

AN ANALYSIS OF CHILD RIGHTS AND THEIR DIGITAL INTERFACE

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ABSTRACT

The purpose of this paper is to highlight the debate surrounding the age of consent, focusing on the Law Commission's recommendation not to reduce it from 18 to 16 years and the arguments for and against this change. It provides arguments both for and against this change, discussing rising criminal cases under the Protection of Children from Sexual Offences (POCSO) Act, the recognition of sexual autonomy, and the potential impact on adolescent boys and girls. Additionally, it delves into the amendments to the Juvenile Justice Act and the recommendations made by the Law Commission to address cases involving individuals aged 16 to 18 years under the POCSO Act.

Moreover, it delves into the issue of Child Sexual Abuse Material (hereinafter CSAM) abuse, discussing the recent notices issued to social media platforms to remove such content and the impact of CSAM on survivors and the measures taken to curb its spread. It discusses the Information Technology (IT) Act, Protection of Children against Sexual Offences (POCSO) Act, and initiatives undertaken by social platforms to combat CSAM. Additionally, it explores children's excessive social media usage and its implications, including the positive and negative effects, stakeholders' concerns such as parents, the government, and schools. It underlines the need for parental controls, empowerment of children, and regulation to ensure safe and effective usage of the internet. Lastly, the document addresses the intersection of AI and human rights, weighing the potential of AI technologies to both harm and strengthen human rights. The authors emphasize the need for regulations, ethical guidelines, and global collaboration to ensure that AI technologies respect and promote human and children rights as well as the importance of assessing the societal impact of AI and involving the public and stakeholders in the dialogu

KEY WORDS: Protection of Children against Sexual Offences (POCSO) Act, Juvenile Justice Act, Child Sexual Abuse Material (CSAM), Information Technology (IT) Act, AI Technologies, human and children rights.

1. INTRODUCTION

The legal and social landscape of child right in India albeit globally also, are currently defined by the rigid existing laws and evolving social dynamism of youth autonomy in hyper digital age. On the one hand even the Law commission has suggested of maintain age 18 as age of consent but also recognised the “maturity gap” resulting due to early achieving the adulthood (sometimes as early as age 14)) backed by the “iPad kid” phenomena. Thus, lately the recommendation of commission also suggested to use the provisions of Juvenile Justice Act for resolution of cases for children of age group 16-18.

The other area which has been discussed in the paper is related to Child Sexual Abuse Material (CSAM) vis a vis its relationship with the rights to privacy under Article 21 of Indian Constitution. The paper also details about the IT rules under Information Technology Act 2000, which prescribes a basic guideline along with the substantial

law to penalise the defaulters. The discussion also delineates the how the double edged sword of Artificial Intelligence can be utilised for the betterment of society as a whole in general and children specifically inter-alia in accordance with the newly formulated law of Digital Personal and Data Protection Act 2023.

Thus, the basic contours of the paper revolve around how the technology where currently the surveillance, data mining, the algorithm bias infringes basic human rights, can be skewed towards the use, which can enhance the sexual rights and personal autonomy along with the overall knowledge and maturity upgradation.

2. SOCIAL REALITY OF YOUTH AUTONOMY

The Debate on age of consent emerges out of the 22nd Law Commission recommendation in its 283rd report which advised that the age of consent should not to be reduced from 18 to 16 years.

Law Commission received a reference to consider the reducing age of consent from 18 to 16 under the Protection of Children from Sexual Offences (POCSO) Act, 2012. POCSO Act, 2012 was enacted to protect children from offences of sexual assault, sexual harassment and pornography. The Act also provides for the establishment of Special Courts for the trial of such offences.

Now question arises what should be the Age of Consent?

At various instances it has been defined as the age at which one is considered legally competent to consent for sexual activity. The POCSO Act fixed the age of being categorised as a child at 18 years, thus making it the default “age of consent”.

In recent times, it has been witnessed that the registration of criminal cases has been increasing under the POCSO Act. Girls’ parents want the police to press charges under the POCSO Act against the accused in cases where the two have eloped or engaged in consensual sexual activity out of their likings. Thus resolution of the said question is paramount in addressing the concerned issue and it will help in avoiding the injustice to adolescent boys being treated as criminals. Now a days, children be it a male or female gets maturity early near the age of 14 years, due to social media awareness and easily accessible internet connectivity. They are also getting the puberty at an early age and they are mature enough to make the right decision. Sexual autonomy encompasses both, the right to engage in wanted sexual activity and the right to be protected from unwanted sexual aggression. Only when both aspects of adolescents’ rights are recognised, human sexual dignity can be considered to be fully respected. When it comes to adopting global practices: the age of consent ranges from 13 to 18 years globally. The age of consent in Germany, Austria, Hungary, Italy, and Portugal is 14. In England and Wales, it is 16 years.

