sexually explicit materials online.”<sup>2</sup>

Information and Computer Technology and Computer Mediated Communications have given way for expanding these sexual fetishes in the virtual world. Viewing of child pornography and even producing child pornography has also seen an increasing trend since, Both ICT and CMC have same properties of nature and the perpetrators can participate which otherwise they could not take part in. cyber pornography and the availability and access of these porn materials online has initially helped in the establishment of the virtual world of Internet (Viano, 2017). The content which is obscene is easier accessible with the advancement of technology and moreover availability of internet on smart phones, laptops and I pads have made the distribution and sale of these porn /obscene materials easier and risk free.<sup>3</sup>

Child pornography is a serious crime However; adult pornography is not legally banned in India. It is a form of child sexual exploitation and defined as “*any visual depiction including any photograph, film, video, picture, or computer or computer-generated image or picture whether made or produced by electronic, mechanical, or other means of sexually explicit*

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<sup>2</sup> Retrieved from

[https://odp.inflibnet.ac.in/index.php/module\\_details?course=p04.%20cyber%20criminology%20and%20cyber%20forensics](https://odp.inflibnet.ac.in/index.php/module_details?course=p04.%20cyber%20criminology%20and%20cyber%20forensics)

<sup>3</sup> Ibid



*conduct where the production of the visual depiction involves the use of a minor engaging in sexually explicit conduct” (Cyber Obscenity, 2012).<sup>4</sup>*

More consumption of pornography material are also affecting adolescent’s behaviour. Use of Male pornography is significantly enhancing sexual relations with non-romantic friends, and which is likely with “hook-up” culture following in western countries. In an analysis of twenty two studies, Paul Wright and colleagues has reported that pornography consumption is violent and non-violent and which is associated with oral and physical sexual aggression. The association is for females and males, adolescents and adults.<sup>5</sup>

In a rapidly changing and growing online environment leaving safe internet access to chance is not an option. There is an immediate requirement for a strict action. Governments should want all young people to benefit from the opportunities that access to the internet offers. They should be equally determined to ensure that children and young people are protected from the risks which using the internet also presents. The first World Congress was held in August 1996 at Stockholm .The prime issue of the Congress was commercial Sexual Exploitation of Children .The World Congress discussed about visual or audio material which exploit children sexually .Due to easy access to worldwide web crimes are increasing every moment .These pose a complex challenge for the legislation and law enforcing agencies worldwide .It became very easy to use, distribute or sell pornographic materials. These acts affect moral and psychological growth of society. Child abuse, sexual violence against women and other sexual crimes are the direct effect of pornographic images which are also causing breaking of marriage tie, juvenile delinquency and sexual diseases. In the contemporary phenomenon worldwide has become the playground and game room .The United State of America (U.S.A), the United Kingdom (UK), Canada, Russia, Australia , India and other countries worldwide are raising their voice to fight against cyber pornography which corrupt mind of young people and others who are sensitive to these.<sup>6</sup>

<sup>4</sup> Retrieved from [https://odp.inflibnet.ac.in/index.php/module\\_details?course=p-04.%20cyber%20criminology%20and%20cyber%20forensics](https://odp.inflibnet.ac.in/index.php/module_details?course=p-04.%20cyber%20criminology%20and%20cyber%20forensics)

<sup>5</sup> Wright, Paul J., Robert S. Tokunaga, and Ashley Kraus, “A Meta-Analysis of Pornography Consumption and Actual Acts of Sexual Aggression in General Population Studies,” *Journal of Communication* 66, no. 1 (2016): 183-205.

<sup>6</sup> Dr.M.Dasgupta, *Cyber Crime in India(A Comparative study)*, Eastern Book House, New Delhi ,pg.135



The Wolfenden Committee's Report 1957<sup>7</sup> of the United Kingdom recommended that prostitution as well as homosexual activities done in private between two consenting adults are not crime though immoral. Professor J.S.Mill in his book *On Liberty*<sup>8</sup> says that unless there is harm to others in the Society State must not interfere with individual's right or liberty. The freedom and privacy are protected unless and until it causes harm to others. Even H.L.A Hart And Lord Devlin's debate<sup>9</sup> concluded with the shared morality , which we require for balancing democracy as well as morality in society.

