

CYBER CRIMES BY JUVENILES: PARADOX OF INTENTION VIS-A-VIS INNOCENCE

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Abstract—This article opens with an idea to pen-down the interrelationship between the Information and Communication Technology and its reflection on the psychology of a juvenile delinquent at the time of commission of offence in Cyberspace. Mobile phones, hi-tech e-Gadgets and Personal computers are used in isolation, without any human involvement that allow a child or adult to be just one lone individual in cyberspace. A person can develop an imaginary world and then transform that world on to the Internet. Juveniles are attracted towards cyber activities and get involved in cyber-defamation, cyber-pornography, cyber-stalking, online gambling, misuse of social networking websites and much more online- activities even without knowing the serious consequences of these activities. These offensive activities are bound to happen in the dreamy world of Internet without knowing their consequences. Almost 85% juveniles are involved in it. Who cares? No one cares. Who files a complaint against these activities? No one files a complaint. Neither parents nor State cares what a child watches online. In this article the research question are: (i) whether involvement of a child in cyber offences between 7-12 years is eligible for the defence of innocence and immaturity of understanding as prescribed in Criminal law? (ii) If a child or child in conflict with law commits cybercrime and claims innocence what remedy is available in cyber jurisprudence? An attempt has been made to explore the answer of these research questions and submit relevant suggestions.

Keywords: Juvenile Delinquency, Cybercrime, Intention or Innocence, The Information Technology Act, 2000 (2008)

1. INTRODUCTION

The past decade has marked a revolution in the attitude of Indian Jurisprudence toward its offending children. In a democratic set-up, the State is the highest and the ultimate parent of all the residents within its territorial borders. The problem of the delinquent child is of great importance for State as upon its wise policies, the future of many rising generations is dependent. Recently, in India during the time span of 2012-2017 reconsideration of nature of punishment to a delinquent; reformatory or penal, in serious offences has opened new sphere of debate. This debate is settled down on the doctrine that the child who has begun to go wrong, who is incorrigible, who has broken a law or who has gone against an ordinance, the delinquent must be taken not as an enemy but

as a protector by the State. The rationale behind this doctrine is that State is the ultimate guardian because either the unwillingness or inability of the natural parents to guide toward good citizenship has compelled the intervention of public authorities.

In the era of Information and Communication Technology (ICT) the comfortable and hi-tech life given by the parents has opened new hurdles for Indian Juvenile Jurisprudence. In the lap of cyberspace, juveniles are inclined towards serious cybercrimes like cyber-stalking, cyber-terrorism, cyber-warfare, phishing, cyber-pornography, cyber-piracy, mishandling of social networking sites. An innocent mind is involved without being noticed by both parents as well as the State. The consequences of these crimes are much more serious than crimes committed in the physical world. On the path of are formatory model of punishment to delinquents the Juvenile Courts and Juvenile, judges need to take into consideration the social, psychological, financial, cultural as well as technological aspects.

2. AGE OF CHILD UNDER VARIOUS LEGISLATIONS IN INDIA: AN ANALYSIS

How far age is relevant in the commission of crime has always been a matter of serious discussion among legal experts. In Indian legislations the determination of age is dependent on several factors. "Juvenile" or "Child" means a person who has not completed eighteen years of age.

According to International Law, a 'Child' means every human being below the age of 18 years. Today this is a universally accepted definition of a child which comes from the United Nations Convention on the Rights of the Child (UNCRC).¹

According to Criminal Law under Indian Penal Code, section 82 considers that the child below seven years of age is not capable of committing an offence, while section 83 says

¹ Definition of the child (Article 1) under UNCRC: The Convention defines a 'child' as a person below the age of 18; unless the laws of a particular country set the legal age for adulthood younger.

nothing is an offence which is done by a child who has not attained sufficient maturity of understanding to judge the nature and consequence of his conduct on that occasion.² Thus, there is total immunity from criminal responsibility up to the age of 7 and qualified immunity from the age of 7 to 12 years (the liability depends upon the capacity of understanding of the child).

Under the Indian Laws, Section 2 (k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 defines “juvenile” or “Child” as a person who has not completed eighteenth year of age. Under the Juvenile Justice (Care and Protection of Children) Act, 2015 “child” means a person who has not completed eighteen years of age.³ Under this Act “Child in conflict with law” means⁴ a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.⁵

Under the Juvenile Justice (Care And Protection Of Children) Act, 2015 in Chapter IV entitled Procedure in Relation to Children in Conflict With Law it is provided under Section 10 that, “As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended: Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail.”⁶

Juvenile Justice (Care and Protection of Children) Act, 2015 has been passed by Parliament of India. It aims to replace the existing Indian juvenile delinquency law, Juvenile Justice (Care and Protection of Children) Act, 2000, so that juveniles in conflict with Law in the age group of 16–18, involved in Heinous Offences, can be tried as adults.⁷ From 12 to 18 years, though the liability is not conditional, the Juvenile Justice Act provides for care and protection of the rights of child in conflict with law, and certain special procedure and forum was

created to judge the criminality with concern for all social circumstances which might have compelled or influenced to commit crime. A child below 16 cannot enlist himself in to the armed forces. Unless he attained 18 years a child cannot take part in active combat.⁸

Under the Child Labor (Prohibition and Regulation) Act, 1986 Section 2 (ii), “Child” means a person who has not completed the age of 14 years. According to the Child Marriage Restraint Act, 1929 Section 2 (a), “Child” means a person who, if a male, has not completed twenty one years of age, and if a female, has not completed eighteen years of age. For the purposes of protecting the right to life of girl child the provision of marriage age shall also be recommended to be raised up to 21 on par with male person, as young girls in this country require more protective cover or at least equal protective cover.⁹

According to the Immoral Traffic (Prevention) Act, 1956 Section 2 (a) “Child” means a person who has not completed the age of sixteen years.

