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## COMBATING CHILD OBSCENITY: A CRITICAL ANALYSIS

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### ABSTRACT

*“Crime is immortal – as immortal as a society”.*

*It has been a baffling problem, ever since the dawn of human civilization. More than 90 per cent of all cyberattacks or cybersecurity breaches are caused by human error. So human beings are the weakest link in the cybersecurity chain. Computers are weapons, but the perpetrators and the victims are both humans. Moreover, it's a growing trend and it will continue to evolve into new areas, one such area is child obscenity. Obscenity is indecency and refers to a narrower category of pornography. The electronic revolution has made pornography more accessible as the expansion of digital technology has provided the greatest excess to date to sexually explicit content accessed by both adults and children. A child's simplicity, lack of knowledge, and purity are what attract child molesters to trap them in a vicious circle of cybercrime. The paper introduced is an endeavour to assess the law governing child obscenity in India and its impact on minors.*

*The present paper is an attempt to evaluate the concept and test of obscenity in India, sexual exploitation of children via the internet with a detailed analysis of India's position vis-a-vis international convention on child rights, child obscenity under various legislations in India and its loopholes. further, this paper worries about how to eliminate child sexual abuse material on the internet, and how AI and social engineering can fight loopholes of cyber obscenity. Further, the researchers also tried to analyze the issues of child trafficking in cyberspace. The research paper is prepared on the analogical method of research, the secondary sources are used in the*

*paper for gathering the information and further converting the same into a precise piece of information.*

**Keywords:** *Child Obscenity, Child Pornography, Cybercrime, Digital Technology, Trafficking.*

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## 1. INTRODUCTION

“No violence against children is Justifiable and all violence against children is preventable” –  
Professor Paul Pinheiro.

Child obscenity or pornography is a menace and the way it is growing using information technology and communication tools, one may even conclude that no child is safe. The onus is on civil society to help the state to curb this menace from taking monstrous proportions. Every child has the right to protection from all forms of exploitation. The open network was a relatively new and unexplored territory until a few years ago. At first, it was used as a tool for education but now, Child obscenity is a growing problem worldwide, with the proliferation of technology and the internet making it easier for perpetrators to access and distribute sexually explicit or inappropriate material involving children. Child obscenity or pornography in cyberspace includes the trading of sexually explicit materials involving minors through electronic mode. The digital revolution has facilitated widespread access to pornographic and explicit content, bringing previously hard-to-obtain material directly into people’s homes. With the proliferation of online databases and the internet, accessing sexually explicit images has become easier than ever for both adults and minors. Studies have shown that online pornography contributes to various negative societal issues such as child abuse, violence against women, rape, inequality, family breakdown, youth delinquency, promiscuity, and the spread of sexually transmitted diseases. Concerns among parents about the potential harm of online pornography to their children are justified. Predators exploit the internet’s anonymity to seek out victims, using platforms like newsgroups, chat rooms, and email to share child pornography and groom children. Pornographic content on the internet comes in various formats, including images, short animations, sound files, and written stories, primarily disseminated through websites and occasionally through older channels like Usenet newsgroups. Additionally, the internet enables discussion about sex, viewing live sexual performances, and arranging sexual encounters- all from the comfort of a computer screen.

The nature of the internet has always made its regulation difficult. Pornographic material's presence on the internet has sparked more widespread attention and discussion than any other aspect of the medium, sometimes to the extent of overshadowing the various other uses to which the medium can be put. Technology has an inherent capacity to combat child obscenity or pornography, but we the society as a whole have to recognize it.

## 2. LITERATURE REVIEW

Saquist Ahmad Khan (2020):<sup>1</sup> The author of this article claims that cybercrime encompasses a broad spectrum of criminal activities or illegal actions wherein a computer serves as either a tool, a target, or both, spanning various related subjects such as cyber obscenity, pornography, cyberbullying, phishing etc. and the author also stressed upon the ways we can combat these. The author's main objective in creating this document was to promulgate its content and statistics on cybercrime around the world. The document focuses on cyber laws in India mainly.

