

“SECURING THE FUTURE” AN ANALYSIS OF LAWS ON CHILD PORNOGRAPHY AND THE
NEED FOR MODEL LEGISLATION

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Abstract

Today, people rely on the Internet for unique purposes such as data, communication, and shopping. Basically, children are also connected to the Internet for emotional or educational purposes. Since the Internet provides a lot of interesting things, it can also be a huge source of violations. Many cyber-crimes occur every day, such as phishing, cyber bullying, hacker attacks, etc. Of all these crimes, child pornography is the most painful and intolerable crime. Some people destroy the entire life of a child/children just for their personal benefit or desire. Child pornographic entertainment may be a pornographic entertainment department that uses photos, audio recordings, sounds, computer-generated materials, etc., to abuse children under Eighteen years for a long time; Or the Children’s Safety Against Sexual Offences Act of 2012 (POCSO) described explicit children’s entertainment as “any visual representation of sexual expression, including children containing photographs, audio recordings, high-level or computer-generated images.

This is more than just one a legal issue is also a moral issue, because it may change the child’s view of human nature. It is endless victimization because the image is placed on the Internet and cannot be completely deleted or retrieved. The image is still transmitted from one end to another end. This will have an impact on the present and the future of the victim. It also leads to other types of criminal activity.

Keywords: *Web, Child Pornography, Wrongdoing, Legal issue, Victimization, Criminal activity*

Introduction

Child pornography on the web has become a hot topic all over the world. The development of modern innovations that greatly increase the ways of acquiring, disseminating and delivery of this criminal substance

has contributed to the development of this case.¹ Unused innovations allow predators to track, recruit, and abuse children anywhere in the world, thereby significantly increasing their opportunities. The United Nations Children's Fund reckoned that more than 4 million websites are featuring victims of minors, including even children less than 2 years of age. Predators can stalk new victims anonymously in chat rooms and blogs.² With an estimated annual revenue of Rupees 22,23,02,75,00,000, comes from the Child pornography industry. "The Center for Missing and Exploited Children of the United States" receives 5.4 million reports of sexual exploitation of children from CyberTipline.³ The exact number of children who have been victims of online sexual exploitation in India or around the world is unknown. According to the "International Association of Internet Hotlines" from 2012 to 2014, the number of web pages containing "Child Sexual Abuse Material (CSAM)" increased by 147%, with children 10 years old or younger portrayed in 80% of these materials.⁴ "Testimony from the Center for Missing and Exploited Children" to the US Congress the report stated that 19% of the perpetrators identified in the investigation had photos of children under 3 years old ; 39% under 6 years old; 83% under 12 years old.⁵ According to the 2015 "Thorn Sextortion survey report" 4,444 42% of sexual extortion victims knew their perpetrators online.⁶ Over a three-year period between 2001 and 2004 the number of sites carrying child pornography nearly doubled to around 480,000. Approximate on the statistics of children who have been victims range from ten thousand to one hundred thousand. Pornographic images of children, ranging from babies to teenagers, are widely available on the internet. "Numerical Statistics quoted

¹ <<https://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A.HRC.12.23.pdf>> accessed 22 July 2021

² Najat M'Jid, Report of the Special Rapporteur on The Sale of Children, Child Prostitution and Child Pornography, (United Nations 2011) <<http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A.HRC.12.23.pdf>> accessed on 21 July 2021

³ <<https://www.missingkids.org/HOME>> accessed 22 July 2021

⁴ "Child Online Protection in India", UNICEF, pp.75-76. <http://unicef.in/Uploads/Publications/Resources/pub_doc115.pdf> accessed 29 July 2021

⁵ <<http://www.missingkids.com/Testimony/>> accessed 22 July 2021

⁶ <<https://www.wearethorn.org/child-pornography-and-abuse-statistics/>> accessed 22 July 2021

in report estimates nearly 20 % of individuals possessing child pornography had images of babies and children aged under 3 and more than 80 % had images of children aged between 6 and 12”.⁷

In India, the opinions of the “National Criminal Records Bureau”(NCRB) did not provide data on cases of child pornography. As a result, the severity of the problem was not recognized. In a written response to the BJP Member of Parliament, the Ministry of the Home Affairs shared the data and agreed that there were 177 cases in Kerala. A total of 159 cases were recorded in Uttar Pradesh, compared to 26 in 2012. Although the state of Assam did not elaborate on these cases in 2012, the state recorded an increase of more than 100%, with 111 cases recorded in 2013. The cases went to Rajasthan and Maharashtra, which went from 48 to 81, of the whole 737 captures, the most extreme (167) were made in Uttar Pradesh and 130 in Maharashtra.⁸

There are number of international Standards on this topic to safeguard the situations that arises in the Child Pornography.

