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WHISPERS FROM THE WEB: CYBER SEX CRIMES AGAINST CHILDREN IN INDIA AND THE EFFICACY OF IT LAWS

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Abstract

This article delves into the implications of online access for children, exploring the multifaceted dimensions of Online Sexual Exploitation and Abuse of Children (OSEAC) in India with the help of a case study, the challenges in combating this menace, and the urgent need for robust IT laws and digital literacy to protect children from online predators. The advancement in the technological sphere has also made available various tools and techniques to predators who are always ready to groom and exploit teenagers, circulate their indecent images/videos, and encourage other paedophiles/predators to commit sexual offences against children, which remains the foremost area of research of this article.

Keywords- *Child rights; child grooming; online sexual abuse; cybersex crimes; IT laws*

1. INTRODUCTION

In the 'Kunwari Begum' case, Shikha Metray, a YouTuber and NIFT graduate, allegedly used a live-streaming video to incite her viewers by describing how to sexually assault infants. The content came to the notice of a human rights advocate, who reported it and urged the Ghaziabad Police and NCPCR to take strict action against the content creator. Consequently, an FIR was lodged against Ms. Metray, accusing her of encouraging sexually aggressive behaviour and advising viewers to "disregard consent". This is one of many incidents that stresses upon the underlying problem of increasing OSEAC in India. The proliferation in the number of child predators or individuals with the psychiatric disorder of paedophilia risks the safety of children in cyberspace. The Crime in India 2022 report reveals 1,823 cases of cybercrimes against children (Section 14 and Section 15 of the POCSO Act, 2012), which witnessed a rise from 1,376 as reported in 2021. The increased exposure to online academics and entertainment post-COVID has further exposed children to the part of the internet that targets and subjects minors to exploitation, involving disturbing acts of sexual nature.

2. CYBER SEX CRIMES AGAINST CHILDREN IN INDIA

Diving into the ambit of OSAEC, it includes a wide range of psychological behaviours and nuances, be it subtle or explicit. It also involves a range of behaviours and interactions that can start subtly and escalate to explicit exploitation over time, through tactics like grooming and coercion, by perpetrators who use deception to gain trust from young victims before moving on to more coercive demands or blackmail through seemingly innocent communication initially. The concept to engage with an audience while preserving anonymity on the internet makes it easier for abusers to target vulnerabilities and cause emotional and psychological distress to their victims. These actions are testament enough to the hidden character of exploiting children and demand constant vigil and pre-emptive actions to safeguard them from such dangers.

The first step in this direction is to understand who a child is. According to the POCSO Act, 2012, a "**child is any person below the age of eighteen years**".

As a vulnerable section of the population, the Indian Constitution grants special protection to children as underlined in various provisions-- Article 15(3) empowers the State to "enact specific provisions for women and children", Article 39(f) ensures that "children have opportunities and facilities to develop healthily, with freedom and dignity, and are safeguarded against exploitation and moral or material neglect", a clause introduced by the Forty-fourth Amendment Act of 1978. Additionally, Article 45 requires the State to provide free and compulsory education to all children up to the age of 14 years.
Additionally, within the framework of The IT Act, 2000, noteworthy provisions, to which this article draws attention, include s.67A and s.67B, which specifically discuss penalties for distributing and sharing content that features sexually explicit acts, in electronic formats as well as for disseminating material that depicts children in such explicit scenarios, respectively. Further, s.79 describes the exemptions from liability of intermediaries in certain cases which may act as barriers to effective action against intermediaries allowing explicit sexual content on their domains and complexities in law enforcement and s.11(iv) of POCSO Act, 2012 which covers cyberstalking for the purpose of sexual gratification as sexual harassment of a child.
On Sept 23, 2024, the Apex Court revised a ruling of the Madras High Court in the Just Rights for Children Alliance vs. S. Harish (2024, September 23), penalising the possession and storage of child pornography in any form, tangible or constructive, in the ambit of section 15, POCSO Act, 2012. The bench led by Chief Justice DY Chandrachud and Justice JB Pardiwala also suggested that Parliament consider amending the POCSO Act to term it "Child Sexual Exploitative and Abuse Material (CSEAM)" instead of "child pornography", reiterating that the word "pornography" (considered an act between consented adults) may undermine the gravity of victimization of the child.
Child sexual abuse imagery has severe and lasting impacts on the victims. Each time these images are viewed, the children involved may experience revictimisation, making them feel guilty, shameful, also increasing vulnerability to further victimisation and abuse. It's crucial to take proactive and prompt actions to remove any such imagery from online platforms.

