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**ANATOMY OF CYBER LAWS IN INDIA IN CONNECTION
WITH POCSO ACT**

By- Tripti M Kumar

Law Student, K.L.E. Society's Law College

ABSTRACT

The ever-growing internet is a result of the globalization that has enabled the world to communicate without the borders and territories in mind. The world of internet lets us access any information with just a click which is a blessing at times like these. The pandemic has led the world to not only think about its ways of teaching but has completely shifted itself to cyberspace. This has enabled the young minds to seek and gain knowledge over the World Wide Web. But cyberspace can turn into more of a bane than a boon if not properly regulated. Cases of cyber bullying and child grooming often come up these days in the news. The object of this paper is to address the issue of protection against the harassment and exploitation minor by discussing the narrow link between cyber laws in India and the Protection of Children from Sexual Offenses Act, 2012 (POCSO). It discusses various provisions that Indian law system under the two Acts namely POCSO and IT Act, 2000 and other things like Child Sex Abuse Material (CSAM).

**INTRODUCTION TO INDIAN CYBER
SPACE**

Cyber law being one of the upcoming acts that needs interpretation often is a savior to a generation that has internet and computer systems bred into their lives. In the times of a pandemic, internet has more so proven its importance in the society, even more when one talks about how cyberspace has completely taken over the education system. Be it a normal search on Google or a friendly chat on a social media platform, the internet more or less has become a huge part of our lives. This co-dependency has become more of a reason why there needs to be balance between the society and the cyber world. Regulating the internet has never been easy since the laws of the internet can never be put inside four walls. The horizons of the internet are yet to be explored by common man, let alone a regulatory body. What seems just like an activity from a computer screen leaves a forever print on the World Wide Web. Yet different legislations and enforcement agencies have come up with regulatory bodies and acts to better supervise



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cyberspace. Internet is still at its developing stage where it is just expanding its roots in the Indian subcontinent, it has been noticed that it skips to address some relevant areas prone to cybercrime, one such area being the exploitation of children over the cyberspace. The side of the internet that cannot be overlooked is how it has become the hub for offenders and pedophiles who engage in activities like child pornography, cyber stalking, cyber bullying, defamation, grooming, hacking, online child trafficking, sexual harassment, violation of privacy. To tackle this social evil the legislative bodies of India brought two Acts into existence, the Information Technology Act, 2000 and Protection of Children from Sexual Offences (POCSO) Act, 2012. Due to the vast jurisdiction of the law, it covers numerous issues, for the sake of writing this paper I will be exploring the relation cyber law has to POCSO and how the Indian populace is adapting to it.

INFORMATION TECHNOLOGY ACT 2000

We'll first discuss the origin of cyber laws in India and its effect on the parameters of the Internet for Indian population. The Indian

parliament came up with an act to deal with cybercrimes and illegal activities happening on the web namely Information Technology Act, 2000¹ (*herein referred to as the IT Act*). The IT Act is an act of the Indian parliament notified on 17 October 2000. It is the law in India dealing with cybercrime and electronic commerce.

The IT Act brushes over the topic of child abuse over electronic media in its 67th section. Section 67B of IT Act, 2000 states Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form², it includes punishment for- Whoever, –

- a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or
- b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or 26

¹ Prateek Singh, Cyber Law In India: IT Act 2000, <http://www.legalserviceindia.com/legal/article-836-cyber-law-in-india-it-act-2000.html>

² IT ACT, 2000, Chapter XI, Section 67B



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- c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or
- d) facilitates abusing children online, or
- e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children.

According to it whoever is found guilty of such act shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

These five clauses try to cover different offenses, and the act has been built in such a manner that it tries to cover most offenses over the internet. It discusses about the criminal liability for the production, publication and or transmission of child pornography. Production here means filming or even causing to make sexually explicit videos, images, texts or any other content for that

matter. It also has the power to criminalize erotica, comics and novels which depict children in a sexually obscene manner. Mere transfer or possession of sexually explicit matter is enough to prove a person guilty under this act. This section of the Information Technology Act was implemented on 27th October, 2009 and thereafter the Government of India implemented the Protection of Children from Sexual Offences Act, 2012 (POCSO) and made a land mark of a difference for the cases in the coming years towards the restriction of Child pornography in India.

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO)

The Protection of Children from Sexual Offences, or POCSO, was enacted in 2012 and the latest amendment done to it was approved by the Parliament on August 1, 2019. This act seeks to protect children from any kind of abuse and lays down the grounds and conditions of punishment to those engaging in sexual crimes against children, death penalty in cases of aggravated sexual assault, besides imposing fines and imprisonment to curb child pornography. This act was brought into existence to protect the interest of the victim and come up with a child

friendly judicial process. The Act is a gender neutral, protective and beneficial legislation made to protect children, a person who has not yet completed the age of 18 from the claws of sexual exploitation and child grooming; befriending them on social media, building an emotional trust and induce them into sharing video and photographs of them performing sexual activities on the record.

The Act includes include offences such as possessing Child Sex Abuse Material (CSAM), using children for the purposes of creating CSAM, or exposing children to pornography or CSAM. In those such cases, POCSO shall be used along with provisions of the Information Technology Act.

Protection of Children from Sexual Offences Act (POCSO) criminalizes the use of children for pornographic purposes over cyberspace in form of

- (a) rendition of any private organs of the child;
- (b) usage of a child in real or simulated sexual activity (with or without penetration);

- (c) the obscene depiction of a child in explicit acts.

The Act also criminalizes the act of storing any form or kind of pornographic material related to children directly or indirectly.

