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A legal analysis of cyber child pornography in India under information technology act, 2000

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Abstract

Over the past ten years, cyberspace has expanded quickly, making it harder to control the internet because of its ease of use, global reach, and lack of borders. Pornography consumption, reliance, and addiction are proving to be significant issues. It has shown to be a vicious problem in cyberspace. Publication and distributing offensive content featuring minors via technological means is known as cyber child pornography. The rise in cyber child pornography in recent years is the result of easy access to the internet and readily available movies and data. The most horrible crime that takes place is child pornography, which has spawned a number of other crimes like child sex abuse and sex tourism, etc. Enforcing laws is a different process than creating them. Many countries have adequate anti-child pornography legislation in place, but they are not strictly enforced. In addition, monitoring a worldwide operation such as the Internet calls for monitoring nationals of nations with vastly different domestic legal systems, customs, and social mores. Despite the seeming insurmountable nature of these challenges, it is important to keep in mind that cyber child pornography is a real and serious issue on a global, national, and local scale and is not a non-violent crime. Child pornography has become more prevalent and easily accessible in India as a result of the swift development of the internet and technology. This work attempts to analyze and discuss the issues concerning cyber child pornography and the laws that are working for the regulation of such concerns in India with special reference to the Information Technology Act, 2000.

Keywords: Child abuse, cyber space, cyber child pornography, internet, sexual acts

Introduction

The birth of digital technology endeavor to make people's life easy, but now human ingenuity has used the same technology for committing crimes. These digital innovations provide an easy tool for a certain group of people, for accessing pornographic contents which impose harmful effects on the society resulting in the degradation of social values^[1]. Such material is in fact far from novel phenomenon. The very idea of such images provokes revulsion among the overwhelming majority in society. Garaging the precise extent of cyber child pornography is itself a difficult task, as a significant portion of such material is likely to be hidden from direct public visibility given its illegal nature. Whilst the portrayal of child pornography dates back to ancient times, only in recent times after the migration of such materials onto the cyber world that the discussions on the nature and scale of the problem have come to be publicly acknowledged and politically addressed. Consequently, the past few decades have seen concerted legal efforts to address child pornography in general and cyber child pornography in particular.

Pornography is easily recognized but often difficult to define concisely. Pornography is a wider concept and child pornography is an offspring of it. In order to understand child pornography, one needs to know what is pornography. Pornography, according to Black's Law Dictionary means material (writings, photographs or movies) depicting sexual activity or erotic behavior in a way that is designed to arouse sexual excitement.

Pornography is often measured using parameters like obscenity or indecency. Obscenity is a legal term that applies to anything offensive to morals and is often equated with the term Pornography. Pornography, however, is not the same as obscenity. It is a more limited term, which refers to the erotic contents of books, magazines, films, and recordings. Roughly, obscenity is dirty sexual material that lacks value, while pornography is explicit sexual material that harms society. Some representations of sexual activity may also fall short of being labeled obscene, depending on the morals of the community.

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The line is not always clear, but it exists. The Honorable Supreme Court opined in *Ranjit. D. Udeshi v. State of Maharashtra* ^[2] that: "It cannot be denied that it is an important interest of society to suppress obscenity. There is of course, some difference between obscenity and pornography in that the latter denotes writings, pictures etc. intended to arouse sexual desire while the former may include writings etc. not intended to do so, but which have that tendency. Both of course, offend against public decency and morals but pornography is obscenity in a more aggravated form."

Pornography has legal or consistent definition neither in India nor in other parts of the world. In India, the term obscenity is generally being used to denote explicit works. The term 'Obscenity' is mentioned but not defined under Indian Penal Code, 1860 (herein after referred to as IPC), the term 'Pornography' is not defined but is just mentioned under Protection of Children from Sexual Offences Act, 2012, (herein after referred to as POCSO Act, 2012). A much wider term "Sexually Explicit Conduct" is used under Information Technology Act, 2000 (herein after referred to as IT Act, 2000) for the said purpose. It is often used as euphemism for pornography. Pornography is regulated by the legal standards that govern the concept of Obscenity. Considering obscenity as the base of pornography, the decisions of the Indian courts and the laws relating thereto are relied upon for the study on Cyber Child Pornography.