3. THE UNDERLYING SOCIAL FACTORS

3.1. Society as a Cause

3.1.1. Sex Education: A Taboo

Sex Education aims to educate young individuals to make conscious, well-informed choices regarding their bodies, relationships, and sexual well-being. Sex education has long been treated as taboo in our society. As a result, children grow up with little to no awareness about these crucial topics. It is our collective responsibility, as a society, to protect and guide children by helping them differentiate what is right from wrong. However, meaningful communication is often missing. Even many elders lack proper knowledge about sex education because they were never taught, and this ignorance is passed on from one generation to the next, creating a vicious cycle of ignorance. Society is the starting point of both positive and negative influences. Before we turn to the legal system for accountability, we must first recognize that the root issue lies in societal attitudes and mindsets. Deep-seated cultural and religious beliefs often hinder the acceptance and implementation of comprehensive sex education. As a result, young people, left without proper guidance, turn to unreliable sources like peers, the internet, or pornography, which can lead to serious misunderstandings and distorted views about sex and related matters.
Chandra Mouli *et al* (2017) highlighted the efforts being made in India to implement sex education through "UDAAN - a School-centred Adolescent Education Program (AEP)" launched in Jharkhand. The initiative, led by the Jharkhand Council for Education, Research and Training under the Department of School Education and Literacy, initiated and technically backed by C3 in the year 2006.
Udaan is an adolescent education program for in-school delivery that has been adopted in all higher secondary education in the state as an effort to give those girls and boys wings and point them in the right direction. It aims to provide information to young people in schools about adolescence and growing up at their appropriate age.
Outcomes of the Program:

- Has reached and sensitised over 1 million students from classes 6th to 9th and 11th,
- Has tie-ups with 2941 active middle and secondary schools across 24 districts, and
- Has successfully trained over 6,048 teachers.

3.1.2. Deeply-rooted gender prejudice

This often leads to discrimination or a harmful attitude towards women and girls.

It influences how young people understand gender roles, navigate relationships, and see themselves. Sometimes, it can subtly show up in harmful ways like ignoring girls' opinions or reinforcing outdated stereotypes. Other times, it takes a more serious turn, leading to harassment, unequal treatment, or even violence.

- **Effects of misogyny on young girls:** It teaches young girls that their value lies in their appearance, behaviour, and their ability to please others. These actions lead to an inferiority complex and vulnerability in the mind of young girls, which makes them easy victims of abuse. The hyper-sexualisation of girls in popular media further reinforces the idea that they are objects of male gaze and attention, often causing them to tolerate inappropriate behaviour or fail to recognize abuse. Additionally, young girls are frequently told to avoid confrontation, which can prevent them from asserting boundaries or reporting abuse.
- **Effects of misogyny on young boys:** It promotes toxic masculinity, teaching them to suppress their emotions, avoid vulnerability, and assert dominance. It discourages boys from seeking help or reporting abuse, as doing so might be perceived as weak or emasculating. Misogynistic environments often lead to the normalisation of disrespectful behaviour towards other genders. This distorted understanding of consent and dominance increases the risk of boys becoming perpetrators of harassment or abuse. Lack of healthy male role models and uncomfortable but appropriate conversation plays a big role in exacerbating these issues.

3.1.3. The Victim Blaming Culture

India has a history of 'victim-blaming' culture, the idea of assuming that the incident probably happened because of the actions of the victim rather than holding the wrongdoer accountable for their conduct.

Victim blaming may be described when someone directly or indirectly suggests that a person who has been harmed or abused, is somehow at fault for what happened to them instead of holding the perpetrator accountable.

Ramifications of victim blaming:

- Internalised guilt and shame,
- It discourages the victim from coming forward and speaking up,
- Shifts the focus away from holding the perpetrator accountable, and
- Loss of trust in adults and institutions.

3.2. Family as a Cause

3.2.1. Neglect

Neglect could be emotional, physical, or supervisory. When it comes to parenting, it refers to a deficiency in a parent's engagement and responsiveness towards their child. This can manifest as neglect or abandonment, often linked to issues such as parental substance abuse.

Neglected children are the most vulnerable. When the caregiver fails to provide the attention they need, they are left exposed to predators, who often makes them seek validation and affection online, making them prime targets for sexual exploitation.

3.2.2. Lack of Supervision

As a parent, it is the responsibility of every parent to supervise their children in what they're doing, who they are engaging with, and their surroundings. If they are left unsupervised, it could cause serious problems, especially when it comes to their online activities. Many parents may be unaware of the digital platforms their children use or may not have time to monitor their online interactions. This can make them an easy subject to abuse in any form.

3.2.3. Shame and Honor

Majority of the cases of abuse remain silent due to the fear of shame and embarrassment. People care more about their reputation in society than their abused child. Protecting their family honour often takes precedence over the child's safety and well-being, leading to denial, silence, or even covering up of the matter. This behaviour gives more power to the offenders and might motivate other potential child sexual offenders, knowing that there are no repercussions for their actions.

3.2.4. Family Members as Perpetrators

Nearly 99% of sexual offence victims and 97% of POCSO-related cases involve girls, with offenders often known to the victims (Das M., 2024). As per the Crime Survey for England and Wales (CSEW) 2019, before the age of 16 years, 5% specified that they were abused by their fathers, 6% by stepfathers, 1% by mothers, and 0.3% by their stepmothers. Further, 64% of the respondents who had faced sexual abuse were by a parent, step-parent, or guardian.