International Standards on Child Pornography Law

I) “United Nation Convention on Rights of Child and Resolutions”

The Convention on Rights of Child, 1989 “*Child is defined as any human being under the age of 18 years, unless majority is attained earlier under municipal law*”. “The Committee on the Rights of the Child, the Convention's monitoring body has encouraged States to review the age of majority if it is set below 18 and to raise the level of protection for all children under the age of 18”.⁹ It is Government obligation to ensure Children’s health for the betterment of mental health.¹⁰ However, *Article 19 and 34 of the Convention* are relevant here, “*Article 19 provides that children have the right to be protected from being hurt and mistreated,*

⁷ “Child Pornography Flourishes in A World with No Borders” (Ohchr.org, 2009) accessed 21 July 2021

⁸ DK Pandey, 'Pornography Cases Up 100 Per Cent Last Year' (The Hindu, 2014)

<<https://www.thehindu.com/news/national/pornography-cases-up-100-per-cent-last-year/article6288856.ece>> accessed 17 July 2021

⁹ Article 1, Convention on Rights of Child, 1989, Resolution No. 44/25

¹⁰ Article 6, *ibid*

physically or mentally. Governments ought to guarantee that children are legitimately cared for and ensure them from savagery, mishandle and disregard by their guardians, or anybody else who looks after them”.

“Article 34 stated that the state must protect children from all forms of sexual exploitation and abuse. Furthermore, clause (c) states that states must take all appropriate national, bilateral, and multilateral measures to prevent child exploitation in pornographic performances and materials”. The UN has also passed resolutions on 20 December 1993 and on 23 December 1994 namely “Effective international measures need to be taken to prevent child trafficking, child prostitution and pornography”¹¹ and “to prevent and eradicate the sale of children, child prostitution, and child pornography, effective international measures are required.”¹²

2) “Optional Protocol to The Convention on The Rights of the Child on The Sale of Children, Child Prostitution and Child Pornography, 2002”

Protocol provides that “*States Parties shall prohibit the sale of children, child prostitution, and child pornography in accordance with the provisions of the present Protocol*”.¹³ Article 2(c) defines Child Pornography as follows:

“Child pornography is defined as any depiction of real or simulated explicit sexual activities with children in any way, or any depiction of children's sexual parts primarily for sexual purposes.” The Protocol mentions that the states will guarantee (at least) the production, distribution, dissemination, import, export, provision, sale or possession of child pornography for the aforementioned purposes is fully punishable under municipal penal law.¹⁴ According to Article 8, “*the State party should take appropriate measures to protect the rights and interests of children who are victims of practices prohibited by this Protocol at all stages of the criminal justice process, including recognizing the vulnerability of the child victims, informing them of their rights, and*

¹¹ Resolution 48/156 on 20 December 1993

¹² Resolution 49/210 on 23 December 1994

¹³ Article 1, Optional Protocol to The Convention on The Rights of the Child on The Sale of Children, Child Prostitution and Child Pornography, 2002

¹⁴ Article 3(c), Ibid

protecting the victims throughout the legal process, safeguarding the privacy and identity of child victims as needed and take measures in accordance with national legislation to protect witnesses to avoid unnecessary delays in the process of case resolution.”¹⁵

3) “Council of Europe Convention on Cybercrime, 2001”

Paragraph 2 of Article 9 provides an inclusive meaning of child pornography as follows: “*Child pornography will include pornographic material depicting: first, a minor indulging in explicit sexual acts; second, a person who appears to be a minor indulging in explicit sexual acts.*”

Article 9, paragraph 1 further stipulates that “Each party must take legislative and other measures necessary to criminalize in their native law following acts, when deliberately and without the right to commit the following acts: disseminate through computer frames; promote or produce obscene child content accessible through computer frames; Dissemination of obscene children content through computer framework ; obtain child pornography for oneself or others through the computer frame; obscene content for children within the computer frame or medium of computer data capacity”.¹⁶

