

Child Abuse, Law and Technology **(With reference to crime against Children)**

Yamini Krushnarao Mohod¹ and Dr. Abhay Butle²

Research Scholar, Ph.D. Center for Higher Learning and Research

Shantaram Potdukhe College of Law, Chandrapur, Gondwana University, Gadchiroli¹

Guide, Shantaram Potdukhe College of Law, Chandrapur, India²

Abstract: *"Today's Children are Tomorrow's Nations Future" therefore, future of our Nation's children should be protected and should not be abused by the cyber-criminal. Nowadays the technology is growing very fast and today's human work, efforts gets easier day to day due to use of information technology and internet. But digital technology in the hand of children and that too at early age, are harmful to their future leading them to become cyber victim. Due to cyberspace, digital world and use of internet lot of data, information and contents are being transferred and searched and being downloaded for every second by the users but such digital world should be designed such as age restricted and it must be available only after identifying the person's identity. The unrestricted internet use which has no limitation of geographical boundaries leading fast growth in cyber-crime against children i.e. child pornography, child abuse, child harassment etc. The legislature has enacted many laws such as the I.T. Act, POCSO Act, IPC (BNS) are to punish the criminals but today needed preventive measures, policies and laws which will prevent cyber-crime more effectively against the children. The present research will understand the psychology of cyber criminals, Government Role for rehabilitation of cyber victim, preventive measures to decrease cyber-crime which are required for sustainable development of cyber law and technology in India with reference to Cyber-crime against child abuse and Law and Technology.*

Keywords: Children, Cyber Crime, Technology, Internet, Protection etc

I. INTRODUCTION

In today's world use of internet and internet tools, computer, mobile, e-transactions are growing very fast in day to day life and its use in daily life is increasing therefore, human life becoming very easier than olden days. The human life without internet and mobile, e- communication are unimaginable as today's person cannot live without mobile and internet use. The digital technology and its tools are becoming inseparable part of human life. The development in innovation in e-communication, internet tools leads more increasing reliance on the use of e-communication and use of internet. The use of e-commerce, internet, e- communication devices are more important because human life becomes more easier and enjoyable. In Railways, Industries, educations, Research areas, Health sector, banking etc. all are now-a-days are depending on the uses of e-resources digital technology and its tools.

The uses of internet and e-communication has many advantages but also there are many disadvantages which causing harm to the adults and also to the children. In India if any person commits crime then he will be tried and punished as per the Law of the Land i.e. as per the Criminal Laws such as The Indian Penal Code, Indian Evidence Act and Code of Criminal Law same are replaced with the new Acts, The Indian Home Ministry recently announced the enactment of three new criminal laws, Bharatiya Nagarik Suraksha Sanhita, 2023, Bharatiya Nyaya Sanhita, 2023, and Bharatiya Sakshya Adhiniyam, 2023, effective from 01 July 2024. These bills repeal the British- era Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act, respectively. The new laws aim to replace the colonial laws, by considering implementation of justice through a victim centric approach, increasing focus on national security and introducing digital, electronic evidence reviews, making them priorities of these laws.¹

Modern world gives us many facilities. We can visit anywhere in the world by the help of modern invention. Sometimes Modern Invention creates crime. Cyber Crime is one of them. Cyber Crime is a common phenomenon in the world. Cyber Crime is that group of activities made by the people by creating disturbance in network, stealing others important and private data, documents, hack bank details and accounts and transferring money to their own. Cyber Crime, especially through the Internet, has grown in importance as the computer has become central to commerce, entertainment, and government. Cyber crime, also called computer crime, the use of a computer as an instrument to further illegal ends, such as committing fraud, Trafficking in child pornography and intellectual property, stealing identities, or violating privacy. Restriction of cyber crimes is dependent on proper analysis of their behavior and understanding of their impacts over various levels of society. People have been greatly suffering for it. It is not only creates human suffering but also put effect on it. So Cyber Crime is one of the major crimes done by computer expert.²

There are fully trained and technically proficient criminals to use the internet to execute a variety of unlawful acts i.e. to commit cybercrimes. Now a day's numbers of incidents of cybercrimes are increasing day by day.

