

CYBER CRIME: CHILD AS A PERPETRATOR, CHILD AS A VICTIM

Written by Amar Kumar Roy

Sharda University, Greater Noida, Uttar Pradesh, India

ABSTRACT

The web of cyber world is moving rapidly like a galloping horse with the introduction of novel technologies every second, penetrating its roots amongst masses and particularly in teenagers. At times, this penetration takes us to the dark side of this cyber web which entraps people into a pool of cyber-crimes, often affected by socio-economic as well as psychological factors. One of the most affected classes belongs to the group of children who often tend to fall on both sides of the curtain- at one side remains a child in the face of a perpetrator, on the other side is a child who becomes the victim. Both facets can be seen within offences like cheating by personation (often referred as cyber fraud), violation of privacy, publication or transmission of obscene materials, child pornography, cyber stalking, cyber bullying in educational institutions, etc. punishable under various legislations. Complexity in this field arises because of the fragile age of the perpetrator and need for diverse protection mechanism for victims. This has increased our burden, as apart from legislations and judicial decisions, there has to be sufficient mechanism for prevention and increasing awareness at a very early age so as to sensitize them of severity of these offences.

Keywords- Psychological Factors, Cyber Fraud, Child Pornography, Protection Mechanism, Cyber Sensitization.

INTRODUCTION

The definition of Child is diversified in the eyes of law which very much depends upon the policy and purpose of the law. However, certain principles have always been adhered to while framing laws in relation to child, which has been provided in multitude of International Conventions and Frameworks and which has been further incorporated in legislations passed by Parliament.

The first and the foremost is the Universal Declaration of Human Rights which specifically declares that every child is entitled to special care and protection.¹ International Covenant on Civil and Political Rights² and International Covenant on Economic, Social and Cultural Rights³ further strengthens the above declaration by putting an additional duty upon member States to provide measures for protection of children which are necessary due to his status as a minor and to provide for special measures for their protection from any economic or social exploitation respectively. Even though there was a range of protection and rights entrusted upon the child there was still a need to provide a uniform definition of the child. Recognizing the same, United Nations adopted Convention on the Rights of the Child which now defines child as every human being below the age of eighteen years.⁴ India being the signatory has adopted the same definition for the purpose of identifying child under the criminal justice system.⁵ This definition is universal for the purpose of identifying offenders as well as victims.

The matter related to child has always remain sensitive as it is an undeniable fact that they need special care and protection. This is why it becomes important to identify and scrutinize the various aspects when a child interacts with the cyber space. Cyber Space has no boundaries or limitations and can easily circumvent the set rules meant to regulate the same. This is why issues pertaining to Cyber Space in itself is considered opaque and hydra-headed. It interacts with every human being irrespective of age in this new world. The moment child is born and

¹ Universal Declaration of Human Rights art. 25(2).

² International Covenant on Civil and Political Rights art. 24(1), Dec. 16, 1966.

³ International Covenant on Economic, Social and Cultural Rights art. 10(3), Dec. 16, 1966.

⁴ Convention on the Rights of the Child art. 1, Nov. 20, 1989.

⁵ The Juvenile Justice (Care and Protection of Children) Act, § 2(1)(12)-2(1)(13) (2015); The Information Technology Act, Explanation to § 67B (2000).

becomes capable of establishing some sort of communication in their surroundings, he is introduced of cyber technology in one form or the other. Practically, it is inevitable and in fact has more good than evil. Hence, there is an everlasting need to balance the good and evils of cyberspace to maintain an equilibrium in the society. However, there may arise problems when this balance will not be maintained. Moreover, problems related to a child is in itself problematic as understanding child psychology in a given set of circumstances is a complex task. Therefore, when a child interacts with the cyberspace, it aggravates. For that reason, there is a need to conduct proper study on the co-relation between child and cyberspace.

The researcher has tried to understand this inter-relation in the forthcoming Chapters and how law regulates this relation. The researcher in order to explain the same has referred to doctrinal mode of research and has relied upon existing studies on this issue and has also tried to put forth certain suggestions.

INTER-RELATION BETWEEN CHILD AND CYBERSPACE

Today there has been a sea change in the psyche of the offenders who have shifted their mode of committing offences from traditional means to the internet due to the complexities involved in the enforcement of laws and collection of evidences in offences relating to cyberspace. It provides the offender a sense of security and they also consider this mode as safer and more efficient as now offences can be committed on merely a few keystrokes and ironically, internet also provides them a sense of privacy. Because of these characteristics only, it also attracts the juvenile delinquents who often tends to fall for these attractive overtures. On the other hand, the above explained reason also becomes a prominent reason to commit offences against the children.

