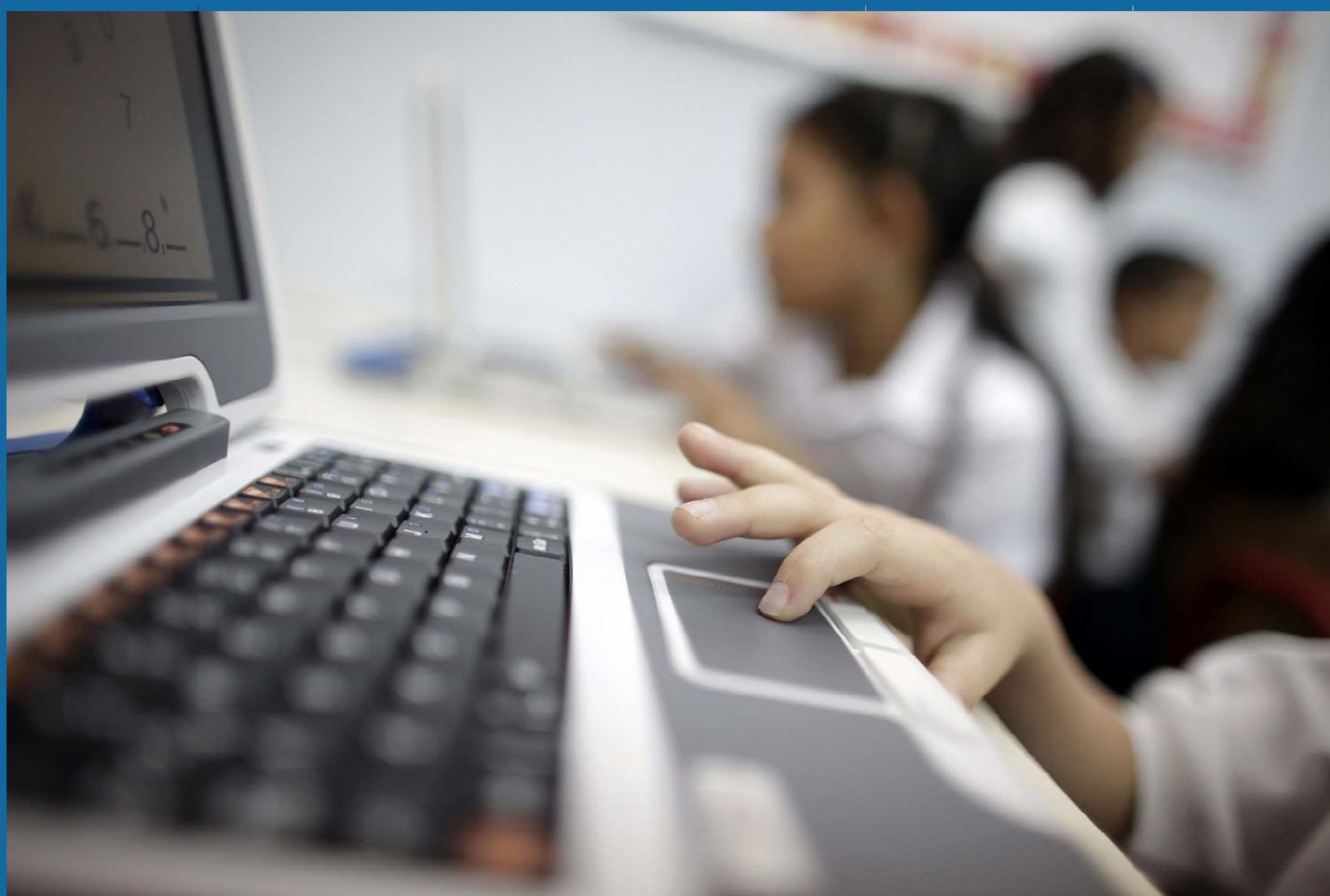




CHILD VICTIMS OF CYBER CRIME LEGAL TOOL KIT



ACKNOWLEDGMENTS

Written By: iProbono and Professor Karnika Seth, FIRE

Lead Co-Ordination And Research: Shohini Banerjee and Saurabh Malik

Supervised by: Mariam Faruqi, iProbono and Professor Karnika Seth, FIRE

Additional Researchers: Shruti Bist and Sarvesh Roy, FIRE

iProbono

iProbono is an international non-profit organisation working to provide access to justice to civil society and disadvantaged individuals, while building a culture of pro bono in the legal profession. iProbono enables legal professionals to provide organisations working on a wide range of development and rights-based issues with high quality legal advice. The team also works with individuals and organisations on strategic litigation. In India, iProbono has developed expertise in protecting the legal rights of survivors of child sexual abuse. Their work has not only influenced policy making in this field but importantly changed the lives of the children they support. iProbono is recipient of the UK Financial Times Innovative Lawyers Awards and the Nominet trust cites iProbono as one of the 100 innovations that made the world a better place. Mariam Faruqi (LLM), South Asia Regional Director, is a UK qualified lawyer with expertise in human rights. Saurabh Malik, Program Manager, is an India qualified lawyer with several years of expertise in child rights and Intellectual Property Law. Shohini Banerjee, Program Manager, has five years of experience in gender rights and psycho-social intervention for sexual abuse survivors. Contact: <mailto:contact@i-probono.com>

