

## The Reality and Legality of Child Pornography

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### Abstract:

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

-(ATTORNEY GENERAL ERIC HOLDER Jr. Speaks at the NATIONAL STRATEGY CONFERENCE ON COMBATING CHILD EXPLOITATION IN SAN JOSE, CALIFORNIA, MAY 19, 2011).<sup>1</sup>

Under the ambit of POCSO ACT which was enacted by the parliament on 14th November, 2012 defines Child as any person below the age of 18 years and provide protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and Pornography.

By the mid-1980's, the trafficking of child pornography within the United States was almost completely eradicated through a series of successful campaigns waged by law enforcement. Anonymous distribution and receipt was not possible, and it was difficult for paedophiles (a person who is sexually attracted towards children) to find and interact with each other. For these reason, child pornographers became lonely and hunted individuals because the purchasing and trading of such images were extremely risky.<sup>2</sup>

Unfortunately, the child pornography market exploded in the advent of the internet and advanced digital technology. The internet provides ground for individuals to create, access, and share child sexual abuse images worldwide at the click of a button. Child pornography images are readily available through virtually every internet technology including websites, email, and instant messaging/ICQ, internet relay chat(IRC), newsgroup, bulletin boards, peer to peer networks, and social networking sites. Child pornography offenders can connect on internet forums and networks to share their interests, desires, and experiences abusing children in addition to selling, sharing, and trading images.

Moreover, these online communities have promoted communication between child pornography offenders, both normalizing their interest in children and desensitizing them to the physical and psychological damages inflicted on child victims. Online communities may also attract or promote new individuals to get involved in the sexual exploitation of children.

### I. VICTIMS OF CHILD PORNOGRAPHY

It is important to distinguish child pornography from the more conventional understanding of the term pornography. Child pornography is a form of child sexual exploitation, and each image graphically memorializes the sexual abuse of that child. Each child involved in the production of an image is a victim of sexual abuse.

While some child sexual abuse images depict children in great distress and the sexual abuse is self-evident, other images may depict children that appear complacent. However, just because a child appears complacent does not mean that sexual abuse did not occur. In most child pornography cases, the abuse is not a one-time event, but rather ongoing victimization that progresses over months or years. It is common for producers of child pornography to groom victims, or cultivate a relationship with a child and gradually sexualize the contact over time.<sup>3</sup> The grooming process fosters a false sense of trust and authority over a child

order to desensitize or break down a child's resistance to sexual abuse. Therefore, even if a child appears complacent in a particular image, it is important to remember that the abuse may have started years before that image was created.

Furthermore, victims of child pornography suffer not just from the sexual abuse inflicted upon them to produce child pornography, but also from knowing that their images can be traded and viewed by others worldwide. Once an image is on the internet, it is irretrievable and can continue to circulate forever. The permanent record of a child's sexual abuse can alter his or her life forever. Many victims of child pornography suffer from feelings of helplessness, fear, humiliation, and lack of control given that their images are available for others to view in perpetuity.

Unfortunately, emerging trends reveal an increase in the number of images depicting sadistic and violent child sexual abuse, and an increase in the number of images depicting very young children, including toddlers and infants.

<sup>1</sup><https://www.justice.gov/criminal-ceos/child-pornography>

<sup>2</sup>[https://www.parentsprotect.co.uk/warning\\_signs.htm](https://www.parentsprotect.co.uk/warning_signs.htm)

<sup>3</sup><https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-abuse/>

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## II. CRIMINAL CEOs ROLE

CEOs work to deter and eradicate the production, distribution and possession of child pornography. CEOs attorneys work with the high technology investigative unit (HTIU), the federal bureau of investigation (FBI), United States attorney's offices throughout the country, and the National centre for missing and exploited children (NCMEC) to vigorously combat this growing problem by investigating and prosecuting violators of federal child pornography laws. In addition, CEOs attorneys work with law enforcement personnel to identify and rescue victims of child pornography from continued abuse.