The protection of children against online abuse is a universal problem most countries face today. For a broad overview, it is important to mention briefly various international organizations working towards this goal and their key initiatives in respect thereof. Also, we will briefly discuss the main initiative adopted in US and EU, particularly U.K.to combat this problem. Protecting children online is a universal concern .It poses a multi jurisdictional challenge and requires dedicated and active contribution by multiple stakeholders. Recognising the importances of the subject, different countries have come together to formulate and sign special multilateral treaties or bilateral arrangements and international agreements of mutual co-operation and assistance. International organizations are playing a vital role in combating the problem through various key initiatives to secure online space for children.<sup>10</sup>

## **UNITED NATIONS**

The UN Convention against Transnational Organized Crime and Protocol to prevent , Suppress and punish Trafficking in persons , particularly women and children , supplements the UN Convention against the Transnational Organized Crime to which India is signatory. The UN has also set up a body to combat online

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<sup>7</sup>Report of the Committee on Homosexual Offences and Prostitution,1957:London , Her Majesty's Stationary Office ,Reprinted 1968,11s.0d.Net.

<sup>8</sup> Basil Mitchell:Law, Morality,and Religion in secular Society,Oxford University Press,London,1967.

<sup>9</sup> H.L.A.Hart:Law,Liberty and Morality;Oxford University Press, London,1963.

<sup>10</sup> Seth Karnika , Protection of Children on Internet, published by Universal law publishing Co.Pvt.Ltd.,NewDelhi,81.



child abuse . The UNODC is making efforts to bring justice to children including online security and social welfare aspects.<sup>11</sup>

The Executive Director of the UN office on Drugs and Crime (UNODC), Yury Fedotov .recently made a statement –

“The exploitation of children is not a new phenomenon, but the digital age has exacerbated the problem and created more vulnerability to children”<sup>12</sup> This is an apt statement that reflects the current times when information technology is being misused to target young and gullible children by cyber criminals.

There has been great concern for the welfare of children at the international and national levels. Kofi A. Annan ,Secretary General of the United Nations (UN) , Observed :<sup>13</sup>

“There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace.”

## **A DEBATE ON OBSCENITY AND PORNOGRAPHY**

- The Literal meaning of Pornography is “Describing or exhibiting sexual acts in order to cause sexual excitement through books , films , etc.”

Alone Pornography cannot become a crime unless and until it amounts to obscenity.

- Obscenity denotes an act which is offensive to modesty or decency, livid and repulsive.

*Regina vs. Hicklin* describes the test of Obscenity. According to that the tendency “to deprave and corrupt those minds are open to such immoral influences and into whose hands a publication of this sort may fall.

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<sup>11</sup> See UNICEF website ,<http://www.unicef.org/protection/>

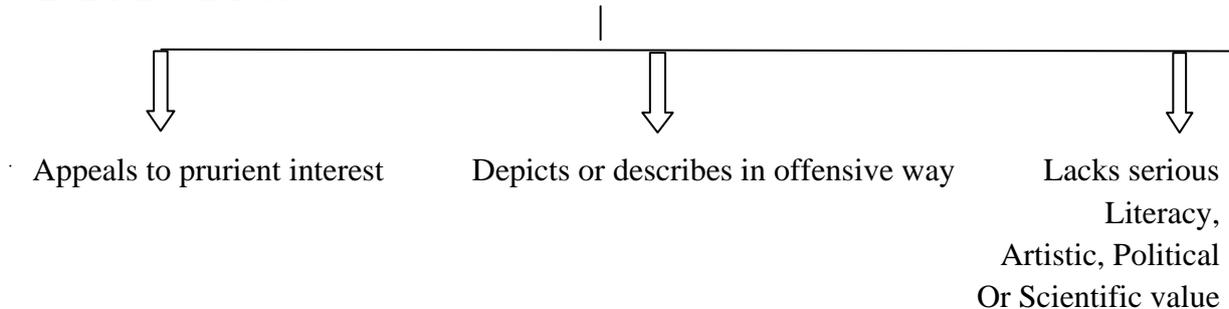
<sup>12</sup> Experts at UN meeting seek ways to stop online child abuse ,UN News Centre ,27 Sept.,2013  
<http://www.un.org/apps/news/story.asp?News ID=46072#.U9ZTrG2Sz3Q>

<sup>13</sup> Foreword by Kofi A. Annan in The State of the World ‘s Children (UNICEF,OUP 2000).



”In *Miller vs. California* Supreme Court of America gives three test for obscenity that is called “Miller Test” i.e.