Concept of Child Pornography

When a pornographic matter depicts children, it becomes child pornography. Child pornography shall include pornographic material that visually depicts:

1. A minor engaged in sexually explicit conduct;
2. A person appearing to be a minor engaged in sexually explicit conduct;
3. Realistic images representing a minor engaged in sexually explicit conduct.

The legal definition of children as those under 18 is common to anti-pornography laws in many countries like USA, UK, Canada, India etc. In India, for the purpose of trial of pornographic offences involving children the age of majority and the age for consensual sex is fixed at 18. But in some countries for example like Spain and Australia child pornography covers only those materials involving depiction of children under 13 and 16 years old respectively depending on jurisdiction and the sexual context ^[3]. Such differences create a situation, whereby USA, UK or Indian authorities are unable to act against Spanish or Australian websites featuring sexually explicit images of 13 and 16 years old respectively as they are permitted by Spanish and Australian law, even though they are illegal in other countries in which they may be viewed and downloaded ^[4]. Accordingly, to avoid such inconveniences in the protection of children, the age of a child for the purpose of indecent photographs of a child is now 18 in most of the countries notwithstanding the fact that it is inconsistent with the age of consent being 16 in some. The fact that a community finds it acceptable for young people of a certain age to participate in consensual sexual activity does not necessarily mean that it is appropriate to circulate or distribute images taken during that legal sexual activity. There is also no international agreement on the age of sexual consent. Since the legal age of consent for consensual sex varies significantly around the world, difficulties may arise in determining whether the person depicted as or appears to be

engaged in a sexual act is under the relevant age or not. In such cases, what the legislature seeks to prohibit is the creation of pornographic materials which has the appearance of involving a minor. If it appears to a jury or magistrate that the person is under the relevant age, then the offence is made out irrespective of the actual age of the person depicted. This lacuna has led to statutory appeals for bringing uniformity in age of the child for the purpose of child pornography legislation.

Child pornography is generally focused on photographs or images. It refers to images or films and, in some cases, writings depicting sexually explicit activities involving a child, usually for commercial purpose. This is the most prolific form of child pornography and is arguably the form that is most damaging to the child depicted in it. According to Article 2 (c) of the *Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* ^[5], the definition of child pornography is "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes." The reference to „whatever means' clearly covers more than just photographs and expressly considers non-image-based forms of material, which includes visual representation, written representation, as well as audio representation.

Concerns regarding Cyber Child Pornography

As more homes have access to internet more children would be using, and the more are the chances of falling victim to the aggression of pedophiles. In physical world, parents know the face of dangers and they advise their children to keep away from dangers. But in case of cyber world, most of the parents do not themselves know about the basics of internet usage and dangers posed by various services offered through the internet. Hence, the children are left unprotected in the cyber world. The cyber child pornographers take advantage of this situation and lure the children, who are not advised by their parents, teachers or guardians about what is wrong and what is right for them while browsing the internet. Offenders use false identities in chat rooms to lure victims into physical meetings, thus connecting the worlds of cyber and physical crime. When this happens, virtual crime often leads to traditional forms of child abuse and exploitation such as trafficking and sex tourism. Whenever new pornographic images are created, no matter the source, the market becomes more saturated. The combination of opportunity ease, perceived anonymity and the immediate personal rewards created a situation that accessing child pornography is not simply common, it actually becomes a norm. These groups provide social reinforcement to members, allowing them to rationalize their sexual interest in children as legitimate and to be encouraged.

Computers and its networks, despite being such high technology devices are extremely vulnerable. Computer vulnerability is a flaw in the security of a computer system. The cyber security is the support structure that prevents unauthorized access to the computer. At present the mobile and wireless technology is so developed that it becomes equivalent to personal computers, as one can do a lot of work on mobile phones which were earlier possible on the computers only. When vulnerability is exploited, the person using the vulnerability will gain an extra privilege or advantage compromising the system's integrity. Likewise in the case of cyber pornography involving children, the

pornographers and pedophiles use this vulnerability to seduce and induce children for satisfying their selfish needs and interests. The internet has certainly led to an increase in the volume of child pornography in circulation and to an increase in the overall level of sexual offending against children and young people. Exposure to pornography seems to be a stepping stone to later sexual offending against children. Every republication of a child abuse image, in a way re-abuses the child depicted within it. Pedophiles use internet chat room contacts with children in order to establish a relationship of apparent friendship and trust, which are then exploited to arrange face to face meetings in which sexual abuse can take place. Cyber child pornography presents some unique challenges for law enforcement agencies.