In line with the age criteria provided under the POCSO Act, Section 375 of the Indian Penal Code was amended by the Criminal Law Amendment Act, 2013 to raise the age of consent to sexual intercourse to 18. However, the exception for a man having intercourse with his wife who is not under the age of 15 years remained on the statute book creating a different kind of dichotomy. This is contradictory to the POCSO Act as Section 42A of the POCSO Act, which gives it an overriding effect over other laws. In the case of *Independent Thought v Union of India and ors*¹ the Supreme Court read down the exception in the IPC that exempted sexual intercourse between a man and his wife being a girl between 15 and 18 years of age from being considered rape.

Children generally lack emotional or psychological maturity. Due to this, they are not able to make informed decisions about sexual activity. Another angle is about convergence of the age of consent and age of marriage. They should not be conflated in theory, in practice, due to existing present country's social milieu, because they

¹ [2017] 10 SCC 800, AIR 2017 SC 4904

two are intrinsically linked. Any reduction in the age of consent will inevitably provide a safe harbour provision to coerce minor girls into subjugation, marital rape and other forms of abuse, including trafficking. Thus, any decrease in the age of consent would negatively impact the age-old fight against child marriage by providing parents an opportunity to marry off minor girls. It could lead to dire consequences, not only for the health and well-being of the child forced into early marriage but also for the potential offspring of such relationships.

Law commission came up with some suggestions. it suggested that if the Court finds the relationship between the accused and the child has been intimate, the Court may, impose any lesser sentence on the accused than the minimum sentence prescribed under the Act. For this, the important condition is the difference in age between the accused and the child should not be more than three years. It has also recommended that discretion be used if there is tactical approval, the accused has no criminal antecedents, bears good conduct after the offence, etc.

Further it also suggested some amendments to the Juvenile Justice (Care and Protection of Children) Act 2015². It said if the cases registered under the POCSO Act where both parties are aged between 16 to 18 years can be dealt with by the Juvenile Justice Board instead of the criminal courts. The Commission suggests changes to Section 18 of the JJ Act empowering the JJ Board to dispose of such cases by awarding sentences other than imprisonment such as - admonishment, community service, counselling, and release on probation on condition to maintain good conduct. Spreading awareness regarding sex, consequences of engaging in sex at an early age, information about contraception and safe sexual behaviour along with awareness regarding the POCSO Act.

3 ENCRYPTED NETWORKS, JURISDICTIONAL GAPS, AND THE RISING TIDE OF AI-DRIVEN EXPLOITATION.

CHILD SEXUAL ABUSE MATERIAL (Hereinafter CSAM) is a material which is used for an abuse of a child. CSAM refers to any content that depicts sexually explicit activities involving a child. CSAM are part of Online Child Sexual Abuse and Exploitation (OCSAE) that incorporates activities such as luring children into sexual chats, production, and distribution of child CSAM, live streaming sexual assault of minors etc. About 4.5 lakh cases of CSAM have been reported in India as of May 2023. Globally, it is estimated that up to 1 billion children aged 2-17 years, have experienced physical, sexual, or emotional violence.

Recently, the Ministry of Electronics and Information Technology (MeitY) issued notices to social media platforms, including Telegram, X (formerly Twitter), and YouTube, to remove Child Sexual Abuse Material (CSAM) from their platforms in India. Information Technology (Intermediary Liability Guidelines and Digital Media Ethics Code) Rules, 2021 under the IT Act 2000 lays down strict expectations from social media intermediaries that they should not allow criminal or harmful posts like CSAM on their platforms. MeitY has warned the social media intermediaries that any delay in complying with the notices will result in the withdrawal of their safe harbour protection. Safe harbour protection refers to immunity against third-party content, implying that it shields them from any legal liability. It is under Section 79 of the IT Act 2000.