3.3. Children's General Vulnerability as a Cause

Children are the easiest target of cybersex crimes because of their vulnerability and lack of comprehension. When they are exposed to the internet, they see certain things and learn from them. The easy accessibility of the internet and social media platforms makes them normalise what they see online and imitate the same.

Children from poor, unstable, and troubled families are at the highest risk when it comes to cybersex crimes. They are mostly unsupervised and neglected and seek validation from people online who provide them any level of stability.

Peer pressure is another reason why children share their personal information and exchange pictures for the sake of gaining popularity. It is another form of seeking validation, further exposing them to a range of online predators waiting to exploit and violate them.

3.4. Digital Illiteracy and Cybersex Crimes

It refers to the lack of skills and knowledge required to effectively use and understand digital technologies and resources. Individuals with limited digital literacy often fall victim to cybercrimes.

- **Lack of awareness:** Individuals, especially children may not understand online safety practices. Their limited understanding of online privacy, scams, and grooming tactics increases their vulnerability and makes them an easier target than others.
- **Easily Manipulated:** Children's lack of knowledge may lead to difficulty in recognizing the potential threat or manipulative tactics used against them by online groomers and child sex offenders. They can easily exploit the minds of these children by twisting words and affecting their thinking ability, making them engage in harmful activities.
- **Role of Parents and Teachers:** They are crucial in enhancing technological proficiency across young individuals and prevention of cybersex offences against them by familiarizing them with safe practices and advising on how to carefully interact in digital sphere.

3.5. News Media as a Cause

The news media is the most consumed form of media in every household. It significantly influences public opinions, political discourse, and policy agendas. It shapes how people perceive certain things and their behaviour towards them.

Cybercrime is an advanced form of crime that cannot be easily tackled in a society like ours, where it is so easy to be influenced by external forces. News media channels not only help in spreading awareness but also influence an individual's behaviour towards online safety, ideally. However, the exaggeration of media information can have negative effects on society, as can instil fear and anxiety in the minds of people.

The level of exaggeration and lack of compassion towards the victim and the family's well-being, treating the traumatic experiences as sensational stories, mere scandals, and violating their privacy for the sake of Television Rating Point (TRP), is what has been plaguing the Indian news media for years now, to such an extent that the public considers conclusions of media trial to be the actual truth of events.

It is therefore safe to say that anticipating such an exaggerated scrutiny, victims of cybersex abuse develop a fear of public exposure and often find themselves hesitating while reporting the crime due to victim shaming and blaming instead of holding the perpetrators accountable for their lawless actions. Over time, this constant exposure without responsible framing normalises such crimes, hence, propagating this desensitisation to weaken the collective awareness among the masses, increasing the potential cybercrime rates, and undermining efforts to create safe digital spaces for children.

3.6 Social Media as a Cause

Social media is majorly consumed by teenagers and is a space where young individuals communicate with each other and the world beyond. They often spend several hours a day online with minimal supervision, communicating with strangers and bonding with them. In such a space, predators roam freely, targeting young children to groom, manipulate, and exploit under a smartly curated disguise to hide their real identity.

Each and every sort of content is available on such platforms, and teens are heavily influenced by these media trends they see online that shape their opinion, behaviour, and appearances. This leads to the desire to 'fit in' to meet unrealistic standards and seek validation from outside. Being constantly exposed to such unfiltered content that causes harm to the minds of young individuals leads to hyper sexualisation, normalisation, and glorification of such harmful behaviours, making them an easy target for the predators.

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4. CHILD GROOMING AND THE ONLINE ECOSYSTEM

Grooming is a professional term used to describe the calculated and gradual process by which an offender sexually abuses a child. It is a horrifyingly planned and manipulative act that makes victims of sexual abuse feel complacent and adds an additional layer of protection for the offender. Further narrowing it down to digital platforms, Chiu & Quayle (2022) define "online grooming as the technology-facilitated process of befriending a young and vulnerable person by an adult perpetrator for the express purpose of sexual abuse and exploitation".

It involves an individual attempting to contact a minor with the goal of some form of sexually inappropriate behaviour (e.g.: cybersexual activity, child pornography, arranging an in-person meeting for the purpose of sexual contact; Staks-rud 2013). "The process whereby an offender manipulates a minor into a situation where sexual abuse can be more readily committed, while also preventing future disclosure" (van Dam, 2001; Wyre, 2000).

The existing literature predominantly examines the mechanisms and underlying dynamics of sexual grooming within physical interactions. The digital adoption of sexual grooming post-pandemic has contributed to more severe forms of sexual abuse and has led to a drastic increase in cases of sexual grooming.

Adults, adolescents, and children routinely interact via digital communication platforms, which involves the online augmentation in young individuals' ages (including children and young adolescents), in order to have access to certain social media platforms. This particular trait has seen a corresponding upward trend in cases of online sexual abuse and exploitation, the McAfee's Global Connected Family Study of 2022 (India) provides that about 83% of children aged 10-14 use smartphones, which is steadily increasing and points towards the availability of vulnerable young individuals to the exposure of child predators.

Further in the study, the percentage of Indian children engaging in private conversations with individuals whose real identities they do not know is 11% higher than that of children in other parts of the world, a clear indication of a child's tendency and vulnerability towards child grooming.