The use of the internet to commit child pornography offenses has blurred traditional notions of jurisdiction. CEOs maintain a coordinated, national-level law enforcement focus to help coordinate nationwide and international investigations and initiatives.

Furthermore, CEOs attorneys and HTIU computer forensic specialists travel all over the world to conduct and participate in trainings for investigators, law enforcement personnel, and others involved in efforts to investigate and prosecute child pornography offenders. CEOs also designs, implements and supports law enforcement strategies, legislative proposals, and policy initiatives relating to federal child pornography laws.

## III. CHILD SEXUAL ABUSE

Child sexual abuse issues are generally handled by state and local authorities, and not by the federal government. There are many sound reasons for this, including the relationship between the states, which generally have broad authority within their jurisdictions, and the federal government, which has constitutional limitations on its authority. As a result, the department of justice generally has no province over these matters.

If, however, a child is sexually abused on federal lands, such as a military base or Indian Territory, the offender may be prosecuted under federal law in addition to, or instead of, state law.

Child sexual abuse isn't always easy to spot. The perpetrator could be someone you have known a long time or trust, which may make it even harder to notice. Consider the following warning steps:

### **Physical Signs:**

1. Difficulty in walking or sitting
2. Bloody, torn, or stained underclothes
3. Bleeding, bruises, or swelling in genital area
4. Pain, itching, or burning in genital area
5. Frequent urinary or yeast infection

### **Behavioural Signs:**

1. Shrinks away or seems threatened by physical contact
2. Exhibits signs of depression or post traumatic stress

disorder

3. Expresses suicidal thoughts, especially in adolescents
4. Self-harm
5. Develops phobias
6. Has trouble in school, such as absences or drops in grades
7. Changes in hygiene, such as refusing to bathe or bathing excessively
8. Returns to regressive behaviours, such as thumb sucking
9. Runs away from home or school
10. Overly protective and concerned for siblings, or assumes a caretaker role
11. Nightmare or bed-wetting
12. Inappropriate sexual knowledge or behaviour<sup>4</sup>

## IV. R v. SHARPE CASE<sup>5</sup>

It began in 1995 when John Robin Sharpe was returning from a trip to Amsterdam where he had travelled to meet Edward Brongersma, a Dutch jurist and advocate of pederasty and paedophilia. Upon return, Canada Customs found a collection of computer discs containing a text entitled "Boy abuse". A later search of his Vancouver apartment revealed a collection of photographs of nude teenage boys, some of them engaged in sexual acts with one another. Sharpe was arrested and charged with illegal possession under s. 163.1(4) of the Criminal Code, and for possession for the purposes of distribution or sale under s. 163.1(3) of the Code.

Acting in his own defence, Sharpe challenged the criminal provisions as violation of freedom of expression under section 2(b) of the Charter. Sharpe argued before a court that laws regarding the possession of child pornography violated his freedom of thought and expression. He presented a fairly controversial argument that since he was interested in teenage boys, he should be entitled to pornographic material relating to his sexual interests. Nonetheless, the law he was charged under was eventually upheld with some exceptions regarding written pornography.

During his trial, the prosecutor argued for the harmfulness of child pornography possession and why it should remain illegal. Sharpe attempted to refute the prosecution's claims that child porn and child sexual abuse are a related paradigm by claiming that the legal attitudes towards pornographic representations of children 'creates a victim' instead of starting with one. The line between production, distribution, and possession was also espoused by Sharpe. He further argued that in many instances possession of child pornography could act as a catharsis in preventing child sexual abuse. In regard to provisions on written pornography, Sharpe argued that the law in question targeted the political advocacy of pederasty and served little purpose in protecting children from sexual abuse. The charges in respect to Sharpe's writings were eventually dismissed when he argued artistic merit with the assistance of an English professor who compared his written works to 'transgressive expression' parallel to Marquis de Sade's *120 Days of Sodom*.

