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# Child Pornography on Social Media and Related Crime

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## ABSTRACT

*With the advancement in technology, crime rates are also increasing. More than adults, children are being sexually exploited through this latest technology over the internet. Many of them knowingly or unknowingly share, transmit, and publish such obscene pictures of children over the internet which makes them held liable for offence of child pornography. Due to this many times, intermediaries also come under this purview and are held liable. This paper explains laws which make such acts as a cyber offence against a child. This paper also deals with what extend the intermediary be held liable. It will also try to cover the latest precedents related to cybercrime against a child.*

**Keywords:** *child; child pornography; sexual exploitation; obscene; intermediary liability;*

## I. INTRODUCTION

Children are the most important part of human society and the greatest gift of god. They are the most innocent being on this earth and they require more love, care, and attention. Children are more prone to get trapped in mishappenings in the world. As per the National Crime Records Bureau report, there are a total 13244 number of child pornography cases Between March 1, 2020, to November 18, 2020<sup>2</sup>. And there are 420 child sexual abuse cases reported between March 1, 2020, to august 31<sup>st</sup>, 2020<sup>3</sup>. This data shows that with the advancement in technology, crime rates are also increasing and the future of a child is getting spoiled at an early age itself. Not just the future but also their innocent childhood too. This paper aims to make everyone understand the impact of this heinous crime on children, what they go through, and what treatment they deserve. This paper also aims to warn each individual about their acts on social media, because not knowing the law is not an excuse, one act of yours will lead you to go behind the bar and spoil the child's life too. As we all notice, many of our family members upload nude pictures of a baby and videos related to it, so will it

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<sup>2</sup> Sexual Abuse Cases Of Children Reported Online, Ministry of Women and Child Development, September 22, 2020, <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1657679>

<sup>3</sup> ibid

be a crime against a child? Will it come under child pornography? This paper will try to answer such questions and clear every basic concept related to it.

### **Objective**

1. To understand what is child pornography
2. To evaluate whether child pornography on social media is a crime or not
3. To analyze which laws make child pornography an offence in India
4. To under what India is doing to combat child pornography
5. To evaluate the liability of Intermediary
6. To understand the impact of such crime on children
7. To evaluate other crime related to it

## **II. CONCEPTUALIZATION**

### **(A) What is Pornography**

Though there is no single definition of the word pornography. It differs from culture to culture across the world, a vision of the people and understanding of an individual. If we go by the oxford dictionary definition, pornography means a material which is printed or visual material containing explicit description and display of sexual excitement.

It is the erotic behavior that is designed in such a way and portrayed that give rise to sexual excitement<sup>4</sup>. And the legal dictionary defines it as, scenes of sexual behavior that is being represented in books, magazines, photographs, films, and other media in such a way that led to arouse sexual interest<sup>5</sup>. The Internet on one hand used as a useful tool, it also provides a tool for porn addicts to execute their desire. Though it's one's private behavior, its addiction has a negative impact on the whole society as well as on them. Sometimes it influences domestic violence, sexual abuse, rape, child sexual abuse<sup>6</sup>.

### **(B) What is Child Pornography**

It is the representation of a child engaged or involved in real or simulated explicit sexual activities in audio, video, or written form through various means like electronic, digital, optical means. It involves the use of a minor in sexually explicit conduct. It can also be the case where the visual depiction has been created, adapted, or modified to make it appear that

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<sup>4</sup> Attupam, Mary AO, A study of porn addiction among high school students in Saurashtra region, *Sodhganaga@INFLIBNET*,1-33, Pg.3 (2018).

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*, page 9.

a minor is engaging in sexual conduct<sup>7</sup>. It is nothing but a child's sexual abuse and exploitation of children engaged in such activity which directly hamper their well-being, and harm their physical as well as mental health<sup>8</sup>.

### (C) What is Obscenity

Like pornography, there is no settled definition of obscenity. According to the oxford dictionary, it means extremely offensive words or expressions and it has the quality of being obscene. Now obscene has been further defined as depicting or describing sexually related matter which is offensive in character, against accepted moral standards and decency<sup>9</sup>. The question of whether the content is obscene or not highly depends on how it impacts the reader's mind or the viewer's mind. Under the Indian Penal Code, it is given that any book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, which depicts an overt sexual desire or sexual interest on the person who read, see or hear the content given in it, such that it deprave and corrupt the person are considered to be obscene. Also, one who sells, distributes, let to hire, or is in his possession, import, export, taken part in making a profit out of it through business, advertisement, or for the same purpose has been purchased, produced kept, imported, exported or circulated will be held liable under section 292 of Indian Penal Code<sup>10</sup>.

