

ARE CHILDREN SAFE ON THE INTERNET? - THE EVER-INCREASING RISE OF CHILD PORNOGRAPHY

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ABSTRACT

The “Nth Room” refers to a massive digital sex crime that has shaken up the country of Korea due to its unprecedented scale and violence, involving dozens of victims, many of them minors. On the messenger app Telegram, paying individuals joined mysterious chatrooms to watch films wherein women have been sexually exploited and abused.

Child Pornography is one of the crimes that has been on the rise especially during the lockdown period.

This brings out a very disturbing question to the forefront i.e. Are children really safe?

This paper will discuss the legal implications of child pornography as a violation of human rights.

THE Nth ROOM CASE

“The Nth rooms are talk rooms on the Telegram messaging application where users unlawfully produce and exchange explicitly dehumanizing films/videos of females. Casualties, numerous underages, are regularly forced by Telegram users into abusing their bodies. Culprits have supposedly transformed genuine attacks into online substance.”¹

“The original chat room ‘Nth room’ gained popularity in late 2018 on Telegram but soon gave way to other chat rooms titled- ‘slave room’, ‘female child room’, ‘rape your acquaintance’ etc.”

“In these chat rooms, underaged girls were degraded, forced to humiliate themselves by barking like dogs or laying on the public toilet floor. The depraved men participating in the chat rooms often used ‘*Gang- Ganhaja*’ which translates to ‘let’s rape’ as a form of greeting.”

“The case is heightening public worry that computerized violations involving youngsters may be much more normal than recently suspected, as cell phones and secret chatrooms can offer simple approaches to spread pictures and recordings. Sex crimes involving cell phones are the same old thing. However, the scale and seriousness of the crimes have incited more individuals to call for more grounded punishments. Some contend that a jail term alone isn't sufficient to dissuade similar digital crimes.”

CHILD PORNOGRAPHY LAWS IN REPUBLIC OF KOREA

The Act of Protection of Children and Juveniles from Sexual Abuse is the primary regulatory Act for the regulation of child pornography in the Republic of Korea.

It criminalizes the production, import and export of obscene materials, sale, rental or distribution as well as possession of child pornographic materials. The act-imposed duty on ISPs to delete, prevent and block transmission of such materials.

However, it has been difficult to convict the accused as most of the victims were unaware of them being recorded.

In a similar shocking case in Korea in 2018, Son Jong-woo who was 24 at the time operated a child pornography site called ‘Welcome to Video’. This site was inaccessible by regular web

browsers and required payment through the cryptocurrency – Bitcoin which made it extremely difficult to track down the users of the site.

The man behind this shocking case was caught but those who viewed and produced such content could not be traced. South Korean authorities also refused the extradition of the man to the USA, which was a huge disappointment to anti-child pornography groups who wished for the man's extradition to the USA for severe punishment and to act as a deterrent for others.

In the USA, the viewers of 'Welcome to video' were awarded at least 5 to 15 years in prison whereas the prime accused in this case was let off in 18 months.

This case and the Nth Room case are forcing Korea to re-examine how it defines sex crimes and the legal measures to prevent them.

Digital sex crimes in South Korea, even those focusing on children, are infamous for drawing in light sentences on the culprit. Under Korean law, makers of child pornography can get up to lifelong incarceration, yet as a general rule the new normal is culprits being awarded just two years in 2017, revealed the Ministry of Gender Equality and Family. Son Jong-woo, the creator of one of the world's most infamous child pornography sites was awarded just a year and a half in prison.