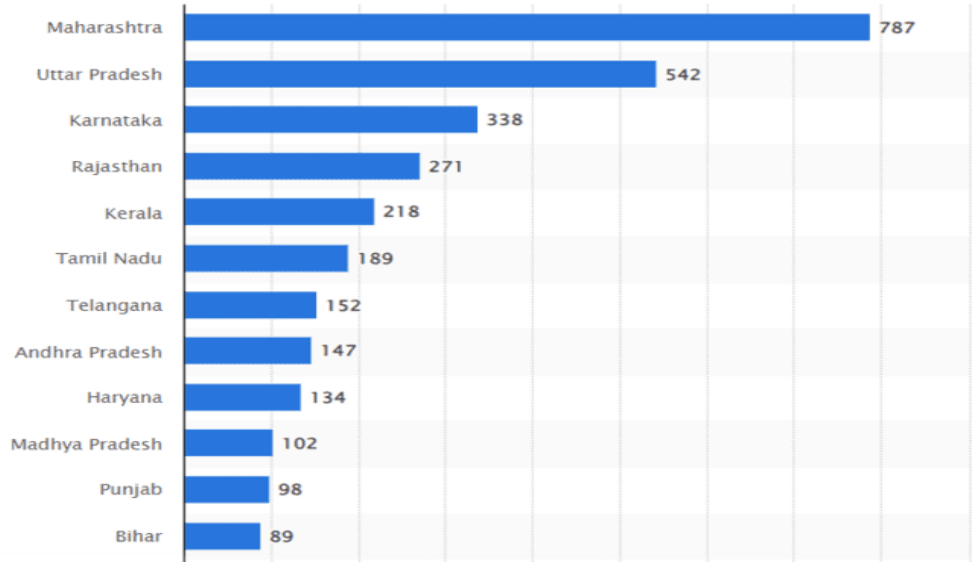
Source: media.mcafeeassets.com

Figure 1: Number of Indian Children Holding Private Conversations without knowing a Person's Real Identity

4.1. Cybersexploitation

The Australian Center to Counter Child Exploitation (ACCCE) defines online child exploitation as the utilization of technology or the internet to carry out the sexual exploitation of a child, including the production and exchange of CSEAM. Adults or teens can engage children in sexually explicit conversations that can range from mild to serious and can lead to "fantasy enactment" (where sexual fantasies are explored) or even cyber-rape scenarios. Grooming, a form of cyber exploitation, does not always involve explicit sexual conversations or online fantasy. However, it still falls under cyber abuse because the goal is to sexually abuse a child in the real world, with at least one point of contact occurring online.

In 2022, according to a Statista report published by Basuroy T. (2023), the state of Maharashtra reported 787 cases of sexual exploitation as a motive for cybercrime. This was followed by 542 cases in the state of Uttar Pradesh and 338 cases in Karnataka. These crimes fell under the purview of many sections of the Indian Penal Code and the Information Technology (IT) Act, 2000.



Source: statista.com

Figure 2: Number of cases of Sexual Harassment as a motive for Cybercrime in India

In "A Typology of Child Cybersexploitation and Online Grooming Practices", O'Connell (2003) revealed pioneering research findings on the process of sexual grooming and exploitation via the Internet, offering an initial understanding of this complex phenomenon and how perpetrators overcome a child's hesitance. She further delved into the numerous stages a child predator usually adopts to groom a child. The study explains that offenders often create child personas to attract users of a similar age and the opposite sex. They then wait for a child's response to initiate a connection.

4.2. Cyberstalking and Cyber Harassment

Cyberstalking is when an individual maintains continuous surveillance of another person in a manner that will make them uneasy, anxious, or intimidated. It starts as an over-enthusiastic interest in the person, which eventually leads to an obsession with the intention of causing them harm. Sometimes it can accompany offline stalking and can result in physical harm. As per the UNDOC Teaching Module Series: "Cybercrime, cyberstalking is the utilization of information and communication technology (ICT) to carry out more than one occurrence aimed at habitually annoying, harassing, attacking, threatening, scaring, or verbally abusing persons".

Cyberstalkers usually aim to instigate fear in the minds of their victims by threatening or harassing them or their family to achieve their objectives.

To understand the Indian context, a Statista report of 2023 reveals that Maharashtra recorded the highest number of cyber stalking and bullying cases against women and children with nearly 52 cases registered, in 2022. It was followed by Kerala, which had around 30 registered cases. Overall, the country recorded approximately 158 cases.

4.3. Cyberbullying

The use of ICT has been steadily increasing, and children now have access to the internet and various forms of digital technology. It not only gives children a platform to communicate but also put them in danger of exposure to cybercrimes. Cyberbullying, extremely common among children, is the use of electronic communication to bully, annoy, humiliate, and intimidate an individual.

