



## Overview of Laws against online child sex abuse in India, U.K and U.S

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### Abstract

*Online sex abuse of children is quite a glaring problem in the digital age. With globalisation and digitalisation, the child sex offenders have found a convenient medium of anonymity to target innocent and gullible children. Nations across the globe are grappling with this menace and trying to find legislative, policy and strategic changes to bring about reforms in their legal framework to effectively curb this rampant menace. In India, the Information Technology Act, 2000 and Protection of Children from Sexual Offences Act, 2012 deal with online sex crimes against children. In U.K, the Protection of Children Act, 1978 and U.K the Sexual Offence Act, 2003 are applicable legislations. In U.S as per Section 1466A of Title 18, United State Code, if any person knowingly produces, distributes, receives, or possesses with intent to transfer or distribute visual representations, such as drawings, cartoons, or paintings that depict minors engaged in sexually explicit conduct, then these are considered obscene and such act is a punishable offence.*

*This paper analyses the existing laws that protect children against online sexual abuse in India and provides broad overview of laws in U.K and U.S that address the same issue. It elucidates legislative measures that may be adopted to strengthen our legal framework in India by taking examples from applicable laws in U.S and U.K.*

**Keywords-** online child sex abuse; exploitation of children on internet; child safety on internet; child protection on internet; child pornography; child grooming.

### Introduction

Misuse of technology for sexual exploitation of children is a heinous crime not only in India but across most jurisdictions including U.K and the U.S. In India, child pornography is a punishable offence as per Section 67B of the IT Act, 2000. Though the term 'Child pornography' is not defined by the said Section, it expressly provides that browsing, seeking, creating, advertising, promoting, exchanging, circulating, publishing, sale of child pornography is prohibited by the Act. It also covers cybergrooming in Section 67B © which makes punishable the acts that are used to cultivate, entice or induce children to online relationship with one or more children for sexually explicit acts. Section 67B also prohibits facilitating child abuse and recording electronically own abuse or of others pertaining to sexually explicit acts with children. The term of punishment prescribed by Section 67B of Information Technology Act, 2000 on first conviction is upto 5 years of imprisonment and fine.

The Section provides as follows-



## Section 67 B of Information Technology Act.

### **“67B. Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form.-**

Whoever,-

- (a) Publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct or
- (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner or
- (c) Cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource or
- (d) Facilitates abusing children online or
- (e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees:

Provided that the provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting,

representation or figure in electronic form-

- (i) The publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or
- (ii) which is kept or used for bonafide heritage or religious purposes

Explanation: For the purposes of this section, “children” means a person who has not completed the age of 18 years.”

[\* Inserted vide Information Technology Amendment Act, 2008]

In addition, India enacted the Protection of Children from Sexual Offences Act, 2012 that prohibits sexual assault<sup>1</sup>, sexual harassment<sup>2</sup> (including cyberstalking, cybergrooming, intimidation)<sup>3</sup>.

Sexual harassment has been defined by section 11 of the POSCO Act as follows-

<sup>1</sup>Section 7 of POCSO Act, 2012. Section 8 prescribes punishment of minimum term of three years that may extend upto 5 years and fine. Section 9 deals with aggravated sexual assault and section 10 prescribes minimum five years punishment which may extend upto 7 years and fine. Section 3 deals with penetrative sexual assault and section 4 prescribes minimum term of 7 years which may extend to imprisonment for life and fine. Section 5 deals with Aggravated penetrative sexual assault and Section 6 prescribes imprisonment of at least 10 years which may extend to imprisonment for life and fine.

<sup>2</sup>Section 11 of POCSO Act, 2012

<sup>3</sup> Seth Karnika, Protection of Children on Internet, Universal Law Publishing company, 2015 @pg 98



**“Section 11. Sexual Harassment** - A person is said to commit sexual harassment upon a child when such person with sexual intent,—

- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- (iii) shows any object to a child in any form or media for pornographic purposes; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- (vi) entices a child for pornographic purposes or gives gratification there for.

Explanation- any question which involves "sexual intent" shall be a question of fact.”

For acts amounting to sexual harassment, Section 12 imposes punishment of three years of imprisonment and fine.”

In India, child pornography<sup>4</sup> is prohibited by Section 13 of POCSO Act, 2012. The said Section is reproduced hereunder –

**“Section 13. Use of Child for Pornographic Purposes** - Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes—

- (a) representation of the sexual organs of a child;
- (b) usage of a child engaged in real or simulated sexual acts (with or without penetration);
- (c) the indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes.

