Menace of Child Pornography: Normative Approach to Control It

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Abstract

Pornography is exiting in society for a long time. Depending on the ethical and moral value associated with pornography the State allows it. There are conflicting debates about its impact on various groups of society in particular the vulnerable groups i.e., the child in particular. Understanding the potential impact on the physical and psychology of the child, the majority of states have restricted child pornography. However, the proliferation of technology in general and ICT, in particular, has made it difficult to control the creation, dissemination, participation in the pornography act across the world due to the dynamic nature of its reach and accessibility diluting the attempt of the State to control it. The exposure of ICT during the Corona time has exposed them to evil side of technology. There are reports of exponential rise of child pornography related incidents during Corona times. In the above background the paper attempts to identify the Indian regulatory attempts and the challenges in dealing with the menace of child pornography. The main purpose of the study is to analyse the existing legal national and international framework to regulate the menace of child pornography. For the study doctrinal method of research methodology has been applied. The study takes into consideration relevant laws from national and international perspective apart from the government report on the issue.

Keywords *Cyberspace, Pornography, Information Technology Law, Budapest Convention, Indian Penal Code, Intermediaries*

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INTRODUCTION

Defining pornography is an arduous task and therefore it was rightly described by the Potter Stewart that "I can't define pornography, but I know it when I see it." Though pornography is etymologically is the combination of two Greek words i.e., "porni" meaning prostitute and "graphien" meaning to write.[1] The word was used to recognize any work of art or literature depicting the life of a prostitute. Various civilizations around the world promoted this as art as per their moral and ethical standards. Though broadly remain divided on the issue of its wide acceptability and therefore the debate on pornography is not new. However, the development of technology making it easy to create and disseminate in permanent form without diluting the quality and quantity of such content has threatened the social fabric and well-being of society. There has been plenty of jurisprudential discussion on the issue with feminist groups freely and strongly arguing their case approving or disapproving the pornography. The radical group of feminists is against pornography and therefore advocating for the prohibition of this practice. They perceived it as violence against women and gender inequality which is against dignity and respect. According to them this one form of patriarchal mindset projected women as an object of sexual intercourse leading to violation of her respect and dignity physically and emotionally. On the other hand, the liberal feminist group conceptualizes or links pornography with the freedom of speech and body autonomy. Pornography breaks the patriarchal society's control over women's body and set her free. It is a reflection of autonomy over her body and soul. However, the liberal feminist is divided on the issue of intensity. The moderate liberal feminist argues for a certain act to prohibit and not the all-pornographic acts. Balancing the private rights and public interest to maintain the moral and ethical value strong in the society, private rights are required to balance against the public interest. Therefore, certain pornographic materials need to be prohibited. However, the strong liberal feminist promoted pornography by arguing for absolute openness in the production and consumption of pornography. According to them, banning pornography will create more harm than good for society as it will violate the rights of the consumer as well as the producers.

History is witness that the feminist views have played a major role in the upliftment of the status of women in society. The pornography-related regulations and freedoms are subjected to the ethical and moral perception of the State based on the above arguments. However, there is universal unanimity on the issue of the harmful effect of child pornography and related sexual abuse on the physical and psychological upbringing of the child. The

1 John Philip Jenkins, Pornography, *Britannica available at*: https://www.britannica.com/topic/pornography (visited on 30.06.2022

majority of states have imposed one or the other form of restriction on child pornography.