In a significant study, it has been found that there are multiple evidences which shows negative clinical and neurological effects of the screen in front of us on the kids and the clinical research also suggests that a child may be introduced with various psychiatric disorders like anxiety, depression, increased aggression, etc. due to its prolonged use. These are the undeniable

negative effect of the technology on the child.⁶ And these signs are often ignored by the parents and this ignorance has been traced to the very root cause of offence of cyber bullying.

In another study conducted by Dr. Richard Freed, a renowned child psychologist, it has been further analyzed that only because a child is technology friendly or in another word, an expert in the technology, a parent shall not consider their child to be able to review or understand on its own the effects of technology on their lives. This is why there is a self-imposed duty upon the parents to guide their child in this cyber space so that the technology can be fruitfully enjoyed by their child.⁷

There is an abundance of information on the internet and it includes misinformation as well as ill-information and all are flowing indiscriminately. Therefore, not the information but clarity of the information is the power. So, it is very essential that a child must be well informed so that he or she may be able to judge or differentiate ill-information from the information. Naturally, a child cannot make a better judgment regarding the same. Therefore, there is an implied duty cast upon us, individuals as well as the legislators, to segregate the same in order to provide a better virtual experience to the child.

CHILD AS A PERPETRATOR AND CHILD AS A VICTIM

Child as a perpetrator

Edwin Sutherland, who propounded the Differential Association Theory, suggested that any person indulges in any criminal act only after learning the same in close social group. He further explained that one is not criminal from birth or does not inculcate the traits of a criminality on its own, rather, it is the result of one's interaction with its surroundings. This process of moving towards delinquency is same as learning any other skills.⁸ The same can be understood in the position of a child who is introduced of technology at a very young age and as discussed above internet carries with itself every kind of information. It becomes a big problem particularly in cyberspace as it is a complex environment wherein on a single platform everything is available,

⁶ NICHOLAS KARDARAS, GLOW KIDS HOW SCREEN ADDICTION IS HIJACKING OUR KIDS— AND HOW TO BREAK THE TRANCE, CHAPTER-1 INTRODUCTION, (2016).

⁷ RICHARD FREED, WIRED CHILD: RECLAIMING CHILDHOOD IN A DIGITAL AGE, (2015).

⁸ ANTHONY WALSH & CRAIG HEMMENS, INTRODUCTION TO CRIMINOLOGY 144 (2d. ed. 2011).

from educative content to incriminated content. Inability to differentiate among the two is the most challenging task for a child and it is for the legislators and other members of society to provide solutions for this menace. This is how internet works as a criminogenic element and motivates a child to commit a crime.

Another theory which would help us to understand as to why juveniles tend to become delinquent is the Social Disorganization Theory which has been propounded by Shaw and McKay. According to them, involvement of juveniles in crime is often due to factors including urban density, substandard housing, low income, inadequate schools and family problems. These factors result into social disorganization and often cannot be controlled by an individual.⁹ This can be very well understood as just like our society there is also a digital divide of have and have-not(s). Although it may not be a prominent factor behind commission of cyber-crimes by a child but it may act as a force which pulls them towards committing the same.

On the one hand, it is said that the age of adolescence is the age of storm and thunder as many ideologies, problems, thoughts and various ways of expression evolve in their mind at this age and on the other hand, it is a well-known fact that technology is a queer thing, i.e., it gives gift in one hand and stabs you in the back. It acts as a vehicle which provide its pillions plethora of things to get invested into. Therefore, when both of them meets in an unchecked environment, then, there may arise a situation of conflict between the child and the law and a juvenile is born.

A child in the cyberspace can act by himself without any interference by the other, they are freer than ever. This is so because of the transformative nature of the cyberspace, few of them can be listed as:¹⁰

- a) Globalization: Cyberspace has expanded the limits of our culture as well as expanded the jurisdiction for those who wants to commit offences on this sphere.
- b) Distributed Networks: Individuals are shaping their relationship with each other which involves flow of data among themselves and thereby also create avenues for victimization of an individual.

⁹ RICHARD LAWRENCE & CRAIG HEMMENS, JUVENILE JUSTICE, 11 (2008).

¹⁰ DAVID S. WALL, THE INTERNET AS A CONDUIT FOR CRIMINAL ACTIVITY, BOOK- INFORMATION TECHNOLOGY AND THE CRIMINAL JUSTICE SYSTEM, (April Pattavina et al. eds., 2005).