Laws concerning Cyber Child Pornography in India

The legal response to the cyber-crimes in various countries is varied. The laws relating to cyber pornography have evolved differently in each country. Since the impact of cyber-crime is unbounded, any effort made at national level have to meet international coverage for the sake of effective containment of cybercrimes and protecting the interest of the society at large. Criminal legislations are territorial in nature by which such a rule will be valid over the acts conducted within a specific area only. The criminalization of child pornography and other offences involving the sexual exploitation of children over internet are beyond any boundaries. Such situation necessitates understanding of global-legal response relating to the cybercrimes, since protection of these innocent victims is the duty of the entire mankind.

To tackle with the adverse development of cyber space the legislature in India was also compelled to enact legislation, IT Act, 2000 and it was amended in 2008. This is not specific child pornography legislation but contains certain penal provisions for publishing or transmitting obscene materials in electronic form. The IT Act, 2000 prohibits the computer aided dissemination of obscene materials, and not child pornography in particular. After the amendment in 2008, the Act extended its ambit to sexually explicit conducts depicting children. But unlike many other nations, in India no legislation deals with pornography directly, the parameter is obscenity. The multi-jurisdictional dimension of the internet has led to the enactment of extra territorial jurisdiction for computer related offences. Cybercrime can be dealt with only by a national legislation having extra territorial jurisdiction. The IT (Amendment.) Act 2008 provides for extra territorial applicability which is self-claimed. Domestic legislation is clearly necessary to target the child pornography offenders. However, it was held in *Samresh Bose and another V. Amal Mitra and another* ^[6], its popular culture rapidly disseminates around the world, there is increasing pressure on the world nations to meet global standards for regulating child pornography. The offenders could easily move to other territorial limits having less strict rules after committing cyber offences so as to evade prosecution.

The legislators clearly intended the IT Act, 2000 to be the fundamental umbrella legislation to govern computer related activity in India. The legislative initiatives for the regulation of cyber child pornography are discussed in two parts:

- Position Prior to the Enactment of the IT Act, 2000
- Position under the IT Act, 2000

Position Prior to Enactment of IT Act, 2000 Obscenity under Indian Penal Code

In India, no legislation deals with pornography directly, the parameter is obscenity. The offence of obscenity in India is dealt under IPC. The principal provisions of law concerning the criminalization of publication and circulation of materials with obscene content are contained in Secs. 292, 293 and 294 of IPG. These are substantive provisions of law relating to obscenity restricting the exercise of free speech and expression enshrined under Art. 19(1) (a) of Constitution of India. Such publications are prohibited under Art. 19(2) of Constitution of India as these obscene publications corrupt the mind of younger generation.

“It can hardly be said that obscenity which is offensive to modesty or decency is within the constitutional protection given to free speech or expression because the article dealing with the rights itself excluded it. This freedom is subject to reasonable restrictions, which may be thought necessary in the introduction of the general decency and morality. Sec 292 manifestly embodies such a restriction because the law against obscenity seeks no more than to promote public decency and morality ^[7].”

Under IPC, the distribution of obscene works is a crime; persons who sells, distributes or post pornographic materials or do any obscene act or performances will find themselves subject to the conditions laid down in the statute. Sec. 292(1) of IPC is a deeming provision. The conditions in Sec. 292 of IPC adopted in determining whether a material is obscene or not are laid down as follows: - A book, pamphlet, paper, writing etc. shall be deemed to be obscene if it is:

- Lascivious or
- Appeals to the prurient interest or
- If its effects if taken as a whole tend to “deprave and corrupt” persons who are likely to read, see or hear it.