Irrespective of the above facts, pornographic material related to children are produced, consumed, abused, and available in plenty due to technology. The advent and proliferation of Information and Communication Technology (ICT) at the regional and global level have converted the world into a global village and is instrumental in creating, storing, sharing, disseminating child pornographic material more freely than ever before. Variety of tools[2] are used by the offender to produce and disseminate child related sexual materials like encryption, streaming, peer to peer platforms etc. In 2017 internet watch foundation identified 78,589 internet web pages, in 2018 it found an increase of 32 % in the number of such websites. In 2019, the Interpol-sponsored study created an International Child Sexual Exploitation Database to discover the alarming pattern of increase in the number of cases. It reported 2.7 million images and videos, an increase of almost double from the report of 1.5 million images and videos in 2019.[3] In 2020 the pandemic has aggravated the matter to a great extent due to more dependability on ICT during pandemic times. The pandemic caused serious economic loss to humanity in terms of economics and life. ICT during these times contributed to establishing contacts through social distancing. However, the technology was all of a sudden widely used by the mass public including children for educational purposes making it compulsory for them to adopt and use the technology. This sudden exposure to ICT has caused an increase in the consumption of child pornographic content. The India Child Protection Fund (NGO) reported[4] in April 2020 during the lockdown an increase in the consumption of child pornography content in India of massive 95%.

MEASURES TO CONTROL

Maintaining a law and order situation is the priority of every State and therefore State takes importantly necessary precautionary and preventive measures. The issue of cyber-crime cannot be controlled by exclusive one or the other measure. It needs a collaborative effort from all other important technical and non-technical measures to deter any cyber-crime. Hence, the three important measures have been identified for controlling and deterring

2 Report of the Special Rapporteur on the Sale and Sexual exploitation of children, including child prostitution, child pornography, and other childhood sexual abuse material, UN General Assembly, A/HRC/43/40, *available at*: https://undocs.org/en/A/HRC/43/40 (visited on 30.06.2022)

3 International Child Sexual Exploitation database, *available at*: https://www.interpol.int/en/Crimes/Crimes-against-children/International-Child-Sexual-Exploitation-database (visited on 01.07.2022)

4 Child Sexual Abuse Material in India Report On Demand For Child Pornography & Pilot Deterrence Using Artificial Intelligence, *available at:* https://7d53df5d-623a-479f-89b5-c88a0757a721.filesusr.com/ugd/aeb656_0247bfeedc04490b8e44e4fba71e3ad7.pdf, (visited on 01.07.2022)

cybercrime of any nature including child pornography i.e., regulatory measures, technical measures, and due diligence.

1) REGULATORY MECHANISM – INTERNATIONAL LAW

The world around the concept of pornography has been treated differently depending on the socio-legal structure and ethical issues. Cross-border availability of the material and trafficking make it an international problem. The wide use of the ICT does not respect the territorial boundaries and with impunity violate human rights through the cross-border dissemination of information with the help of various innovative tools and platforms including social media, making it difficult for the State to identify and control the pornography materials. Understanding the impact and human right violations due to the child pornography, State at international level have formulated some Convention related to pornography.

A. UN CONVENTION ON THE RIGHTS OF THE CHILD, 1989[5]

The Convention is the first widely[6] accepted international Convention on the issue of rights of Child internationally. The Convention creates a right-based approach to deal with the exploitation of a child. It defines a child as a person below 18 years of age.[7] It recognizes the rights of the child from various perspectives. It ensures the State takes adequate and appropriate measures to protect the child against all forms of exploitation and discrimination.[8] Article 34 of the Convention reflects the international call on sexual exploitation and sexual abuse through various modes. follow:

> "State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, State Parties shall, in particular, take all appropriate national, bilateral, and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials."

Though the Convention is an important piece of legislation on the rights of children, it remained toothless in terms of enforcement as it does not provide any enforcement

5 Convention on the Rights of the Child, *available at*: https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf (visited on 02.07.2022).

6 Currently, 196 States are party to the Convention of Rights of Child except for the USA, *available at*: https://indicators.ohchr.org/ (visited on 02.07.2022)

7 Convention on the Rights of the Child, Article 1

8 Id., Article 2

framework. It leaves the enforcement part on the State to look into the enforcement of the defined rights of the child.

B. OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY[9]

The Protocol deals with child pornography for the first time in detail. The Protocol is well accepted by the State as 177 countries[10] around the world has ratified the treaty endorsing the accepted modalities for enforcing the prohibition of child pornography. The Protocol is the outcome of the International Conference on Combating Child Pornography on the Internet, 1999 at Vienna, which analyzed the adverse effect of ICT on children. The option Protocol defines child pornography for the first time as:

> "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 primary purposes."[11]

Convention makes it compulsory for the State to criminalize the act of producing, distributing, disseminating, importing, exporting, offering, selling, or possessing the child pornography material by advocating for penalizing culprits.[12] To deal with the international cross-border case of pornography and its enforceability, the Protocol allows the State to take it as the basis for the extradition of the offender in a case if the States does not have an extradition treaty among them on the issue.[13] It expects the State to mutually provide cooperation and assistance in the investigation, obtaining evidence at their disposal and in extraction proceeding.[14] The State party should execute requests from another State Party for seizure or confiscation of goods or proceeds.[15]

9 Optional Protocol to The Convention on The Rights of The Child on The Sale of Children, Child Prostitution and Child Pornography, *available at*: https://www.ohchr.org/Documents/ProfessionalInterest/crc-sale.pdf (visited on 02.07.2022)

10 Status of the Convention, *available at*: https://indicators.ohchr.org/ (visited on 02.07.2022)

11 Optional Protocol to The Convention on The Rights of The Child on The Sale of Children, Child Prostitution and Child Pornography, Article 2(c)

12 Id., Article 3(1)(c)

13 Id., Article 5(2)

14 Id., Article 6

15 Id., Article 7(b)

C. COUNCIL OF EUROPE - CONVENTION ON CYBER CRIME, 2001[16]

European Convention is the first cyber-specific international Convention dealing with various offenses related to cyberspace. The objective of the Convention is to develop a common criminal policy to protect society from various cyber-crime and fostering international cooperation regarding the investigation and enforcement of cybercrimes. It advocates for the harmonization of the domestic claws to deal with the abovementioned objective. The Convention was signed in 2001 and by April 2021, 65 States have been party to it with 12 more State have signed for it. Of these 30 states have largely enacted the domestic legislation in response to it in line with the Convention.[17]The Convention lists out the substantial as well procedural provisions to be incorporated by the State.

It defines the child as a person below 18 years of age and criminalizes child pornography in Article 9. The Convention elaborates on the nature of transactions in cyberspace which invites the recognize the following act as Act of pornography i.e.,

> "(a) producing child pornography for its distribution through a computer system;
>
> (b) offering or making available child pornography through a computer system;
>
> (c) distributing or transmitting child pornography through a computer system;
>
> (d) procuring child pornography through a computer system for oneself or another person;
>
> (e) possessing child pornography in a computer system or on a computer data storage medium."[18]

The Convention elaborates on the necessary measures that need to be taken by the State to effectively deal with the cyber-crimes elaborated in the Convention at the national as well as international level. Understanding the undeniable impact of the cross-border impact

16 The Convention is also known as Budapest Convention on Cyber Crime, 2001, *available at*: https://www.europarl.europa.eu/meetdocs/2014_2019/documents/libe/dv/7_conv_budapest_/7_conv_budapest_en.pdf. (Visited on 03.07.2022)

17 Council of Europe, Enhanced cooperation on cybercrime and electronic evidence: Towards a Protocol to the Budapest Convention, *available at*: https://rm.coe.int/towards-2nd-additional-protocol/1680a22487 (visited on 03.07.2022)

18 Id., Article 9(1)

of the cyber-crime the Convention elaborates on the State to improve on the laws with regards to the jurisdiction, extradition of the culprit, mutual assistance in the investigation, transfer of related data, collection of evidence, confiscation of related materials, etc.

Recognizing the urgent need to have a collaborative and cooperative approach to deal with cyber-crime, the Convention is well accepted by the State. The Convention is open for the European as well as non-European State[19]. So far India is not a party to the Convention.