<sup>4</sup><http://www.childmolestationvictims.com/warning-signs-of-child-molestation/>

<sup>5</sup><https://scc-csc.lexum.com/scc-csc/en/item/1837/index.do>

## V. ASHCROFT v. FREE SPEECH COALITION, 535 U.S. 234 (2002)<sup>6</sup>

The issue in this case was that does the Child Pornography Prevention Act (CPPA) of 1996 struck down freedom of speech, by preventing speech which is neither obscene nor child pornography, and does it so violate child pornography.

Now let's talk about the facts of the case in brief: the Child Pornography Prevention Act (CPPA) defined prohibited child pornography to include explicit sexual images which were meant to represent minors but did not use any real children as subjects, being produced by other means such as computer imaging. The Free Speech Coalition (petitioner in this case) argued that this federal law violated the First amendment.

The Congress enacted the CPPA in 1996 to prohibit the use of images which appear to show the minors engaged in sexual acts but which were, however, produced without the use of real children. The possession or distribution of images so produced, whether by virtual technology methods or by using adults, who look childish or are made to look so, was prohibited in specific conditions by this act. This was challenged by the Free Speech Coalition (petitioner in this case), which is a trade union for the adult-entertainment industry, and other parties. They challenged the act in federal district court on the grounds that the terms "appear to be" and "conveys the impression that" as used in the impugned statute are too vague and broad to prevent the Act from being improperly used to prevent them from producing works under their constitutional rights guaranteed in the First Amendment. The district court granted summary judgement for the government (defendant in the case). The decision was reversed by the federal court of appeals, and the defendant appealed.

## VI. ADAM WALSH CHILD PROTECTION AND SAFETY ACT- CRITICS IN INDIA<sup>7</sup>

The Adam Walsh Child Protection and Safety Act is a federal statute that was signed into law by U.S. President George W. Bush on July 27, 2006. The Walsh Act organizes sex offenders into three Lines according to the crime committed, and mandates that Line 3 offenders (the most serious line) update their whereabouts every three months with lifetime registration requirements. Line 2 offenders must update their whereabouts every six months with 25 years of registration, and Line 1 offenders must update their whereabouts every year with 15 years of registration. Failure to register and update information is a felony under the law. States are required to publicly disclose information of Lien 2 and Lien 3 offenders, at minimum. It also contains civil commitment provisions for sexually dangerous people.

The Act also creates a national sex offender registry and instructs each state and territory to apply identical criteria for posting offender data on the internet (i.e., offender's name, address, date of birth, place of employment, photograph, etc.). The Act was named after Adam Walsh, an American boy who was abducted from a Florida shopping mall and later found murdered.

As of April 2014, the Justice Department reports that 17 states, three territories and 63 tribes had substantially implemented requirements of the Adam Walsh Act.

### *Adam Walsh has some legal applications which are listed below:*

- Gives the U.S. Attorney General the authority to apply the law retroactively
- Gives a federal Judge the ability to civilly commit individuals who are in the custody of the federal prison system if it is proven that the individual (1) has engaged or attempted to engage in sexually violent conduct or child molestation; (2) suffers from a serious mental illness, abnormality, or disorder; and, (3) as a result, would have serious difficulty refraining from sexually violent conduct or child molestation if released. A hearing is available to the involuntarily committed individual every six months to reconsider their commitment status if requested by counsel or the person in the federal treatment program.
- Establishes a national database which will incorporate the use of DNA evidence collection and DNA registry and tracking of convicted sex offenders with Global Positioning System technology.
- The law defines and requires a three-line classification system for sex offenders, based on offense committed, replacing the older system based on risk of re-offence.
- Line 1 sex offenders are required to register for 10–15 years; tier 2 for 25 years and line 3 offenders must register for 25 years to life.
- Increases the mandatory minimum incarceration period of 25 years for kidnapping or maiming a child and 30 years for sex with a child younger than 12 or for sexually assaulting a child between 13 and 17 years old.
- Allows courts to expand definition of sex crimes requiring registration through broad residual clause.
- Increases the penalties for sex trafficking of children and child prostitution.
- Widens federal funding to assist local law enforcement in tracking sexual exploitation of minors on the internet.
- Creates a national child abuse/neglect registry to protect children from being placed into the care of or adopted by people convicted of child abuse or child neglect.
- Limits the defence access to examine child exploitation material which is the subject of a charge, such that examination may only be conducted in a government building.<sup>8</sup>