However, in practice it is the third condition- deprave and corrupt- which is most often resorted to for deciding on obscenity and that condition used is of Hicklin’s. Thus, the statute declares that any material will be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect would tend to deprave and corrupt persons who are likely to read, see or hear the matter contained or embodied in it. Sec. 292 of IPC punishes anyone who sells, hires, distributes, exhibits or puts into circulation, exports and imports or conveys, advertises or offers any obscene matter. It also punishes those who take part in or receive any profits from a business in the course of which he knows or has reasons to believe that obscene material is produced, purchased or put into circulation. A person convicted under Sec. 292 of IPC shall be punished with imprisonment of either description for a term that may extend to two years and a fine of two thousand rupees and in case of subsequent conviction of the same person an increased imprisonment for a term up to five years and fine of five thousand rupees is imposed. Sec. 292 of IPC also sets out certain legitimate purposes where obscenity is not deemed to be an offence.

The sale, distribution and circulation of obscene objects to persons below a specified age limit are made punishable under IPC. Sec. 293 of IPC prescribes penalty for those engaged in such activities. When a person sells, lets to hire, distributes, exhibits or circulates any obscene or pornographic materials to any one below the age of twenty years an offence is committed. The offender is then liable to be punished with imprisonment of either description for a term extending to three years and fine extending to two thousand rupees on first conviction and an imprisonment for seven years and fine

extending to five thousand rupees on commission of the same offence by the same party for the second time. Thus, to prevent pornographic materials whether involving children or not, IPC through these sections rightly imposes penalties on persons who prey upon the susceptibility of younger minds.

Thus, IPC stands for punishing the offences which expresses or suggests unchaste or lustful ideas or is impure or lewd or may be indecent acts. After the drastic development in the technological field covering computers and its networks it became difficult to convict the offender under IPC. The IPC does not directly embrace e-pornography but before the enactment of the IT Act, 2000, it was the sole penal provision in India banning and prosecuting the obscene publications. The provisions relating to obscenity under IPC however does not cover all offences evolving through new technological advancements and also punishments prescribed did not contain any element of deterrent.

Test of Obscenity

The law of obscenity, incorporated in Secs. 292 and 293 of the IPC, is a British Legacy. Sec. 292 of IPC lacked any definition of 'obscenity' and the courts in India conveniently borrowed the word 'obscenity' from the English statute and this has as its foundation the famous Hicklin test. The test was pronounced by Lord Cockburn in *Queen v. Benjamin Hicklin* and another^[8]. The Hicklin test has been adopted by the Honorable Supreme Court of India in the leading case of *State of Karnataka v. Basheer*^[9]. The Supreme Court adopted a national standard to determine obscenity in conformity with the Hicklin test. To quote:

"An overall view of the obscene matter in the setting of the whole work would, of course be necessary, but the obscene matter must be considered by itself and separately to find out whether it is so gross and its obscenity is so decided, that it is likely to deprave and corrupt those whose minds are open to influences of this sort and into whose hands the book is likely to fall."

Elaborating further the test of obscenity in *Umesh Chandra v. State of Rajasthan*^[10], regarding the community mores, obscenity without a prepondering social purpose or profit cannot have the constitutional protection of free speech and expression. When obscenity treats with sex in a manner appealing to the carnal side of human nature, or have that tendency, it is offensive to modesty and decency. But the extent of such appeal in a particular context is a matter for consideration in each individual case. It is to be judged on the basis of the national standards and whether it is likely to pander to lascivious, prurient or sexually precocious minds must determine the level of obscenity.

The Supreme Court negative the requirement of scienter as a necessary ingredient of the offence under Sec. 292 of IPC. The court was of the opinion that if the word obscenity is given as wide a meaning as was given in Hicklin case, there is a danger that many a literary work will not be available to the public. The publishers and booksellers may withhold a publication from being circulated for fear that they might be committing an offence under IPC. Such self-censorship of books and publications would affect the right of public to have access to works of art and literature. Therefore, it is the duty of the court on case-to-case basis to consider allegedly pornographic or obscene matter by taking an overall or holistic view of the entire publication or transmission and to determine, whether the passages or materials are so likely to deprave and corrupt those, whose minds are open to such

influences.