4) “Directive of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography, 2011”¹⁷

This Directive highlighted that child pornography is increasing and spreading through the use of new technology and internet.¹⁸ Paragraph 6 of the declaration highlighted serious criminal offences such as the Child sexual exploitation and child pornography which requires a comprehensive approach covering the prosecution of offenders, the shielding of child victims, and prevention of the phenomenon. When taking any

¹⁵ Clause (a)-(g), Article 8, Ibid

¹⁶ Article 9, Convention on Cybercrime, 2001

¹⁷ Directive 2011/92/EU on 13 December 2011

¹⁸ Melissa Hamilton, “Child Pornography Crusade and its Net Widening Effect”, Cardozo Law Review, <<http://ssrn.com/abstract=1914496>>accessed 23 July 2021

action to combat these crimes on the basis of the “European Union Charter of Fundamental Rights” and the “United Nation Convention on the Rights of the Child”, the best interests of the child must first be considered. The Directive provided the denotation of child pornography as follows: “*Child pornography is defined as: any material that visually depicts an attractive child engaging in actual or simulated explicit sexual conduct; and (ii) any performance of a child's sexual organs with the primary purpose of sex; (iii) Any visual description of any person who appears to be a child engages in any material of real or simulated sexually explicit behavior, or any representation of the genitals of a person who appears to be a child primarily for sexual purposes; or (iv) A real image of a child engaging in a sexually explicit behavior or a real image of a child's genitals , mainly for sexual purposes;*”¹⁹

Paragraph 18 also underlined the importance of intention under child pornography law. In expansion, child casualties of sexual manhandle, sexual abuse and child pornography ought to be given access to lawful guiding and, lawful compensation in consonance with the victim compensation scheme. Such lawful directing and lawful representation shall be given by the competent specialists for the reason of claiming compensation from the State. The rationale of legal counselling is to enable victims to be informed and receive advice about the various probabilities open to them through law. Lawful advising should be given by an individual having sufficient legal understanding. Legal advising and, legal representation should be given free of charge, at slightest when the victim does not have adequate monetary resources, in a manner consistent with the internal procedures of Member States.²⁰

Article 5 provides that “Member States must take the imperative steps to ensure that deliberate acts are carried out without authorization is punishable and further provides for specific minimum punishment for specific offences like Obtaining or at least one year penalty if in possession of child pornography, and the deliberate acquisition of child pornography through information and communications technology is punishable by at

¹⁹ Article 2(c), Directive of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography, 2011

²⁰ Paragraph 32, Ibid

least one year in prison, and the distribution, dissemination or dissemination of child pornography is prosecutable by at least two years in prison; provided that the supplying or supplying of child pornography is punishable by at least 2 years in prison, and the performance of child pornography is punishable by at least 3 years in prison”. Article 25 provides that “Member States should take measures to ensure expedited of web pages hosting or spreading child pornography on their territories, and should strive to remove such web pages hosted outside their territories”.²¹

5) “Council of Europe Convention on Protection of Children against Sexual Abuse and Sexual Exploitation, 2007”

Convention defines “*Child pornography is defined as any material that visually portrays a child engaging in real or simulated sexually explicit behaviour, or any depiction of a child's genitals for primarily sexual purposes*”.²² Article 20 provides “*that All parties will take the necessary legislative or other steps to ensure that the following willful acts are criminalized without authorization: creating child pornography; providing or offering child pornography; and distributing or disseminating child pornography.; themselves or others acquire child pornography; own child pornography; Deliberately acquiring child pornography through information and communication technology*”.

Key Features of Definition of Child Pornography under International Conventions

Keeping in mind the various rights of child provided under the “UN Convention on Rights of Child” and especially Article 34(Right against any form of exploitation); there are some common features of definition of child pornography.

- a. *Means of Representation*: “Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography”, 2002 provides “any means of representation”. “Convention on Cyber Crime” uses word “material”. “Directive of the European

²¹ Directive 2011/92/EU on 13 December 2011

²² Article 20(2), Convention on Protection of Children against Sexual Abuse and Sexual Exploitation, 2007

Parliament and of the Council on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography” uses words “any material”. “Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse” also uses “any material”. So, the conventions provide that child pornography should be criminalized irrespective of the means of representation/medium.