There are different types of Cyber Crime i.e. hacking, Virus dissemination, Logic bombs, Denial-of-Service attack, Phishing, Email bombing and spamming, Web jacking, Cyber stalking, Data diddling, Identity Theft and Credit Card Fraud, Salami slicing attack, Software Piracy, Cyber Pornography, Sale of illegal articles, Pharming.

The Information Technology Act mainly deals with different types of definitions, Authorities, and types of cybercrime and punishments.

The term "Information Technology" comprises the quantification, storage, and communication of information, means the use of hardware, software, services, and supporting infrastructure to manage and deliver information using voice, data and video³

The term "Cyber Crime" means if any offence committed against the individual or group of individual which causes mental, physical harm or harm to the reputation through electronic means is called as cybercrime. The world electronic means by the use of modern telecommunication networks such as internet, computer, electronic devices etc.

"Child" means:

According to the definition given in The Juvenile Justice (Care and Protection of Children) Act of 2015 defines a child as "a person who has not attained the age of eighteen years is child."

According to definition given in The Protection of Children from Sexual Offences Act of 2012, Section 2(d) 'child' means any person below the age of eighteen years.

According to The Prohibitions of Child Marriage Act of 2006, Sec.2 (a) "child" means a person who, if a male, has not completed twenty one years of age, and if a female, has not completed eighteen years of age.

Cyber Abuse against Children:

Children are innocent therefore cybercriminal commits crime against the children very easily and children gets victims of cyber abuse. The Term child abuse means all forms of crime which constitute an offence committed against the children by using computer, internet, computer tools etc. i.e. physical, emotional ill treatment, sexual abuse, commercial or other exploitation, which causes harm to the children.

The Legal Framework to deal cybercrimes in India:-

Information Technology Act, 2000 (IT Act)

Section 66A provides punishment for sending offensive messages through communication service etc. shall be punished with imprisonment for a term which may extend to three years and with fine.

Section 66B it provides punishment for dishonestly receiving stolen computer resource or communication device shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to rupees one lakh or with both.

Section 66C provides Punishment for identity theft, shall be punished with imprisonment for a term which may extend to three years and with fine extend to one lakh rupees.

Section 66D provides punishment for cheating by personation by using computer resource shall be punished with imprisonment of either description for a term which may extend to three years and fine may extend to one lakh rupees.

Section 66E provides punishment for violation of privacy shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh or with both.

Section 67B provides punishment for publishing or transmitting of material depicting children in sexually explicit act etc. in electronic form shall be punished with imprisonment of either description which may extend to five years and fine extend ten lak h, and in the event of second or subsequent conviction with imprisonment extend to seven years and fine extend to ten lakh rupees.

The Bharatiya Nyaya Sanhita, 2023

Section 294 and 295 deals with Sale, lets to hire, distributes, exhibits or circulates to any child any such obscene object as is related to in section 294 or attempts so to do, shall be punished with first conviction with imprisonment for a term which may extend to three years and fine extend to two thousand and in the event of second or subsequent conviction with imprisonment extend to seven years and fine extend to five thousand rupees.

Section 296 provides that whoever, to the annoyance of other does any obscene act in any public place or sings, recites or utters any obscene song, ballad or words, in or near any public place shall be punished with imprisonment of either description for a term which may extend to three months or with fine extend to one thousand rupees or with both.

Section 77 and 78 provides for voyeurism and stalking and punished with three years and fine. Cyber stalking is the act of contacting a woman despite of her lack of interest or following her via e-communication technology, such as the internet or email.