WHO/Europe, in their 2nd volume of "Health Behaviour in School-Aged Children (HBSC)" study, which focuses on patterns of bullying and peer violence among adolescents across 44 countries and regions, stated that 1 in 6 school-aged children experience cyberbullying. About 12% (1 in 8) of adolescents report cyberbullying others, whereas about 15% (1 in 6) have experienced cyberbullying, with rates closely aligned between boys (15%) and girls (16%). This trend represents an increase from 2018-- from 12% to 15% for boys and 13% to 16% for girls.

According to "Life Behind the Screens of Parents, Teens and Tweens", a McAfee study conducted in 2022,

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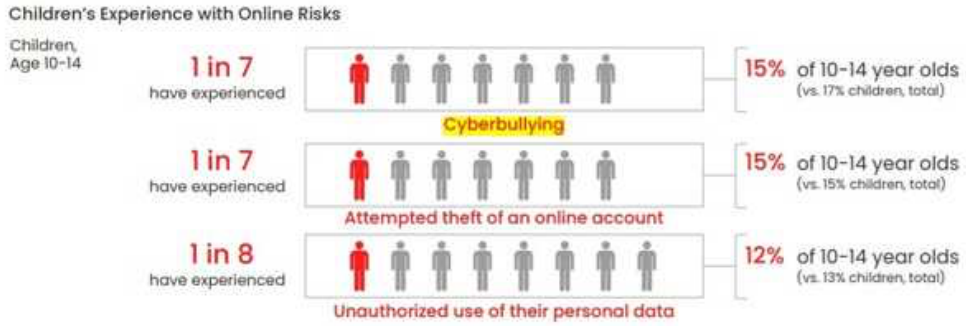
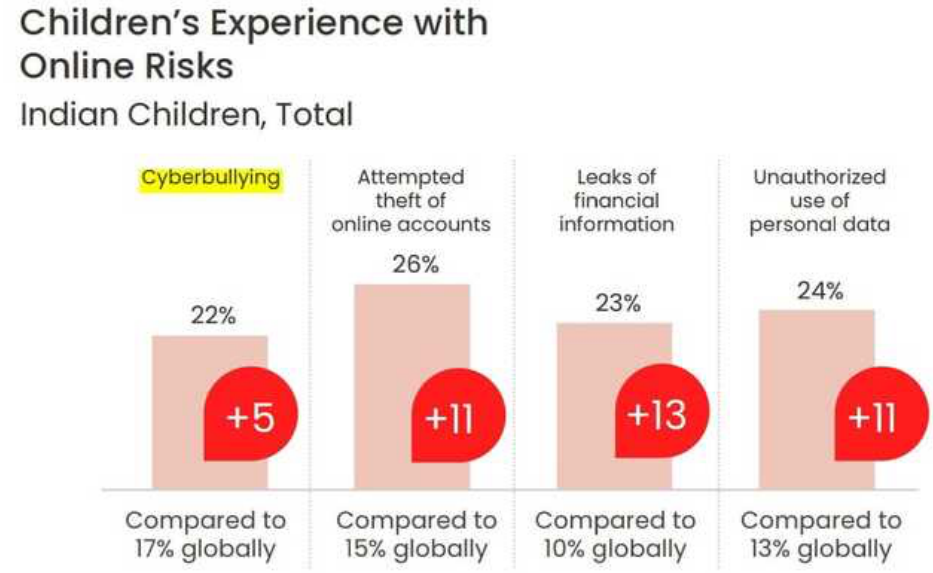
- 1 in 7 (15%) have reported that they have already experienced cyberbullying. Globally, the highest rates were in the U.S. (26%), Australia (24%), and India (21%)—with the lowest in Japan (4%), France (6%), and Germany (6%).



Source: media.mcafeeassets.com
Figure 3: Children's (aged 10-14) Experience with online Risks

- While these experiences start early with 10–14-year-olds, exposure to online risks only increase as teens get older. By age 17 to 18, reports of cyberbullying increase to 18%, attempted theft of an online account to 16%, and unauthorized use of personal data to 14%.
- In India, cyberbullying also trended slightly higher than the international average by 5%.



Source: media.mcafeeassets.com
Figure 4: Indian Children's Experience with Online Risks

5. "HOW TO?": PAEDOPHILE ADVICE TO PAEDOPHILES

The study carried out by O'Connell (2003) also shed light on discussions among adults having a sexual interest in minors within chat-rooms dedicated to child-sex themes showed that besides the prevalent sharing of child pornography, these dialogues often involved online grooming with an emphasis on ways to avoid getting caught. In these chat rooms, users share information on earmarking children who match their specific preferences. The advice on selection and targeting includes viewing children's public profiles online, which typically include information fields such as real name, age, and location, and may also invite children to upload photographs and provide details about their hobbies and interests. Additionally, if a child has created their website, they are often asked to provide the URL.

Table 1. Main Stages of Cybersexploitation.