Yashika Arora and Bhawna Sharma (2018):<sup>2</sup> Due to the gradual growth of the internet, technology abuse is gradually expanding, leading to cybercrime. It is basically a penal offence and is considered an illegal activity to trespass into another person's computer or network. This document illustrates and focuses on cyber obscenity and its impact on society and children. Today with the advent growth of the cyber world child obscenity has tremendously increased, the children are now not safe from the dark web. The authors further worry about the measures that can be taken to curb cyber obscenity or pornography.

## 3. MEANING AND TEST OF OBSCENITY

Obscenity is a complex and controversial topic, as the definition of what constitutes obscene material can vary greatly depending on cultural and social norms. The US Supreme Court has recognized the Miller test as the prevailing criterion for determining whether the matter is obscene. The Supreme Court has thrown out the British Hicklin test and the contemporary community standards test which considers the changing values in society, what was considered

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<sup>1</sup> Saquist Ahmad Khan, *Cybercrime in India: An empirical study*, 11(5) INT'L J. SCI. & ENG. RSCH. (2020)

<sup>2</sup> Yashika Arora & Bhawna Sharma, *The dark side of cyber-Pornography*, 4 PEN ACCLAIMS (2018)

obscene a century or even just a decade ago may not be deemed obscene today. Indian Courts have also interpreted the meaning of obscene through a series of different case laws. To have a more comprehensive understanding, it would be valuable to examine the historical development of the obscenity test.

#### 4. TEST FOR OBSCENITY IN US

In the case of *Regina v. Hicklin*,<sup>3</sup> the guidelines for the obscenity test were established, the Hecklin test, also known as the “obscenity test” was a legal standard used in the 19<sup>th</sup> century to determine whether the literary or artistic creation was obscene. The ruling established the concept that a piece of art may be deemed objectionable if it had the potential to “corrupt and debauch individuals with impressionable minds who might encounter such immoral influences through its publications” The Hicklin Test was first applied in American court cases in order to uphold the federal anti-obscenity Act of 1873 ( also known as the Comstock Act) and later state statutes that addressed obscenity and were modelled after the federal legislation. While the Hicklin test was used for many years in England and the United States, it was criticized by many legal scholars as being overly broad and vague. Critics argued that the test focused solely on the potential harm of a work rather than its artistic or literary value.

In the 19<sup>th</sup> century, the modern community standard test, which considers the shifting values in society, took the role of the Hicklin test. The Community Standards Test is a legal test used to determine whether material is obscene. The examination originated from the 1957 Supreme Court ruling in the matter of *Roth v. United States*.<sup>4</sup> The assessment questions whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest, depicts or describes sexual conduct in a patently offensive way, and lacks serious literary, artistic, political, or scientific value. The test assessed obscenity by the standard of an individual who was open to immoral influences and would likely be corrupted or depraved by the material. The Community Standards Test was replaced by the Miller test in 1973.

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<sup>3</sup> *Regina v. Hicklin*, (1868) 3 QB 360.

<sup>4</sup> *Roth v. United States*, 354 US 476 (1957).

The Miller test was established in the 1973 Supreme Court case of *Miller v. California*.<sup>5</sup>, the U.S. Supreme Court ruled that states could restrict the publication or sale of materials that “appeal to the lascivious interest in sex, depict sexual conduct in an overly offensive manner, and, when considered as a whole, lack substantial literary, artistic, political, or scientific value.” The court emphasized that the term “prurient” should be defined by the standards of the average person, applying contemporary community norms. Additionally, the court asserted that a work having some “redeeming social value” would not serve as a defense against such restriction.

The test involves three prongs that must be satisfied in order for a material to be considered obscene and not protected.

- Whether based on current community norms, the average person would perceive that the work, when considered in its entirety, elicits a lascivious or sexually arousing interest. (this prong is intended to exclude material that is considered normal or acceptable within the context of society.)
- Whether the work portrays or describes sexual conduct in a manner that is clearly offensive, as explicitly defined by the state law, (this prong is intended to exclude the material that is considered harmful or offensive to society.)
- Whether, when considered comprehensively, the work lacks significant literary, artistic, political, or scientific merit, (this prong is intended to exclude material that has redeeming social value).

The Miller test has been subject to criticism and debate since it was first established. Some critics argue that the test is too subjective and that the characterization of what qualifies as obscene can vary greatly depending on the individual or community making the determination.