There are three exceptions to it:

- **Public good:** when publication through any of above means like books, pamphlet, representation of figure, etc. is for public good i.e., for work of science, literature, art or learning object. It will be not be an offence<sup>11</sup>.
- **Other religious purposes:** Also this section will not apply if it is represented, sculptured, painted on any temple or any car for reflecting an idol or for any religious purpose<sup>12</sup>.
- It should be used in a **bona fide manner** and for the public good<sup>13</sup>.

### (D) Who is a Child

A child is a person who is unable to maintain himself on his own. According to UNCRC, a

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<sup>7</sup> Raj Kiran, Protecting the innocence of the child A Study in legislative and Judicial Trends, Sodhganga@INFLIBNET,1-288, Pg.102(2018).

<sup>8</sup> Supra note 5, page 12.

<sup>9</sup> Ashok Wadje, Cyber Obscenity issues, and challenge, Shodhganga@INFLIBNET, Pg.3 (2018)

<sup>10</sup> Indian Penal Code, 1860, Act 45 of 1860 Sec 292.

<sup>11</sup> ibid

<sup>12</sup> ibid

<sup>13</sup> ibid

child is someone who is below eighteen years of age unless, under any law applicable to the child, the majority is attained earlier<sup>14</sup>. In India there is no specific age limit for a child, it differs from laws to laws and their aim and objective. Like Under Indian Penal Code<sup>15</sup>, A child is a person of age 7 to 12 years; Under Protection of a child from sexual offence<sup>16</sup>, A child is a person who is below the age of 16 years; Under The Juvenile Justice Act<sup>17</sup> and The Indian Majority Act<sup>18</sup>, A child is a person of 18 years of age. Sometimes it gives rise to conflict for ascertaining the status of a child because of different ages of a child in different acts. So there is also a need to harmonizing the same along with different domestic laws<sup>19</sup>.

### **III. IMPACT OF CHILD PORNOGRAPHY ON CHILDREN**

Children, here are the person who are below eighteen years of age. They are the most sensitive part of human society. At this age they have a keen interest in learning new things, they need so much attention, care, and love. As in the 21<sup>st</sup> century, the Internet is playing a vital role in making children learn many more new things just on a single click, it also leads them to get exploited if they get trapped by the wrong hand. And its impact sometimes is temporary but most of the time it is permanent. Its effect is permanent and harsh when they get exploited, abused, harassed, as their trust is broken at an early age itself. According to RAINN<sup>20</sup> (Rape, Abuse & Incest National Network), victim of child pornography can have psychological, emotional, and physical effects. These are inescapable repercussions that lead to depression, flashbacks, isolation, anger issues, eating disorders, and sleep disorder. However sexual abuse can lead to self-harm, self-hate, sexually transmitted infection, pregnancy, attempt to suicide.

According to the Department of Justice, It is so grave that even if the child gets out of the sexual abuse cycle of child pornography, the victimization won't stop as child pornography images are permanent & available on every internet platform. They feel traumatized that their abuse will always be on the internet for anyone to see. They feel so helpless, humiliated as many a time the pedophiles<sup>21</sup> is always there to blackmail and it gets very difficult for them to trust a single person again in their life. Society and family also play a vital role behind this impact, as even after the child get rid of this issue, society won't accept the particular victim

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<sup>14</sup> United Nation Convention On the Rights of the Child 1989, Article 1.

<sup>15</sup> IPC, 1860.

<sup>16</sup> POCSO Act 2012, Section 2, Clause, d.

<sup>17</sup> JJ Act, 2015.

<sup>18</sup> IM Act, 1875.

<sup>19</sup> Supra note 8, page 60-61.