Explanation:—For the purposes of this section, the expression "use a child" shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.”

Section 14 of POCSO prohibits child pornography and imposes sentence of 5 years and fine on first conviction and on subsequent or second conviction for a term upto 7 years and fine. Direct participation of a person in pornographic acts coupled with sexual assault and other such offences prescribes even stricter term of punishment as per Section 14 of POCSO Act, 2012.

<sup>4</sup>Section 13 of POCSO Act, 2012.



It is pertinent to note that Section 20 of the POCSO Act puts an obligation on media, studio and photographic facilities to report cases of any material or object that is sexually exploitative of child (through use of any medium) to provide information to Special Juvenile Police Unit or to local police. Section 19 of POCSO puts such obligation to report on any person who has apprehension that an offence under POCSO is likely to be committed or has knowledge that such an offence has been committed. Section 21 provides punishment for failure to report with imprisonment upto 6 months or fine or both.

Punishment for storage of pornographic material involving a child is punishable under Section 15 of POCSO Act which may extend to three years or fine or with both.

Despite these strict legal provisions, hardly any convictions have been held in such cases of online sex abuse of children in India. As per latest reports, about 6,816 police cases were registered from November, 2012 when the Protection of Children against Sexual Offences Act (POCSO) came into force up to March, 2015, but the conviction rate is barely 2.4%<sup>5</sup>.

Lawson the subject in the U.S and U.K are certainly more stringent and effective in dealing with these crimes against children. In U.K in 2010, there were 380 convictions or cautions for 'simple' possession of indecent images of children and 1,401 for creating or taking them 1,401. In 2003, the total went above 1,700.<sup>6</sup> In

USA, almost 6 in 10 child sex crime suspects were prosecuted in 2006 rising from 4 in 10 in 1994. It is reported that Nine of 10 defendants were convicted and sentenced to prison, rising from 8 in 10 in 1994. The median prison sentence imposed increased from 36 months to 63 months in this period<sup>7</sup>.

### **U.K laws against online child sex abuse**

In order to curb Child pornography and related offences in U.K, existing laws such as Protection of Children Act 1978 and Obscene Publications Act 1959 are applicable.

In *DPP v Whyte*<sup>8</sup> in his judgment Lord Wilberforce held that Obscene Publications Act 1959 applied even where publication of obscene content was made electronically to a single person, including a minor. He categorically held-

*"Thus, it cannot be said that because there is only one recipient and only one likely reader of an article, the article is incapable of meeting the test of obscenity for the purposes of the Act. It would be extraordinary if it were otherwise. There could be no sensible reason for the legislature having excluded otherwise obscene material from the scope of the legislation, merely because it was likely to be read by, and therefore liable to deprave and corrupt, only one person, a person who might, for example, be a young child."*

Section 1 of the Protection of Children Act 1978 punishes act of taking, making, distributing, showing or possessing with a view to distributing any indecent image of a child. It

<sup>5</sup>Himanshi Dhawan, "Eight cases of child abuse every day but conviction rate at an abysmal 2.4%", *The Times of India*, Jul 9,

2015, <http://timesofindia.indiatimes.com/india/Eight-cases-of-child-abuse-every-day-but-conviction-rate-at-an-abysmal-2-4/articleshow/47996454.cms>

<sup>6</sup>John Carr, "Record Level of Convictions for Child Pornography Offences in the UK", [http://www.huffingtonpost.co.uk/john-carr/record-level-of-convictio\\_b\\_1363732.html](http://www.huffingtonpost.co.uk/john-carr/record-level-of-convictio_b_1363732.html)

<sup>7</sup>U.S. Department of Justice, Office of Justice Programs Bureau of Justice Statistics Bulletin, Federal Prosecution of Child Sex Exploitation Offenders, 2006, December 2007, NCJ 219412

<http://www.bjs.gov/content/pub/ascii/fpcseo06.txt>  
<sup>8</sup>[1972] A.C. 849





includes within its ambit a 'pseudo photograph'. A Pseudo photograph includes an indecent film, or a copy of a photograph or film, or computer data capable of conversion into a photograph<sup>9</sup>. This is similar to the Indian POCSO Act wherein usage of a child in real or simulated sexual acts is a punishable offence under Section 13 of POCSO Act. A person who is convicted of an offence under the Protection of Children Act is likely to be barred from working with children in the United Kingdom, and directed to register in the Sex Offenders Register. Depending on the gravity of act, sentences are given based on the guidelines for sentencing decided by the Advisory panel. However, unlike U.K, in India there is no sex offender registry as on date but initiatives are being made under Juvenile Justice bill to introduce a similar provision in India. The Indian Home Ministry is working on online database that will be accessible to the public through the Crime And Criminal Tracking Network And Systems (CCTNS) project. This is estimated to be launched by 2017<sup>10</sup>.