Others argue that the test is overly broad and can lead to the suppression of material that is actually protected under the First Amendment's protection of free speech. For example, works of art or literature that contain sexually explicit content may be considered obscene under the Miller test, even if they have serious or literary value.

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<sup>5</sup> *Miller v. California*, 413 US 15 (1973).

Despite these criticisms, the Miller test continues to serve as the established legal criterion for identifying obscenity in the United States. While various court cases have brought about refinements and clarifications to the test over time, the fundamental principles remain unchanged.

## 5. TEST FOR OBSCENITY IN INDIA

The test of obscenity in India has undergone significant changes since the country gained independence in 1947. Although the Constitution of India ensures the right to freedom of speech and expression, it imposes specific limitations on this right, including restrictions on material that is considered obscene.

The test of obscenity in India has its roots in British colonial law, which was based on the Hicklin test. This test was used to suppress works of art and literature that were deemed obscene, including works by Indian authors and artists. After independence, the Indian government sought to create a legal framework that would protect free speech while also placing reasonable restrictions on obscenity.

The *Ranjit D. Udeshi v. State of Maharashtra*<sup>6</sup>, a modified version of the Hicklin test was adopted as the standard for determining obscenity in India. The court ruled that the obscenity test revolves around whether the material in question has the potential to corrupt and debauch individuals with susceptible minds who may come across such immoral influences through its publication.

The court additionally defined "obscene" as material that is "offensive to modesty or decency, lewd, filthy, and repulsive." It affirmed the constitutionality of section 292 of the Indian Penal Code (IPC)<sup>7</sup>, asserting that it represents a reasonable restriction on the freedom of expression as outlined in Article 19(2) of the constitution, serving the interests of decency and morality<sup>8</sup>.

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<sup>6</sup> *Ranjit D. Udeshi v. State of Maharashtra*, AIR 1965 SC 881

<sup>7</sup> Indian Penal Code, § 292, No. 45, Acts of Parliament, 1860 (India)

<sup>8</sup> INDIA CONST. art 19(2)

Further, in the case of *Aveek Sarkar v. State of West Bengal*<sup>9</sup>, the Supreme Court held that the test for obscenity is whether the material has the tendency to arouse sexual desires or whether it goes beyond the acceptable standards of morality in society. The court also emphasized that obscenity cannot be determined by applying contemporary community standards alone and that the material should be considered in light of the impact it could have on society as a whole. The Sarkar case has provided a more contemporary and nuanced view of the test of obscenity in India.

In the *Samaresh Bose v. Amal Mitra* case<sup>10</sup>, the court emphasized that the definition of obscenity varies from one country to another, influenced by the prevailing moral standards of contemporary society. The court made a distinction between vulgarity and obscenity, stating that while vulgar writing may evoke feelings of disgust and boredom, it does not necessarily have the effect of corrupting the morals of readers. On the other hand, obscenity is characterized by its potential to deprave and corrupt individuals susceptible to such immoral influences.

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Significantly, in *Directorate General of Doordarshan v. Anand Patwardhan*,<sup>11</sup> the Supreme Court, in the case of *Ajay Goswami v. Union of India*, reaffirmed the Miller Test as the fundamental criterion for determining obscenity. Additionally, the Court emphasized that the assessment of work should be based on the perspective of an ordinary individual with common sense and prudence, rather than an individual who is exceptionally sensitive or unconventional. It was observed by Dr. A.R. Lakshmanan, J. in *Ajay Goswami v. Union of India*<sup>12</sup> while referring to contemporary standards:

“When determining whether a specific work is obscene, it is essential to consider contemporary societal values and national norms. A notable instance is the contrast in judgments regarding *Lady Chatterley's Lover*, where the Supreme Court in India deemed it obscene, while in England, the jury acquitted the publishers, marking a pivotal moment in advocating literary freedom in the

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<sup>9</sup> *Aveek Sarkar v. State of West Bengal*, 2014 (4) SCC 257

<sup>10</sup> *Samaresh Bose v. Amal Mitra*, 1985 4 SCC 289

<sup>11</sup> *Directorate General of Doordarshan v. Anand Patwardhan*, (2006) 8 SCC 433

<sup>12</sup> *Ajay Goswami v. Union of India*, (2007) 1 SCC 143 (169)



UK. The divergence in viewpoints between the Indian Supreme Court and the English jury might be influenced by the concept of "community mores and standards." The test has become somewhat outdated in the era of the internet, where traditional barriers have broken down, and publications from around the world are easily accessible with a click.”