The court required to look at the literature alleged to be obscene as a whole and not in specific words or pieces and then assess its impact on the minds of readers including adolescents. If its overall effect is not corruption of mind or invocation of prurient interest then, it cannot be set aside as obscene. Mere use of vulgar language also does not make a book or piece of literature obscene. Vulgarity and obscenity are different concepts. The Supreme Court differentiated between vulgarity and obscenity, as vulgar writing is not necessarily obscene. Vulgarity arouses a feeling of disgust and revulsion and also boredom but does not have the effect of depraving, debasing and corrupting the morals of any reader of the novel, whereas obscenity has the tendency to deprave and corrupt those whose minds are open to such immoral influences. However, this principle of likely audience test is ambiguous and likely to fail in the internet age as internet can be accessed from any location and unless terms of usage clearly state the target audience, it is difficult to argue that a work was not meant for access by people belonging to a particular category. Recognizing these loopholes of the likely audience test, the issue of obscenity on internet was considered by the Supreme Court in *Ajay Goswami v. Union of India*^[11] wherein the court rightly observed that community based standard test is obsolete in the internet age which has converged the world into one global place. In this case, the Court took a liberal view and described the responsible reader test to judge obscenity. It held that publication should be judged as a whole and the content needs to be examined with a responsible reader standard. The court held that a complete ban on publishing news items or pictures will deprive adults from reading entertainment content that is permissible under the normal norms of decency in any society.

Position under IT Act, 2000

With increase in the growth and development of information technology, the possibilities of increase in the crimes relating to computers and its networks have also increased simultaneously. With the tendency of misusing of technology, there arisen a need of strict statutory laws to regulate the criminal activities in the cyber world and to protect the true sense of technology, IT Act, 2000 was enacted by the Parliament of India. The IT Act, 2000 was enacted by adopting the Model Law in Electronic Commerce adopted by the United Nations Commission on International Trade Law (herein after referred to as UNICITRAL)". The IT Act, 2000 provided the back bone for e-commerce in India. The Indian approach has been to look at e-governance and e-commerce primarily from the promotional aspects looking at the vast opportunities and the need to sensitize the population to the possibilities of the information's age. IT Act, 2000 aims to facilitate the development of a secure regulatory environment for electronic commerce.

The definition of computer given in the Act is wide enough to bring almost all categories of computing devices within its purview. Sec. 2(1) (i) of IT Act, 2000 defines Computer. The IT Act, 2000 as amended in 2008 enlarged the scope of definition of Computer Network, so as to include communication device which means cell phones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, audio or image. While it is admittedly a statute leaning towards regulation of commercial activities it has several sections

dealing with the contraventions of its provisions.

Since the primary objective of this Act was to create an enabling environment for commercial use of information technology, certain omissions and commissions of criminals while using computers have not been included. The IT Act, 2000 neither defines cyber-crime nor uses this expression, but only provides the definition of and punishment for certain cyber offences. This Act in a way has characterized the cyber-crimes, which were earlier unknown to general public in India. Cybercrime is not been defined in any Act enacted by the Indian Parliament.

Mere publication of obscene material amounts to impugned act under section 67 of the IT Act, 2000. Publication here stands for making available to the public at large in the specified modes as envisaged by IT Act, 2000. In the context of IT Act, 2000 this does mean making available to the public at large through certain specified mediums in virtual world driven by internet. Those could be through social networking sites; emails or email services; blogs and websites or contents on website. In the course of time considering the need to cope up with the expanding contours of various forms of cybercrimes, the IT Act, 2000 was amended in 2008.

The IT Amendment Act, 2008 was created to address issues that the original Act failed to cover and to accommodate further development of IT and related security concerns since the original law was passed. The IT (Amendment) Act, 2008 made creation and transmission of child pornography through electronic form illegal and punishable and enabled the law enforcement agencies to take strict action against those indulging in child pornography. Secs. 67A and 67B of IT (Amendment) Act, 2008 also makes no reference to the term pornography rather uses the words „sexually explicit act or conducts. When considered in the context of children, the sexually explicit act or conduct means actual or simulated sexual intercourse whether between persons of the same or opposite sex and exhibition of body parts of a minor. Thus, the term denotes actual sexual abuses which are more dangerous than obscenity and pornography While Sec. 67A proposes to punish the publication and transmission of sexually explicit act or conduct in electronic form, Sec. 67 B deals specifically with sexually explicit material depicting children in electronic form. When it comes to Sec. 67 B legislature has taken a special care of online abuse of child in the cyberspace which is so rampant and easy owing to certain advantages of Information Technology. Along with publication or transmission of impugned material, now, as per IT (Amendment) Act, 2008, even browsing and downloading of material depicting or containing child in an obscene or indecent manner or in sexually explicit act or conduct is now an offence with severe punishment. Child pornography is now a part and parcel of code of obscenity reflected in the IT (Amendment) Act, 2008.