D. COUNCIL OF EUROPE CONVENTION ON THE PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION AND SEXUAL ABUSE, 2007[20]

This Convention is more specifically deals with the various kinds of Child related sexual exploitation through the electronic and non-electronic medium. It recognizes a child as a person below 18 years of age.[21] It defines child pornography as "any material that visually depicts a child engaged in real and simulated sexually explicit conduct or any depiction of a child's sexual organs for a primarily sexual purpose"[22]. The Convention criminalizes the intentional act of producing child pornography, offering and making available, distribution, procuring for oneself or other people, possession of pornographic content, knowingly obtained access to child pornography.[23]It makes the intentional conduct of recruiting a child for pornography performance, coerce the child to perform pornography, or profiting from such exploitation of a child, knowingly attend pornographic performance involving the child.[24] Certain grounds have been identified which as per the Convention aggravate the circumstances and therefore require tough sanctions to deal with the issues like offense causing serious damage to physical or mental health, torture or serious violence, an offense against vulnerable victims, the offense is done by family members or person in custody or authority, several people acting together, a framework of the criminal organization, a repeat of the offense.[25]

Understanding the cross-border nature of the offense, the Convention asks for international cooperation in the form of mutual legal assistance and extradition in criminal

19 The Convention is signed by many Non-European States such as the USA, Japan, Australia, Sri Lanka. India is not a party to the Convention so far.

20 Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, *available at*: https://rm.coe.int/1680084822 (accessed on 03.07.2022)

21 Id., Article 3

22 Id., Article 20(2)

23 Id., Article 20(1)

24 Id., Article 21

25 Id., Article 28

matters for investigations and proceedings. It suggests protective assistance for the victims like setting up of information services through telephone or internet helpline for advice or help. For psychological, physical, and social recovery the State needs to provide short or long terms assistance. It leaves it on State to develop such infrastructure and system to amicably resettle the victim.[26]

2) REGULATORY MECHANISM - DOMESTIC LAWS

Legislative point of view India has a long list of legislation having bearing on pornography directly or indirectly. The following legislation is important in deciding the fate of child pornography-related information.

A. CONSTITUTION OF INDIA

The Constitution of India is the most sacrosanct law of the land. Part III of the Constitution lays down the fundamental rights which are the cornerstone of a democratic state and society. Article 19 is the most debated fundamental right. While Article 19(1)(a) deals with freedom of speech and expression, clause (g) gives the right to practice or carry on any occupation, trade, or business. However, the Court has cleared on a plethora of occasions that the fundamental rights are not absolute. Article 19(2)[27] introduce the restrictions to the enjoyment of the rights. The Apex Court in the case of M/S Khoday Distilleries ltd. Vs. State of Karnataka[28] observed that the fundamental rights are not absolute and restricted by the qualifying conditions. Right to business does not include "the right to trafficking in women or slaves or counterfeit coins or to carry on any business of exhibiting and publishing pornographic or obscene films or literature."

Constitution does not promote any activity which degrades the moral value of society and is very sensitive to the welfare of children. Child pornography is not in the interest of the physical and psychological well-being of the child.

B. INDIAN PENAL CODE

Indian Penal Code is one of the oldest legislations on crime and therefore doesn't deal with pornography, however, it defines the concept of obscenity and criminalizes it under sections 292 & 293. The latter section criminalizes the sale, distribution, exhibition, circulation of obscene material of any person below the age of 20. The Apex Court in Khoday

26 Id., Article 14

27 Constitution of India, Article 19 (2)

28 Khoday Distilleries ltd. vs. State of Karnataka 1995 SCC (1) 574

case[29] held that

> "There is difference between obscenity and pornography in that the latter denote 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 moral, but pornography is obscenity in a more aggravated form".

Reading the provision along with the Information Technology Act, 2000 covers the cyber obscenity-related issues.