Overall, the courts in India have taken a nuanced approach to obscenity, recognizing that it is a complex and subjective concept that requires careful consideration of context and cultural norms. While obscenity is not protected under the Indian Constitution, the courts have generally been reluctant to restrict artistic expression or freedom of speech and have sought to balance these competing interests in a thoughtful and nuanced manner.

## 6. INDIAN LEGISLATIVE PROVISION

The issue of obscenity in India is a contentious one, with various laws and regulations in place to govern and regulate what is considered obscene in the country. The Indian Penal Code, which is the primary law governing criminal offences in India, has several provisions related to obscenity. Additionally, there are various other laws, rules, and regulations that deal with obscenity in different contexts such as The Protection of Children from Sexual Offences (POCSO) Act, 2012 and The Information Technology Act, of 2000.

A new and highly sophisticated medium emerged in the late 20<sup>th</sup> century, which fundamentally transformed the way people think about information technology. With the growth of IT, it was strongly felt by the world community to bring in some legislation to regulate this high tech. Article 19(1)(a) of the Indian Constitution provides citizens with the following protections regarding their right to free speech and expression<sup>13</sup>:

“all citizens shall have a right to freedom of speech and expression”

“This freedom's absolute character has since been expressly limited in Art. 19. (2). Therefore, it is evident that even though India's constitution guarantees its citizens the right to free speech and expression, the government has the authority to enact laws that legitimately restrict this right under a few specific conditions.”

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<sup>13</sup> INDIA CONST. art. 19(1)(a)

The criminal offence of publishing pornographic material online is addressed in section 67 of the Information Technology Act. Section 292 of the IPC serves as the model for section 67 of the IT Act of 2000. This section is the most stringent legislative measure against pornography which provides punishment for publishing or transmitting obscene material in electronic form. It states that if anyone publishes or transmits obscene material in electronic form that is lascivious or has the tendency to deprave and corrupt people, they can be punished with imprisonment of either description which may extend up to 5 years and also with a fine which may extend to ten lakh (10,00,000 Rs.) rupees”.

It is therefore clear that the provision of section 67 is sufficiently broad to cover all perpetrators of cyber obscenity, including internet service providers, web hosts, and website owners.

In the first place the punishing statute, no reference to pornography is found in the Indian penal code. Therefore, before examining section 67 of the Information Technology Act (IT Act)<sup>14</sup>, it is necessary to briefly review section 292 of IPC, which deals with obscenity. Interestingly Indian penal code, of 1860 does not define the word “obscene” or “porn”. Section 292 IPC states that “any book, pamphlet, paper, writing, drawing, painting, representation, figure, or any other object shall be deemed to be obscene if it is lascivious or appeals to the prurient interests of the audience and tends to deprave or corrupt persons who are likely to contact with it.”

Regarding the Information Technology Act specifically, section 67 of the act defines an offense that is essentially the same as section 292 of the IPC; the only significant distinction is that section 67 of the act extends the definition of obscenity to include any content that is in electronic form and in the cyber world. Thus, every obscene electronic information would come within the rigours of section 67 of the IT Act, 2000.

Neither the IT Act, 2000 nor the Indian Penal Code, 1860 gives any definition of the term “lascivious” or “prurient”. The Webster’s New World dictionary defines the term “lascivious” as

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<sup>14</sup> Information Technology Act, 2000, § 67, No. 21, Acts of Parliament, 2000 (India)

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expressing lust, wanton, tending to excite lust, and the term “prurient” has been defined as having lustful ideas or desires. Neither there are any uniform standards for determining what is lascivious or prurient nor the definition of what constitutes obscenity has changed over time, depending on the age, the location, and even the individual, depending upon the particular social conditions and standards.

The scope of the expression “any content that is lewd, appeals to lustful interests, or has the potential to corrupt or deprave people who are probably reading, seeing, or hearing it while taking into account all the relevant factors” has to be interpreted in the light of the various principles and tests laid down by the aforesaid judicial pronouncement.