CHILD PORNOGRAPHY LAWS IN INDIA

“An aggregate of 47 people, including adolescents, have been caught across Kerala for evidently searching for child abuse material on the darknet during the Covid-19 lockdown, the state police said had reported.”ⁱⁱ

“An alarming rise in the demand for child pornography material (also referred to as 'Child Sexual Abuse Material') has been seen ever since the Covid-19 induced lockdown was enforced, the India Child Protection Fund (ICPF) claimed on Monday.”ⁱⁱⁱ

“In its report the ICPF said that New Delhi was among the metropolitan networks where there is a "request" for foul material including kids, thusly introducing grave risks to its youngsters during the Covid prompted lockdown. The ICPF has conveyed a report named 'Child Sexual Abuse Material in India', an assessment of youngsters engaged with sensual amusement demand in 100 metropolitan territories in India like New Delhi, Chennai, Mumbai, Kolkata, Bhubaneswar and Indore. The overall interest for child pornography was a normal of 5 million

consistently in 100 metropolitan territories on the public web during December 2019, which has now spiked.”

“The report reveals up to a 200 percent extension sought after for severe substance which shows youngsters "gagging", "dying" and 'tormented". "Metro urban communities like New Delhi, Kolkata, Chennai and Mumbai, other than various Tier II and capital urban areas, which are seeing a sharp addition in Covid cases, have been red-haired by the December report as hotspots for child pornography," the ICPF said. "ICPF has forewarned this exhibits a large number of paedophiles, child attackers and child erotic entertainment addicts have relocated web based, making the Internet amazingly dangerous for kids. Without unbending activity and control, this could achieve an exceptional rising in sexual bad behaviors against kids," it included.”

The report alludes to Europol, United Nations, ECPAT reports which express that youngsters are as of now more slanted to web preparing and sexual compulsion.

“Before the institution of the Information Technology (Amendment) Act, 2008 (IT Act), there was no law explicitly focusing on online child erotic entertainment in India. Child sexual entertainment was controlled by vulgarity laws. For instance, in a 2008 case in the Delhi High Court, where an explicit MMS of kids was flowed online on a well-known website, the blamed was charged under Section 67 for the IT Act (Publication and transmission of disgusting material) and Section 292 of the Indian Penal Code (Sale of indecent material). Taking note of the absence of explicit enactment, Justice Murlidhar expressed, "India might need to build up an alternate administrative model to direct the utilization of the web with the end goal of restricting its utilization for spreading child obscene materials... the errand merits the most extreme need.”

“During this time, there was creating arrangement among the overall organization on the necessity for general criminalization of the creation and scattering of online child sexual entertainment.”

“The IT Act condemns creation, distribution and dispersion of child erotic entertainment. Creation incorporates formation of any "text and advanced pictures", portraying youngsters in profane or revolting or explicitly express way and recording "misuse relating to an explicitly unequivocal act". Aside from video, sound and photos, the definition is sufficiently wide to incorporate the criminalisation of the funnies, erotica books or kid's shows portraying youngsters participating in sexual action. The Act likewise disallows all types of distribution,

transmission, commercial, advancement, trade and circulation of material "portraying youngsters in foul or obscene or explicitly express way."

"The IT Act criminalizes production, publication and distribution of child pornography.^{iv} Production includes creation of any "text and digital images", depicting children in obscene or indecent or sexually explicit manner and recording "abuse pertaining to a sexually explicit act".^v Apart from video, audio and photographs, the definition is wide enough to include the criminalisation of the comics, erotica novels or cartoons depicting children engaging in sexual activity.^{vi} The Act also prohibits all forms of publication, transmission, advertisement, promotion, exchange and distribution of material "depicting children in obscene or indecent or sexually explicit manner".^{vii}

"There is a limited exception to the offence if the material used is "in the interest of science, literature, art or learning or other objects of general concern" or is for "bona fide heritage or religious purposes".^{viii} POSCO criminalises the use of children for pornographic purposes in any form of media including through "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); (c) the indecent or obscene representation of a child".^{ix} Contravention is punishable with imprisonment ranging from six years to life, depending on the type of offence.^x The Act also criminalises the storage of any pornographic material involving a child in any form, for commercial purposes.^{xi} Non-commercial consumption of child pornography is thus not punishable under POSCO."