The amendments do not make it illegal to view adult porn, it does make watching child porn an offence. Thus, mere possession of adult pornography is not an offence and the electronic avatars of traditional pornography now come under the watchful eye of the law. Apparently, the only place where obscene material is safe from the reach of the law is when it reaches the privacy of one's home and is for private use only. But this right to possess obscene materials in the privacy of one's home does not create a correlative right to receive it, transport it or distribute it even if it is for private use. Nor does it create some zone of constitutionally protected privacy that follows such material when it is moved outside the home

area. Thus, the individual has a right to view obscenity in his home but the law can punish virtually every means of obtaining the material.

The proviso to Sec. 67, 67A and 67B of the IT Act, 2000 however states that the publication or transmission of material containing sexually explicit act or conduct in electronic form shall be an exception if it is in the interest of science, literature or art of learning or other objects of general concern or which is kept or used Bonafede for religious purposes. No punishment will be given if the publication is justified as being for the public good. Thus, serious works of art, literature, politics or science, medical works even though they deal with sex or include sexual references or depictions, would not be considered pornography in the context of their legitimate uses. This proviso is applicable even in the case of child pornographic materials or depiction involving children in sexually explicit conduct. Thus, any person with pornographic materials depicting children could avoid the law if he successfully proves the work to come under the exception clause.

In determining the penalty under this Act, the fact whether the offence was the first or repeat offence, the extent of benefit gained by the guilty and loss caused to the affected persons would be given due consideration. Thus, a person found guilty for publication or transmission of obscene matters in electronic form shall be punished on first conviction with imprisonment of either description for a term that may extend to three years and a fine extending to five lakh and on subsequent conviction with imprisonment extending to five years and fine which may extend to ten lakhs. A first offence of publishing or transmitting pornographic or sexually explicit act or conduct in any electronic form involving children can attract up to 5 years in jail and fine of R.10 lakh and up to 7 years in jail and fine of up to 10 lakhs in case of second offence. The IT (Amendment) Act, 2008 has given due importance to the seriousness of electronic crimes against children, by attributing punishment that makes the offence under Sec. 67B of cognizable, non-bailable offence and can be triable by a magistrate of the first class in case of a first conviction and by a court of session, in a case of second or subsequent conviction. It is a non-compoundable offence.

Another safeguard applicable to child sexual abuse content is the Sec. 66E of the IT Act, which criminalizes the intentional or knowing capture, publishing or transmitting the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, in circumstances where a person can have a reasonable expectation that:

1. He or she could disrobe in privacy without being concerned that an image of his private area is being captured or
2. Any part of his or her private area would not be visible to the public regardless of whether that person is in a public or private place.

This protection of privacy is very relevant in cases of child sexual abuse images that are increasingly being captured on mobile cameras. The person who commits the violation of privacy shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both. These sections resemble and contains to a large extent the elements contained in Sec 292 of the IPC. Sec. 67 of IT Act, 2000 is analogous to Sec. 292 of IPC. They explain obscenity in similar terms, though the scope of the

latter is wider. Sec. 292 of IPC uses the word “any other object which can be argued to include any material or object in electronic form”. But in Sec. 67 of IT Act, 2000 the word “electronic form” is expressly provided. Thus, it can be stated that IT Act, 2000 is a special legislation, which overrides the inconsistent provisions of the existing legislations. Each and every electronic information which is obscene subject to the proviso, would come within the rigors of Sec. 67 of the IT Act, 2000 along with Secs. 67 A and 67 B.