Child in Cyber Space: Impact

Cyberspace has a many impact, effect on children having both beneficial and adverse effects. While the internet offers numerous educational, social, and entertainment opportunities, it also exposes children to various risks and challenges. There are some aspects of the impact of cyberspace on children as follows:

Positive Impact:

1) Access to Information and Education:

Cyberspace provides children with vast resources and information, enabling them to access educational materials, online courses, and academic resources. This facilitates self- directed learning and supports academic achievement⁴

2) Social Connectivity:

Children can connect with peers, family members, and communities globally through social media platforms, messaging apps, and online forums. This fosters social interaction, friendships, and cultural exchange, promoting social development and a sense of belonging.

3) Creativity and Expression:

Online platforms offer opportunities for children to express themselves creatively through art, writing, music, and other forms of digital content creation. They can share their talents, ideas, and perspectives with a wide audience, enhancing self-confidence and creativity.

4) Entertainment and Recreation:

Cyberspace offers a plethora of entertainment options, including online games, streaming services, and digital media content. These activities provide relaxation, enjoyment, and opportunities for leisure and recreation.

5) Learning and Skill Development:

Interactive educational games, simulations, and virtual learning environments help children develop critical thinking, problem-solving, and digital literacy skills. They can learn coding, programming, subjects in engaging and interactive ways.

Negative Impact:

1) Cyberbullying and Harassment:

Children are susceptible to online abuse, trolling, and cyberbullying, all of which can have detrimental effects on their mental and emotional health. Negative interactions on social media platforms or messaging apps can lead to anxiety, depression, and low self-esteem.

2) Exposure to Inappropriate Content:

The internet exposes children to age-inappropriate, violent, or sexually explicit content, including pornography, hate speech, and graphic imagery. Exposure to such content can desensitize children, distort their perceptions, and pose risks to their mental and emotional well-being.

3) Privacy and Security Risks:

Children may unknowingly share personal information online, leading to privacy breaches, identity theft, and cyber stalking. They may fall victim to online scams, phishing attacks, or malicious software that compromise their digital security and safety.

4) Addiction and Screen Time:

Excessive screen time and internet use can contribute to addiction, sedentary behavior, and sleep disturbances among children. Spending too much time online may affect their physical health, social interactions, and academic performance.

5) Online Predators and Grooming:

Children may encounter online predators who use deceptive tactics to groom and exploit them for sexual purposes. This can lead to instances of online sexual abuse, sextortion, or trafficking, posing significant risks to their safety and well-being.

6) Digital Divide:

Disparities in internet access, digital literacy, and technological resources contribute to a digital divide among children from different socioeconomic backgrounds. Children lacking access to cyberspace may face inequalities in education, opportunities, and social inclusion. Overall, while cyberspace offers numerous benefits and opportunities for children, it also presents significant challenges and risks. It becomes very important to discuss the cybercrimes which are growing day-by-day.

The Protection of Children From Sexual Offences Act, 2012

The Protection of children from sexual offences Act, 2012 is a legislation enacted to protect children below 18 years of age from all forms of sexual offences including sexual assault, sexual abuse, sexual harassment, and child pornography. Section 11 of the POCSO Act provides sexual harassment. A few instances involving electronic media are:

- a) An individual displaying pornographic material to a child with sexual intent via any electronic medium would be deemed to have sexually harassed the child.
- b) A person who constantly contacts a child through any electronic media is said to commit sexual harassment.
- c) If a person threatens a child through any electronic form to use any body of the child or the child involved in a sexual act whether real or fabricated commits sexual harassment
- d) Allures a child for pornographic purposes. Sexual harassment is punishable under Section 12 of the POCSO Act. Any individual who commits the crime of sexual harassment faces a fine in addition to up to three years in jail.

Section 13 of the POCSO Act provides the prohibition of using children for pornographic purposes under the law. It states that any individual who utilizes a child for their own sexual gratification through any electronic media, whether for personal use or distribution, is considered to have exploited the child for pornographic purposes. This encompasses the creation of obscene representations of the child, the display of the child's sexual organs, and the depiction of a child engaged in a sexual act.