- c) Data Trails: This transformative aspect has two approaches; one is that it acts as a tool for law enforcement agencies in their investigation and the other is that it creates a scope for identity theft.
- d) Transnational Environment: It provides a whole new range of options to choose from in order to commit a cybercrime. Such options may include, dealing in sexually explicit materials, child pornography, cyber frauds, etc.

The above discussed factors may be one of the many reasons as to why a child gets attracted towards committing cyber offences and become a cyber delinquent and their victim can be anyone – an adult or a child or the juvenile himself.

Child as a Victim

Hon'ble Justice Krishna Iyer once said that the victim is the most neglected individual in our criminal justice system, he even coined the same as "vanishing point of our criminal law".¹¹ The observation made in 1979 stands true till date due to lack of proper redressal mechanism in our criminal justice system which is further encompassed with inordinate delays.

When we deal with child victims and that too in the cases relating to cyber offences, a special need and care has to be imparted upon them as even when the victim has not suffered physical trauma but mental trauma in itself is sufficient to torment the psychological state of such child. An additional duty is also cast upon the investigators and prosecutors as in majority of cyber offences, a child victim does not know have the knowledge of physical identity of the perpetrator which complicates the trial.

Cyberspace advancements has made many children as victims-in-waiting. From the outside, cyberspace may seem like safe, lawful and certain, but in reality, this advancement needs to be regulated for the sake of maintaining that seemed to be safe, lawful and certain environment. Otherwise, the whole process of victimization of child would affect the very course of one's life as victimization with itself brings a bundle of emotions that includes depression, anger low self-esteem and low self-efficacy.¹²

¹¹ Ratan Singh v. State of Punjab, (1979) 4 SCC 719.

¹² ANTHONY WALSH, CRIMINOLOGY, 261 (2012).

COUNTER-MEASURES

In order to regulate this cyber behavior among and against child, Parliament has enacted certain legislations creating certain offences punishable under the law and also protection for juvenile delinquents.

The Information Technology Act, 2000

Due to the rapid pace of technological advancements, there arose a need to enact a separate legislation due to which Parliament enacted this Act and thereby created a cluster of offences which were being committed in the cyberspace. While doing so, criminal liability was also introduced for commission of offences against child, which can be summarized as:

- i) Violation of Privacy: The cases of violation of privacy is the most challenging for law enforcement agencies as it is in most rampant use by the offenders. It can be very well seen from the reports published in our newspapers which involves capturing of images of private parts of a female or child in changing rooms of the Malls or Clothing Stores, filming of one's person in public toilets, making the act of sexual harassment or rape go viral on various online platforms, extortion after threatening to circulate one's unpleasant photographs, etc. All of these cases has been made punishable under the Information Technology Act, 2000¹³ in addition to the Indian Penal Code, 1860¹⁴ and the Protection of Children from Sexual Offences Act, 2012.¹⁵
- ii) Publishing or transmitting obscene material: Here, the word "obscenity" has wider connotation than the word "pornography", the test of which has been laid down in the case of *Ranjit D. Udeshi v. State of Maharashtra*,¹⁶ Supreme Court has held in this case that unless any act corrupts or deprave the mind to immoral influence, any act cannot be said to be obscene. Publishing and transmitting of such materials which may also include a child victim has been made punishable under Section 67

¹³ The Information Technology Act, § 66E (2000).

¹⁴ The Indian Penal Code, § 354C, 509 (1860).

¹⁵ The Protection of Children from Sexual Offences Act, § 11 (2012).

¹⁶ AIR 1965 SC 881.

of the Act. However, this section was not sufficient to deal specifically with cases relating to child and hence 2008 Amendment inserted Section 67B in the Act, segregating the child pornography from the rest.

- iii) Child Pornography: Even when children are considered to be a form of God in our country, the cyber revolution has increased the exploitation of child manifold. The main reason behind the same can be understood from the characteristics of the internet which provide anonymity to the offender with little or no expense on its own part. This is one of the various modes of committing child abuse. Firstly, pornographic videos or images are produced and then, further distributed and streamed on the internet and at times, pictures of children are also morphed to create such content.¹⁷ To make such acts punishable, Section 67B was introduced which exhaustively punishes every act related to child pornography and includes within its sphere publishing, transmitting, creating, collecting, downloading, seeking, exchanging, distributing or recording a child in obscene or indecent or sexually explicit manner. This provision does not leave any gap or loopholes for the offenders to go around and commit this heinous offence.

