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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CHILDREN'S RIGHTS IN THE ERA OF SOCIAL MEDIA: HOW DO CURRENT LAWS UPHOLD THE RIGHTS OF CHILDREN IN AN INCREASINGLY DIGITALIZED ENVIRONMENT.

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INTRODUCTION

Tracing back to our childhood before the advent of social media. Consider the time when children played outside until the sun went down, laughter rang throughout neighbourhoods, and friendships were formed in the warm embrace of shared experiences. Children used to indulge in creative play, such as constructing forts in the backyard, climbing trees, and becoming lost in the pages of a favourite book. Their environments were filled with the simplicity of exploration, free of others' curated lifestyles. Before social media, children formed deep, meaningful friendships face to face, developing vital social skills via direct engagement. They handled the nuances of friendship, disagreement, and resolution, becoming more resilient in the process. They developed friendships based on genuine companionship and shared moments of delight, rather than on likes or follows. However, we must recognize that social media has introduced a new dimension to childhood, one that may be both good and problematic. While technology has opened up new opportunities for creativity, connection, and knowledge, it has also raised worries about cyberbullying, unreasonable comparisons, and a loss of privacy, to mention a few.

A concerning issue that transcends across borders and cultures is children's presence and impact on social media, as well as the vital need for comprehensive legislative frameworks to safeguard them. In an age of pervasive digital solidarity, our children face a complex landscape that offers both enormous opportunities and grave dangers.

According to reports, about 93 percent of the world's population is online, actively using social media. This online presence on social media has become a crucial part of people's life,

particularly among the younger generation. However, the growing digital presence is also contributing to negative encounters. 60% of kids in India between the ages of 9 and 17 spend more than three hours a day on social media or playing video games, per a national poll conducted in 2023. This amounts to 39% for one to three hours, 46% for three to six hours, and 15% for more than six hours.¹

Despite age limitations meant to protect children's welfare, studies show that by the time they are 13 years old, a large number of minors have already set up their own accounts. This calls into question how effective the laws and rules in place to safeguard kids online are currently. Are our legal systems keeping up with the quick advancement of technology? Do we go far enough in protecting impressionable youth from being used, harassed, and exposed to inappropriate content? We have to initiate a thoughtful and educated conversation about these pressing problems. One such pressing issue affecting the welfare of children in an increasing digital world is that which exploits the innocence of our youth – Pedophilia, defined as a psychiatric disorder characterized by an adult's sexual attraction to prepubescent children.

A significant percentage of children use social media, frequently without fully comprehending the consequences. Although platforms have put user safety safeguards in place, it is still unclear if these will be sufficient to protect our most vulnerable citizens. The statistics are terrifying. These perpetrators use strategies that frequently escape the attention of both the children and their guardians in order to groom and influence youngsters through the use of social media. They use false identities to entice kids, frequently posing as classmates, and ultimately get them into dangerous circumstances that have the ability to radically alter the trajectory of a child.

Based on the statistics from the newly released report by NCRB Report, there were 1823 cases overall in 2022 where minors were the victims of cybercrimes, which represents a 32% rise over the 1376 cases from the previous year. Cyberstalking/bullying (158 instances), cyber pornography/hosting or publishing obscene sexual materials featuring minors (1171 incidents), and other cybercrimes against children (416 cases) were among the types of cybercrimes against

¹ Divya Bhati “More than half of Indian youth aged 9-17 spend over 3 hours daily on social media, gaming: Study” Oct 16, 2023

children.² These statistics reflect the lives of many children whose innocence has been broken; they are far more than mere numbers. Pursuant to research by several non-governmental organizations and child welfare organizations, the most vulnerable members of our society are most at threat. Children who are not able to access education, live in poverty, or are members of marginalized populations are more likely to be exploited. The perpetrators of these horrible deeds frequently take advantage of the victims' faith in them, which causes more stress and upheaval in the lives of children.

Even though the government has taken action to address this problem, such as the 2012 implementation of the Protection of Children from Sexual Offences Act (POCSO Act), there are still difficulties in putting these laws into practice. Numerous sources report that the horrifyingly low conviction rate for instances involving child sexual abuse persists. Survivor's testimonies are frequently questioned or ignored and are the focus of severe examination. This discourages victims from coming forward and perpetuates the culture of silence surrounding these crimes thriving.