3. JUVENILE AND CYBER CRIMES: PARADOX OF INTENTION VIS-A VIS INNOCENCE

Criminal law jurisprudence acknowledges that no crime can be committed unless there is mens rea: Guilty State of Mind. Every offence requires a particular presence of intention that is reflected from the words: “with intent”, “recklessly”, “unlawfully”, “willfully”, “knowingly”, “fraudulently”, “corruptly”, “dishonestly”, “negligently”. The doctrine of mens rea may be summed up as: A man will not be held criminally responsible unless: (a) He/she was acting voluntarily, (b) Knew that he/she was doing and (c) Foresaw the likelihood of consequences.¹⁰ Best known maxim of English criminal law is “*actus non facit reum nisi mens sit rea*”- that means an act itself does not make a man guilty unless his/her mind is innocent. Mens rea is an important element of crime except in statutory offences where liability is strict.¹¹ Strict liability negates mens rea. Even though a person’s conduct is not attributable to any wrongful act or negligence, he/she is still held criminally liable. This is called strict liability which is present in the Information Technology Act, 2000 (as amended in 2008). The legendary rule of strict liability as established in *Rylands v. Fletcher*¹² centuries ago

² Clayton A. Hartjen, *Legal Change and Juvenile Justice in India*, 5 International Criminal Justice Review (1995), pp. 1-16 at p. 2.

³ Section 2 (12) of the Juvenile Justice (Care and Protection of Children) Act, 2015 defines Child.

⁴ Section 2(13) defines ‘Child in Conflict with Law’ under the Juvenile Justice (Care and Protection of Children) Act, 2015.

⁵ Section 2 (14) the Juvenile Justice (Care and Protection of Children) Act, 2015 defines “Child in need of care and protection”.

⁶ Section 10 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

⁷ A revamped Juvenile Justice Bill was passed in the Lok Sabha on 7 May 2015 in the aftermath of the Delhi Rape Case of December, 2012 in which a minor was found guilty. The new bill will allow minors in the age group of 16-18 to be tried as adults if they commit heinous crimes. The Act came into force from 15 January 2016.

⁸ Madabhushi Sridhar, “Discussion Paper on Legal Provisions Regarding Age of Child To protect the Rights of Children” retrieved from: < <http://ncpcr.gov.in/showfile.php?lid=87> > visited on 11 October, 2016. (According to National Institute for Public Cooperation and Child Development, Government of India, Notification dated July 31, 2000).

⁹ R.S. Rastogi, *Prevention and Treatment of Juvenile Delinquency in India*, 2 Canadian J. Corrections 324 (1959-1960).

¹⁰ Ratanlal and Dhirajlal, *The Indian Penal Code 12-20*, LexisNexis (2013).

¹¹ Talat Fatima, *Cyber Crimes 387*, Eastern Book Company (2016).

¹² 1868 LR 3 HL 330 (HL).

is being recalled in the hi-tech ambience of the Internet where cybercrimes can be committed by juveniles too. Major changes in the law lexicon are required as the fundamentals of criminal law are being challenged on the touchstone of cyberspace.¹³

Cybercrimes are bloodless, non-violent and committed in highly sophisticated methods. With the advent of e-crimes, legal world faces the difficulty to pinpoint mensrea in cybercrimes. Therefore, in the context of cybercrimes an essential element for determining mens rea in Internet crime, on the part of the offender is that he or she must have been aware regarding nature of the act, modus operandi of the act consequences of the act at the time of commission of an offence.¹⁴ If a juvenile in conflict with law is given the benefit of innocence-it will lead to provide sound platform for the commission of offences in cyberspace. In physical offenses mens rea is present as it involves preparation and attempt but in cyberspace presence of mensrea cannot be denied because of involvement of technicalities. Children presently are involved in cyber -crimes since childhood times. The school-to-prison pipeline is the nationwide trend where children are funneled out of the education system into the criminal justice system. This must be stopped at any cost.¹⁵

The nature of cyber offences is such that people from all ages are attracted towards it. Old people are not aware to operate the technology; therefore, their focus is specifically on social networking websites to meet old friends and relatives, particularly on what's app and Facebook. The teenage group and in legal terms juveniles are also attracted towards this beautiful world of cyber cosmos but without knowing transparent boundaries in cyberspace. Children from the age of 12-18 are involved in following activities namely:

1. Making Profile with fake e-mail Id: Cheating by Personation¹⁶: Punishable under Section 66-D of the Information Technology Act, 2000 (2008)
2. Posting of the picture of actor/actress on one's own profile: Cyber Defacement: Punishable under Section 66-D of the Information Technology Act, 2000 (2008)

¹³ Michael H. Langley and H. B. Drone, *Juvenile Justice: Reneging on a Socio-legal Obligation*, 4 Social Service Review 47 (1973), pp. 561-570 at p. 561.