Whether the whole act



## LEGISLATION IN INDIA

In India, In the Information Technology Act, 2000 under section 67-B and In the POCSO Act, 2012 under section 13 define “child pornography” separately. Both acts defines pornography in different ways like, In the POCSO Act It is ‘representation of the sexual organs of a child’ for the purposes of sexual gratification as an offence under pornography On the other hand In IT Act it does not. Similarly, Information Technology Act defines offence and prescribes punishment in the same section, but POCSO Act defines it separately.<sup>14</sup>

The model law states that ‘knowing possession’ and ‘knowingly downloading or knowingly viewing’ should be an offence. The IT Act under Section 67-B is saying that whoever ‘collects, seeks, browses, downloads’ child pornography is an offender. Whether that person is having intention in doing so or not or whether that act is done accidentally or knowingly is matter of the court to decide. There is a huge difference between in advertently viewing an image and actively downloading an image. The POCSO Act punishes only those who has stored child pornographic material like images, videos etc. for commercial purposes. ‘Grooming’ is added in a sub-section of section 67-B of the said act but not defined separately.<sup>15</sup>

<sup>14</sup> <https://www.outlookindia.com/website/story/opinion-india-must-review-its-law-on-child-pornography-and-address-gaps/357863>.

<sup>15</sup> <https://www.outlookindia.com/website/story/opinion-india-must-review-its-law-on-child-pornography-and-address-gaps/357863>



Further, Under **Section 67 of the Information Technology Act, 2000** following acts are punishable with imprisonment of maximum 3 years and fine up to 5 lakhs:

And Publication- which would include-

1. Transmission- this includes sending obscene photos or images to any person via email, messaging, what's app or any other form of digital media.
2. Causing to be published or transmitted- this is a very wide terminology which would end up making the intermediary portal liable, using which the offender has published or transmitted such obscene content. The Intermediary Guidelines under the Information Technology Act put an onus on the Intermediary/Service Provider to exercise due diligence to ensure their portal is not being misused.

**Section 67A** of the Information Technology Act makes *“publication, transmission and causing to be transmitted and published in electronic form any material containing sexually explicit act or conduct, punishable with imprisonment up to 5 years and fine up to 10 lakhs”*.

**Section 66E**, one of the amendments made to the IT Act, 2000, has introduced punishment up to three years for whoever *“intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person.”*

**Section 292 of the Indian Penal Code (IPC)** defines *obscenity as that which is ‘lascivious or appeals to the prurient interest or tends to deprave or corrupt persons’*. Under **S.354C of the Indian Penal Code on voyeurism**, the offences included *“capturing the image of a woman in a private or sexual act with a hidden camera or device, without the consent of the woman. If the woman consents to the capture of the images but not to its dissemination, then it is still an offence under the same law and the imprisonment is from three to seven years. Forcibly showing pornography to a woman is also included under sexual harassment.”*

## CONCLUSION AND SUGGESTIONS

Living in the age of computers, the grip of technology is getting firm on human beings. Altering the daily habits of individuals, Devices have taken place as an essential element for the survival .By the introducing of internet in early 90's ,the amalgamation of computer



devices and internet has proved a boon as well as bane for every living organism on earth . As the subscribers of Information Technology increasing, the misuse of it has also seen in the form of cyber crimes.

India has witnessed that there is increase ratio of cyber crimes incidents under IT act, 2000 as compared to previous years. A recent ASSOCHAM-NEC joint study Symantec Corporation ranked India among top 5 countries to be affected by cyber crime, between 2012-2017, the number of Internet users which is given at CAGR of 44% of which India is placed third after US and China.

A better legislation with a clear definition of obscenity and pornography is required in understanding the nature of the crime. Awareness programmes are required to enlighten the common people about the side effects of such types of crimes. Sex education among children in schools can be a helpful effort for the children to understand the pros and cons of this kind of entertainment industry. It can therefore be concluded that turning a blind eye and a deaf ear cannot change the reality that cyber obscenity and pornography have become an integral part of our society. For some people it is declared as a source of their livelihood while for others it is a source of entertainment..<sup>16</sup> School authorities should create awareness about the child abuses. If any behavioral change in the student is noted the same should be brought to the notice of the parents and enquire the child in a conducive atmosphere to find out any abuse has been inflicted. Media should also play active role in educating and sensitizing the society about child abuses and sex offences by giving required publicity about the existing laws against sexual offences especially child sexual offences.

People should be educated to note the behavioral changes of the children and find out the reasons for abuses to save the child from trauma which may be prolonged. The investigating agencies should coordinate with NGOs, who are working for the welfare of children and prevention of child abuse by foreign nationals. There should be efforts by all to revive the disintegrated joint family system for more benefits including safety of children.

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<sup>16</sup> Retrieved from [https://odp.inflibnet.ac.in/index.php/module\\_details?course=p-04.%20cyber%20criminology%20and%20cyber%20forensics](https://odp.inflibnet.ac.in/index.php/module_details?course=p-04.%20cyber%20criminology%20and%20cyber%20forensics)