C. THE INFORMATION TECHNOLOGY ACT 2000 (IT ACT)

Initially, the IT Act was created in response to the UNCITRAL Model Law of Ecommerce, 1996 dealing commercial aspect of electronic transactions and their legal validity. However, analyzing the dynamic nature of cyberspace and its direct impact on the State and its subject, the Information Technology Amendment Act, 2008 was incorporated in the IT Act. Right from the beginning the ambit of the legislation is very wide covering any offenses or contravention committee in India or outside in foreign land having an impact on Indian soil.[30] Therefore, the Act covers all kinds of criminal acts committed by any person from anywhere i.e.., within or outside the territory of India, if it involves a computer, computer system, or computer network located in India.[31]Therefore the effect test has been applied for the application of the Act to foreign generated crime. While this provision is promising in itself in criminalizing the cross-border origin of crime, in absence of a party to the International Convention for cooperation in the investigation and part of global enforcement mechanism the Act does not provide the effective procedural mechanism to enforce it in such cases. In the absence of any clear guidelines, extradition or Mutual Agreements are the way out to address the menace of pornography.

The IT Act has provisions relating to child pornography. Section 67B comprehensively deal with the Child Sexual Abuse Material (CSAM) in the Act as it provides stern action for publishing, transmitting, or cause to be publishing or transmitting material relating to a child engaged in a sexually explicit act or conduct.[32] It also covers creating text or images, collecting, seeking, browsing, downloading, advertising, promoting, exchanging or

29 Id.,

30 Information Technology Act, 2000, Section 1 and Section 75

31 Id., Section 75(2)

32 Id., Section 67B (a)

distributing material depicting a child in an obscene or sexually explicit manner.[33] Grooming of a child for a sexually explicit offense such as inducing, cultivating, or enticing the child to an online relationship of such nature is an offense.[34] Anyone records in electronic form own abuse or that of the other relating to the sexually explicit act of children are punishable under the Act.[35] The section provides the punishment of 5 years of imprisonment and penalty extend to 10 lakh in the first case. Subsequently, if they are caught then seven years imprisonment and fine extend 10 lakh.

D. INFORMATION TECHNOLOGY ACT 2000 - LIABILITY OF INTERMEDIARIES

Indian definitions of intermediaries[36] is the most comprehensive one covering 9 different categories of intermediaries. Social media and content creators are one form of intermediaries. The IT Act exempts liabilities of social media in case it is it restrict itself to provide to a communication system over which information is made available by third parties. The platform will not be liable if it doesn't contribute in initiating, selecting and modifying the information contained in the transmission.[37] However, it will be liable if they have conspired, abetted, aided, or induced by threats or promise in the commission of a crime or upon receiving the actual knowledge or notified by the appropriate government or its agency to it, fails to expeditiously remove or disable access to the material on that resource.[38]

Apart from criminalizing various offenses under chapter IX, the Act formulates the Rules for Intermediaries i.e.., The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule 2021 (New Rules).[39] The New Rules advise the intermediaries and the social media intermediary to apply due diligence so that the platform or technology should not use to host, display, upload, modify, publish, transmit, update

33 Id., Section 67B (b)

34 Id., Section 67B (c)

35 Id., Section 67B (e)

36 Id., Section 2(w) "intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service concerning that record and includes Telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places, and cyber cafes."

37 Id., Section 79 (2) (a).

38 Id., Section 79(3)(a) & (b)

39 The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rule 2021, available at: https://www.meity.gov.in/writereaddata/files/Intermediary_Guidelines_and_Digital_Media_Ethics_Code_Rules-2021.pdf. The Code suppress the Information Technology (Intermediary Guidelines) Rule, 2011.

or share any information that is obscene, pornographic in nature, pedophilic, invasive of another's privacy including bodily privacy[40] and is harmful to the child.[41] It is imperative on the part of the intermediary and social media intermediary to mention the above condition with explicit clarity in the privacy policy and user agreement.