There are also certain Cyber Offences punishable under the Information Technology Act, 2000 which has attracted children to become Juveniles who are later tried as per the Juvenile Justice (Care and Protection of Children) Act, 2015:

- i) Dishonestly receiving stolen computer resource: Under this offence dishonest receiving or retention or having reasonable apprehension to have in one's possession stolen computer resource or communication device has been made punishable.¹⁸ Here, 'communication device' may include smart wearable devices, mobile phones, laptop, tablet, etc. The above act has also been made punishable under Section 411 of the Indian Penal Code, 1860.

Many organized criminal group recruits' children as a member of their group and at times, children by themselves indulge in commission of the above-mentioned offence as they are aware of the fact that even if they will get caught, they will get

¹⁷ TALAT FATIMA, CYBER CRIMES, 129 (2d ed. 2016).

¹⁸ The Information of Technology Act, § 66B (2000).

diminished punishment under the criminal justice system due to the protection accorded to the children under the law.

- ii) Cheating by Personation: Section 66D of the Act specifically incriminates cheating by personation committed by any person by any communication device or communication resource. The relevant instances in which a child commits this offence can be seen in cases of committing fraud by way of sending deceptive messages or emails on behalf of banking institutions, sending messages by requesting monetary help pretending to be a close family member or a friend, getting OTP through voice phishing for an online banking transaction by deceiving the victim on some pretext or the other, running fraudulent schemes in the name of some reputed institutions, etc.¹⁹ These are some of the methods employed by a juvenile cyber offender to indulge in fraudulent and illegal financial transactions.

OTHER CYBER OFFENCES CONCERNING CHILDREN NOT COVERED UNDER THE IT ACT

- i) Cyber Stalking: Nowadays, in addition to following anyone in person has extended to the cyberspace as well and this has also been categorized as an offence and made punishable under the Indian Penal Code, 1860.²⁰ Section 354 D(2) of the Code specifically penalizes the act of any man who monitors use of any form of electronic communication done by a woman. When we would analyze the above provision, we can easily conclude that the above offence has been made punishable only when an act is committed by a man against a female victim.²¹ This does not cover the situations wherein a victim can be a male child and offender a female and Parliament needs to fill this lacuna to prevent any such offence being committed against a male child. However, Parliament has enacted a special law to fill the above

¹⁹ RODNEY D. RYDER & NIKHIL NAREN, INTERNET LAW REGULATING CYBERSPACE AND EMERGING TECHNOLOGIES, 4.32 (2020).

²⁰ The Indian Penal Code, § 354D (1860).

²¹ The Indian Penal Code, § 10 (1860) provides an exhaustive definition of 'Man' and 'Woman' and only includes man and woman of any age respectively.

gap by classifying the above act as Sexual Harassment under Section 11(iv) of the Protection of Children from Sexual Offences Act, 2012.

- ii) **Cyber Bullying:** It is an act of bullying committed through various online and social media platforms available on the internet. Anyone can be a victim of this kind of bullying, but the most suffered group includes teenagers. However, at times perpetrators have also been identified to be a child which is quite distressing as this may be seen to be a trivial issue but this may act as a stepping stone for a child in the domain of criminal world.

Even though this issue is severe and sensitive in nature, Parliament has not enacted a clear law on this subject. Earlier, by way of an amendment in the year 2000, Section 66A was inserted in the Information Technology Act, 2000 which penalized cyber bullying, however it was declared unconstitutional by the Hon'ble Supreme Court in the case of *Shreya Singhal v. Union of India*²² as being violative of freedom of speech and expression and Section 66A not fulfilling the criteria as set under Article 19(2) of the Constitution to curtail the fundamental right.

Even though the cases pertaining to cyber bullying may be prosecuted under any other general law on fulfillment of set criteria for the required offence, there has been a lack of specific law after striking down of Section 66A, the result of which has been suffering of genuine victims.²³

Instance of misuse of above laws

Even when these provisions has been enacted for the protection of the victims, there arises few cases in which Courts have recognized the misuse of the above-mentioned provisions. In one such instance, an FIR was filed against a person for capturing a picture of a child witness in the police station. The Hon'ble Kerala High Court in the given case quashed the proceeding initiated under Section 66E of the IT Act, 2000 as quite apparently the above act did not fulfill the criteria of capturing an image of the private area of the child.²⁴

The Juvenile Justice (Care and Protection of Children) Act, 2015

²² Writ Petition (Criminal) No. 167 of 2012.