The POCSO Act of 2012 was passed in recognition of an upsurge in child sexual abuse cases. It lays out the process for placing these laws into effect and includes provisions protecting minors from sexual assault and pornography. The Goa's Children's Act, 2003 and Rules, 2004 were the only laws in India that attempted to safeguard children's rights prior to the implementation of the POCSO Act, 2012. Child sexual abuse was considered an offense under Sections 375, 354 and 377 of the Indian Penal Code, 1860. These clauses fail to protect masculine youngsters from sexual assault or preserve their dignity. The POCSO Act has been crucial in highlighting the importance of children's rights and protection while also offering victims of sexual abuse a strong legal system. As a result of increased awareness, the number of child sexual abuse instances reported has also increased. Both non-penetrative and aggravated penetrative sexual assault are punishable under the Act.³

² "Cyber Crimes against Children see 32% Rise in a Year: NCRB Data Reveals." CRY's analysis of NCRB 2022 report.

³ "POCSO Act : everything you need to know" – Ritika Sharma | iplleaders
<https://timesofindia.indiatimes.com/blogs/developing-contemporary-india/five-things-to-know-about-the-pocso-act/>

How Children Are Sexualized On Social Media

According to statistics, every year, over 300 million children worldwide fall prey to online sexual exploitation and abuse. Researchers at the University of Edinburgh discovered that, in the past year, 12.6% of children worldwide—roughly 302 million youth—have been victims of nonconsensual talking, sharing, and exposure to sexual images and video. This finding is thought to be the first global estimate of the severity of the crisis. 12.5% of respondents reported having experienced online solicitation, which included unwelcome sexual chat, including sexting, sexual requests, and demands for sexual acts from adults or other young people. The first global research of its kind reveals the "staggering scale" of crime in the US, with one in nine men admitting to a crime.⁴

Unknowingly, children have been thrown into a world where it is possible to be manipulated, misled, and taken advantage of their identities and pictures. The sexualization of children on social media is a manifestation of a cultural ill that has to be addressed immediately and calls for our urgent attention. It is not only a product of technology improvement. When someone is viewed as a simple physical feature, denied autonomy and liberty, and treated like a sexual object, this is known as sexualization. Regrettably, children have also been sexualized, often through the lens of social media. This propensity does not just affect adults. It just takes a quick look through well-known apps like Snapchat, TikTok, and Instagram to notice the alarming trend of youngsters being depicted in inappropriate ways. Our children are exposed to damaging ideas of beauty and sexuality through these pictures, which blur the boundaries of childhood innocence through provocative attire, improper postures, and sexualized comments. Furthermore, it is impossible to ignore the power dynamics present in the digital sphere. According to a survey, there has been an 87% increase in the frequency of online child sexual abuse content since 2019. India is one of the Nations contributing to this alarming trend. The National Center for Missing & Exploited Children's research reveals a 32 million rise in the amount of content including child sexual assault. According to We Protect Global Alliance's fourth Global Threat Assessment Report, 54% of respondents to its surveys conducted in 2021 said they had been the victim of "online sexual harms" when they were younger. Additionally, between 2020 and 2022, children between the ages of 7 and

⁴ "More than 300m children victims of online sexual abuse every year" Mon 27 May 2024 | Article by, [Haroon Siddique](#) and agency

10 years increase in self-generated sexual images by 36%.⁵

According to the statistics that TOI was able to collect, 1,512 incidents were reported in 2022 compared to 1,799 cases in 2023. Compared to 1440 instances in 2022, Delhi Police solved 1,742 cases in 2023. The majority of the accused, according to the police, were people the survivors knew, including their neighbours, tutors, relatives, and friends. They said that the survivors had been sexually harassed and enticed under false pretences. Delhi Police also dealt with incidents of people posing as others on social media and going after young females. An officer said that the suspect would pose as a female in order to win the trust of the children, coerce her into disclosing personal photos, and use the threat of publishing such images online as blackmail. The officer said, "Young girls have been advised to refrain from engaging in conversations with strangers on social media." Another cop brought attention to the unsettling practice of manipulating photographs of young girls, posting them on social media, and making fictitious profiles using these altered images in order to harass the children even more.⁶

Social media platforms are a major factor in this problem. Sensational material is frequently given top priority by their algorithms, thereby encouraging postings that sexualize youngsters. These platforms, which have billions of users globally, have an obligation to safeguard vulnerable groups from damage and abuse. However, there is a concerning trend that parents and guardians are now expected to keep an eye on their children's online activities rather than the platforms themselves putting safety measures in place. It is critical that we push social media corporations to adopt stronger rules and practices.

