

THE BIG PICTURE OF CHILD PORNOGRAPHY

by

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ABSTRACT

“Pornography incarnates male supremacy. It is the DNA of male dominance. Every rule of sexual abuse, every nuance of sexual sadism, every highway and byway of sexual exploitation, is encoded in it”

- *Andrea Dworkin*

Pornography is a protean term, trapped in the clutches of complexity by the digital age¹. Essentially, it is concerned with the portrayal of sexual subject-matter for the sole purpose of sexual arousal. While sexual fantasies portrayed in pornography are a boon to insatiable desires, they convey a very misleading notion of sexuality. Apart from trapping users in a loop of addiction, they also promote gender stereotypes and sexual violence in reality. Owing to legal and social implications, a concrete definition of pornography is a contentious issue at hand. Therefore, the author through this paper has discussed the gravity of the issue of child pornography, more so with the advent of technology. Further, the author has also examined the steps taken by the international community in combatting the problem of child pornography along with the existing legal provisions against the same in India.

Key Words: Porn, Sexuality, Violence, Impact, Victims

¹ Sarah Ashton et al., *What does ‘pornography’ mean in the digital age? Revisiting a definition for social science researchers*, 6 PORN STUDIES 144 (2019), <https://www.tandfonline.com/doi/full/10.1080/23268743.2018.1544096?scroll=top&needAccess=true>.

INTRODUCTION

The word ‘pornography’ is known to have a Greek origin and is similar to the word ‘pornographos’ which refers to “the depiction of prostitutes, describing the life, manners, and customs of harlots and their patrons”². Those in favour argue that restricting access to porn is curtailing a person’s right to freedom of speech and expression. On the contrary, another aspect to be looked into is obscenity that opposes public policy and also harms women and children. While it is freedom for those who do it and for those who use it as a means of entertainment, people to whom it is done are also asked to believe that it is freedom for them, when it really is not.

How far people should have the right to do the wrong thing? According to Article 1 of the Universal Declaration of Human Rights, “All human beings are both free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. Similarly, Article 1 of the Charter of Fundamental Rights of the European Union, “Human dignity is inviolable. It must be respected and protected”. This notion of human dignity is linked to the idea that every person has an equal right to be valued and respected for his or her own sake. It cannot be given or taken away by any State or authority. States are therefore compelled to respect and protect it. They have both a negative and positive duty to prevent anything that could harm a person’s dignity. Torture and cruel, inhuman and degrading treatments are universally prohibited by all human rights treaties. Yet pornography violates this prohibition: most pornographic contents depict humiliating treatments and physical harm against one of the sexual “partners”. Many also portray criminal behaviours such as rape, incest and child abuse. Moreover, these degrading treatments are almost always perpetrated against vulnerable people, namely women and children, although men are also concerned³.

² Dechamma KC, “*Pornography*” as a right or as violative of rights?, 3 IJLMH 884 (2020), <https://www.ijlmh.com/wp-content/uploads/Pornography-as-a-Right-or-as-Violative-of-Rights.pdf>.

³ *Pornography and Human Rights*, EUROPEAN CENTRE FOR LAW AND JUSTICE (2019), <HTTP://MEDIA.ACLJ.ORG/PDF/PORNOGRAPHY-AND-HUMAN-RIGHTS,-EUROPEAN-CENTRE-FOR-LAW-AND-JUSTICE,-OCTOBER-2019.PDF>.

The impact of pornography on society is progressively increasing. It is destroying the dignity of human beings. Especially when directed towards children, it conveys the idea that people exist only for the sexual satisfaction of others. Be it printed pages or films, today, pornography is to a greater extent linking sex and violence as appropriate partners in human intimacy. Children are portrayed as suitable sexual partners and women are shown as playthings to satisfy the sexual whims of others. The borderless nature of the internet that holds a promise for education and access to quality information, also poses a risk of harmful encounters that the youth might have, based on the extent of their participation and online interaction. As the advent of technology brings about challenges with respect to jurisdiction, enforcement of domestic legislation and human rights obligation, state interference concerning individuals and their actions has become even more relevant.

