

Child Abuse and the Internet in India: Legal Control

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Abstract-

Crime against child are not new to the world. The history is replete with the horrifying incidents of child abuse across every race, civilization, nation of the world. The tender age and immaturity of children has always tempted the society to abuse the children in various ways viz. Physical, Sexual, Emotional and Psychological abuse. With the advent of internet and its subsequent adoption throughout the world, the crimes against children have acquired a high magnitude, intensity and characteristics. Internet has shrunken the world. The Internet is an international network of networks that connects people all over the world. Any computer can communicate with almost any other computer linked to the Internet. Internet today has become an indispensable part of one's life.

Key words: Technology, Transform, Communicate, Magnitude, Intensity

The technology which was intended to connect computers and share information across the globe has been utilized by offenders to abuse the children. Though the internet plays a very important role in educating young minds in a connected world, the internet also misuses their age of unreason and leads them to various abuses. India is set to have each of its village connected by broadband by 2018 according to the department of telecom India. The government is pushing to transform hitherto traditional India into a digital India connected through the Internet. Further about 39 percent population of India is young i.e. below 18 years of age. So it's a timely alarm for the policy makers to safeguard the children of India from the abuses and crimes on the internet.

Internet

The Internet is an international network of networks that connects people all over the world. Any computer can communicate with almost any other computer linked to the

Internet. The Internet has created a universal technology platform on which to build all sorts of new products, services, communities and solutions. It is reshaping the way information technology is used by individuals and organizations. The Internet has provided an expedient mode of communication and access to a wealth of information. In less than two decades, the Internet has moved from being a communications medium used by some to an everyday tool used in our homes, schools, workplaces and travels¹. It enables us to search for information, perform routine tasks and communicate with others. The technological aspects of the Internet are developing at the same high speed as the number of users globally. The Internet provides a social context for us to meet with others and to exchange information on a scale we would never have thought possible in the past. The World Wide Web is a system with universally accepted standards for storing, retrieving, formatting, changing and displaying information in a networked environment. Information is stored and displayed as electronic pages that can contain numbers, text, pictures, graphics, sound and video. These web pages can be linked electronically to other web pages, independent of where they are located. Web pages can be viewed by any type of computer. Over the time, the internet has created a virtual space for everyone to connect with others disregarding borders.

The Internet is a valuable tool; however, it can also be detrimental to the well-being of children due to numerous online hazards². The various social networking Platforms like Orkut, Facebook, Myspace etc. have created a space for the people to interact with others along with others features sharing images, calling, video chatting etc. the children are no exception to this phenomenal aspects of the internet. Children, especially the adolescent, tend to make friends through these networking mediums. Since internet is generally accessed to by the children in absence of their parents, this provides opportunity for the unscrupulous elements to connect with the children. The offenders then entice them through various ways and thereafter harass and abuse them. Anonymity is one of the chief feature of internet which is used by the offenders to entice children by hiding their actual profile. The offenders by misrepresenting their age and profile chat

¹ Julia Davidson and Peter Gottschalk, *Internet Child Abuse Current Research and Policy*, 27, 2011.

² Ibid.

with the children and lure them for sex and other unlawful activities. It is only after the children meet the offenders that they realize that the person with whom they were chatting and sharing information was a quite old person. But until then the damage has been already done as their valuable information, nude pictures, videos are in the possession of the offender. The offender then blackmails the children with the fear of uploading their pictures and videos on the internet. Ultimately the child is then led to the den of abuse and crime.

Understanding Internet Child Offenders

The internet provides safe medium for the offenders to trap the children to various abuses. The tactic of grooming, where sex offender criminals contact children and gain their trust for the purpose of meeting them and engaging in sexual behavior, consists of a specter of approaches. The Internet enables sex offenders to entice multiple victims at once³. The various approaches employed by the online offenders to lure children are⁴:

1. **Friendship-forming phase** involves the sex offender getting to know the child. The length of time spent at this phase varies from one sex offender to another and the number of times this stage of the relationship is re-enacted depends upon the level of contact the sex offender maintains with a child.
2. **Relationship-forming phase** is an extension of the friendship-forming phase, and during this phase the adult may engage with the child in discussing, for example, school and/or home life. Not all adults engage in this phase but generally those who are going to maintain contact with a child will endeavor to create an illusion of being the child's best friend.
3. **Risk assessment phase** refers to the part of the conversation when a sex offender will ask the child about, for example, the location of the computer the child is using and the number of other people who use the computer. By gathering this kind of information it seems reasonable to suppose that the sex offender is trying to assess the likelihood of his activities being detected by, for example, the child's parents, guardians, or older siblings.

³ Id at 43.

⁴ Id at 44,45.

4. **Exclusivity phase** typically follows the risk assessment phase where the content of the conversation changes so that the child is invited to reveal personal problems in the context of a private conversation. The interactions take on the characteristics of a strong sense of mutuality, where secrets are shared.
5. **Sexual phase** is introduced after the adult has positioned the conversation so that a deep sense of shared trust seems to have been established. It is during this phase that the most distinctive differences in conversational patterns occur. For those adults who intend to maintain a relationship with a child and for whom it seems to be important to maintain the child's perception of a sense of trust and love having been created between child and adult, the sexual phase will be entered gently. The relational framing orchestrated by the adult is for the child to perceive the adult as a mentor and possible future lover.