CSAM Survivors might feel guilty about not having been able to stop the abuse, or even blame themselves. Exposure to and frequent exposure to CSAM can cause various levels of psychological stress like anxiety, depression, and Post-Traumatic Stress Disorder (PTSD), which leads to lower motivation for academics, self-harm tendencies etc. Childhood online sexual abuse leads to diminished self-esteem through harmful messages from abusers, impairs interpersonal relationships, hinders trust-building, and deepens isolation and loneliness in survivors. Many times, it has observed that to cope with the trauma of childhood sexual abuse, survivors turn to alcohol and substances in adolescence, often continuing this pattern into adulthood. CSAM contributes to a wide

² Juvenile Justice (Care and Protection of Children) Act 2015

range of communicable and non-communicable diseases like sexually transmitted infections including HIV, and other health conditions like unintended pregnancies, induced abortion etc.

Various sections of Information Technology (IT) Act, 2000³ such as: Sections 66E, 67, 67A, and 678 of the IT Act impose stringent penalties and fines for online transmission of obscene or pornographic content including CSAM. IT Rules 2021 aims to curb the circulation of CSAM on social media platforms. As per Rule 3(1) (b), platforms must "make reasonable efforts to prevent users from posting content that is paedophilic or harmful to children. Rule 4(4) requires large social media platforms (more than 50 lakh users in India) to deploy technology-based measures, including automated tools to proactively identify information that depicts child sexual abuse. Protection of Children against Sexual Offences (POCSO) Act, 2012 provides protection to all children under the age of 18 years from offences of sexual assault, sexual harassment, and pornography. It provides for stringent punishments which have been graded as per the gravity of the offence. Online Child Sexual Abuse and Exploitation (OCSAE) Prevention/Investigation Unit was set up by CBI to probe offences covered under various provisions of IPC⁴, POCSO Act⁵ and IT Act, apart from other relevant laws. Under the Nirbhaya Fund, the Government implements a project namely, 'Cyber Crime Prevention against Women and Children (CCPWC)', for awareness. Digital Personal Data Protection Act, 2023⁶ places three conditions on data processing entities for children's data namely, obtaining "verifiable parental consent", not causing harm to children, and lastly not tracking or monitoring children or targeting ads at them. Considering all this some social platforms have taken few initiatives such as YouTube which uses an automatic tool called Child Sexual Abuse Imagery (CSAI) Match to proactively weed out CSAM.

Lack of awareness, limited knowledge and access to India's CSAM reporting platforms leads to a very low number of self-reported crimes. In 2020, the National Cybercrime Reporting Portal (NCRP)⁷ recorded 1,102 cybercrimes against children. By contrast, NCRB received about 2.7 lakh reports of OCSAE from the National Centre for Missing and Exploited Children (NCMEC) in 2020 alone. Tracing content related to child sexual abuse, social media platforms would have to break end-to-end encryption, compromising the security of online communications and violating the Right to Privacy under Article 21. Offenders exploit the vulnerabilities of young children through social networking websites and chat spaces using fake accounts, and thus, the challenge of anonymity This makes the identification of sexual abusers, facilitators, and prosecution of viewers of child abuse content difficult. In the current digital age, the increased use of social media platforms, the mass migration to online classes, and the use of educational apps can also negatively impact children. From 2019-2020, Cybercrimes against children rose by 400% due to COVID-19 and shift to online mode of services such as education etc. Nearly 90% of these crimes involved the publication or transmission of CSAM.

4 GROWING UP DIGITAL: EXPLORING THE LONG-TERM EFFECTS OF SOCIAL MEDIA EXPOSURE ON CHILDHOOD DEVELOPMENT

In recent survey, Pew research centre⁸ has indicated that 60% of urban kids spend 3 hours daily on social media and other online platforms. There is evident role of different stakeholders in causing the increase of children's access to Internet. In modern society, especially in urban society where both parents are working, parents are unable to provide adequate attention to a child, leading to the modern phenomenon of the "iPad kid". It describes

³ Information Technology (IT) Act, 2000

⁴ IPC

⁵ POSCO Act

⁶ Digital Personal Data Protection Act, 2023

⁷ National Crime Records Bureau (NCRB) report 2020

⁸ Pew research centre

a young child who is always glued to their iPad or other smart device. Additionally, parents expose children to social media by uploading sonogram pictures, posting about their experiences in pregnancy, uploading photos of their newborns, etc. Technological advancement, with the help of data mining and analysis facilitate showing of content according to children's inclination in order to attract their attention. Stimuli from the screen like colour, sound, and stories change superfast which can be sensory overload releasing hormones of happiness in children.