Friendship-forming stage	Getting to know a child. Pictures may be exchanged for the purpose of verification by an offender that they are conversing with a child as well as the child meeting their preference criteria.
Relationship-forming stage	Extension of the friendship-forming stage. Involves discussing a child's school and/or home life, with the aim to present as the child's best friend.
Risk-assessment stage	An offender may assess the location and other people's usage of the computer for likelihood of detection.
Exclusivity stage	Making a minor feel special and fostering the feeling of "best friends" by reinforcing the idea of complete and implicit trust. Gradual introduction of sexual themes and topics, with potential for increasing in intensity by applying gentle pressure on the part of an offender. Expressed feelings of discomfort by a minor may be followed by profound expressions of regret and pleads for forgiveness by an offender, serving to reestablish the sense of mutuality.
Sexual stage	The nature of sexual conversation may vary from mild suggestions to overt requests, along with varying degrees of explicit descriptions. An offender's rationale for introducing sexual themes may be explained as mentoring and educating purposes.
Concluding stage; damage limitation; "Hit-and-run" tactic	Lavishing a victim with praise and encouragement to reestablish the relationship for the purpose of minimizing risk of disclosure. An offender has no interest in damage limitation or either repeated or continued contact with a victim, therefore simply abandoning the interaction without reestablishing the relationship with the victim.

Source. Aadapted from O'Connell, 2003.

Source: image.guardian.co.uk
Figure 5: Main Stages of Cybersexploitation, O'Connell (2003)

In the Indian context, the recent event of a 23-year-old Youtuber encouraging sexual abuse against infants and children by "teaching" her audience how to assault infants sexually and to "disregard consent," discussed further in this article, describes an ecosystem that shines on the spectrum of the gravity of child predators/paedophiles and a rise in their numbers with the availability of convenient resources, techniques, and platforms at their disposal.

5.1. "She Will Say No. Leave her!": The Kunwari Begum Case

The case of the abovementioned YouTuber Ms. Shikha Metray, known as Kunwari Begum on digital media platforms, a graduate from the NIFT, Delhi and formerly employed at a garment company in New Delhi, was arrested by the Ghaziabad Police (UP) in the solicitation of CSEAM, according to The Times of India article published by Avishek Kumar. The matter was brought to light by Deepika Narayan Bhardwaj, a documentary filmmaker and equal rights activist (founder of Ekam Nyaay Foundation), who filed an FIR with the Ghaziabad Police when she came across a video on the accused's social media account with a thumbnail titled, "She Will Say No. Leave her!", something the activist considered unimaginably disgusting and horrifying. The said content violated S. 293 of the IPC (S. 295 of the Bhartiya Nyaya Sanhita, 2023) and S. 67B of the IT Act, 2000, which describes that the distribution, sale or circulation of obscene content and the sale of pornographic content to anyone under the age of 20 is illegal.

The accused was initially granted interim bail after filing of the case. Later in August 2024, despite opposition from the prosecution, the court released her on bail, considering that she had no prior criminal history, had not misused the interim bail, and the facts and evidence on record justified the grant of bail.

5.2. More Case Studies: Taking it a Notch Further

Bose, A. (2024), in his article, "Instagram to Telegram: Predators sell child sex abuse videos for Rs 40", mentions of a fight that broke out between a 16-year-old girl and her 17-year-old boyfriend, where she agreed to his "share terms" to settle the dispute, and within minutes, the video had spread among their classmates. Later, when her parents found out, they met the boy's parents and asked them to delete the video, which was already all over the internet. Chitra Iyer, founder of Space2Grow, a consulting firm with expertise in child digital safety, has teamed up with another NGO, Rati Foundation, which works to remove CSEAM from online platforms, to help the girl's family, but at a time, when they found a way to lodge an FIR, her parents backed out, saying they had faced enough harassment as is.

The same study also mentions of a 2019 New York Times investigation which revealed that India is one of the largest producers and consumers of CSEAM. The US non-profit National Center for Missing & Exploited Children (NCMEC) reported in 2019 that 1,987,430 pieces of CSEAM had been reported from India-- the most in the world. Despite the strict legal penalties, CSEAM is readily available on social media platforms at prices ranging from INR40 to INR5,000. It further cites the analytical data by Telemetrio, an online catalogue and analytics tool for Telegram channels, that the phrase "child porn" gets around 20,000 to 40,000 views every week in India.

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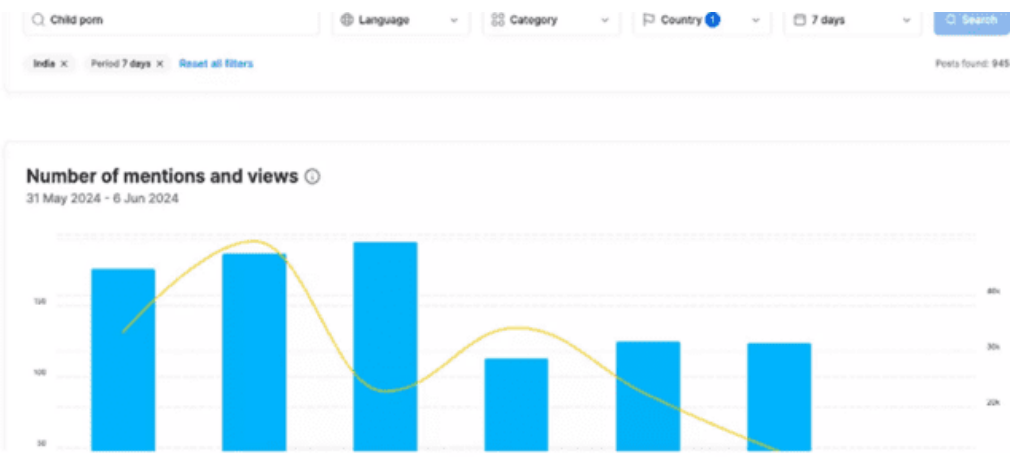