Kinds of Child Abuse on the Internet

The internet is used by the offenders for diverse kinds of abuses against the children. The prominent among them are;

1. Child pornography.
2. Cyber bullying.
3. Unwanted Solicitation for Sexual Contact or Pictures.
4. Unwanted Exposure to Sexually Explicit Material.
5. Grooming.

International Instruments Governing Child Abuse on the Internet

1. The United Nations Convention on the Rights of Children, 1989⁵.

The United Nations Convention on the Rights of Children, 1989 draws attention for four sets of Civil, Political, Social, Economic, and Cultural rights of every Child viz. Right to Survival, Right to Protection, Right to Development, Right to Participation. It is a comprehensive convention which provides for the holistic protection and development of child. The Convention on the Rights of the Child

⁵ India became signatory to the Conventions on the Rights of Child (hereinafter will be referred to „CRC“), on 02.09.1990, in accordance with Article 49 of the CRC.

of 1989 defines more precisely the term “child”: “[...] a child is any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier” The relevant articles which deal with the abuse and sexual exploitation of children are Article 34.

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

2. **United Nations Optional Protocol on the Rights of the Child on Child Pornography⁶, 2000.**

This protocol mandates to prohibit and prevent the sale of children, child prostitution and child pornography. States are directed to modify their penal codes or to enact new laws to ensure that the legal systems embrace minimal legal provisions such as taking a child for the sale of his/her organs, for the purpose of employment, for the purpose of prostituting the child, etc. most of the offences involving the children on internet take place across the borders so it is necessary that each state must define its jurisdiction with others. For that purpose, the member states should have extraditing treaties with one another to bring the offenders to justice. States shall do everything in their power to ensure the rights of victims of trafficking are upheld by providing them with all necessary information, and legal counsel, allowing them participation in all proceedings, and working towards the child rehabilitation and reintegration into society. Each state is required to submit a report two years after having ratified this OP. India has yet to submit a report.

3. **Convention on cybercrime Budapest, 2001.**

⁶ India signed the OP on 15 Nov 2004 and ratified it on the 16 Aug 2005.

Article 9 – Offences related to child pornography

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:
 - a. producing child pornography for the purpose of its distribution through a computer system;
 - b. offering or making available child pornography through a computer system;
 - c. distributing or transmitting child pornography through a computer system;
 - d. procuring child pornography through a computer system for oneself or for another person;
 - e. possessing child pornography in a computer system or on a computer-data storage medium.
2. For the purpose of paragraph 1 above, the term “child pornography” shall include pornographic material that visually depicts:
 - a. a minor engaged in sexually explicit conduct;
 - b. a person appearing to be a minor engaged in sexually explicit conduct;
 - c. realistic images representing a minor engaged in sexually explicit conduct.
3. For the purpose of paragraph 2 above, the term “minor” shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.
- 4 Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, subparagraphs d. and e, and 2, sub-paragraphs b. and c.
4. **Convention on the protection of children against sexual exploitation and sexual abuse, 2007.**

Article 18 – Sexual abuse 1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalized:

- a. engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
- b. engaging in sexual activities with a child where:
 - use is made of coercion, force or threats; or
 - abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or
 - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.
2. For the purpose of paragraph 1 above, each Party shall decide the age below which it is prohibited to engage in sexual activities with a child.
3. The provisions of paragraph 1.a are not intended to govern consensual sexual activities between minors.

Article 20 – Offences concerning child pornography

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct, when committed without right, is criminalised:
 - a. producing child pornography;
 - b. ordering or making available child pornography;
 - c. distributing or transmitting child pornography;
 - d. procuring child pornography for oneself or for another person;
 - e. possessing child pornography;
 - f. knowingly obtaining access, through information and communication technologies, to child pornography.
2. For the purpose of the present article, the term “child pornography” shall mean any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes.

3. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.a and e to the production and possession of pornographic material:

- consisting exclusively of simulated representations or realistic images of a non-existent child;
- involving children who have reached the age set in application of Article 18, paragraph 2, where these images are produced and possessed by them with their consent and solely for their own private use.

5. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.f Article 2.

Article 23 – Solicitation of children for sexual purposes

Each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting.

The term “pornography” was first defined in the Oxford English Dictionary in 1857 and was referenced earlier in French writing to refer to writing about prostitution, obscenity, and obscene images (Hunt 1993). Each jurisdiction has its own, very specific, definitions of “child” and “pornography. “child pornography” can be functionally defined as an image that depicts a clearly prepubescent human being in a sexually explicit manner.

Research conducted relative to Internet crimes against children can be grouped into several subtopics: **unwanted solicitation for sexual contact or pictures; pornography (children as the subject); harassment and bullying; and unwanted exposure to sexually explicit material.**