¹⁴ Id.

¹⁵ India Geronimo, *Systemic Failure: The School-To-Prison Pipeline And Discrimination Against Poor Minority Students*, 1 Journal of Law in Society 13 (2011-2012), pp. 281-300 at p. 281.

¹⁶ Section 66D of the Information Technology Act, 2000 (2008) Punishment for cheating by personation by using computer resource (Inserted Vide ITA 2008): Whoever, by means of any communication device or computer resource cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.

3. Sending defamatory messages and exploiting online platform: Cyber Defamation
4. Attempt to break Password: Hacking¹⁷
5. Following someone's profile: Cyber Stalking¹⁸
6. Playing Gambling and games on the Internet: Cyber Gambling
7. Watching movies, videos on pornography: Cyber Pornography¹⁹
8. Copyright Violations: Plagiarism
9. Involvement in cheating with Fake Profile: Cyber-cheating²⁰
10. Violation of Privacy²¹

These activities are covered under the Information Technology Act, 2000 (as amended in 2008), however, according to the juveniles it do not fall within the category of crimes because they are fascinated towards it. These offensive activities are bound to happen in the dreamy world of Internet without knowing their consequences. Ignorance of the law is no defence. Following their passions lead to the commission of crimes. Almost 85% juveniles are involved in it. Who cares? No one cares. Who files a complaint against these activities? No one files complaint. Neither parents nor State cares what a child watches online.

4. CONCLUSION AND SUGGESTIONS

“Innocence is like polished armor; it adorns and defends.”

¹⁷ Section 66D of the Information Technology Act, 2000 (2008): Computer Related Offences Substituted vide ITAA 2008) If any person, dishonestly, or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to two three years or with fine which may extend to five lakh rupees or with both.

¹⁸ Cyber Stalking causes Mental Pressure to the victim that leads to another heinous crime. However it is not listed as such as cybercrime.

¹⁹ Section 67 of the Information Technology Act, 2000 (2008) prescribes Punishment for publishing or transmitting obscene material in electronic form (Amended vide ITAA 2008). Section 67 A of the Information Technology Act, 2000 (2008): Punishment for publishing or transmitting of material containing sexually explicit act, etc. in electronic form (Inserted vide ITAA 2008).

²⁰ Fake profile offences are covered under Section 66 C and 66 D keeping in view the nature of offence.

²¹ Section 66E of the Information Technology Act, 2000 (2008) Punishment for violation of Privacy (Inserted Vide ITA 2008): Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.

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The Information Technology Act, 2000 as amended in 2008 has not mentioned any definition of 'child'; therefore, the general principles of the criminal law take the first seat. However, when there is a controversy between a general code and a special legislation, then special legislation overrides a general legislation. The relevant suggestions to ponder upon are that if juveniles or child in conflict with law is involved in cyber-crimes:

1. The traditional modes of investigations must be well equipped keeping in view techno-legal nature of crime.
2. No benefit of innocence and immaturity of understanding should be given in the case of cyber terrorism, identity theft and cheating by personation. The reason is in the commission of above quoted offences applicability of mind is hundred percent.
3. The traditional reformatory techniques of rehabilitation need to be reshaped keeping in view the nature of the offense in cyberspace.
4. Beyond the ambit of law, this is a matter of self-introspection that to whom the fault lies-Innocence of the fact that these activities are actually an offence or irresponsible attitude of guardians to check the content on the internet they are dealing with.

The author wants to submit that as the nature of offences have been changed from physical world to cyber-world therefore, same judicial procedure is inappropriate to adopt. The problems of juvenile delinquency and youth in abnormal situations are not amenable to resolution within the framework of the traditional process of criminal law. Juvenile Justice has been to provide specialized and preventive treatment services. It is high time to frame new rules for the regulation of Internet in such a way that we use this weapon for creativity not for deteriorating our saplings or generations who are yet to see entire life by their involvement in cyber offences.²² I am 100% innocent and the charges against me are 100% false is a popular defence on behalf of a juvenile. The dilemma of age in the context of nature of crimes and offender which has always a matter of discussion among jurists needs to be resolved and strict liability must be imposed on the children within the age group of 16-18 years. Rehabilitation happens when teenagers are forced to connect with their own culture; when they are taught to take responsibility of each click on keyboard in cyberspace, and make them to understand the grave consequences of their activities on internet which they feel that no one is watching them. The only effective way to reduce and prevent juvenile crimes is to balance through the enforcement measures accompanied with targeted, effective and intervention initiatives.

²² Carolyn Hamilton, "Guidance for Legislative Reform on Juvenile Justice", Children's Legal Centre and United Nations Children's Fund (UNICEF), Child Protection Section, New York, 2011.