CHILD PORNOGRAPHY AND ITS IMPACT ON VICTIMS

“Unfortunately, we’ve also seen a historic rise in the distribution of child pornography, in the number of images being shared online, and in the level of violence associated with child exploitation and sexual abuse crimes. Tragically, the only place we’ve seen a decrease is in the age of victims. This is, quite simply – unacceptable.”

- *Attorney General Eric Holder Jr. at the National Strategy Conference on Combating Child Exploitation in San Jose, California, May 19, 2011.*

Pornography may not be the new challenge. But, the ease of its accessibility and availability is deeply troubling. Today, child pornography is one of the most heinous crimes in existence, mainly because it encourages sexual abuse and human trafficking of children. The obviousness of pornography being harmful to children is evidenced by the fact of increasing number of countries making laws prohibiting the sale of pornography to children. Many of the viewers fall into the abyss of porn by starting with adult pornography but become desensitized and seek images and videos of younger and younger people, and some ultimately seek tween or child pornography⁴. Child pornography is basically the portrayal of a minor person in a sexually

⁴ Dawn Hawkins, *The scourge of child pornography*, NEW YORK TIMES (December 10, 2020), <https://www.nytimes.com/2020/12/10/opinion/letters/child-pornography.html>.

explicit way by way of videos, photographs or other computer generated content in any form. The sharing of child porn over the internet is ever-increasing. While only 3000 cases of child pornography were registered in 1998, the number exceeded 1 million in 2014 and reached a whooping 18.4 million in 2019, globally. The porn industry has become a multi-million dollar industry by making young children their most vulnerable victims. India being one of its biggest consumer and contributor, a pornographic video is captured every 40 seconds, 38% of which are related to child sexual abuse. 25% of all search engine queries are related to child pornography, stated the director of the Indian Cyber Army. The National Crime Records Bureau came across more than 25,000 pieces of alleged child abuse content that was uploaded on social media in 2020.

Pornhub, the 10th most viewed website in the world, buys a billboard in Times Square, provides snow plow's to clear the streets of Boston and donates to organizations that fight against racial discrimination. it attracts 3.5 billion visitors per month but yet has another ugly side to it⁵. It monetizes child rape, child abuse and non-consensual violence. A search for girls under 18 or 14 year olds leads in each case to more than 100,000 videos⁶. Rapists would open the eyelids of these young girls and touch their eyeballs to show that they are not responsive. A petition to shut the site down has received 2.1 million signatures. While child pornography is a very commonly used term by prosecutors, lawmakers, investigators and the public, it fails to describe what the true horror faced by numerous children all around the world is. The production of child pornography once, creates a permanent record of a child's sexual abuse. We may think that getting the child out of the cycle of pornography would stop his or her victimization. However, once the representation in any form is disseminated on the internet, according to the Department of Justice, victimization of the child becomes permanent and continues in perpetuity. Knowing that their images are on the internet, available to the world at large, they suffer re-victimization forever and the cycle immortalizes the abuse suffered by these children. Many victims of child pornography suffer from feelings of helplessness, fear, humiliation and lack of control given that their images are available for others to view in perpetuity. The effects of child pornography can broadly be categorized into psychological, emotional and physical. Speaking about the most immediate effects, they may suffer from physical injuries like internal bleeding, somatic effects like stomach aches and headaches,

⁵ Nicholas Kristof, *The children of Pornhub*, NEW YORK TIMES (December 4, 2020), <https://www.nytimes.com/2020/12/04/opinion/sunday/pornhub-rape-trafficking.html>.

⁶ *Ibid.*

pregnancy, substance abuse, eating disorders, sleep disorders, etc. At the same time, they are at a high chance of contracting sexually transmitted diseases as well. Long-term psychological and emotional effects can consist of mental health disorders like depression, anxiety, and posttraumatic stress disorder. Sometimes they suffer from feelings of worthlessness and low self-esteem which in turn results in distorted and unhealthy sexuality. They face difficulty in establishing healthy relationships in their adult life. They are also at a greater risk of getting ensnared in commercial sexual exploitation. Risky behaviours also extend to suicidal ideation.