However, on 5th August 2019 the Parliament with the assent of the President passed the POCSO Amendment Act, 2019.

"In the recent past rates of children's sexual abuse cases showing the insensitive mentality of the victimizers, who have been violent in their methodology towards young casualties, is ascending in the nation. Children are turning out to be simple prey due to their youthful age, physical weaknesses and the inability of life and society."

"There was a solid need to take tough measures to hinder the rising pattern of child sexual abuse in the nation, the amendments made to the said Act make arrangements the enhancement of punishments for various offences so as to deter the perpetrators and ensure safety, security and dignified childhood for a child. It additionally enables the Central Government to make

rules for the way of erasing or deleting or reporting about obscene material in any structure involving a child to the assigned authority.”

Section (2)(1) of the POCSO Act is the Addition of new clause - '(da) which states that - “child pornography” means any visual depiction of sexually explicit conduct involving a child which include photograph, video, digital or computer-generated image indistinguishable from an actual child, and image created, adapted, or modified, but appear to depict a child.^{xii}

As mentioned previously Section 14 and 15 deals with child pornography, however, this too was amended.

“The Amendment presents a new section 15 and proposes the accompanying punishments for capacity and ownership of explicit material involving children:

A minimum fine of Rs. 5,000 for ownership of explicit material involving a child and with an intention to share the material in first time offense. For ensuing offenses, the fine will be no less than Rs. 10,000.”

Transmission such material, aside from the reason for reporting or as proof in the court, will be culpable with a fine, jail term of up to 3 years, or both.

“Commercial utilization of such material will be culpable with jail term of 3-5 years, or fine, or both for the first conviction. Subsequent convictions can prompt jail term of 5-7 years with fine.

Prior to the amendment, non – commercial use of child porn was not punishable however now regardless of intention to use it for earning money or not – It is an offense to store such explicit material.”

OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION, AND CHILD PORNOGRAPHY

“The convention on rights of the child of 1989 is looked over by the UNICEF. The convention is the most signed and ratified international human rights treaty in the world. The Convention changed the manner in which a 'child' is seen and treated – i.e., as individuals with a particular set of rights rather than as detached objects who have to be cared for and shown good cause.”

The widespread acknowledgment of the Convention obviously shows a wide worldwide pledge to safeguard children and their rights. This convention has also been recognized by Non- state entities.

“The right of children to protection from violence has been included in the Convention on the Rights of the Child and yet around one billion children experience some form of emotional, physical, or sexual violence every year; and one child dies from violence every five minutes.”

“Violence against children knows no limits of culture, class, or educational institutions. It happens against youngsters in establishments, in schools, and at home. children facing violence is likewise a worry, just like the increase in cyberbullying. because of this children are found to be living in disengagement, forlornness, and dread, not realizing where to go for help, particularly when the culprit is somebody close to them. Children's sexual orientation, handicap, destitution, identity, nationality, or religious origin may all increase the risk of violence with the youngest being especially vulnerable as they are less able to speak up and seek support.”

“There has been some genuine advancement in the form that numerous states currently have enactment to disallow physical, mental, and sexual violence and backing casualties; crusades are bringing issues to light of the negative effect of viciousness; and tormenting, sexual brutality, and unsafe practices against children are being handled.”

“These are significant developments but much more needs to be done. The inclusion of a specific target (16.2) in the 2030 Agenda has shown the world’s commitment to end to all forms of violence against children.^{xiii} As responsible citizens and human beings actions must be taken urgently to ensure that this noble vision becomes a reality for every child.”

“Under Article 1 of the Convention on the Rights of Child, a "Child" is characterized as a person under the age of 18 years and, in legal terms, a child is alluded to as a minor. In a report by UNICEF, it was found that 1 out of 3 young females and 1 out of 5 young males were probably going to be sexually exploited before they attain the age of 18.”