<sup>20</sup> The Nation's Largest anti-sexual violence organization, <https://www.rainn.org/about-rainn>

<sup>21</sup> A Person who is sexually attracted to children.

and humiliate them more by bringing those incidents before them again & again, by keeping their children separate from them and by not letting them live freely. Whereas family sometimes after the incident took place gets more strict towards a particular child, seize all the gadgets, restrict their movements. This creates a more harmful environment for them after they get abused. In the very first place, most of the children do not tell about the incidents because of the fear and thinking of its repercussions. The psychological damage encompasses disruptions in sexual development, self-image, and lack of trust<sup>22</sup>. It spoils their wonderful childhood and further life experience.

#### **IV. WHETHER CHILD PORNOGRAPHY IS AN OFFENCE IN INDIA?**

There was no law specifically targeting child pornography in India before 2008. In the year 2008, the Information Technology (Amendment) Act came. Before that child pornography was regulated by obscenity laws like the Indian penal code<sup>23</sup>; Information technology act<sup>24</sup>; Indecent representation of women (prohibition) act<sup>25</sup> Etc. as in the landmark case of Avinish Bajaj case<sup>26</sup>, this is the year 2008 case, where a pornographic MMS of children was circulated online on a popular website, where the accused was held liable under IT Act, section 67 for publishing and transmitting obscene material and IPC, section 292 for sale of obscene material. Later on in 2006, IT (Amendment) Bill, the expert committee and the standing committee recommended that a separate provision that will criminalize online child pornography needs to be incorporated. Accordingly, section 67B was incorporated into the IT Act. It criminalizes such material that depicts a child in a sexually explicit manner. This section came into force on October 27, 2009. Subsequently, The Protection of children from sexual offense act, 2012<sup>27</sup> came, which specifically criminalized and prohibited the use of a child for a pornographic purpose. Hence, child pornography is an offence in India. Also, consent of the child is irrelevant under both the laws<sup>28</sup>.

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<sup>22</sup> The lasting effects of child pornography, INNOCENT LIVES FOUNDATION (2020), <https://www.innocentlivesfoundation.org/the-lasting-effects-of-child-pornography/#:~:text=Children%20used%20in%20child%20pornography,and%20post%2Dtraumatic%20stress%20disorder.>

<sup>23</sup> IPC, Section 292-294.

<sup>24</sup> IT Act, Section 67.

<sup>25</sup> 1986, section 4.

<sup>26</sup> Avinish bajaj v state (2005) 3 CompLJ 384 Del.

<sup>27</sup> POCSO Act 2012, Section 13-15.

<sup>28</sup> Rahul Hemrajani, Research Note on Online Child Pornography Law in India, SSRN Electronic Journal, September 25, 2019.

## V. WHO IS INTERMEDIARY

It is an entity that facilitates the flow of data. It can either be called a Telecom service provider or an Internet service provider. They play a crucial role as they provide internet services to users or host the web and provide the server that stores data. Under the Information Technology Act, Intermediary include telecom service provider, internet service provider, search engines, online auction sites, online market places, web hosting service provider and cyber cafes or any person who receives the information on behalf of other people; or any person who store, transmit the record or provide services for the record<sup>29</sup>.

## VI. INTERMEDIARY LIABILITY

Section 79 of the Information Technology Act, 2000 tells to what extent the intermediary may **not** be held liable for cybercrimes given under the act of 2000. It is now established that the intermediary will not be held liable in all cases. They will not be liable when the cybercrimes have been committed by a third party and the internet service provider is not liable for any third party information or data made available by him, only if he proves that<sup>30</sup>:

1. That the offence or contravention was committed without his knowledge or<sup>31</sup>,
2. That he had exercised all due diligence to prevent<sup>32</sup>.

## VII. LEGAL PROVISIONS TO COMBATE CHILD PORNOGRAPHY IN INDIA

The laws that directly with the acts and conduct involving obscenity and pornography are<sup>33</sup>:

1. Indian Penal Code<sup>34</sup>
2. Information Technology act 2008 and Information Technology Act 2008<sup>35</sup>
3. Indecent representation of women (prohibition) act<sup>36</sup>
4. The Prevention of Children from Sexual Offence Act, 2012<sup>37</sup>

When the information technology act was not enacted, that time the provisions of IPC and the indecent representation of women act was used to deal with the offence of pornography and obscenity, it also covers the same offence committed in electronic media. Both laws covered

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<sup>29</sup> Nidhi Chhillar, Cyber Pornography, ipleader Intelligent Legal service, July 9, 2019, <https://blog.ipleaders.in/cyber-pornography/>