INTERNATIONAL EFFORTS AGAINST CHILD PORNOGRAPHY

The problem of child pornography is one of international proportion. It is well recognized by the global community that children all around the world are at a risk from those predators who engage in the production, exhibition, distribution and consumption of child pornography. The United Nations Convention on the Rights of the Child in 1989 was the first legally binding treaty on the rights of children against child abuse. Article 34 of this Convention puts an obligation on the state to undertake all appropriate bilateral, multinational and national measures to protect children against all forms of sexual abuse. It has been ratified by an overwhelming majority of nations and in spite of all the efforts, it still remains an issue of great significance. In 2000, the United Nations General Assembly adopted the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography which is a protocol to the Convention on the Rights of the Child and that requires parties to prohibit the sale of children, child prostitution and child pornography. As of December 2019, 176 states were party to the protocol. Article 3 of this Protocol mandates the states to criminalize the production, distribution, importation, exportation, dissemination, offer or sale of child pornography and Article 3(1)(c) obliges the states to punish the possession of child porn if it is for any of the purposes mentioned above. It played a role in recognizing the rights of these victims and laid down standards for the protection of victims in the criminal justice process. the protocol is intended to achieve the purposes of certain articles in the Convention on the Rights of the Child, where the rights are defined with the provision that parties should take "appropriate measures" to protect them. Article 1 of the protocol requires parties to protect the rights and interests of child victims of trafficking, child prostitution and child pornography, child labour and especially the worst forms of child labour. On March 19, 2021, the United Nations Children's Fund and the Office of the United Nations High Commissioner for Human Rights for the Pacific welcomed Fiji's ratification of this protocol. In 2001 the Council of Europe Convention on Cybercrime adopted the Budapest Convention which is one of the most foremost

conventions that deals with the issue of child abuse since it has a very pragmatic approach with universal application to judicial officers and the law enforcement agencies at the same time. Article 9 of this convention defines child pornography as “a material that visually depicts a minor or a person appearing to be minor to be engaged in a sexually explicit act”. It has various unambiguous terms and a detailed categorization of child pornography. Lastly, it also provides for the criminalization of child pornography. In 2007, another Convention on the Protection of Children against sexual exploitation was adopted. It has a wide ambit, thus covering the concept of sexual tourism as well. The only drawback of this convention is that it has only been adopted by the European nations.

INDIA’S APPROACH TO THE ISSUE OF CHILD PORNOGRAPHY

During the pandemic, with countries being in lockdown, people are spending more time online. In April 2020, the India Child Protection Fund, who cites data from the largest pornography website in the world ‘Pornhub’ reported a spike of 95% in the traffic from India as compared to the average traffic in the pre-coronavirus time⁷. There was an increase in demand for ‘child porn’, ‘sexy child’ and ‘teen sex video’. It reveals a 200% increase in demand for violent content showing children choking, bleeding and tortured⁸. This indicates that a legion of paedophiles, child rapists and child pornography addicts have migrated online, making the internet unsafe for children. Without stringent action, India could see a drastic rise in sexual crimes against children as well. The Childline India helpline reported more than 92,000 SOS calls asking for protection against abuse within only 11 days of the lockdown⁹. In the light of these technological advancements, the Indian Government has enacted various reforms to strengthen the legal frameworks.

Protection of Children from Sexual Offences Act, 2012 (POCSO Act) is the main legislation that deals with child sexual abuse in general which includes offences of sexual assault, sexual harassment and pornography. Chapter III specifically makes the use of a child in any form of media for the purpose of sexual gratification an offence. The Act covers the offences of

⁷ Aarushi Jain & Yojit Pareek, *Child pornography in India during the lockdown: Are our children safe?*, LIVE LAW (June 23, 2020, 5:12 PM), <https://www.livelaw.in/columns/child-pornography-in-india-during-the-lockdown-are-our-children-safe-158778?from-login=625876>.