## VII. SEXTORTION IN CONJUNCTION TO CHILD PORNOGRAPHY

Sextortion is a serious as well as heinous crime that generally occurs when someone threatens to distribute your private and sensitive material if you don't provide them images of sexual nature, sexual favours or money. The perpetrators may also threatens you to harm your children, friends, family or

<sup>6</sup><http://www.casebriefs.com/blog/law/constitutional-law/constitutional-law-keyed-to-cohen/restrictions-on-time-place-or-matter-of-expression/ashcroft-v-the-free-speech-coalition/>

<sup>7</sup><http://time.com/4437205/adam-walsh-murder/>

<sup>8</sup><http://criminal.findlaw.com/criminal-charges/child-pornography-and-selfies--what-you-need-to-know.html>

relatives by using information they have obtained from your electronic devices unless you fulfil their demand.

All social networks can be abused to target victims. The environment in which fraud or extortion of this nature can take place is created and built on communication. Social networks and all other means of communication facilitate that and it leads to child pornography also.

Organised crime networks are involved in Sextortion as it involves little investment and low risk for comparatively high financial gain. Victims usually feel trapped by circumstance and are reluctant to report it to the police. The internet also allows for a large number of people to be reached with comparative ease. Individuals may be targeted through any number of different websites, including social networking, dating, webcam or adult pornography sites. In some cases, victims have been identified via pornography sites where they entered credit card details. There is no specific method or social network used. The single common factor in all cases is for the organised crime group to make money. Resourceful and practiced criminals target hundred of individuals around the world with the so-called 'scatter-shot' approach aimed at increasing their chances of finding a victim.<sup>9</sup>

### VIII. DOMESTIC MINOR SEX TRAFFICKING

The federal trafficking victims' protection act defines the crime of human trafficking as:

- A. The recruitment, harbouring, transportation, provision or obtaining of a person for the purpose of a commercial sex act where such an act is induced by force, fraud, or coercion, or in which the person induced to perform such act which has not attained 18 years of age, or
- B. The recruitment, harbouring, transportation, provision or obtaining of a person for the purpose of a labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Domestic minor sex trafficking is the commercial sexual exploitation of American children within U.S. borders. The age of the victim is the critical issue- there is no requirement to prove force, fraud, or coercion was used to secure the victims action. In fact, the law recognizes the effect of psychological manipulation by the trafficker, as well as the effect of threat of harm which traffickers/pimps use to maintain control over their young victims. Children can be commercially sexually exploited through prostitution, pornography, and/or erotic entertainment.

*"The best estimate, the best data, suggests that we have at least 100000 American kids a year are victimised through the practice of child prostitution; that number ranges as high as 300000."*

**-ERNIE ALLEN, NATIONAL CENTRE FOR MISSING AND EXPLOITED CHILDREN**

The Trafficking Victims Protection Act 2000 was passed on October 28, 2000, is the federal law specifically enacted to prevent victimisation, protect victims, and prosecute perpetrators of human trafficking.

The TVPA goes on to establish a framework of rights that a victim of domestic minor sex trafficking is entitled to, including:

1. The right not to be detained in facilities inappropriate to their status as crime victims;
2. The right to receive necessary medical care and other assistance;
3. The right to be provided protection if a victim's safety is at risk or if there is a danger of additional harm by recapture of the victim by trafficker.

These rights are not being provided uniformly across the United States as first responders and juvenile justice struggles to identify the victims and respond within a system ill-equipped to protect the victims of domestic minor sex trafficking. Traffickers also known as pimps are those persons who profit by receiving cash or other benefits in exchange for the sexual use of a minor by another person.