<sup>30</sup> Supra note 8, page 41

<sup>31</sup> ibid

<sup>32</sup> ibid

<sup>33</sup> Supra note 8

<sup>34</sup> ibid

<sup>35</sup> ibid

<sup>36</sup> ibid

<sup>37</sup> Ibid

visual representation but it does not specifically deal with audio materials and computer-generated photographs. It also does not deal with child sexual abuse and specifically, it did not include child pornography. With the span of time the IT Act 2000 was introduced but initially, child pornography in the electronic forum was included as an offence, it got included in the year 2008 when the IT Act amendment took place and with the inclusion of child pornography in electronic media as an offence, several other offences also got incorporated and upgraded the version of publication of obscene material in cyberspace<sup>38</sup>.

#### (A) Under Indian Penal Code,

1. section 292- deal with sell, distribution, circulation, import, export, making profit through a business activity where such material is a sale, purchased, circulated, advertised, etc., all this are offence under section 292 but if it is for the public good, bonafide or for a religious purpose, in the interest of science, literature or art of learning purpose then it's not an offence. So to prosecute a person who does such activity, the following has to be proved against him<sup>39</sup>:

- a. That the material in the question of fact is **obscene** in nature<sup>40</sup>
- b. That obscene material has been **Published**<sup>41</sup>
- c. That there was **guilty mind** on the part of accused<sup>42</sup>
- d. And that the accused is **not falling under any of the three exceptions** prescribed under section 292<sup>43</sup>.

But In Ranjit Udeshi<sup>44</sup> case the most important and landmark case, which rejected the necessity of proving mens rea in order that the culprit might be punished for the offence under section 292. As in subsection of a particular section, it does not say 'whoever knowingly, or negligently, etc.' so it does not make the knowledge as an ingredient for this offense. Therefore, intention or mens rea is deemed once the work is found to be obscene, no more proof of intention is required. Also, the offence under this section is cognizable, bailable but not compoundable (i.e. parties cannot compromise)<sup>45</sup>.

2. Section 293 of IPC talks about the sale of obscene material to young people. Whoever

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<sup>38</sup> Ibid, page 2

<sup>39</sup> Ibid, page 8

<sup>40</sup> ibid

<sup>41</sup> ibid

<sup>42</sup> ibid

<sup>43</sup> ibid

<sup>44</sup> Ranjit Udeshi v State of Maharashtra, AIR 1965 SC 881.

<sup>45</sup> Supra note 8, page 8

sells, distribute, circulate, exhibit, offer or attempt to offer, any obscene object as referred to in section 292 to any person who is under twenty years, shall be punished under this section<sup>46</sup>.

3. Section 294 of IPC makes any obscene act that is done in a public place an offence and if someone sings, recite or utter any obscene song, ballad, or words in or any near any public place will be held liable under this section<sup>47</sup>.

4. Online obscenity- under IPC and IT Act, though the phrased used under IPC 'any other object' is wide but it does not cover material in an electronic media as it is specifically covered under section 67 of IT Act. So any obscene material in an electronic form will be dealt with under the IT Act, Section 67. Also, section 81 of the IT Act gives it an overriding power. Section 292 of IPC shall be overridden by section 67 of IT Act, 2000<sup>48</sup>.

### **(B) Under Indecent Representation of Women (Prohibition) Act**

The definition of indecent representation of women has been given under section 2<sup>49</sup>. Section 3 prohibits the advertisement of the indecent representation of women. It does not allow any person to publish, take part, or even cause to publish such kind of indecent material. And section 4 of this same act prohibit publication or sending of books, pamphlets that contain an indecent representation of women but protect those who do it for the public good in a bonafide manner or for a religious, idol or ancient monument purpose<sup>50</sup>.

### **(C) Under IT Act 2000**

Section 67 prohibits publishing and transmitting obscene contents on the internet, which create, cause, or disturb the public order and morality. If any obscene material is circulated or transmitted using electronic resources like a computer, computer system, computer network, computer resource, and communication devices would be an offence under the IT Act 2000. IT (Amendment) Act has made a certain change and added a new provision as part of a code of obscenity. This has been done because section 67 was being criticized for being a general provision, it did not explicitly deal with the delicate issue concerning child pornography<sup>51</sup>.