### **Prohibited images-U.K law**

Section 62 of the Coroners and Justice Act 2009 ('the Act') has created a new offence of possession of a 'prohibited image' of a child. It is punishable by up to three years' of imprisonment. This Provision was made effective on 6 April 2010 and has prospective

<sup>9</sup>See section 7(4) of the PCA 1978 and section 160(4) of the CJA 1988. In *R v Stamford* [1972] 2 Q.B. 391, it was held that whether a photograph is indecent is decided based on standards of propriety. Motive of defendant and circumstances are not relevant to decide indecency, however it may determine intention deliberately taken or made, *R v Graham-Kerr* 88 Cr App R 302 CA; *R v Smethurst* [2002] 1 Cr App R 6, CA.

<sup>10</sup>Himanshi Dhawan, Juveniles as young as 10 to be on sex offenders registry? The Times of India, Dec 20, 2015 <http://timesofindia.indiatimes.com/india/Juveniles-as-young-as-10-to-be-on-sex-offenders-registry/articleshow/50251519.cms>

effect. The maximum penalty on summary conviction is liable to six months' imprisonment or a fine or both.

The offence pertains to non-photographic images (this includes digital images, cartoons, sketches and drawings) and does not include indecent photographs, or pseudo-photographs of children.<sup>11</sup> In Indian law, we currently do not have this clarification. Though Section 13 of the POCSO Act prohibits depiction of children in simulated or real sexual acts, it is pertinent to note that the said Section fails to clarify whether use of child for pornographic purpose includes simulated representation of sexual organs of a child, and indecent or obscene representation of a child which is simulated. The punishment is prescribed in Section 14 with upto 5 years of imprisonment on first conviction. Also, it does not create a distinction between simulated images or pseudo photographs including cartoon, sketches etc. Moreover the term 'simulated' is not been defined in POCSO Act, 2012. This should be made to cover even pseudo photographs as in U.K or separate provision similar to one in Section 13 should be incorporated in the Act for pseudo photographs.

### **Extreme Pornography and U.K law**

The offence of possession of extreme pornographic images is provided in Part 5, Sections 63 to 67 of the Criminal Justice and Immigration Act 2008. It was made effective on 26 January 2009 and is prospective in application. As per Sections 63 to 67 of the Act, possession of pornographic images that depict acts which threaten a person's life; acts which result in or are likely to result in serious injury to a person's private parts is strictly prohibited. Section 71 of the Act increases the maximum penalty for publication and for the possession of

<sup>11</sup>[http://www.cps.gov.uk/legal/p\\_to\\_r/prohibited\\_images\\_of\\_children/](http://www.cps.gov.uk/legal/p_to_r/prohibited_images_of_children/)



obscenematerial for gain under the Obscene Publications Act 1959 from three to five years.<sup>12</sup>

Such provisions are currently absent in Indian law and ought to be incorporated prescribing stringent punishments for publishing, or circulating , possessing or creating extreme pornography. In India Section 66E of IT Act, 2000 ,however ,does prohibit MMS videos or video voyeurism. The Section prohibits acts of intentionally or knowingly capturing, publishing or transmitting the image of a private area of any person or MMS video and other sexually explicit content which captures private parts of a person without such persons consent. The punishment prescribed is upto 3 years of imprisonment and fine upto 2 lakhs or both.

In U.K, Section 1 of the Malicious Communications Act 1988 punishes acts of sending of electronic communications that comprise of indecent, grossly offensive, threatening or false content when there is an intention to cause distress or anxiety to the recipient. In India, similar provision exists in Section 11 of POCSO Act (sexual harassment to a child) though Section 66A of Information technology Act, 2000 also covered same field but was recently struck down owing to its ambiguity by the Supreme Court of India in the *Shreya Singhal v UOI*<sup>13</sup> case. It is therefore necessary to draft a new provision to replace the Section 66A of IT Act, 2000<sup>14</sup>.