“The convention on the rights of the child “ensures basic rights to children around the world irrespective of the child’s or their guardian's nationality, race, color, language, political opinion, ethnicity, birth, etc. under Article 2.”^{xiv}

The Governments of the nations who have signed the convention have to ensure that every child enjoys the rights that have been stipulated in the convention.”

In totality, the convention on the rights of the child is about how the countries, UN agencies, and other non- governmental agencies or organizations work to ensure child rights.

“A Protocol may be on a topic relevant to the treaty or is used as a tool to strengthen certain points of a treaty. It may be used to address original, emerging concerns or establish a new procedure for enforcement of the treaty.”

“However, The ‘Optional’ Protocols are optional because of its demanding nature. These protocols are often more rigid than the convention itself. These optional protocols are treaties in its strictest form and create more pressure on nations to follow the outcomes of said protocols.”

“The Optional Protocol on the sale of children, child prostitution and child pornography draws special attention to the criminalization of these serious violations of children's rights and emphasizes the importance of increased public awareness and international cooperation in efforts to combat them.^{xv}”

“It supplements the Convention by furnishing States with nitty gritty necessities to end the sexual misuse and abuse of children and furthermore shields kids from being sold for non-sexual purposes - for example, different types of constrained labour, illicit adoptions and organ donation.”

“The Protocol provides definitions for the offences of ‘sale of children’, ‘child prostitution’ and ‘child pornography’. It also creates obligations on governments to criminalize and punish activities related to these offences. It requires punishment not only for those offering or delivering children for the purposes of sexual exploitation, transfer of organs or children for profit or forced labour, but also for anyone accepting the child for these activities.^{xvi}”

“The Protocol additionally secures the rights and interests of child victims. Governments must offer lawful and other help administrations to child victims. This commitment incorporates thinking about the eventual benefits of the child in any connections with the criminal law and justice system. children should likewise be supported with fundamental clinical, mental,

strategic and monetary help for their rehabilitation and reintegration. As a supplement to the Convention on the Rights of the Child, the interpretation of the Optional Protocol's content should consistently be guided by the standards of non-discrimination, eventual benefits for the children, survival and development, and cooperation.”

“The "Optional Protocol on Child Trafficking, Child Prostitution and Child Pornography" require State parties to provide legal and other support services to child victims and calls for international cooperation to prevent and punish these violations.^{xvii}

IMPLICATIONS ON NATIONS TO FOLLOW SUCH PROTOCOLS

“International human rights treaties and agreements such as the Convention on the Rights of the Child are developed through a process of negotiation among United Nations Member States. Individual States then decide for themselves whether to be legally bound by the treaty.^{xviii}”

“A State becomes a party to the Convention and Optional Protocol by signing and ratifying either instrument or by acceding to them. A regional integration organization becomes a party to the Convention and Optional Protocol by signing and formally confirming its intention or by acceding to them. A precondition to signing and ratifying the Optional Protocol is having signed and ratified the Convention.”

“The first step in the process of becoming a party to a treaty is signing the treaty. States and regional integration organizations, such as the European Union, may sign the Convention. Any signatory State or regional integration organization that has signed the Convention may also sign the Optional Protocol. However, no prior signing is required if a country accedes to the Convention or Optional Protocol.”

“A State may sign the Convention and Optional Protocol at any time. Signing should be arranged with the Office of Legal Affairs at the United Nations Headquarters in New York. While some treaties do not leave open the period for signing, this Convention and Optional Protocol are open for signing indefinitely.”

CONCLUSION

“Child pornography is a violation of human rights. Almost all countries have signed protocols and conventions to ensure the protection of children. It has often been said that the term ‘child pornography’ should not be used as it is blatantly recording the sexual abuse of a child.”

“It is not just a legal issue but a moral issue. Even with numerous conventions on protecting the rights of children, it was found in a report by the International Centre for Missing and Exploited children that even though the convention on the protection of child rights is the most signed yet most of the countries do not have legislation that directly deals with child pornography.”