Section 14 of the Act provides penalties for using a child for pornographic purposes. Offenders under Section 13 face imprisonment for a minimum of five years along with a fine. Upon subsequent convictions, the minimum imprisonment increases to seven years, again accompanied by a fine. Additionally, if the individual involved also commits offenses under Section 3, Section 5, Section 7, or Section 9 by personally engaging in the pornographic acts, they will be subject

to punishment under Section 4, Section 6, Section 8, or Section 10, respectively, in addition to the penalties outlined in Section 14.

Section 15 of the Act provide penalties for storing pornographic material involving a child. Individuals found to be storing or possessing such material with the intent to transmit or distribute it without reporting it to the authorities will be subject to a fine of no less than Rs. 5,000 upon the first conviction, and no less than Rs. 10,000 for subsequent convictions. If the material is stored or possessed for transmission, display, or distribution in a manner not prescribed by law for reporting, the offender may face imprisonment for up to three years, a fine, or both. Those who store or possess the material for commercial purposes may face imprisonment for a minimum of three years, extendable to five years, or a fine, or both. For subsequent convictions, the imprisonment may range from five to seven years, with the possibility of a fine or both. According to Section 16 of the Act, aiding and abetting the commission of any of the aforementioned acts is illegal.⁶

National Cyber Security Policy 2013

The Indian government implemented national cyber security with a number of goals. The prevention and investigation of cybercrimes, especially those against minors, is one of the policy's goals. It offers a suitable legislative framework to improve the capabilities of enforcement. Its goal is to raise public awareness about cyber security. The measure also safeguards citizens' data, forbids invasions of their privacy, and shields them from financial damages brought on by cybercrimes such data thefts that result from invasions of privacy.

The Digital Personal Data Protection Act, 2023

The Act provides a of protections to ensure that children's privacy is maintained. The clause stating that consent must be given by the age of 18 is among the most significant. The Act stipulates that a data fiduciary must get permission from the guardians before processing a child's personal data. It also suggests requiring mandatory registration with the data protection authorities for data fiduciaries that deal only with minors. Processing children's data and offering them services is seen as a qualifying criterion for identifying a significant data fiduciary. Significant data fiduciaries are subject to extra requirements outlined in the legislation. It is against the law for data fiduciaries to follow or monitor children's data or handle personal information in a way that might endanger children.

Lacuna in Indian laws:

That, there are many crimes against children which are illegal and punished in respective laws in India, some acts are not recognized it as crimes. In India, cyberbullying, which is illegal in many other nations, is nonetheless a serious crime. Sexting works in the same way. Because there is no legal mechanism in Indian law for the punishment of cyberbullying and sexting, these acts are not regarded as significant crimes there. The act of trafficking children with the aim to use them for sexual exploitation is illegal, but the act of trafficking children with the goal to create pornographic or obscene content is not specifically covered by the law. It also says nothing about cyber grooming, which is another crime committed against children in our nation at an alarming rate that might ultimately lead to their death. Cyber grooming is done with the intention of sexual exploitation. Both the IT Act of 2000 and the POCSO Act of 2012 need to be amended.

- a) A amendment to the POCSO Act of 2012 that makes it illegal to promote or counsel sexual activity with someone under the age of 18 in any written document, graphic depiction, audio recording, or portrayal.
- b) In connection with this, the IT Act, 2000 was amended to provide for punitive measures against individuals who give minors access to pornography and against those who obtain, create, or disseminate information on child sexual abuse.
- c) Accountability of agencies receiving actionable intelligence: This would allow local police departments and law enforcement agencies across international borders to share intelligence in order to guarantee investigations.
- d) Speedy legal deterrence through investigation and disposal: The required deterrence would be provided by expedited investigation and case disposal in addition to a thorough definition of child pornography and the modifications to the POCSO and IT Act.³² Since cybercrimes against children have increased so much, special attention needs to be given to this growing menace. Speedy trials and subsequent prosecutions could be a deterrent for current and future offenders.