Likewise in U.K, Section 127 of the Communications Act 2003 makes sending or causing to send through a 'public electronic

communications network' a message that is 'grossly offensive' or of an 'indecent, obscene or menacing character', a punishable offence. In India, in order to prohibit publication or distribution of obscenity and offensive content such as sexual obscene images or sexually explicit content , Section 67 , 67A ,of IT Act, 2000 also apply respectively. However, these provisions apply in general and not specifically to children .Only section 11 (sexual harassment) and section 13 (child pornography of POCSO Act, 2012) are especially applicable to protect children.

### Revenge Porn

Recently, there has been an amendment to the Criminal Justice and Courts Act, 2015 which incorporated a specific offence named revenge porn. The law came into effect in February 2015 with prospective operation. Revenge porn means circulating private sexual images of a person without their consent with the intention of causing them distress. The maximum custodial sentence is imprisonment of two years.<sup>15</sup> In India, there is no separate section for Revenge porn and general Sections prohibiting publication and transmission of obscene content exist<sup>16</sup>. It is important to consider inclusion of such provision even under Indian laws.

### Child grooming law more effective in U.K

Internet child groomers make attempts to track young children for sexual abuse, particularly on social media. Initially, they would engage a child into conversation about his/her hobbies and later intentionally divert the subject to obscene or sexual matters. Often such offenders would lure innocent children to meet them

<sup>12</sup>[http://www.cps.gov.uk/legal/l\\_to\\_o/obscene\\_publications/](http://www.cps.gov.uk/legal/l_to_o/obscene_publications/)

<sup>13</sup>[http://supremecourtindia.nic.in/FileServer/2015-03-24\\_1427183283.pdf](http://supremecourtindia.nic.in/FileServer/2015-03-24_1427183283.pdf)

<sup>14</sup> To prohibit publication or distribution of obscenity and offensive content, Section 67 , 67A ,of IT Act, 2000 also apply.

<sup>15</sup> "Revenge porn' illegal under new law in England and Wales". BBC News (UK). 12 February 2015. (Retrieved 17 June 2015)

<sup>16</sup> Section 67, Section 67A of IT Act, Section 66E of IT Act, 2000



secretly offline where they could easily sexually exploit or abuse them. In U.K the Sexual Offence Act, 2003 has incorporated offence of grooming. The Act contains provisions including Offence of inciting a child under 13 into sexual activity<sup>17</sup>, engagement in sexual activity in the presence of a child<sup>18</sup>, causing a child to watch a sexual act<sup>19</sup>, arranging of child or facilitating a child offence<sup>20</sup>, and meeting a child following sexual grooming<sup>21</sup>. Section 15 of the Sexual Offence Act, 2003 makes ‘meeting a child following sexual grooming’ an offence after such person meets a child online. Such a provision is indeed missing under Indian laws and ought to be considered for inclusion /incorporation in POCSO and/or IT Act, 2000.

Similarly, in United States, Title 18 U.S.C § 2422 criminalises use of the mail, interstate commerce, etc. to entice a minor to sexual acts. Also, 18 U.S.C § 2425 criminalises transmission of information about a person below the age of 16 for sexually abusing a child by pornography, for grooming etc. In addition state specific laws may also apply. For example Florida law declares use of a Computer to Seduce a Child as a felony.

### Position of law in USA

#### Test of obscenity in U.S

The U.S. courts elucidated a three-pronged test, popularly known as the *Miller* test to determine if a material is obscene. In this case, Defendant Marvin Miller was convicted for sending a mass mailing of sexually explicit advertisements for adult books and video films. The three-pronged *Miller* test was explained in *Miller v.*

*California*, 413 U.S. 15, 24-25 (1973)<sup>22</sup> as follows:

1. “Whether the average person, applying contemporary adult community standards, finds that the matter, taken as a whole, appeals to prurient interests (*i.e.*, an erotic, lascivious, abnormal, unhealthy, degrading, shameful, or morbid interest in nudity, sex, or excretion);
2. Whether the average person, applying contemporary adult community standards, finds that the matter depicts or describes sexual conduct in a patently offensive way (*i.e.*, ultimate sexual acts, normal or perverted, actual or simulated, masturbation, excretory functions, lewd exhibition of the genitals, or sado-masochistic sexual abuse); and
3. Whether a reasonable person finds that the matter, taken as a whole, lacks serious literary, artistic, political, or scientific value”<sup>23</sup>.