The pandemic accelerated the transition to digital learning platforms without creating awareness about negative impacts. Parents also feel pressure to provide the technological device as most of the work given after the pandemic is done online. The digital world helps children in escape from real-life challenges and stresses thus eventually get attracted to social media for prolonged usage. There is pressure from peers to use the latest technology and latest games and applications. Government also lack separate regulation for adults and children. And thus, creating a breeding ground for misusers

There are various positive effects of social media on children. Several social media applications can help in learning skills like reading, writing, counting etc. through the games. It Can inculcate the habit of to respect others' points of view and start paying more attention to universal morals and values as they interact with people from all over the world. Social media provides a great amount of easiness in communicating and interacting with different people which improve social skill set of children. Social media can provide a wealth of information on various topics which can be used by children to express their creativity, share their ideas, and showcase their talents through various mediums such as art, writing, or video content. But on a flip side social media can also have negative impact on children if unchecked and unregulated. Children may become victims of bullying, harassment, or exclusion on social media platforms, which can lead to emotional distress, anxiety, and even depression. Social media is an easy and potential platform to spread fake, artificial, embarrassing, and hostile information about others. Children can get stressed while making face-to-face contact with the people around and become addicted to social media to communicate with others. Children have limited capabilities in distinguishing online reality from actual reality. They can become afraid of not having enough likes and losing the perceived online support. Even the excessive screen time can lead to reduced physical activity, poor sleep patterns, and other health-related issues. All these situations can make them a victim of low confidence, fear, unreal fakeness in the long run which must be addressed with the relevant checks and balances

5 DIGITAL SENTINELS OR CYBER THREATS? REDEFINING CHILD RIGHTS IN THE AGE OF ARTIFICIAL INTELLIGENCE

Freedom on the Net, an annual study of human rights online, states that conditions for human rights online are deteriorating. The finding highlights that AI technologies have the potential to not only promote but also infringe upon human rights. An understanding of a delicate balance between them is the need of the hour.

It's an old saying by Albert Einstein, *"It has become appallingly obvious that our technology has exceeded our humanity"*

While AI itself is a tool and does not inherently possess the intention to harm, its applications and implementations have raised concerns in the recent past in the many ways.

Big -data surveillance systems aggregate and analyse massive amounts of personal data, inferring people's most sensitive information. Automated systems are deployed to censor political, social, and religious speech which hampers freedom of speech and expression provided under Article 19 of Indian Constitution. AI surveillance can incentivize people to avoid reprisal through self-censorship. The access to information has been made very selective and biased by the service provider because platform algorithms have promoted incendiary content over

reliable information. Pro-government commentators can use generative AI to create disinformation at scale. The AI-enabled surveillance tools, such as social media monitoring which are in nature of due process forgo standards like “probable cause,” treating everyone as a possible wrongdoer. Algorithmic systems can perpetuate bias built into their training data and exacerbate long-standing discrimination i.e. the stereotyping of classes etc, be it based on caste, sex, religion or any other discriminatory pattern already persisting in any society.

The Association and assembly techniques of AI systems with abilities like facial recognition can identify and track potential protesters, allowing state forces to arrest and retaliate against them. The current usage and excessive usages of Digital election interference is being harnessed by AI to augment disinformation campaigns, creating deep fakes to sow doubt, discredit opponents, and manufacture public support etc. all these has validated an old saying of Stephen Hawking,

“Success in creating effective AI could be the biggest event in the history of our civilization. or the worst. we just don’t know”.

While there are challenges and risks associated with AI, there are also significant opportunities for promoting and upholding human rights. It upholds the very basic right of Right to equality which has been enshrined in Indian constitution and that to in the very preamble. AI algorithms can be designed to reduce biases in decision-making processes. By eliminating or minimizing bias in areas like hiring, lending, and criminal justice, AI can help ensure that individuals are treated more equally and fairly.

The basic tenet of human right surrounds around privacy protections. AI technologies can be used to develop advanced privacy protection mechanisms, including secure data encryption, identity protection, and secure communication, which are essential for safeguarding individuals’ freedoms. AI-powered surveillance technology can be used to hold governments and institutions accountable and thus ensuring the human rights. For example, facial recognition technology (FRT) can be used to document and expose police brutality, ensuring transparency and accountability. AI can help law enforcement agencies allocate resources more effectively, proactive crime prevention, and objective decision-making which enables good governance and eventually protects collective right of all the humans and specifically children. Although, there are concerns about the misuse of predictive policing when used unethically but on the flip side the early warning system developed by generative AI helps in giving timely warnings for natural disasters and humanitarian crises.