Source: boomlive.in
Figure 6: Number and Mention of CSEAM in India over 7 days (31.05.2024 – 06.06.2024)

5.3 Indian Case Laws

5.3.1. Just Rights for Children Alliance v S Harish (2024 SCC OnLine SC 2611)

This case highlights the issue regarding the possession, storage, and viewing of CSEAM under Indian law. It also clarifies the scope of the POCSO Act, 2012 and the IT Act, 2000 concerning CSEAM.

Background: A case was registered by the Tamil Nadu Police after a report published by NCRB against S. Harish for possessing CSEAM on 29 January 2020. Upon investigation, he was found in possession of objectionable videos on his phone, recorded in Tamil Nadu, which involved children who had been sexually exploited and were reported missing.

He was charged under Section 15(1) of the POCSO Act, 2012, which deals with CSEAM and Section 67B of the IT Act 2000, which criminalizes CSEAM in electronic form.

However, when he approached the Madras High Court, seeking to quash the case, the court ruled in January 2024 that mere possession or viewing does not amount to an offence under either law.

This judgment triggered serious concern among child rights advocates. The Just Rights for Children Alliance filed an appeal against the Madras HC decision on 22 February 2024, stating that it could set a dangerous precedent.

Held: The Supreme Court clarified the scope of s.15 of the POCSO ACT. On 23rd September 2024, the court held that any form of possession of CSEAM will amount to 'possession' under s.15 of the POCSO Act, 2012 and the judgment given by the Madras High Court was overruled by the bench of then CJI Chandrachud and Justice Pardiwala.

5.3.2. Swiss Couple Case

In the 2000s, a Swiss couple, both in their 50s, were arrested by the Mumbai police for luring minor girls to perform acts of sexual nature and taking nude pictures of poor street children who approached them for food and money. They were sentenced to 7 years of imprisonment.

6. LEGAL PROVISIONS: GUARDIANS OF JUSTICE

In India, the key laws related to the cyber safety of children include the Information Technology (IT) Act, 2000 and the Protection of Children from Sexual Offences (POCSO) Act, 2012 and the provisions safeguarding the rights of children by the Constitution of India.

6.1. Constitution of India

- **Article 15(3):** It allows the state to make special provisions for women and children.
- **Article 21:** It ensures the right to life and personal liberty to all individuals, including children. It ensures that the children are protected from any action that could endanger their lives and well-being.
- **Article 39(f):** Directive Principle of State Policy (DPSP) recommends the state to focus on ensuring that the children have access to opportunities and resources that fosters their healthy development in an environment of freedom and respect. It also mandates the protection against exploitation and moral or material abandonment.

6.2. IT Act, 2000

- **Section 67**: Penalties for the distribution or sharing of indecent content in electronic form. Whoever publishes, shares or helps spread obscene or sexually explicit materials online that are likely to

corrupt the viewer can face up to 3 years of imprisonment and a fine of up to INR5 lakhs. For repeat offences, the punishment exceeds to 5 years of imprisonment, with a fine not exceeding INR10 lakhs.

- **Section 67(A)**: Penalties for the dissemination or circulation of content illustrating sexually explicit activities, etc., in electronic form. Offenders may be sentenced to imprisonment for 5 years and a fine not exceeding INR10 lakhs. Repeat offenders face 7 years of imprisonment and fine not exceeding INR10 lakhs.
- **Section 67(B)**: Penalties for publication or transmission of materials that depict minors in sexually explicit act, etc., in electronic form,

A. Publishes or shares content showing children involved in sexually explicit acts,
B. Creates, downloads, browses, promotes, or distributes such material,
C. Engages with children online in a sexually explicit or inappropriate manner,
D. Facilitates or participates in the online abuse of children, or
E. Records such abuse electronically.

First time offenders face up to 5 years of imprisonment and a fine of INR10 lakhs, while repeat offenders await 7 years of imprisonment and a fine of up to INR10 lakhs.