- Under section 67 makes publishing or transmitting **any obscene material** in electronic form punishable<sup>52</sup>.

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<sup>46</sup> Ibid, chapter IV, page 5

<sup>47</sup> ibid

<sup>48</sup> Ibid, page 10

<sup>49</sup> IROW Act, Section 2, clause c.

<sup>50</sup> Ibid, page 11

<sup>51</sup> Ibid, page 12

<sup>52</sup> ibid

- Section 67A makes publishing or transmitting material containing the **sexually explicit act**, etc. in electronic form as a punishable offence. This is a non-bailable offence and punishment is also enhanced as compared to section 67<sup>53</sup>.

-And the most important section which had been incorporated in 2008 was **section 67B** which punishes the publication or transmission of material **depicting children in the sexually explicit** act in electronic form. Through this, it is for the first time in the legal history in cyberlaw that it penalizes a person for browsing electronic material that explicitly depicts or portray children in an obscene or indecent sexually explicit manner<sup>54</sup>.

### **SECTION 67B SPECIFICALLY DEAL WITH CHILD PORNOGRAPHY AS AN OFFENCE.**

Looking at this provision, it seems the legislature has given special attention to the online abuse of a child in cyberspace which is so rampant and easy owing to certain advantages of information technology. The acts which are prohibited are<sup>55</sup>:

- Publication, transmission or even causing such content which involve children in sexually explicit form<sup>56</sup>.
- Creating obscene or indented digital image of child engaged in sexual act or represented in sexually explicit manner<sup>57</sup>.
- Even collection of such obscene video which involve children in sexual explicit manner, downloading it, publishing it, sharing it in electronic form all come under offence<sup>58</sup>.
- Forcing or inducing child to come in online relationship with one or more children on internet for sexual explicit act is an offence<sup>59</sup>.
- Anyone who even give facilities to do online child abuse.<sup>60</sup>
- Recording of own sexually explicit video or image or engaged with other person in electronic form is also an offence.<sup>61</sup>

The special care with regard to online child abuse has been taken as even 'browsing' and

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<sup>53</sup> ibid

<sup>54</sup> ibid

<sup>55</sup> Ibid, page 21

<sup>56</sup> ibid

<sup>57</sup> Ibid

<sup>58</sup> ibid

<sup>59</sup> ibid

<sup>60</sup> Ibid

<sup>61</sup> ibid

'downloading' of material depicting a child in sexually explicit or obscene indecent manner is now an offence with severe punishment. It also makes grooming of child for sexually elicit purpose an offence under section 67B (c). Even after having such an act as an offence still, child pornography is so rampant and committed so easily with far reaching implications. As technology has got a wider ambit it is very difficult to track and ban the website which circulates, distribute such material which can be viewed by everyone. Also, most of the pornographic website depicting a child in it is being hosted by foreign countries, which make very difficult for Indian Authorities to track and ban those websites as very frequently they change their website details such as website name, its domain address, hosting platform<sup>62</sup>.

To be the case under this section it is necessary that such transmission, the publication should be in electronic form by or with the help of a computer, communication device, or any other electronic device through which electronic communication can be done. Mobile phones, hand-held phones, cellular phones, tab all will fall under the definition of either communication device or computer.<sup>63</sup>

Punishment: any person who is held liable under this section and convicted shall be punished with imprisonment for a term which may extend up to five years with a fine of Rupee which may extend up to ten lakh<sup>64</sup>.

On the second and subsequent conviction, that person will be imprisoned for a term which may extend up to seven years and also fine which may extend up to ten lakh rupees<sup>65</sup>.

There is one exception which is the same as that of exception in section 292, section 67, 67A. i.e., this does not apply to or extend to any book, pamphlet, painting, drawing in electronic form which is done for the public good or in the interest of art, literature, science, or for heritage and religious purpose<sup>66</sup>.