²³ NS NAPPINAI, TECHNOLOGY LAWS DECODED, 191 (2017).

²⁴ Lakshmi Prathapan v. State of Kerala, Criminal Miscellaneous No. 4776 of 2014.

This Act categories child into two broad categories- child in conflict with law and child in need of care and protection and with the help of this classification, legislators have tried to provide protection to both the child victim as well as to a juvenile.

Even when a juvenile is apprehended to have committed an offence and placed in the custody of the concerned authority, the Act imposes duty upon such person in charge of the child to act as his parent. Further, bail has been made a rule for such child in conflict with law unless it is proved that he is associated with a known criminal.²⁵ Even when a child is convicted, the punishment includes release after advice or admonition, group counselling, community service, fine on parents, release on probation of good conduct and to be sent to a special home for period not exceeding three years.²⁶ This has been done to reduce the stigma attached to a convict to the lowest possible standard so that a child can again re-integrate himself into the society.

The Act also provides specific protection for child in need of care and protection and this terminology not only includes victims of any offence but also includes those children who are not victims to any offence but need care and protection.²⁷ This Act authorizes the Child Welfare Committee to restore such child in the lawful and fit person with or without the supervision of Child Welfare Officer, or, places a child in Children's Home, or, may pass Foster Care orders and Sponsorship orders²⁸ depending upon the facts and circumstances of the case.

Government Advisories

In light of involvement of children in cyber offences, Ministry of Home Affairs has issued advisories to combat this issue, some of them can be listed as:²⁹

- i) Special Training for the law enforcement agencies including of police, prosecution and judges in order to sensitize them about the juvenile justice and human rights.
- ii) Setting up of exclusive children desks in each police station with a clear mandate on compulsory registration of FIR in matters pertaining to children.
- iii) Speedy investigation should be conducted and chargesheet shall be filed with three months.

²⁵ The Juvenile Justice (Care and Protection of Children) Act, § 12 (2015).

²⁶ The Juvenile Justice (Care and Protection of Children) Act, § 18 (2015).

²⁷ The Juvenile Justice (Care and Protection of Children) Act, § 2(14) (2015).

²⁸ The Juvenile Justice (Care and Protection of Children) Act, § 17 (2015).

²⁹ F. NO.15011/48/2006-SC/ST-W, Ministry of Home Affairs, Government of India (14th July 2010).

- iv) Services of Professional Counsellors should be provided to the victims for their rehabilitation.
- v) General awareness regarding the special legislations pertaining to child should be improved among members of society.
- vi) Overall safety conditions in schools, educational institutions, public transport used by the children shall be improved.

Central Government has established Indian Cyber Crime Coordination Centre in order to handle cyber offences in coordinated manner with all the involved agencies in a matter.³⁰ Central Government has also initiated a Toll Free Number and National Cyber Crime Reporting Portal to report every kind of cyber offences committed against child in order to strengthen the existing law enforcement framework and for efficient handling of such offences.³¹

CONCLUSION AND SUGGESTION

Anything and everything related to child remains a sensitive issue and so is the involvement of child with the cyberspace. Not only sensitive, it is also a complex issue due to ever evolving nature of the cyberspace. Hence, the regulation of interaction of a child with the cyberspace is of paramount importance, and, apart from legislative measures, government shall also provide Circulars and Advisories to the relevant law enforcement agencies as and when required.

Before concluding, the researcher would like to put forward few suggestions, in addition to the implementation of Central Government's advisories in the spirit and the letter, which are:

- Cyber Sensitization programs shall be run in government and private schools explaining to children at early age the very nuances of ill-effect of indulging in cyber offences on their own psychological condition as well as that of the victim
- Cyber Wellness Programs should be run in the community catering to the victims as well as to the juveniles so that they do not get victimized from or get involved in any cyber offences.

³⁰ Steps Taken to Deal with Cyber Crime and Cyber Security (17 JUL 2019) available at <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1579226>.

³¹ Steps taken for the Cyber Safety of Women and Children (22 JUL 2021) available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1737762>.

- Awareness programs about how to avoid becoming a victim and why not to indulge in cyber offences should be run through print and electronic media by the state governments as well as central government.
- Government shall promote Model Net Etiquettes in print as well as electronic media and for the same, help of celebrated public figures can also be taken.
- Government may also collaborate with the concerned NGOs to functionalize above suggested programs.
- There shall also be an increase in the Cyber Desks at the police station to increase the accessibility of the law enforcement agencies.