The New Rules attempt to control and regulate the misuse of intermediaries/social media. It lays down some new mechanisms to deal with the misuse of social media of the following types important to regulate child pornography.

a. on receiving the actual knowledge of the information from the Court of competent authority about the availability on any website which is against the public order, decency, or morality, the Intermediary shall not host such information.[42]

b. Intermediaries are required to at least once a year inform their users about the rule and regulations, privacy rules, any changes if any, etc.[43]

c. Grievance officers are needed to appoint with their name and contact number published on the website. Acknowledge the complaint within 24 hours and resolve it within 15 days.[44]

d. In case complaint regarding availability of material of the nature which expose a private area of individual, full or partial nudity or sexual conduct, artificial morphed images, the intermediary shall remove or disable the access within 24 hours to such material.[45]

e. Intermediaries providing message services are required to identify the originator of the information when required by the competent Court/authority. [46]

f. Technology-based measures are required to be adopted by the intermediaries to identify any form of child sexual abuse or conduct on their platform.[47]

The above provisions are a remarkable significant development in regulating the

40 The Information Technology (Intermediaries Guidelines and Digital Media Ethics Code) Rule 2021, Section 3(1)(b)(ii)

41 Id., Section 3(1)(b)(iii)

42 Id., Section 3 (d)

43 Id., Section 3(f)

44 Id., Section 3(2)(a)

45 Id., Section 3(2)(b)

46 Id., Section 4(2)

47 Id., Section 4(4)

intermediaries and social media in a more effective way.

E. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 AND ITS ALLIED RULES (POCSO)

From Indian perspective POSCO Amendment At, 2019[48] incorporated in POSCO Act, 2012 define Child pornography for the first time as:

> "any visual depiction of sexually explicit conduct involving a child which includes a photograph, video, digital or computer-generated image indistinguishable from an actual child and image created, adopted or modified, but appears to depict a child."

The Act defines a child to be below 18 years of age. Section 14 of the Act criminalize the use of a child or children for pornographic act with imprisonment of not less than 5 years and fine. In case of subsequent conviction, imprisonment is not less than 7 years and a fine. Section 15 of the Act criminalizes the storing, possessing of pornographic material in any form is liable to a fine of 5000. Storing or possessing pornographic material relating to the child in any form to transmit or distribute is punishable with imprisonment up to 3 years or fine or both.[49] In case soring the information for commercial purpose invite punishment of three to five years imprisonment or fine or both. In subsequent conviction, the imprisonment can extend to five to seven years and fine.[50]

POSCO Rule 2020[51] apart from other things set the procedure for reporting of pornographic material by an individual or intermediaries. In case a person who has received such material or any information of the place where it is stored, possessed, distribute, etc., can report the matter to the local police of cybercrime portal. In case intermediaries come forward with such information, they should hand over the crucial information regarding the source of its origin. The report should also mention the detail of the device on which such content was noticed.[52]

F. RAJYA SABHA COMMITTEE REPORT ON CHILD PHONOGRAPHY:

48 The Protection Of Children From Sexual Offences (Amendment) Act, 2019 No. 25 Of 2019, *available at:* https://wcd.nic.in/sites/default/files/Protection%20of%20Children%20From%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf (visited on 04.07.2022)

49 Id., Section 8(2)

50 Id., Section 8(3)

51 The Protection of Children from Sexual Offences Rules, 2020, available at: https://wcd.nic.in/sites/default/files/POCSO%20Rules%20merged.pdf, (visited on 04.07.2022)

52 Id., Section 11

Under the chairmanship of Jairam Ramesh, an Ad hoc committee of the Rajya Sabha was constituted to study the alarming issue of pornography on social media[53] and its effects on children and society. The committee presented the report on 25th January 2020. The report makes the 5 levels of recommendations as legislative measures, technological measures, institutional measures, social and education measures, and State level initiatives.

1. From a normative perspective realizing the need to reform the legislative part, the committee proposed to amend the definition of child pornography under section 2(1) POCSO Act 2012 to include a picture of nude or semi-nude of a child, if it is of erotic sense.

2. Taking a clue from the international labor organization suggested introducing the concept of the role of grooming in the crime. The concept of grooming has to be specifically recognized as "the process of establishing/building a relationship with a child either in person or through the use of the internet or other digital technologies to facilitate either online or offline sexual contact with that person".[54]

3. Committee recommended the code of conduct to be created by the central government to lay down code of conduct for intermediaries and to maintain child safety online, appropriate content and curbing the use of children for pornographic purposes.