**a. The provision regarding child pornography under the prevention of children from sexual offense Act, 2012.**

The need for this law arose because the Indian penal code does not cover all types of offences against children. It is more sort of general provision as it does not distinguish with reference to child and adult. And the prevention of children from sexual offence act specifically deals with offence against a child. It deals with sexual assault, sexual harassment, and pornography

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<sup>62</sup> Ibid, page 22

<sup>63</sup> Ibid, page 23

<sup>64</sup> ibid

<sup>65</sup> ibid

<sup>66</sup> ibid

which involve children with different punishment depending on the nature and graving of offence. Under this act, section 13 includes the online exploitation of children. It defines the use of a child for pornographic purposes, sexual gratification in electronic form, or any internet media. It penalizes the representation of a child's sexual organ; usage of a child for any sexual activity with or without penetration; its indecent or obscene representation. All this comes under child used for pornography purpose and will be an offence under the same section of this act. This covers every activity such as offering, transmitting, publishing, facilitating, distribution, circulation such as sexual material where a child has been used. It can be in any form print, electronic, computer, or any other technology<sup>67</sup>.

Section 15 of the POCSO Act, punishes a person for storing pornographic material involving children. Storing for a commercial purpose is strictly prohibited<sup>68</sup>

## **VIII. ONLINE FORUM TO REPORT CYBER CRIME AGAINST CHILD**

### **(A) NATIONAL CYBERCRIME REPORTING PORTAL ('cybercrime.gov.in'):**

This portal facilitates the victim as well as the complainant to report cyber complaints online. This portal caters to complaints only related to cybercrime against women and children. The complaint reported here are dealt with by law enforcement agencies and police based on complaints<sup>69</sup>. This portal is user friendly and convenient as it enables the complainant to report cases without revealing their identity. Here citizen can file a complaint about child pornography, circulation of sexually explicit material, and online sexual abuse. This will lead to automatic registration of FIR and action against the offence will be taken. It will help victims, complainants, civil society organisations, and responsible citizens to report anonymously pertaining to the same act mentioned above. To help the police in the investigation process, the complainant may upload the objectionable content with the URL of the objectionable content. It also facilitates the victim and complainant to track his or her report by opting for the 'report and track' option using a mobile number. The complaint reported here is dealt by police of respective states and union territories. The National Crime Record bureau will identify such objectionable content and ask the intermediary to remove it. NCRB has the power as a government agency to issue a notice under section 79(3) of the IT Act<sup>70</sup>.

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<sup>67</sup> Ibid, page 31

<sup>68</sup> Ibid, page 32

<sup>69</sup> National cybercrime reporting portal, Ministry of home affairs, <https://cybercrime.gov.in/Default.aspx>

<sup>70</sup> PTI, Online portal for lodging complaints against child pornography launched, India tv news, September 20, 2018, <https://www.indiatvnews.com/news/india-portal-for-lodging-complaints-on-online-child-pornography-launched-464287>

**(B) THE NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN ('www.cybertipline.com'): Portal to report Child pornography<sup>71</sup>**

a. Here an incident involving the possession, distribution, receipt, or production of child pornography. It can be reported on this website or a call can be made on 1-800-843-5678. This report will be forwarded for investigation and action to a law enforcement agency. Also if it is an emergency that requires immediate attention or law to be enforced then a call can be made on 911 or you can contact your local police department<sup>72</sup>.

b. A report regarding an incident or suspicious situation which may involve extraterritorial sexual exploitation of children can also be made. This same incident can also be reported to Immigration and customs enforcement/homeland security investigations<sup>73</sup>.

c. A report regarding obscene material sent to a child, a misleading domain name or misleading words or image send to a child on the internet, such incident can also be reported on this website<sup>74</sup>.

**(C) The NATIONAL HUMAN TRAFFICKING RESOURCE CENTRE ('www.humant raffickinghotline.org'): a portal for reporting child sex trafficking<sup>75</sup>**

To report an incident or suspicious situation which may involve child sex trafficking an online report can be made at this website or a call can be made at 1-888-3737-888. For emergency call 911 or contact local police<sup>76</sup>.

## **IX. CASE PRECEDENTS**

### **1. Child pornography on social media – an offence under IT Act and POCSO act:**

In the case of *Fatima A.S. v State of Kerala*<sup>77</sup>, A mother had uploaded a video on social media where her two children were painting on her breast. She claimed that she was promoting sex education. But the court said that if the same would have done without uploading it the case would have been different, but here the video was uploaded and children were depicted obscenely and indecently as they were asked by mother to paint on her nude body. Court held that she is held liable under section 13 of the POCSO Act i.e. for using children for sexual gratification purposes on social media and punished under section 14 of

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<sup>71</sup> How to report a violation of child pornography, The United State, Department of Justice, <https://www.justice.gov/criminal-ceos/report-violations>

<sup>72</sup> *ibid*

<sup>73</sup> *ibid*

<sup>74</sup> *ibid*

<sup>75</sup> *ibid*

<sup>76</sup> *ibid*

<sup>77</sup> 2020 SCC Online Ker 2827

the POCSO Act. Also, she was held liable under 67B (d) of IT Act, for abusing children online<sup>78</sup>.