Another contentious issue was that, In India, we have no protection for the Indian children on the web. The IT Act, 2000 does not mention anything about protecting children online. But we have The Protection of Children from Sexual Offences (POCSO) Act, 2012, it is an Indian law that aims to protect children from sexual offenses and provide a safe environment for their development.

Section 13 of the POCSO Act<sup>15</sup> deals with the use of a child for pornographic purposes. According to the Act, it is illegal for anyone to use a child for pornographic purposes by having the child represent their sexual organs, engage the child in actual or simulated sexual acts, or depict the child indecently or obscenely in television or internet programs or advertisements. The gender-neutral POCSO Act was passed in 2012 and acknowledges that boys can also become victims of sexual assault. A child is defined as a person under the age of eighteen. The Act's provisions are gender-neutral and prioritise the promotion of children's optimal physical, psychological, cognitive, and emotional well-being in addition to protecting their interests and ensuring their well-being.

Further, section 14 deals with the punishment, It stipulates that anyone who uses a child for pornographic purposes will be subject to fines and imprisonment for a minimum of five years, with the possibility of a seven-year sentence<sup>16</sup>. Further, Section 15 makes it illegal to possess or

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<sup>15</sup> Protection of Children from Sexual Offences Act, 2012, § 13, No. 32, Acts of Parliament, 2012 (India)

<sup>16</sup> Protection of Children from Sexual Offences Act, 2012, § 14, No. 32, Acts of Parliament, 2012 (India)

share any pornographic material that involves a child, through the electronic medium for commercial purposes<sup>17</sup>.

These provisions of the POCSO act are aimed at preventing and punishing those who engage in child obscenity in the cyber world. They recognize the growing prevalence of child sexual abuse and exploitation online and seek to provide a robust legal framework to prevent and punish such offences. It is relevant to note that these provisions apply to all forms of electronic media, including social media platforms, online messengers and emails, and not just traditional forms of media.

## **7. INTERNATIONAL LEGAL INSTRUMENTS :**

### **7.1 Conventions on the right of the child**

The Convention on the Rights of Child (CRC) is an international human rights treaty that outlines the rights of children worldwide, was adopted by the United Nations General Assembly in the year 1989 and has been one of the most widely accepted international treaties.

The CRC recognizes the rights of every child to be protected from all forms of exploitation, including sexual exploitation and any form of abuse. Article 34 of the CRC specifically addresses protecting children from sexual exploitation and abuse. It calls on states to take all appropriate measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity, including the production and dissemination of child pornography.

Ensuring the protection of children from obscenity and exploitation is not only a legal obligation but also a moral imperative under the CRC.

### **7.2 ILO Convention on child labour**

The International Labour Organization (ILO) Convention is a global treaty that attempts to end child labour in all of its forms. The year 2000 marked the convention's implementation. The most severe type of child labour involves using, obtaining, or providing a child for prostitution, creating or producing pornography or pornographic performances, using, obtaining, or providing

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<sup>17</sup> Protection of Children from Sexual Offences Act, 2012, § 15, No. 32, Acts of Parliament, 2012 (India)

a child for illegal activities, producing and trafficking drugs, or any other type of work that, by its very nature of the conditions under which it is performed, is likely to endanger the health, safety, or morals of children.

As of April 2023, the convention has been ratified by 187 countries around the world. However, despite efforts to eradicate child labour, it remains a persistent problem in many parts of the world. The convention requires the government to take action to eliminate the worst form of child labour by implementing policies that protect children from exploitation.

In terms of human rights, India is a party to numerous international human rights treaties, such as the Convention on the Rights of the Child, the International Covenant on Economic, social, and Cultural Rights, and the International Convention on Civil and Political Rights.