Types Of Online Sexual Abuse of Children

There are multiple instances that child sexual abuse happens online, and each one is frightening than the other:

- First, we have to consider Child Exploitation Material. This is the creation, distributing, and possession of photographs of children that are sexually explicit without any authorization

⁵ "Prevalence of online child sexual abuse material rises 87% since 2019, report shows Cases of financial sexual extortion went up from 139 in 2021 to over 10,000 in 2022." By Amrita Madhukalya DHNS | 22 October 2023.

⁶ "Sexual crimes against children on rise in Delhi, many targeted online." By Abhay Singh | 31 March 2024.

to view them. In addition to violating the child's dignity, this horrible act feeds a cycle of abuse that may have long-term effects.

- Grooming, a predatory practice in which predators utilize online interactions to influence while taking advantage of vulnerable children's trust. Grooming often begins with seemingly harmless chats, but it can develop into more nefarious plans that result in sexual exploitation. As such predators train children for offline or online sexual assault through manipulating them.
- Online sexual solicitation, in which predators use chat rooms, gaming platforms, and social media to lure minors into disclosing personal information or participating in explicit talks. These interactions may result in dangerous situations, like in-person interaction where the child can end up in imminent danger.
- Sextortion is another alarming aspect; it's an emerging form of blackmail when abusers threaten to publish confidential images of their victims until they give in to other requests which can be disturbing and non-consensual but because of the possession of such sensitive private photographs and information one may think they have no other option rather than complying with their predator's requests which lead to further complicating the scenario. Victims of this type of manipulation may feel helpless and confined, which makes getting assistance more difficult.
- Commenting or sending inappropriate, rude or demeaning messages through social media platforms targeting children/minors based on one's sex.
- Engaging in sexual activities via webcams without permission or in an inappropriate setting involving children/minors.⁷

Current Laws and Recent Developments

First and foremost, the firm bedrock of our legal system is the Protection of Children from Sexual Offenses Act, 2012, or POCSO. This encompassing legislation addresses an array of sexual offenses against minors and sets strict guidelines for reporting, prevention, and investigation. To guarantee that victims receive prompt assistance and rehabilitation, POCSO requires the establishment of Child Welfare Committees. In addition, changes have been made to the

⁷ "Sexual Abuse of Children Online" - Shruti Bist

Information Technology Act of 2000 to address cyberbullying and online pornography. We have instruments at our disposal to combat hazards such as cyberbullying, abuse and exploitation. According to the Information Technology Act. It includes clauses designed to shield people from online crimes, such as those pertaining to the dissemination and publication of pornographic content, especially where it involves children.

According to POCSO Act, 2012- Section 11 and 12, which covers Sexual harassment of child⁸ and the punishment for sexual harassment, it is mentioned that a person is said to be committing harassment if the person sends any gesture i.e. explicit video or photographs, messages or comments with sexual intent it is considered sexual harassment and is also referred as cyberstalking⁹, it is a cognizable and bailable offense, it calls for a punishment of imprisonment of up to 3 years and fine.

Also, Section 354A of IPC, 1860 defines sexual harassment and the punishment for such, Act constitutes that if a person is making sexual advances such as sharing pornography, messages or comments requesting sexual favours, making sexual remarks without the consent of woman including female child are to be considered sexual harassment and is a cognizable and bailable offense with imprisonment up to 1 year or fine or both.

Using a child for pornographic content or purposes be it for personal use or for distribution showcasing sexual organs of child or child engaged in real or simulated sexual acts or representation of obscenity of child is punishable by law under Section 13 of Chapter III of POCSO with punishment being imprisonment for up to five years and fine and if the offense is done second time or subsequently imprisonment may extend up to seven years and liable to fine. If the said person is directly participating in such gruesome pornographic acts with penetrative sexual assault (Section 3) shall be imprisoned not less than 10 years which may extend to imprisonment for life and fine.

⁸ A form of abuse where a child is exposed to sexual content, followed/watched digitally, sent text messages with sexual overtone, exhibited body parts online, threatened with use of body parts in a sexual manner, or used for pornographic purposes.

⁹ Refers to usage of social media platform to harass or stalk an individual.