Consequently, not all facets of children's internet safety are covered under Indian legislation. This is still an area that requires development and law, as well as comprehensive protections for children's online interests.

Judicial Approach:

The Indian government has passed several laws to safeguard children's rights both offline and online. Unfortunately, we lack child-specific legislation similar to that of the United States, and the regulations that do exist are insufficient to protect children's online privacy rights. To safeguard children's rights and privacy in this digital age, the Indian judiciary interprets cyber laws and establishes recommendations in this respect.

In the case of Jayesh S. Thakkar v. State of Maharashtra, in response to the petitioners' letter about the abundance and accessibility of pornographic websites on the internet, the Chief Justice of the Bombay High Court considered the letter to be a writ petition. The division bench issued an order establishing a committee to provide ideas and proposals for stopping it, managing it, and safeguarding minors' access to pornographic websites and other offensive content on the internet.⁷

The Air force Bal-Bharti School's case, a 16 years old student had created a pornographic website to take revenge as he was teased for his pockmarked face. On one pornographic website, he posted photos of his professors and classmates that had been scanned and altered. The youngster was prosecuted under the Indecent Representation or Women Act, section 292, 293, and 294 of the IPC, and section 67 of the Information Technology Act, 2000. Nonetheless, the Juvenile Court granted the child bail.

That, in another case, in Mumbai, a Swiss Couple has gathered some children from slum area and then clicked their nude photographs forcefully. Later they uploaded these photos on website. The Mumbai Police arrested them for the offence of cyber pornography under Section 67 of I.T. Act and under section 292 and 509 of IPC.

The Child pornography was not a factor in the Aneesh v. State of Kerala, 2023 case that the Kerala High Court determined. While the Kerala High Court and the Supreme Court of India have concluded that viewing adult pornography in private is not illegal under Section

292 of the IPC, downloading sexually explicit content that is intended for children is unquestionably illegal under the IT Act.⁸

The complaint was filed against the activist Rehana Fatima for uploading a video showing his children, who are between the ages of 8 and 14, panting in his pants under various provisions of the Juvenile Justice (protection) Act, POCSO Act, and IT Act. The Kerala High Court denied her request for bail, dismissing her argument that she was teaching her kids about sex education.⁹

In S. Harish v. Inspector of Police, the Madras High Court recently declared that downloading child pornography was not illegal under Section 67B of the Information Technology (IT) Act, 2000, quashing the legal proceedings.¹⁰

II. CONCLUSION

In India there is need to take necessary steps to do compulsory cyber awareness education and its proper implementation in rural areas and also in urban areas and to protect the children from cyber abuse is needed. The more stringent law need to be framed and need to be amended as per need and considering changing circumstances in respect of cybercrime against children. In the lack of specific legislation, children's rights to internet safety and privacy are compromised and they become more susceptible to abuse. There is an urgent need to enact comprehensive legislation which specifically targets prevention of cybercrimes against children, providing clear guidelines and stringent penalties for perpetrators.

The government shall take steps to bring public awareness programs, skill training programs for public. That with the help of Media social awareness programs can be conducted. This will bring awareness about cybercrime against children and against public at large.

REFERENCES

- [1]. <https://www.lexisnexis.in/blogs/indias-three-criminal-laws-key-elements-features>
- [2]. Goni, Osman. (2022). Introduction to Cyber Crime. International Journal of Engineering and Artificial Intelligence. 3. 9-23. 10.55923/jo.ijeal.3.1.701.