### IX. ROLE OF TECHNOLOGY IN DOMESTIC MINOR SEX TRAFFICKING

"Domestic minor sex trafficking" is the term coined by Shared Hope International to identify the commercial sexual exploitation of children under 18 years of age who are U.S. citizens or lawful permanent residents. The importance of the term "domestic minor sex trafficking" (DMST) is multi-dimensional. Language is a vital element to the human experience. It allows people to communicate a range of thoughts, emotions, and images in a single word; therefore, the labels placed on victims can have a profound impact on how society views the victims and how the victims view themselves. Use of a term that accurately defines the nature of the crime and the victim status is critical to direct attention to the victim; rather than calling the crime "child prostitution," the application of the term "domestic minor sex trafficking" refers to the real crime being committed in which a child is sexually exploited for an exchange of value and clarifies this child's status as a victim of a crime.

In using the term "domestic minor sex trafficking victim" to describe America's most vulnerable victims of sex trafficking, Shared Hope International has sought to remove these children from their perceived and often assigned delinquent status. Research has shown that these are complex victims who require specialized care; while they do not often act like traditional sex abuse victims, they are not "bad kids" and they have not chosen this lifestyle. Instead, they are a complex victim group that requires specialized treatment, shelter, and understanding.

### X. CHILD PORNOGRAPHY: CYBER CRIME vs. SOCIAL CRIME

According to me child pornography is both-a cyber crime as well as social crime as it affects the reputation, harmony, social status and it leads to defamation, sexual exploitation and likewise many more harm it cause through internet.

A small blank square and a blinking cursor. A window through which the entire world exists. You only have to say the right word – any word – and your every desire will be delivered.

<sup>9</sup><https://www.wearthorn.org/child-pornography-and-abuse-statistics/>

This isn't some magic genie lamp. It's Google, Bing, and every other search engine on the Internet. We live in a world where every home is tapped into a vast sea of information, images, videos and more. It's an ocean filled with exotic islands, glorious and strange creatures, and even demons and monsters. Travelling to the wrong place can bring very real tragedy and horror to a family, and travelling there is as simple as typing in the wrong word into that little square box. There are various links available on internet where daily around 8lakh people watch child pornography and no one is there to file a complaint against them as they don't find it out anything wrong to watch those things, some of the example like-[www.babysitter.com](http://www.babysitter.com). Such sites can be easily seen on most of the peoples mail account as they watch it on a regular basis.

## XI. CONCLUSION

Over the few past years, sexual research has been made regarding the status of child pornography legislation around the world has demonstrated that slow and steady progress is being carried out. Various national and international legal instruments are in places which have helped to raise awareness and attach new urgency to this cause, but still more countries need to take action now if we are to secure a safer future for the world's children.

The purpose of this research is to show that Child Pornography is an illegal act because it is an evidence of a crime and harm all children. It's a sexual violence against children. The children who are below 18 years of age or we can say a minor, are the victim of the sexual violence. People can get in trouble before they even realize it. Some people find themselves losing control over their use of pornography by spending lots of time viewing it or looking for new and different types of pornography.

After viewing such circumstances there comes a need of POCSO ACT, 2012 because existing laws such as IPC, IT ACT AND JJ ACT was not enough to address sexual offences and there was no specific provisions or laws dealing with sexual abuse of male children. The POCSO ACT came into effect on 14th November, 2012. The purpose of this act is to provide protection to all children from the offences of sexual assault, sexual harassment and pornography. Under this act child is defined as any person below the age of 18 years. There are some specific provisions under POCSO ACT like section 13, 14 & 15 which mainly talks about the use of child for pornographic purposes and punishment there-for. The act is gender-neutral. With respect to pornography, the act criminalizes even watching or collection of pornographic content involving children. It also provides for various procedural reforms, making the tiring process of trial in India considerably easier for children.<sup>10</sup>

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<sup>10</sup>[Wedsc.ap.nic.in/informationAbout/PPTs/8.ICPS-POCSO\\_Act.pdf](http://Wedsc.ap.nic.in/informationAbout/PPTs/8.ICPS-POCSO_Act.pdf)