6.3. POCSO Act, 2012

- **Section 13:** Establishes the offence of exploiting a child for pornographic purposes. Any individual who exploits a child in any medium for sexual pleasure, which includes,
  - Representation of the sexual organs of a child,
  - Usage of a child engaged in a real or simulated sexual act, or
  - The incident or obscene representation of a child.
- **Section 14:** Addressing Child Exploitation for Pornographic Purposes. If a child in any form is exploited for pornographic purposes, that individual shall be punished with a term of imprisonment of not less than 5 years and a fine, while a subsequent offence invites imprisonment up to 7 years and liability to a fine.
- **Section 15:** Punishment for storage of pornographic material involving a child,

(1) anyone who stores or possesses CSEAM and fails to delete or report it, with the intent to share or circulate it, is to be fined up to INR5,000 for the first offence, and up to INR10,000 for a repeat offence.
(2) anyone who stores or possesses CSEAM with the intent to transmit, display, or share it in any way, instead of reporting it or using it as evidence in court, is punished for 3 years, a fine, or both.
(3) anyone who stores or possesses CSEAM in any form involving a child for commercial purposes shall face imprisonment for a minimum of 3 years to maximum 5 years, or fine, or both for the first conviction. In case of a repeat offence, imprisonment must not be less than 5 years to 7 years and a fine.

6.4. Bhartiya Nyaya Sanhita (BNS), 2023 (Formerly, Indian Penal Code, 1860)

- **Section 95:** Anyone who hires, employs, or engages any child to commit an offence shall be punished with 3 years of imprisonment, which may extend to 10 years, along with a fine. If the offence is committed, the person will also be punished as if they had committed the crime themselves.
- **Section 295:** Whoever sells, rents, distributes, displays, or even circulates any obscene objects (as defined under section 294 of the IPC) to a child, or even offers or attempts to do so, shall be punished on first conviction up to 3 years imprisonment and a fine up to INR2,000. For a repeat offence, up to 7 years of imprisonment and a fine up to INR5,000.

7. INDIAN POLICE AND THE IT LAWS

According to Datta and Bag (2021), in their research Indian Police & ICT: An Exploratory Insight, it was explained that cybercrime has become a significant problem in the last decade, moving from an unrecognised threat to a pervasive act. Due to the widespread use of the Internet, police officers must be well-trained to combat these crimes to prevent them from being outsmarted by the offenders. Technologies such as Global Positioning System (GPS), Geographic Information System (GIS), wireless internet, and CCTV have proven to be the most effective tools for detecting and fighting cybercrimes. Surveys show that 40-50 police officers find these devices the most suitable for fighting cybercrime. Conversely, mobile printers as a form of ICT are not considered effective by the Indian Police and are rarely used, probably due to reluctance to adopt new technologies.

Further, the study revealed that the use of technology in policing reflects different models of law enforcement. Among the Dehradun Police (Uttarakhand), opinions differ on the most effective model. Of the 200 police officers surveyed, 30% favour a punitive model of policing, which they say deters crime by instilling fear of punishment. However, 70% support a proactive model that includes not only

punishing criminals but also acting as social engineers. This approach involves creating databases of offenders and raising public awareness, which can help reduce crime rates.

NCRB recently announced that it has begun recording online child sexual abuse based on recommendations from the 206th House Standing Committee on Internal Affairs, which noted poor law enforcement and data on these crimes.

On 20 September 2012, the National Database on Sex Offenders (NDSO) was launched under the Home Office. This is the central database of sex offenders in the country, managed by the National Crime Records Bureau. It is a 24/7 online facility that is accessible exclusively to law enforcement agencies that have access to the Inter Operable Criminal Justice System (ICJS)[1].

As of December 28, 2018, NDSO has 4,93,778 records of offenders involved in sexual crimes such as rape, gang rape, teasing, stalking, child abuse, etc. According to the 2020-21 Annual Report, NDSO reported more than 10.69 lakhs sex offenders in the country, enabling investigating officers to track offenders more efficiently and quickly, utilising the database.

8. CONCLUSION: PROMPTNESS, PREVENTION, AND PROTECTION

The troubling case of YouTuber Shikha Metray, who used her platform to encourage sexual abuse against infants and children, has brought to light the grave issue of OSEAC in India. This incident stresses upon the urgent need for stringent measures and heightened awareness to protect minors in cyberspace. The rise in cases of cybercrimes against children, as reported by the NCRB, highlights the increasing danger posed by child predators who exploit digital platforms to groom and abuse minors.

Understanding and combating these crimes necessitates a comprehensive approach incorporating a comprehensive legal framework, effective governance through law and informed civic participation. The POCSO Act, 2012 and the IT Act, 2000, provide necessary legal provisions to address these heinous crimes, but enforcement remains a challenge. The digital age has expanded the reach and tactics of sexual offenders, making it crucial for law enforcement agencies to adopt advanced technologies and proactive policing models. The proliferation of child grooming and cybersexploitation, as seen in the significant increase in online sexual abuse cases post-pandemic, calls for enhanced digital safety measures for children. The responsibility lies not only with the authorities but also with families, educational institutions and tech intermediaries.

Efforts such as the National Database on Sexual Offenders (NDSO) and initiatives to track and remove CSEAM from online platforms are steps in the right direction. However, the battle against OSEAC requires continuous vigilance, cooperation between international and national agencies, and the empowerment of children and communities to recognise and report abuse.

In conclusion, the case of Shikha Metray is a stark reminder of the pervasive threat of OSEAC. It demands a concerted effort from all stakeholders to safeguard the innocence and well-being of the minors and upcoming generations, ensuring that the tech sphere becomes a safe space for their growth and development.

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