- [3]. (https://www.researchgate.net/publication/359892550_Introduction_to_Cyber_Crime)
- [4]. Lectures on Cyber Laws Information Technology Law) Gogia Law Agency Hybrabad1s edition 2017 Prof.Dr.Regal Surya Rao.
- [5]. Dr. Dalbeer Lal, "Protecting the Child from the Evil Effects of the Digital Age" 10 International Journal of Creative Research Thoughts (IJCRT) e74 (2022).
- [6]. Dr. Dalbeer Lal, "Protecting the Child from the Evil Effects of the Digital Age" 10 International Journal of Creative Research Thoughts (IJCRT) e74 (2022).
- [7]. The Protection of Children from Sexual Offences Act 2012 Professional Book Publishers.
- [8]. 7 Ritu Chhabra and Dr. Sushil Kumar Singh, "Rights of Children in Cyber World: Indian Perspective" 43 Sambodhi 21 (2020).
- [9]. Gursimran Kaur Bakshi, "Watching Porn Privately is Not an Offence, Says Kerala High Court", The Leaflet, Sept. 13, 2023, available at: <https://theleaflet.in/watching-porn-privately-is-not-an-offence-says-kerala-high-court/> (last visited on June 12, 2024).
- [10]. Aaratrika Bhaumik, "Rehana Fathima Case: Obscenity Laws and the Policing of Female Sexuality", The Hindu, June 28, 2023, available at: <https://www.thehindu.com/news/national/explained-rehana-fathima-case-obscenity-laws-and-the-policing-of-female-sexuality/article66968303.ece> (last visited on June 11, 2024)
- [12]. R.K. Vij, "Downloading Child Pornography is an Offence", The Hindu, Mar. 08, 2024, available at: <https://www.thehindu.com/opinion/lead/downloading-child-pornography-is-an-offence/article67822295.ece> (last visited on June 11, 2024).
- [13]. Goni, Osman. (2022). Introduction to Cyber Crime. International Journal of Engineering and Artificial Intelligence. 3. 9-23. 10.55923/jo.ijeal.3.1.701. (https://www.researchgate.net/publication/359892550_Introduction_to_Cyber_Crime)
- [14]. Lectures on Cyber Laws Information Technology Law) Gogia Law Agency Hybrabad1s edition 2017 Prof.Dr.Regal Surya Rao.
- [15]. Dr. Dalbeer Lal, "Protecting the Child from the Evil Effects of the Digital Age" 10 International Journal of Creative Research Thoughts (IJCRT) e74 (2022).
- [16]. The Protection of Children from Sexual Offences Act 2012 Professional Book Publishers.
- [17]. Ritu Chhabra and Dr. Sushil Kumar Singh, "Rights of Children in Cyber World: Indian Perspective" 43 Sambodhi 21 (2020).
- [18]. Gursimran Kaur Bakshi, "Watching Porn Privately is Not an Offence, Says Kerala High Court", The Leaflet, Sept. 13, 2023, available at: <https://theleaflet.in/watching-porn-privately-is-not-an-offence-says-kerala-high-court/> (last visited on June 12, 2024).
- [19]. Aaratrika Bhaumik, "Rehana Fathima Case: Obscenity Laws and the Policing of Female Sexuality", The Hindu, June 28, 2023, available at: <https://www.thehindu.com/news/national/explained-rehana-fathima-case-obscenity-laws-and-the-policing-of-female-sexuality/article66968303.ece> (last visited on June 11, 2024)
- [20]. R.K. Vij, "Downloading Child Pornography is an Offence", The Hindu, Mar. 08, 2024, available at: <https://www.thehindu.com/opinion/lead/downloading-child-pornography-is-an-offence/article67822295.ece> (last visited on June 11, 2024).
- [21]. Ms. Barkha B. "Child in Cyber Space" Asia Law House Hyderabad.

Acts:

- The Protection of Children from Sexual Offences Act 2012
- The Bharatiya Nyaya Sanhita 2023.
- National Cyber Security Policy 2013
- The Digital Personal Data Protection Act, 2023