- b. *Real or simulated images*: “Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography” 2002 provides “real or simulated images”. “Convention on Cyber Crime” does not talk about real or simulated images”. “Directive of the European Parliament and of the Council on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography” uses words “real and simulated images”. “Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse” also uses “real and simulated images”
- c. *Appearing to be a minor*: “Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography” 2002 does not use the word appearing to be a child”. “Convention on Cyber Crime” uses phrase “appearing to be a child”, so does “Directive of the European Parliament and of the Council on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography”. “Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse” does not mention such words. It seems to be unclear whether a pornographic material depicting a person appearing to be a minor is within the purview of child pornography or not
- d. *Depiction of Sexual organs*: “Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography” 2002 uses the phrase “any representation of the sexual parts”. “Convention on Cyber Crime” is silent on this aspect”. “Directive of the European Parliament and of the Council on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography” and “Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse” both use the phrase “any representation of the sexual parts”. Hence “any representation of the sexual parts” is within the purview of child pornography.

e. For sexual purpose: All the above-mentioned conventions provide that depiction should primarily for sexual purpose.

The definition used in “Directive of the European Parliament” and of the “Council on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography” seems to embody and harmonize all of the above key features of the definition of child pornography. While other offences relating to child pornography like producing, Distributing, disseminating, importing, exporting, offering, selling or possessing child pornography should also be penalized.

“The Directive of the European Parliament” and of” the Council on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography” also provides the minimum years of imprisonment for these offences as follows:

S.No	OFFENCES (Increasing Order of Gravity)	MINIMUM YEARS OF IMPRISON MENT
1.	(a) “Acquisition or possession of child pornography. (b) knowingly obtaining access to child pornography”	ONE YEAR
2.	(a) “Sale, distribution, or conveyance of child pornography (b) Providing or making available child	TWO YEARS

	pornography”	
3.	“Production of Child Pornography”	THREE YEARS

TABLE 1

INDIAN LAW TO CHILD PORNOGRAPHY

Indian Penal Code, 1860

IPC does not specifically deal with the offence of child pornography. “Section 292 of the Code makes selling, letting to hire, and distributing, importing, exporting, receiving profits from any obscene²³ books, pamphlets, paper, paintings, drawings, statements or graphics or other obscene materials”, are punishable under the law of the land. However, the words “other obscene object whatsoever” can be construed to include child pornography but the IPC doesn’t specifically define child pornography. Moreover, this section is used for determining obscenity only.²⁴

Information Technology Act, 2000

“Section 67B of the statute specifically criminalizes child pornography. Section 67B doesn’t explicitly define child pornography rather the implicit definition seems to be Portray children in an obscene, indecent, or sexually explicit manner”. Further it criminalizes following acts:

²³ Section 292(1) defines “obscenity” as: “if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt person, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it”

²⁴ Ranjit D. Udeshi v. State of Maharashtra (AIR 1965 SC 881), Samaresh Bose v. Amal Mitra (AIR 1986 SC 967), KA Abbas v. Union of India (AIR 1971 SC 481): In all of these cases question was whether novel or films were obscene or not

S. NO	Offences	Punishment
1.	“Publish or transmit or cause the publication or transmission of materials that describe sexual acts of children or sexual acts in any electronic form publish or transmit or promote the publication or transmission of materials that describe acts or acts of sexual exposure of children”	with imprisonment up to 5 years and with a fine which up to 10L (first conviction) or imprisonment up to 7 years and with fine up to 10L (Subsequent conviction)
2.	“Create digital text or images, collect, search, browse, download, in any electronic format to advertise, promote, exchange or distribute materials that depict children in an obscene, indecent or explicit manner”.	Do
3.	“Cultivate, induce or persuade children to form relationships online with one or more other children for the purpose of sexually exposing behaviors”	Do
4.	“Promote child abuse online”	Do
5.	“Any electronic records of abuse of self or other related behaviors of sexual exposure of children”	Do

TABLE 2

“Protection of Children from Sexual Offences Act, 2012 (POCSO)”