Till now most of the legislations have failed in curbing the production and sale of child pornography. There are only 45 nations that have airtight laws to combat child pornography.

“A global mechanism is required to combat this menace. The mechanism should be such that it detects, assesses, and prosecutes online child pornography. It should be universal for easy detection and quick action to eliminate it. The mechanism has to be fool proof without loopholes to reduce the chances of such content being available and the culprits being punished. The framework should be such that it is inclusive and enforces a redressal through the participation of the signatory nations of the convention.”

Thankfully we live in a society where Nations may make different laws on adult porn wherein some choose to ban it and some choose to legalize it however, even the most hateful Governments are against child pornography.

ENDNOTES

ⁱSouth Korea's 'nth rooms' are toxic mixture of tech, sex and crime by Haeryun Kang, available at <https://asia.nikkei.com/Opinion/South-Korea-s-nth-rooms-are-toxic-mixture-of-tech-sex-and-crime>

ⁱⁱ Available at <https://www.indiatoday.in/india/story/kerala-police-busts-online-child-pornography-arrests-47-1694738-2020-06-28, 20-09-2020,22:57>.

ⁱⁱⁱAvailable at <https://ciso.economictimes.indiatimes.com/news/demand-for-child-pornography-in-india-spiked-since-lockdown-icpf/75127959, 20-09-2020, 22:47>.

^{iv} 1 IT Act, Section 67B(a), (b). A “child” for the purposes of both POSCO and Section 67B of the IT Act as any person below 18 years of age.

^v Ibid, Section 67B(b)(e)

^{vi} The breadth of the definition raises several free speech issues. For example, under the section- a child cannot take his own nude photograph or write about her experiences with her sexuality in her diary. Similarly, a cartoonist who draws an imaginary nude of a child, (knowing whether a particular cartoon is a “child” or “adult” is another

difficulty), harms no children in creating his fantasy. As Simpson puts it, “While such laws often seek their justification in the need to protect children”, “they can also lead to outcomes which in effect place our fantasies and thoughts under state surveillance” See Simpson, Brian. "Controlling fantasy in cyberspace: Cartoons, imagination and child pornography." *Information & Communications Technology Law* 18.3 (2009): 255-271.

^{vii} IT Act. Section 67B(b).

^{viii} These exceptions are para materia to Section 292 of the Indian Penal Code. The interpretation of the words “Art” and “Literature” have been as controversial point in law as the interpretation of what is “obscene”. See for example *Devidas Ramachandra Tuljapurkar vs State Of Maharashtra* 2015 SCC OnLine SC 486 ; *KA Abbas v. Union of India* 1971 AIR 481 (SC); *Maqbool Fida Husain vs Raj Kumar Pandey* 2008 Cri LJ 4107 (Delhi HC).

^{ix} POSCO, Section 14

^x *Ibid*, Section 14,15.

^{xi} *Ibid* , Section 15

^{xii} Section 2 (1) (d) of POSCO Amendment Act, 2019.

^{xiii} Available

at <https://www.unicef.org/zh/%E5%84%BF%E7%AB%A5%E6%9D%83%E5%88%A9%E5%85%AC%E7%BA%A6/%E%B8%B8%E8%A7%81%E9%97%AE%E9%A2%98>, 20-09-2020, 23:25.

^{xiv} Article 2 of the Convention of Rights of Child.

^{xv} Available at <https://www.unicef.org/child-rights-convention/strengthening-convention-optional-protocols>, 20-09-2020 , 23:36.

^{xvi} Available at <https://www.unicef.org/child-rights-convention/strengthening-convention-optional-protocols>, 20-09-2020, 23:27.

^{xvii} *Ibid*.

^{xviii} Available at <https://www.unicef.org/child-rights-convention/how-convention-works>, 20-09-20, 23:29.