## **2. Distributing, viewing, storing of any child pornographic content is criminal offence:**

In the case of PTI RRT v VS, 41 people including IT Savy youths got arrested in Kerala for online child pornography. They have been held liable for sharing sexually explicit pictures and videos of children in the 6-15 age group. Some of the youth were suspected to be involved in the trafficking of children. Raids were imposed wherein the team seized 392 devices in 339 cases registered including mobile phone, tabs, modems, hard disk, laptop, memory card, computer with graphic and illegal videos and a picture of children<sup>79</sup>.

## **3. Intermediary Liability**

In the case of X vs State, the Delhi High Court has stated that the intermediary must take all effective measure available to them to ensure that the child pornography content is not hosted on their platform<sup>80</sup>.

## **X. CONCLUSION & RECOMMENDATION**

The growth and development of the nation depend on its citizen's growth. And the young generation children are the greatest source of development. So they require good care and guidance for their proper growth. They have the right to life and wellbeing; to proper care and love; to protection against exploitation and injustice. With the increase in technology, the responsibility of individuals towards themselves and towards their children is also increasing. As children are the most vulnerable section of society and are at greater risk of getting exploited and abused. Parents should keep surveillance on their children while they are on social media without hampering their privacy. They should not neglect the child as it affects the whole life of a child. Society plays a vital role in the development of their child. Society's attitude needs to get changed towards sexually exploited children. They should not make them feel miserable and worthless. Rather they should help them get their confidence back. Also individual in society needs to take care of their acts on social media like what they upload, share, transfer. They should analyze the impact of that particular content and then

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<sup>78</sup> Devika, Ker HC | Mother posting a video on social media being painted on the nude body by minors to teach sex education: prima facie use of children for sexual gratification, THE SCC ONLINE BLOG, July 24, 2020, <https://www.sconline.com/blog/post/tag/child-pornography/>

<sup>79</sup> IT- Savy youths arrested in Kerala for online child pornography, Outlook THE NEWS SCROLL, December 28, 2020, <https://www.outlookindia.com/newscroll/itsavy-youths-arrested-in-kerala-for-online-child-pornography/2000603>

<sup>80</sup> Aditi Singh, Stop child pornography, Bar and Bench, October 26, 2020, <https://www.barandbench.com/news/litigation/social-media-platforms-effective-measures-child-porn-content-delhi-hc>.

share. As this will destroy their life and child's life too. People should not forget their moral values. Everything cannot be controlled by law. Even after having such strong laws that protect children against cybercrime still, many cases are still getting reported and children are still getting exploited. It's the law that will take care of the abuser but who will take care of the child who got victimized. It's the family, friends, and society. It is very important to understand the impact of this crime on children and proper care is given to them rather than criticizing. Because abused child and neglected child will barely become a good and responsible citizen because since childhood only their trust is broken, their exposure is weakened, they have been exposed to such heinous crime which brings anger in them, revenge nature in them. Hence, not just law but society as a whole can make a change and make children feel protected and secured.

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## **XI. REFERENCE**

1. Sexual Abuse cases of children reported online, Ministry of women and child development, [www.pib.gov.in](http://www.pib.gov.in)
2. Rahul Hemrajani, research note on online child pornography law in India, SSRN Electronic Journal, file:///C:/Users/kiit1/Downloads/SSRN-id3417604%20(2).pdf
3. Raj Kiran, Protecting the innocence of the child A study in legislative and judicial trends in India, Sodhganga@INFLBNET, 2018, <http://hdl.handle.net/10603/227022>
4. Attupuram, Mary A O, A study of porn addiction among high school in saurashtra region, sodhganga@INFLBNET, 2018, <http://hdl.handle.net/10603/204554>
5. Ashok Wadje, Cyber Obscenity issues and challenges, Sodhganga@INFLBNET, 2018, <http://hdl.handle.net/10603/223082>

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