The Indian government has ratified the “Convention on the Rights of the Child” on 11 December 1992. POCSO Act was enacted with a view to give effect to the “Article 34 Convention on the Rights of the Child-States are required to take appropriate national measures to prevent the exploitative use of children in

pornographic performances and materials”.²⁵ Section 13 of the Act defines offence of “Use of child for pornographic purposes” as follows:

“Whoever uses a child for sexual gratification in any form of media (including programmes or advertisements broadcast by television channels or the internet or any other electronic or printed form, whether or not such programme or advertisement is intended for personal use or distribution), which includes —(a) the expression of the child genitalia; (b) the use of children in actual or simulated sexual activity (with or without penetration); (c) a child's posting that is indecent or obscene will be charged with using the child for pornographic purposes”;

According to the Explanation of Section 13 states that "using children" includes engaging children through media such as printed electronic devices and video.

Section 14 provides punishment for offence under section 13 as follows:

S.No	Offences	Punishments
1.	“Person using a child for pornographic purposes”	First Conviction: imprisonment up to 5 years +Fine Subsequent Conviction: imprisonment up to 7 years + Fine
2.	“Penetrating sexual assault by a person using a child for pornographic purposes (Section 3), by engaging directly in pornography”	Imprisonment not less than 10 years which may extend to imprisonment for life + Fine
3.	“Aggravated Penetrative Sexual Assault Perpetrated by a Person Using a Child for	Rigorous Imprisonment for life + Fine”

²⁵ Preamble, POCSO Act, 2012

	Pornography Purposes (Section 5), by engaging directly in pornography”	
4.	“Person who uses child for pornography commits sexual assault (Section 7), by engaging directly in pornography”	Imprisonment not less than 6 years which may extend to 8 years + Fine
5.	“People who use children for pornography commit more serious crimes of sexual assault (Section 9), by engaging directly in pornography”	Imprisonment not less than 8 years which may extend to 10 years + Fine

TABLE 3

PART IV: COMPARISON OF INDIAN LAW AND INTERNATIONAL LAW

As concluded under Part II, Article 2(c), “Directive of the European Parliament” and of “the Council on combating the sexual abuse and sexual exploitation of children and child pornography” 2011 provides a nearly universal definition of child pornography, which is- “Child pornography’ means: (i) All data that visually depict the child who participated in the actual or simulated sexually explicit behavior; (ii) The child's genitals, primarily for sexual purposes. Depictions; (iii) Visually depict a child-like person who performs real or simulated sexually explicit acts or portrays the genitals of a child-like person, primarily for sexual purposes.

All data depicted; or (iv) Real images of children sexually active for primary purposes or factual images of children's genitals;”²⁶

This definition contains all the key features of the meaning of child pornography under international law i.e., Means of Representation, Real or simulated images, appears to be under 18, Depiction of Sexual organs for sexual purpose.

Under Indian Law Section 13 of the POCSO Act, 2012 provides for an exhaustive definition.

- a. *“Means of Representation: Act includes “any form of media”.*
- b. *“Real or Simulated Images: Section 13(b) includes “exploitation of child engaged in real or simulated sexual activity”.*
- c. *“Appearing to be a child: International law is unclear whether a person appearing to be a child is within the meaning of child pornography, hence it is not included under the definition of child pornography”.*
- d. *“Depiction of sexual organs: Section 13(a) specifically includes “Representation of sexual organs of a child” in the definition of child pornography.”*
- e. *“For sexual purpose: Act includes “for the purpose of sexual gratification” in the definition of child pornography.”²⁷*

Following table provides for comparison of key indicators of definition of child pornography:

S.No	Indicators	International Law	Indian Law
1.	Whether definition	Yes	Yes

²⁶ Article 2(c), Directive of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography, 2011

²⁷ (Wbja.nic.in, 2021) <http://www.wbja.nic.in/wbja_admin/files/Presentation%20on%20POSCO%20Act,%202012.pdf> accessed 25 July 2021.

	includes all means of representation?		
2.	Whether definition includes Real or Simulated Images?	No	No
3.	Whether definition includes a person appearing to be a child?	Yes	Yes
4.	Whether definition includes depiction of sexual organs?	Yes	Yes
5.	Whether definition includes for sexual purpose?	Yes	Yes

Table 4

As is amply clear from Table 4 Indian Law is in full compliance with the international law on child pornography. Other offences relating to child pornography as provided under Table 1 are fully incorporated under Indian Law as provided under Table 2 and Table 3 and provides for more severe punishment than

provided for under “Directive of the European Parliament” and of “the Council on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, 2011”.²⁸

PART V: KEY PRINCIPLES OF MODEL LEGISLATION ON CHILD PORNOGRAPHY

Definitions

Legislation must contain the definition part which defines the terms used in the legislation. Legislation on Child Pornography must define “child as person below the age of 18 years.”