If a person commits aggravated penetrative sexual assault on a child (Section 5) by directly being a part of pornography he shall be punished with imprisonment for life or if a person touches sexual organs of child (Section 7) such as vagina, penis, anus or breasts with sexual intent without penetration is said to commit sexual assault and is liable for imprisonment of no less than 6 years but which may extend to eight years and shall be fined. If an individual is in possession of pornographic material for commercial purposes involving child shall be punished with imprisonment up to three years or with fine or both.¹⁰

Cyberbullying refers to bullying or harassment on social platforms by trolling or spreading rumors to intimidate others "criminal intimidation" in the Indian Penal Code (IPC) under Section 503 criminal intimidation is defined as threatening another person with injury to their person, reputation, or property Punishment for criminal intimidation under Section 506 IPC is imprisonment for a term of 2 years, fine, or both. Section 507 IPC criminal intimidation by anonymous communication (concealing identity) is punishable by imprisonment up to 2 years. It is non-cognizable and bailable offense.¹¹

Online Child Trafficking¹² is referred to the use of the internet to commit the offense of child trafficking. Happens through the dark web using mediums such as bitcoin and cross-chain technologies which cannot be easily tracked or traced, the reason being to sell children or trafficking them for the purpose of prostitution which is punishable by law under Immoral Traffic Prevention Act (ITPA), 1956, Section 5 of ITPA. This offense is punishable with a minimum imprisonment of 7 years and a maximum of life sentence. Forcing a child between 16-18 years into prostitution: Punishable with a minimum imprisonment of 7 years and a maximum of 14 years. It is a cognizable and non-bailable offence.

The penalties for delivering insulting communications via communication services, etc., were covered in Section 66A, which soon became contentious. Despite being designed to stop cyberbullying and online harassment, Section 66A raised issues with freedom of speech and

¹⁰ The Protection of Children from Sexual Offences Act, 2012

¹¹ Indian Penal Code, 1860

¹² Definition of Child Trafficking by UNICEF: "Any person under 18 who is recruited, transported, transferred, harboured or received for the purpose of exploitation, either within or outside a country."

expression because of its ambiguous and wide meanings. This clause was struck down by the Supreme Court of India in 2015 because of the possibility of misuse and infringement of fundamental rights. This important decision marked a major breakthrough in ensuring that our laws safeguard individual freedoms while keeping up with the digital age.

Section 67B of the Information Technology Act, 2000, addresses the transmission or publication of material in electronic form that depicts children engaged in sexually explicit acts. Offenders may be imprisoned for up to five years and fined up to ten lakh rupees upon first conviction. Subsequent convictions may result in imprisonment for up to seven years and a fine of up to ten lakh rupees.^{13 14}

Such are the laws in our Indian Legislative Framework to uphold the rights of children and thus are situations faced by children when they innocently access internet. As we reflect on these forms of online child sexual abuse, it is vital to remember that prevention is paramount. We must foster open communication with our children, educating them about safe online practices, setting clear boundaries, and encouraging them to speak up when they feel uncomfortable. In a sign that things are still not looking good on the child abuse front, the National Commission for Protection of Child Rights (NCPCR) asked the Supreme Court to ensure that social media platforms be held accountable for reporting accounts that uploaded videos of child sexual abuse under the Protection of Children from Sexual Offences Act (POCSO Act).

In the case of *Fatima A.S. v. State of Kerala* (2020), in a video on social media, a mother was seen being painted her naked body above the navel by her two minor children and she alleged that the motive of the video was to teach sex education to them. The Supreme Court of India observed in this case that, “in the initial years, what the child learns from their mother will always have a lasting impression on their mind. It is usually said that the mother will be the window of the child’s to the world”. Hence the same was covered under Section 13 of POCSO Act which states that anyone who uses children for the purpose of pornographic content whether depicting the use of children in real or simulated sexual acts or representing sexual organs of child indecently or

¹³ CYBER LAW IN INDIA by [Archana Singh](#) | Feb 29, 2024

¹⁴ The Information technology Act, 2000 No. 21, Acts of Parliament, 2000 (India), Section 67A & 67B.

obscenely on internet or any other platform is punishable by law accordingly by Section 14 & 15 of POCSO Act.¹⁵

Consequently, what are our decisions? Above all, we need to put education first. It is essential that we teach children about internet safety, the importance of privacy, and how to recognize abusive behaviour. We have to educate children with the information required to securely traverse the internet. As part of this, open communication is emphasized so individuals can express openly regarding their experiences on online platforms without fearing of being scrutinized. Second, we should advocate for stricter laws and guidelines that render online social media corporations accountable for the content that is posted on their official platforms. To safeguard children and stop exploitation, social media corporations, game designers, and app developers need to have robust regulations in place. This is a social obligation as well as a corporate responsibility.



¹⁵ POCSO Act: everything you need to know By Ritika Sharma | published on May 13 2022 by Sneha Mahwar