⁸ Ians, *Demand for child pornography in India spiked since lockdown*, ECONOMIC TIMES (April 14, 2020, 8:15 AM), <https://ciso.economictimes.indiatimes.com/news/demand-for-child-pornography-in-india-spiked-since-lockdown-icpf/75127959>.

⁹ Barla Mallesh Yadav, *India’s response to combating child pornography*, 5 IJEDR 1172 (2017), <https://www.ijedr.org/papers/IJEDR1704190.pdf>.

preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material. The overall aim of the POCSO Act is the protection of children from sexual exploitation and degradation. Section 14 of the POCSO Act criminalizes the use of children for pornographic purposes in any form of media, including the portrayal of child's sexual organs, the participation of a child in real or simulated sexual activities and the indecent or inappropriate portrayal of a child. Under the POCSO Act, the storage of child pornographic material for commercial purposes is criminalized but storage for non-commercial purposes is not. It defines a child as any person below the age of 18. Before POSCO, there was no specific mention of the terms 'child' and 'pornography' in one specific legislation.

The Information and Technology Act, 2000 is the bedrock of cyber laws in India. Earlier, the act only punished the publishing or transmission of any obscene material in electronic form. The act did not have any specialized provisions that dealt with child pornography. While it was being amended in 2008 to expand its ambit, both the Standing Committee and the Expert Committee to the Information and Technology (Amendment) Bill recommended for the incorporation of a specific provision dealing with the criminalization of child pornography. The recommendation manifested in the form of insertion of Section 67B to IT Act, which criminalized child pornography.

Apart from the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and The Information and Technology Act, 2000, Section 293 of the Indian Penal Code, 1860 specifically criminalizes the sale, distribution exhibition and circulation of any obscene material to any person below the age of twenty years.

CONCLUSION

The term pornography is constantly shifts along a vast continuum moving between two equally slippery concepts, the erotic and the obscene¹⁰. What is usually considered as socially acceptable is an erotic representation. Eroticism begins by stimulating physical responses, then transcend them, leaving a mild sexual glow that can be spoken of politely. At the other end of the scale are obscene representations that are not considered as socially acceptable. It is considered as lower-class vulgarity. While pornography is completely legal, it is legal only within limits. These limits are set by the concept of obscenity. The problem is that not

¹⁰ Joseph W. Slade, *The definition of pornography*, FRONTLINE (2020), <https://www.pbs.org/wgbh/pages/frontline/shows/porn/etc/definition.html>.

everybody uses the same measurement. In order to avoid such contentiousness, theorists prefer to use the neutral term of ‘sexual materials’ instead of pornography. What pornography seems to one person might seem to another. Secondly, the concept is not monolithic. Its definition is ever evolving and its representation occurs at many places by adopting many forms and genres.

Pornography is never the answer to a sexual desire. The process of production and consumption, supposes the sexual exploitation of people in a situation of vulnerability. Consuming and accepting pornography signifies a person’s support to the exploitation and sexualization of children and the promotion of violent sexuality, both physically and mentally, with or without consent. Even though major financial interests could be at stake, the state cannot pretend to be powerless when it comes to limiting the ambit of pornography. The state has a duty to intervene and thus pornography should be limited through national legislation and the same should be efficiently regulated in practice. Children must be a priority in the fight against pornography. According to the National Centre for Missing and Exploited Children, Pornhub’s parent company accounted for 13,229 reports of child sexual abuse material in 202011. The harms caused by porn are immeasurable. From the degradation of intimacy between the sexes, to the injuries endured by those engaging in acts copied from extreme porn, to the rise of bullying in the playground, the erosion of body confidence in young girls, the spike in violent sexual assaults, and rapid climb in porn addiction, the areas where the slimy tentacles of porn reach are never-ending¹².

¹¹ Mr. Bokar-Lindell, *How OnlyFans became the latest casualty of the war on porn*, NEW YORK TIMES (August 24, 2021), <https://www.nytimes.com/2021/08/24/opinion/onlyfans-porn-sex-workers.html>.

¹² Thain Parnell, *The case against porn*, MEDIUM (February 9, 2019), <https://medium.com/@thainparnell/the-case-against-porn-64212f53d197>.