Secondly it should define “child pornography” itself. A model definition should be able to cover all the situations concerning child pornography as follows:

“Child pornography means:

- (i) All data that visually depict the child who participated in the actual or simulated sexually explicit behavior;
- (ii) The child's genitals, primarily for sexual purposes. Depictions; (iii) Visually depict a child-like person who performs real or simulated sexually explicit activity or portrays the genitals of a child-like person, primarily for sexual purposes. All data depicted; or (iv) Real images of children sexually active for primary purposes or factual images of children's genitals; or (v) an indecent or obscene depiction of a child”²⁹

²⁸ Article 5 of the Directive of the European Parliament and of the Council on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, 2011

²⁹ This definition is the combination of Article 5 of the Directive of the European Parliament and of the Council on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, 2011 and Section 13 of the Protection of Children from Sexual Offences Act, 2012

Jurisdiction

Legislation (Take the necessary steps to establish jurisdiction over crimes committed on ships and aircraft registered in that country or on its territory.³⁰ Jurisdiction clause: “*The provisions of this Law also apply to any violation committed by- (1) a Citizens of [country] in any place, with or without [country]. (2) A person on a ship or aircraft registered in [country] wherever they may be. Explanation in this section, the term 'crime' includes any conduct committed outside [country]. If held in [country], you will be penalized under this law*”.³¹

Offences and Punishments

Offences relating to participation in child pornography as per Table 3 and offences relating to possession etc. of child pornography as per Table 1.

Protection of Child victim throughout the process

Inclusion of appropriate safeguards to protect the rights and interests of child victims at all stages of the criminal justice system.³²

Mandatory Reporting

Requiring medical and social welfare professionals, teachers, law enforcement officers, photo developers, information technology professionals, internet service providers, credit card companies, and banks to report allegations of child pornography to law enforcement or other agencies. For this Section 20 and 21 of the POCSO, Act 2012 can be included.

³⁰ Article 4, Optional Protocol to The Convention on The Rights of the Child on The Sale of Children, Child Prostitution and Child Pornography, 2002

³¹ Section 4 of the India Penal Code, 1860

³² Article 8, Ibid

CONCLUSION

The project analyzed “various International Conventions, Protocols and UN Declarations on 1993 and 1994 etc. in depth and brought out the key features of a nearly universal definition of child pornography. The Indian law is consistent with the international standard of child pornography and provides stricter punishments in some cases. There are some key principles of child pornographic law like Definitions, Jurisdiction, Offences and Punishments, Protection of Child victim throughout the process, Mandatory Reporting which must be resorted to while drafting a legislation on child pornography.

MODEL LEGISLATION

Chapter I

Definitions

1. “child means any human being below the age of 18 years”³³.
2. “child pornography means³⁴
 - i. Material that visually depicts children engaged in real or simulated sexually explicit activity;
 - ii. Depictions of children's genitals for primarily sexual purposes; or
 - iii. Materials depicting the genitals of a child-looking or child-like person engaged in actual or simulated sexually explicit acts, primarily for sexual purposes;
 - iv. or a realistic image of a child engaged in sexually explicit acts, primarily for sexual purposes, or a realistic image of a child's genitals. or Child indecent or obscene expression;”

Chapter II

³³ Article 1, Convention on Rights of Child, 1989

³⁴ This definition is a combination of Article 5 of the Directive of the European Parliament and of the Council on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, 2011 and Section 13 of the Protection of Children from Sexual Offences Act, 2012

Jurisdiction

3. The provisions of this Law apply also to any offence committed by-

I) “any citizen of [country] in any place outside and beyond the borders of [country];

II) any person on any ship or aircraft registered in [country] wherever it may be.