4. Recommend amendment to the information technology act 2000 under section 67B to include those who provide pornographic access to children and those who access, produce or transmit CSAM (Child sexual abuse material).

5. Extend the scope of IT act section 69A to block /prohibit all websites/intermediaries that carry CSAM.

3. TECHNICAL MEASURES

The technical nature of cyberspace makes child pornography accessible and therefore to some extent the technology can provide the solutions to control it also. Understanding this aspect of the argument the hardware, as well as software giants, are developing various technological devices to monitor, filter, and control cybercrime. Google, Microsoft, yahoo search engines have blocked the access of child pornography-related material from their

53 Report of the Ashco Committee of the Rajya Sabha to Study the Alarming issue of Pornography on Social Media and its effect on Children and Society as a whole, *available at*: https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/71/140/0_2020_2_16.pdf, (visited on 05.07.2022)

54 Id.,

search engines. Recently Apple has launched an app that will scan the pics on the phone to identify the sexual abuse material relating to children.[55]

The Rajya Sabha Committee on the Pornography have suggested certain action on the part of the government on the intermediaries to control the pornographic material CSAM technically as:

1. Need for proactive monitoring of the CSAM material and subsequent taking it down.

2. Various platforms are being used by the offender to circulate the CSAM material, in particular the end-to-end encryption technology. The committee suggests breaking the end-to-end encryption to trace the origin of the content.

3. A mandatory app to monitor the child's access to CSAM material needs to be created in partnership with the industry and installed in the devices. The app is to be available freely.

4. Memorandum of Understanding with the industry to monitor CSAM.

5. To adopt blockchain technology to identify the use of technology for tracking the use of cryptocurrency to purchase CSAM online. Need to examine the online payment details of the offender.

6. Intermediaries should provide filtration option to the users.

7. Need to create mechanism to identify the underage users of social media at the time of signing up of account. Need technical measures to identify the authentic social media user.

4. DUE DILIGENCE

The last measures to be used for dealing with this menace are to come from the users and children. The IT Act expects due diligence from intermediaries only, leaving no guidelines for the users. Since it is users who are the victim of technology, their awareness, and disciplined approach while using and consuming the technology will save them from victimization and the spread of pornography. Following few due diligence measures can be implemented to safeguards oneself from crime:

1. Parents control or use the technology under their guidance.

55 Washington post, Apple will scan iPhones for child pornography, *available at:* https://www.washingtonpost.com/technology/2021/08/05/apple-child-pornography-iphone/, visited on (05.07.2022)

2. Awareness regarding privacy issues is required.

3. Not to share crucial information such as passwords of emails, banks, etc., about yourself to unauthentic persons.

4. Always apply the best security tips to keep your transactions safe.

5. Important transactions to be under the observation of parents/guardians.

6. Not to share any objectionable material on any social media or other platforms.

7. Not to befriend strangers on social media platforms.

FINDINGS & CONCLUSION

Pornography is a heinous crime and very determinantal for the well-being of the child. Though various legislative measures are created to have a deterrent effect on offenders, the report suggests the rising trends in child pornography content worldwide. The technical nature of cyberspace makes it difficult to control as dissemination of such material is very easy with just a click of the mouse. Offenders have identified various measures to bypass the technological and regulatory measures. Therefore, continuous development of innovative technology and regulatory mechanism is the need of the day. The current New Rules, 2021 under IT Act is innovative in terms of fixing the responsibility of intermediaries in controlling it from their end. Hopefully, that will create some deterrent effect and control the child pornographic materials. Due diligence from intermediaries and users coupled with effective regulatory and technical measures will be able to deal with the problem effectively.

However, regulatory mechanisms without international backing may not be so effective because of the nature of cyberspace. Therefore, the government should participate in one of the international forums for international cooperation on the issue. Budapest Convention is an effective means to deal with the issue internationally. India needs to ratify the treaty as many non-EU states have been party to the Convention. The Convention provide the international cooperation is investigating and prosecuting the international crime of such nature. Though before party to such convention India need to have a proper normative standard for data protection and other related laws.