### Laws against child pornography in U.S

According to Section 1466A of Title 18, United State Code, if any person knowingly produces, distributes, receives, or possesses with intent to transfer or distribute visual representations, such as drawings, cartoons, that *depict minors engaged in sexually explicit conduct*, then law considers these to be obscene.

<sup>22</sup> See also *Smith v. United States*, 431 U.S. 291, 300-02, 309 (1977); and *Pope v. Illinois*, 481 U.S. 497, 500-01 (1987)

<sup>23</sup> CITIZEN'S GUIDE TO U.S. FEDERAL LAW ON OBSCENITY, US DEPARTMENT OF JUSTICE  
<http://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-obscenity>

<sup>17</sup>Section 10

<sup>18</sup>Section 11

<sup>19</sup>Section 12

<sup>20</sup>Section 14

<sup>21</sup>Section 15



The act of production, distribution, receiving, and possession of an image of child pornography using or affecting any means of interstate or foreign commerce is illegal and a punishable offence as per U.S Federal laws<sup>24</sup>. On first conviction, offender is convicted of producing child pornography is imposed fines and given a statutory minimum of 15 years to 30 years of imprisonment.

Further, in U.S laws creation of child pornography for purposes of import into US is also a punishable offence. Such provision is lacking under Indian laws and ought to be incorporated. According to Section 2260 of Title 18, United States Code if any person outside the United States knowingly produces, receives, transports, ships, or distributes child pornography with intent to import or transmit such content into the United States, it amounts to a punishable offence.

In USA, the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act of 2003 also criminalises act of producing, distribution, receipt, or possession of an obscene image of a child under the age of 18 engaged in sexually explicit conduct. (18 U.S.C. § 1466A(a)(1).)

### **Use of deceptive and misleading domain names**

Moreover, Federal law prohibits the use of deceptive and misleading domain names, words, or digital images on the Internet that are created with intention to mislead a minor into viewing any obscene content.<sup>25</sup> Such a provision is

<sup>24</sup>(See 18 U.S.C. § 2251; 18 U.S.C. § 2252; 18 U.S.C. § 2252A).

<sup>25</sup>See 18 U.S.C. §§ 2252B, 2252C.

SEC. 703. DECEPTION BY EMBEDDED WORDS OR IMAGES. (a) IN GENERAL.—Chapter 110 of title 18, United States Code, is amended by inserting after section

clearly missing in Indian law and ought to be included by amending the extant laws.

### **Immoral trafficking using internet**

According to Section 2251A of Title 18, United States Code if any parent, legal guardian or other person in custody of a minor under the age of 18, indulges in act of buying, selling, or transferring custody of that minor for purposes of producing child pornography, such acts are strictly prohibited by Federal law. India ought to incorporate such a provision as well since Immoral Traffic Prevention Act or POCSO does not contain such provision. For procuring or enticing a child into Prostitution, Section 5 of ITPA provides punishment of seven years that may extend upto imprisonment for life. However, it fails to mention child pornography therein which must be incorporated.

### **Conclusion**

India's existing legal framework for protecting children against online sex abuse needs a

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2252B the following: “§ 2252C. Misleading words or digital images on the Internet “(a) IN GENERAL.—Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a person into viewing material constituting obscenity shall be fined under this title and imprisoned for not more than 10 years. “(b) MINORS.—Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a minor into viewing material harmful to minors on the Internet shall be fined under this title and imprisoned for not more than 20 years. “(c) CONSTRUCTION.—For the purposes of this section, a word or digital image that clearly indicates the sexual content of the site, such as ‘sex’ or ‘porn’, is not misleading. “(d) DEFINITIONS.—As used in this section—“(1) the terms ‘material that is harmful to minors’ and ‘sex’ have the meaning given such terms in section 2252B; and “(2) the term ‘source code’ means the combination of text and other characters comprising the content, both viewable and nonviewable, of a web page, including any website publishing language, programming language, protocol or functional content, as well as any successor languages or protocols.”.





detailed review. Considering the nature of emerging threats of online sexual abuse, it is imperative to strengthen our legal framework by making appropriate amendments in existing laws. Countries such as U.K and USA have stringent laws and special provisions in their laws to effectively combat this menace. Similar provisions can also be incorporated in Indian laws to remove existing lacunae wherever necessary. This can be achieved by appropriate amendments in laws and by making punishments more stringent. However, only making the laws more stringent will not suffice till the legal enforcement is also made equally effective so that prosecutions and convictions are duly made in accordance with law.