Explanation- I "offence" includes all acts committed from outside the [Country] and any offense committed in the [Country] will be punished under this Act.”³⁵

Chapter III

Offences and Punishments

4. Part I: Offences relating to Involvement in Child Pornography³⁶

S.No	Offences	Punishment
1.	“Person using a child for pornographic purposes”	First Conviction: imprisonment up to 5 years + Fine Subsequent Conviction: imprisonment up to 7 years + Fine
2.	“Penetrating sexual assault by a person using a child for pornographic	Imprisonment not less than 10 years which may extend to imprisonment for life +

³⁵ Section 4 of the India Penal Code, 1860

³⁶ Section 14, POCSO Act, 2012

	purposes (Section 3), by engaging directly in pornography”	Fine
3.	“Aggravated Penetrative Sexual Assault Perpetrated by a Person Using a Child for Pornography Purposes (Section 5), by engaging directly in pornography”	Rigorous Imprisonment for life + Fine
4.	“Person who uses child for pornography commits sexual assault (Section 7), by engaging directly in pornography”	Imprisonment not less than 6 years which may extend to 8 years + Fine
5.	“People who use children for pornography commit more serious crimes of sexual assault (Section 9), by engaging directly in pornography”	Imprisonment not less than 8 years which may extend to 10 years + Fine

Table 3

5. Part II: Offences relating to acquisition, possession, distribution etc. of Child Pornography³⁷

S. No	Offences (Increasing order of Gravity)	Minimum Years of Imprisonment
1.	(a) "Acquisition or possession of child pornography (b) knowingly obtaining access to child pornography"	One Year
2.	(a) "Distribution, dissemination or transmission of child pornography (b) offering, supplying or making available child pornography"	Two Years
3.	"Production of child pornography"	Three Years

Table 1

6. Part III: Other Offences³⁸

S.No	Offences	Punishments
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³⁷ Article 5 of the Directive of the European Parliament and of the Council on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography, 2011

³⁸ Section 67B, Information Technology Act, 2000

1.	“Disclosing or transmitting or posting or transmitting material in electronic form depicting a child engaged in sexually explicit act or conduct”	with imprisonment up to 5 years and with a fine which up to 10L (first conviction) or imprisonment up to 7 years and with fine up to 10L (Subsequent conviction)
2.	“Collect, search, view, download, advertise, promote, exchange or distribute material in electronic format that creates text or digital images and depicts children in an indecent, vulgar or sexually explicit way”	Do
3.	“Cultivates, entices or induces children to establish relationships with one or more children online for explicit sexual activity”	Do
4.	“Facilitates abusing children online”	Do
5.	“Records in any electronic form one's own or another's sexually explicit act with children”	Do

Table 2

Rights of Child Victim

7. Rights of Child Victims³⁹ :-The Child Victim shall have following rights throughout the Criminal Justice Process-

- i) the right to use appropriate procedures to recognize your special needs, include your needs as a witness;
- ii) rights to know their rights, their functions and the scope, time and progress of the litigation procedures and the handling of cases of child victims;
- iii)The right the right to express and consider the opinions, needs and concerns of child victims in litigation in which their personal interests are affected;
- iv)The right to provide adequate support services to child victims throughout the judicial process;
- v) Protect child victims privacy and identity;
- vi) The right to refrain from disseminating information that can identify child victims;
- vii) The protection of the child victim and his / her family and witnesses (where applicable) the right not to be intimidated or retaliated

Chapter V

Mandatory Reporting

8. The following categories of individuals and organizations must address suspicious child pornography and criminal activity to law enforcement or other authorized agencies:

- i) Individuals have contact with children in their daily professional capacity and are responsible for the people and organizations dealing with the Obligations of these children;

³⁹ Article 8, Optional Protocol to The Convention on The Rights of the Child on The Sale of Children, Child Prostitution and Child Pornography, 2002

ii) Persons who do not contact with the child in their daily work, but who may be exposed to child pornography due to their work obligations;

iii) Organizations or companies that use services to spread child pornography, so they need to perform in their daily work a certain degree of industrial responsibility / corporate citizenship / corporate social responsibility.

iv) Anyone in the media, hotels or hotels, hospitals, clubs, studios or photographic facilities, regardless of name, regardless of the number of people employed.

9. Any individual or organization mentioned in item (i) to item (iv) of paragraph 8, who deliberately fails to report suspicious child pornography to a designated agency will constitute a crime and may be punishable by imprisonment or a fine.