6 CONCLUSIONS

As concluding note we can understand what's behind the children's silence on sexual violence when it comes to various forms of abuses which are sometimes more hurtful due to mistrust of authorities, fear of bullying & mocking, to protect family from conflict with the community, too much exposure to children who have experienced sexual violence, denial, self-blame & shame, fear of not being believed, concern for perpetrator, respect for elders, and loyalty to family.

What can we do as an adult is a larger question that demands as, we being more mindful of privacy settings, protect child’s identity and use a secure Internet connection and report inappropriate images.

As an important stakeholder we must adhere to some basic guidelines. As Government And public authorities, they must enact laws that provides protection against online abuse. When it comes to parents and caregivers, they must protect their children from online dangers by customised blocking and timely scheduling and usage of various sites schools also must have a digital literacy programme inbuilt in course curriculum. Lastly, the private sector service and content provider also must have a norm of creating a safe platform for children. At the end it is the children who must be made aware of their right to safe use of internet.

In doing all this there lies the stakeholders and their respective interests. When we consider government as an agency it is paramount for our national security, law enforcement and public administration to foster innovation and economic growth in the AI sector with respect to citizens and uses of AI. The concerns if not addressed properly it may impact the fundamental rights, privacy, freedom of expression and protection from discriminations. Even the civil societies and activists will not be able to raise awareness of human rights issues and to make governments accountable for any violations. Although AI developers and engineers have a vested interest in advancing in this field, but unless they adhere to basic righteousness, they will not be able to solve complex problem and may not be able to give a justifiable solution because of the existing algorithmic bias which affects fairness negatively. On international level, the International Organisations bodies such as United Nations, WHO etc have interest in global peace security and development, and the basic foundation of these things lies in the truthful, righteous and responsible use of AI tools.

7 SUGGESTIONS

Social Media Companies can implement proactive measures such as content moderation algorithms and reporting mechanisms to prevent the future dissemination of such content. Also, there is a need to develop a National Framework for Child Online Safety to recognize the importance of safe physical and online environments to promote the well-being of all children and young people.

Online grooming and preparatory behaviour identify and combat preparatory child sexual exploitation thus more of abusive activity such as online grooming for child sexual abuse. Online grooming is a term used to describe the tactics abusers deploy through the internet to sexually exploit children. A nationwide awareness campaign with the necessary public attention towards the issue of child sexual abuse would be a welcomed step. Also, steps should be taken to integrate modules on OCSAE into computer science and sex education curriculum at schools. India should adopt an outward-looking approach and explore bilateral or multilateral partnerships to promote child safety online.

Strategic partnerships with countries having robust mechanisms to address OCSAE. Enhanced safety measures while browsing can be developed with the aim of protecting children, in particular from peers or adults seeking to engage in harmful sexual activity with children.

So, when it comes to best utilization of the positives and reducing the negatives parents have the paramount role to play. Parents can opt for parental control settings for internet usage, for example, restricting or allowing certain websites to be viewed on the Internet. Empowerment techniques include teaching them about legal boundaries in age-appropriate language, as well as discussing their communities' cultural, moral, and ethical norms and expectations. Updating children's devices with the latest software and privacy settings so as to minimize data collection. As a watch dog and sentinel governments must play a major role. It can enact and enforce laws and regulations that safeguard children's online privacy and prevent cyberbullying. When it comes to Schools, they can educate students on the safe and effective use of the Internet. Lastly (but not limited to) the internet provider have also a pivotal role to play as they can prevent and respond to child sexual exploitation and abuse online by Child-centred features and functions, effective reporting and feedback mechanisms, etc.

Regulations covering AI should embed human rights principles of legality, necessity, and proportionality by defending information in the age of AI. Ethical And societal impacts of AI should be actively considered throughout the development process. A framework for Social Impact Assessment (SIA) can be developed similar to what is done for the development projects. Engagement in open and inclusive dialogue with the public, stakeholders, and experts to ensure that AI technologies respect and incorporate human rights. The various global collaboration and agreements to establish common standards and best practices for AI ethics and human rights

can help us progress in positive direction. it also inculcates a habit of adhering to ethical guidelines for AI development and deployment on the lines of Asilomar principles.

Thus, overall a balancing of the interests of all involved stakeholders can be challenging, but it's essential to create a framework that ensures AI technologies are developed and deployed in ways that protect and promote human rights in general and children specifically.

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