## 8. ANALYSIS AND HYPOTHESIS WITH SOLUTIONS

This research paper hypothesizes that the consumption of child obscenity is positively associated with an increased risk of engaging in child sexual abuse. Further, exposure to sexually explicit or obscene material at a young age may be more likely to engage in sexually inappropriate behaviour at a later stage in life. It has a negative effect on a child's psychological and social development and can lead to an increased risk of developing sexually deviant behaviour in adulthood. This exposure can also have a negative impact on their self-esteem, emotional well-being, and overall mental health. This is because they may not have the cognitive or emotional maturity to understand the context and implications of such material. Additionally, children who are exposed to this may not have the social support or guidance to process the experience in a healthy way. Exposure to pornography can lead to mental disturbance, depression, flashbacks, and (PTSD) post-traumatic stress disorder.<sup>18</sup>

We are living in an age of crime without borders a borderless crime is a remote threat and therefore detection and punishment must often happen at the global level where there's limited jurisdiction. The most effective way to protect yourself from this kind of attack is to enable two-

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<sup>18</sup> L. David Perry, The impact of pornography on children, AMERICAN COLLEGE OF PEDIATRICIANS (Jan. 10, 2024, 7:00 PM), <https://acpeds.org/position-statements/the-impact-of-pornography-on-children>

factor authentication wherever and whenever possible, 90% of successful cyber-attacks start with a phishing email or text therefore, one must need to have a strong password. To protect the exposure parents can make use of protections and filters available on devices to limit their children's access to obscene content on the open network,<sup>19</sup> parents must have open conversations regarding pornography and obscenity with their children. Further, parents should view pornography as a predator and take immediate action if they discover their child has been exposed to it.

Preventing child obscenity requires a multi-pronged approach that involves parents, caregivers, educators, law enforcement agencies and society as a whole. Parents and educators play a crucial role in a child's life they should educate children about appropriate behaviour and speech, and they should teach them about the danger and the consequences of involving in such activity. Further, adults should monitor children's activities online and offline, communities can organize awareness campaigns and workshops to educate parents, teachers and children about child obscenity, and they can also create support networks for victims and their families. Further, victims of child obscenity should be provided with support services such as counselling, medical attention and legal aid.

It is essential to recognize that preventing child obscenity is an ongoing effort that requires the collaboration of everyone in society. By taking small measures, one can create a safe environment for children to grow in this cyber era.

AI and social engineering can both play important roles in combating child obscenity. AI can be used to detect and prevent the distribution of child pornography on the internet. Machine learning algorithms can be trained to recognize patterns and features of images and videos that are indicative of child pornography. This can help law enforcement and tech companies to identify and remove such content from the internet.

Social engineering can be used to prevent individuals from engaging in the production and distribution of child pornography. This can involve targeted education and awareness campaigns, which aim to change social norms and discourage such behaviour. It can also involve the use of social pressure and peer influence to discourage individuals from engaging in these activities.

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<sup>19</sup> *Id.*

In addition, AI can be used to analyze social media and messaging apps for signs of grooming and exploitation. By monitoring certain keywords, phrases, and behaviours, AI can help identify potential cases of child abuse or exploitation, and alert authorities regarding the same.

## 9. CONCLUSION

Any society's cornerstone is its youth. They represent our hopes and the people of the future. Countries throughout the world have engaged in different projects to harness the potential of children for progress and development. However, with the internet, the children of the world have logged on to a potential fire. In the Indian context, we see that children belonging to affluent families are getting hooked on to internet. Even middle-class children do not lag behind as they utilize the services offered by cybercafes. More importantly, children of tender age tend to be swayed away by the medium of the internet and, more often than not, end up giving complete information about themselves on the net, thereby making themselves extremely vulnerable.

In the West, the awareness regarding child obscenity has tremendously increased and various states of the USA have taken precautionary steps to protect children online. The concept of parental guidance has also gained importance. However, in India, although we have the POCSO Act the IT Act, 2000 which specifically deals with the cyber world does not have anything about protecting children online.

There is an urgent need for the government to enact appropriate legislation to protect children of our country online. We need to encourage the concept of parental guidance. We also need to make parents aware of the different ways in which their children can be abused on the internet. Parents also need to be educated about the tremendous negative impact on the psyche of the child, which follows such online child abuse. Already, cases have been reported in our country where children are abused, misled and cyberstalked online. It shall be of immense value for India to learn from the experience of the West in its efforts towards enacting relevant legislation for protecting children online. In addition, the government needs to start aggressive awareness campaigns in schools to educate children about online child abuse.