CHAPTER II-III of the act chalks out the periphery of the content that can be classified as child pornography, punishment for such offence, abetment and the punishment for abetment, liability of media houses in reporting CSAM and punishment for failure of reporting such CSAM.

Section 13³ of the POCSO Act reads- Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes--

- (a) Representation of the sexual organs of a child;
- (b) usage of a child engaged in real or simulated sexual acts (with or without penetration);

³ Section 13, Protection of Children from Sexual Offences Act, 2012



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(c) The indecent or obscene representation of a child

Shall be guilty of the offence of using a child for pornographic purposes.

Cyber grooming or online grooming is the process of “*befriending*” a child, building an emotional connection with them to the point that the groomer has the high ground on the child’s emotional and mental state. After the offender has the child in their emotionally vulnerable state, the groomer then proceeds to ask for sexual favours from the minor. These favours can include pictures, video or even sexually explicit conversations.

There are typically three kinds of cyber groomers:

- Distorted attachment,
- Adaptable offender, and
- Hypersexual offenders.

Distorted attachment style of groomers usually starts with the offender keeping their identity real and revealed. They make unfeigned emotional connection with the minor through talking over

cyberspace and eventually asking for sexual favours from the child. Where as in the case of adaptable offenders and Hypersexual offenders, they often take on fake identities of a child or a teen to approach the victim, making an emotional bond with the minor leading to obtain intimate and personal data from the child (*often sexual in nature—such as sexual conversations, pictures, or videos*) in order to threaten and blackmail for further inappropriate material, financial or personal benefit.

There are some stages identified to sexual grooming of children identified in *Stages of Sexual Grooming*⁴ by Georgia M. Winters & Elizabeth L. Jeglic, starting from choosing and identifying the victim, gaining access to the victim to gaining trust of the child. This is where the government bodies can curb the exploitation by introducing rules and regulations to such access to the minors.

Recent study by Indian Child Protection Fund (ICPF) showed that there has been a major growth in statistic of engagement with child pornography over the internet, an average 5 million searches for child porn on the public web

⁴ Georgia M. Winters & Elizabeth L. Jeglic (2016): Stages of Sexual Grooming: Recognizing Potentially Predatory Behaviours of Child Molesters, Deviant Behaviour



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were made across 100 cities in India, now this demand may have increased by 100%. These statistics clearly shows the lack of restrictions on the internet over the matter of child abuse. The judgment in the case of *Avnish Bajaj vs State*⁵ stated that the law in our country is not adequate to meet the challenge of regulating the use of the internet to prevent dissemination of pornographic material.

In the case of *State By Cyber Crime Police vs Theodore.Jay.Jaffe*⁶ on 16 September, 2016 when the accused was found out to be viewing, accessing and downloading offensive child pornography materials, the prosecution had the burden to prove to the counsel that the accused had indeed engaged in such an activity, which they failed to do. This might have accrued due to the lack of regulations on the internet service providers (ISPs) through which one had accessed CSAM and child pornography, since in India the intermediaries are not legally bound to report any such activities, whereas there should be a suo moto responsibility under the law.

In the case of *Kamlesh Vaswani Petitioner(s) v. Union of India & others*⁷ the prayers submitted were to adopt various measures towards the improvement of effectiveness of blocking child pornography on the internet and eradicate the great evil. It was further suggested that the central government makes certain rules and regulation to stop child pornography.

If one has to further talk about the relation between cyber law and POCSO, one cannot skip the psychological threat cyber bullying and online abuse has over children. The internet has made the world an open book, but it also comes with threat of being exposed to unwanted information over cyberspace, especially on the young minds engaging with the internet. Online abuse can lead to years of trauma and discomposure towards the internet in children.

This issue needs to be taken seriously and be looked into by the legislation so a child is better protected over cyberspace. Sex education is a stigmatized topic, bringing young and curious minds on the internet looking for answers.

The new rules for over-the-top media services (OTT) platforms might bring some relief to some

⁵ *Avnish Bajaj vs. State*: MANU/DE/0851/2008

⁶ *State by Cyber Crime Police vs Theodore.Jay.Jaffe*; C.C.No.14616/2014

⁷ *Kamlesh Vaswani vs. Union of India & Ors.*: MANU/SCOR/19395/2014



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issue that have come up in the recent year regarding media houses. The rules include Social media intermediaries to disclose the first originator of the mischief information when and if asked by the court or the government. Further the media was addressed by the minister of law and justice Ravi Shankar Prasad on the self-classification of content of media - 13+, 16+ and adult categories.

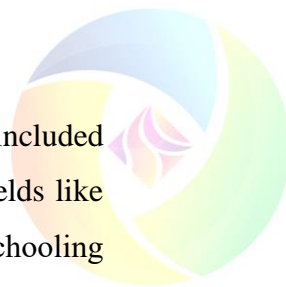
CONCLUSION

There are still some areas that need to be included under the umbrella of these Acts and fields like aid to the victim's mental health, schooling children on the do's and don'ts of the internet, regulation on ISPs, establishment of a standard operating procedure (SOPs) for disposal of cases related to child abuse, ways to get rid of the stigma around sex education in the society and for the young minds should be discussed on legislative levels.

The government of India needs to devise a better plan and come with strategies so that Cyber laws can work parallel to POCSO to fill gaps that have been noticed over the years.

There are new found situations found every day and authorities keep coming up with more

efficient and stringent laws to tackle them. The growth curve of this social disease needs to come to stop, which will be challenging but if we fasten IT Act and POCSO together we get a stronger shield from the everyday growing incidents cybercrimes on children.



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