This legislation is given teeth for the prevention and control of child pornography with certain provisions that facilitate the gathering of evidence. A court may order law enforcement authorities to seize any computer or an accessory that is suspected of having been used in the contravention of law. The Act has made cyber offences to be investigated only by a police officer not below the rank of the Inspector. The police officers are empowered to investigate offences as well as enter and search public places without a warrant for evidence so as to facilitate speedy delivery of justice. Such a lowering of rank of police officer to investigate offence under IT Act, 2000 is indeed a good one as there exist a shortage of staff for investigating cyber related cases.

Conclusion

The cyberspace affords access to vast amounts of valuable information and endless sources of entertainment. On the other side it also exposes them to certain dangers and harmful materials. In effect, the digital technology has dramatically altered the criminal justice terrain such that the opportunistic criminals have consciously turned to the computer to commit illegal acts in situations in which the computer serves as the instrument of the crime, the means by which the crime is committed, as well as in cases in which the victim’s computer or computer system is the target or objective of the act. Cybercrime is a real, fast-growing phenomenon which is becoming a case of global concern.

The concept of obscenity and pornography varies from time to time. Cyber-crime is a new class of crimes rapidly expanding with the technological advancements. To deal with this, the law has to keep pace with the emerging developments. Getting the right lead and making the right interpretation are very important in solving a cybercrime. The cyber space and the pornographic materials transmitted through computer and its networks have created challenges for India’s antiquated laws and orthodox norms.

Cyber pornography is an increasingly visible problem with high potential harm in society today. Child pornography, although was present in traditional society in a very restrictive manner, has become an evil of menacing proportions in the cyberspace, causing harm to innocent children connected to the internet for learning and games. The cyber child pornography includes not only images of real children engaging in sexual act but also computer-generated depictions indistinguishable from real children.

In dealing with cybercrime, law enforcement agencies at local level are always at a disadvantage because of the remarkable speed in which cybercrimes unfold against the typically low speed cooperation offered by traditional forms of mutual legal assistance. Here what is needed is a continued international collaboration between law enforcement agencies around the world, as it is practically impossible to control transnational cybercrimes at the level of states.

Suggestions

In *Aveek Sarkar v. State of West Bengal* ^[12], the Supreme Court stated that the Court should look at the effect of the material on the community and not declare a matter obscene upon the assessment of the complainant alone. In this case the Supreme Court discarded the *Hicklin’s Test*. However, given the fluid nature of the concept of obscenity, there is an urgent need for the judiciary to evolve its own solid rules and regulations. This is because without adequate standards and guidelines it is for the judges to decide what is obscene and what is not, making the result of a prosecution dependent heavily on the attitude of the judge concerned.

The existing laws in the country does not seem to be effective enough to control the menace of cyber pornography and the issues of cyber child pornography in India. The amendment made to IT Act, 2000 is a half -baked measure. What is required is a more comprehensive legislation to address the problem from a more realistic angle. Sec. 67B inserted by the IT (Amendment) Act, 2008 certainly has a positive impact, primarily because India does not have any special legislation to tackle cyber child pornography. To that extent the Act is path breaking. One difficulty posed here is that the term ‘child’ needs to be given a proper definition under IT Act, 2000. Cyber child pornography being a permanent record of abuse the virtual or pseudo images need to be legally regulated irrespective of the fact whether no real or actual children are involved in it.

As mentioned, the IT Act, 2000 does not define the term cyber-crime, but only deals with the various cybercrimes. At the same time through IT (Amendment) Act, 2008 a definition for Cyber Security was included. When this security system is infringed normally it results in a crime. Since the environment where such intrusion occurs is cyber space it becomes cybercrime. Without giving a full proof definition as to what is a cybercrime ensuring cyber security may not be possible. Thus, including a structured definition for the same should be considered.

As cybercrimes occur beyond geographical borders, there need the cooperation between law enforcement agencies of different countries. A duly signed extradition treaty or a multilateral cooperation arrangement is necessary to bring to trial cyber criminals across borders.

There is also legal ambiguity about whether ISPs should be liable for the material they carry or merely regarded as the conduits for that material. The end result is that ISPs legal obligations with respect to cyber child pornography are often unclear. Without a strict procedure but only with an emphasis on self-regulation the purpose of the cyber law will not be served. There is need for guidelines for ISPs to mandatorily report cybercrime incidents.

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