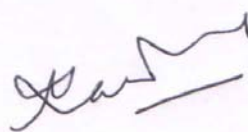


Mariam Faruqi
iProbono

Professor Karnika Seth

Founder, Seth Associates & FIRE NGO

Professor Karnika Seth, Founder of Seth Associates and FIRE NGO, is a distinguished cyber lawyer and expert, author, policy maker and educator. Ms. Seth practices law before the Supreme Court of India for over 17 years. She is the Founding Partner of Seth Associates law firm based in Delhi and the Founder of Foundation for Institutional Reform & Education, a not for profit organization dedicated to spreading cyber-awareness in India. She is Visiting Faculty to National Judicial Academy, National Police Academy, and law enforcement agencies including CBI & NIA. Ms. Seth is advisor to the Office of Controller of Certifying Authorities, Government of India & National Internet Exchange of India. Ms. Seth was conferred the Law Day Award from the Chief Justice of India for authoring the book titled *Computers, Internet & New Technology Laws* in 2012. She received the Digital Empowerment Award for authoring the book titled *Protection of children on internet* in 2015. Contact: karnika@sethassociates.com; mail@firengo.com



Karnika Seth
FIRE



स्तुति कक्कर
Stuti Kacker
अध्यक्ष
Chairperson

भारत सरकार
GOVERNMENT OF INDIA
राष्ट्रीय बाल अधिकार संरक्षण आयोग
NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS
नई दिल्ली-110 001
New Delhi - 110 001



FOREWORD

As per Crime in India 2015, published by the National Crime Records Bureau, reporting of crime against children showed an increase of 5.3% in the year 2015 over 2014. While physical abuse like kidnapping and abduction form a major share of crime against children, cyber crimes against the children have also registered an upward trend of almost 20%. Some of these cyber crimes would lead to physical sexual abuse of children moving from virtual reality to actual world.

The Protection of Children from Sexual Offences Act, 2012 (POCSO) was enacted by the Government of India to provide an extremely strong legal framework for protection of children from sexual offences while safeguarding the interest of the child at every stage of the judicial process. It incorporates child friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. It also contains the legal enablement for tackling cyber crime against children such as child pornography, cheating, cyber stalking, cyber bullying, defamation, grooming, hacking, identity theft, online child trafficking, online extortion, sexual harassment, violation of privacy. With the increased penetration of digital technology the dark side of the internet has become a medium for targeting child victims and since this new technology has many players, often law enforcement agencies are at a loss on how to provide relief to the victim. For better and clear understanding of cyber crimes against children UNICEF has produced a status report titled '*Child Online Protection in India*' which is available at www.unicef.in. Cyberlaw expert, Prof. Karnika Seth's book titled '*Protection of Children on Internet*' is also a pioneering, concise and useful guidebook on online safety of children written with a special focus on India.

The National Commission for Protection of Child Rights (NCPDR) has been mandated to monitor the implementation of the POCSO Act, 2012. The Commission has taken a number of steps to protect the children from sexual abuse. As a path breaking initiative, a POCSO E-button has been developed to facilitate children to report cases of sexual abuse online directly to the Commission and we intend to use this arrangement for tackling the burgeoning problem of cyber crime against children.

This '**Legal Toolkit for Investigators**' is another major initiative taken by this Commission. The Handbook is intended to demystify cyber crime related laws in simple layman language and is expected to be a useful guide for better understanding of the virtual world of crime and its shadow on the real world.

We acknowledge the efforts of iProbono and Professor Karnika Seth who have researched and written this Legal Tool Kit on request of the Commission. The toolkit gives guidance for implementation of provisions of the POCSO Act not only to law enforcement agencies but can also be referred to by teachers, parents and other stakeholders involved in this process.

NCPDR would feel privileged to receive suggestions for updating and improving the next edition of this Handbook.

New Delhi
Dated: September 2017


Stuti Kacker
Chairperson, NCPDR



यशवंत जैन
Yashwant Jain
सदस्य
Member

भारत सरकार
GOVERNMENT OF INDIA
राष्ट्रीय बाल अधिकार संरक्षण आयोग
NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS
नई दिल्ली-110 001
New Delhi - 110 001



Acknowledgement

Cybercrime is a global phenomenon with a criminals acting at a transnational level. Child abuse in India is increasing day by day both online and offline.

To overcome the challenges of cybercrime targeting children, NCPCR organized a consultation in the month of December 2016, February 2017 and May 2017, wherein it was felt necessary that a **Legal Toolkit on Cyber Crime** be developed to enhance the skills and knowledge of investigating agencies involved in cyber crime cases to enable them to protect children from online abuse.

An initiative was taken by NCPCR in collaboration with **Dr. Karnika Seth** and an NGO **iprobono** to prepare "Child Victims of Cyber Crimes - Legal Toolkit" as a useful guide for better understanding of investigation of cyber crime cases targeting children by law enforcement agencies in the country.

I express my sincere gratitude to Ms. Stuti Kacker, Chairperson, National Commission for Protection of Child Rights (NCPCR), for her guidance and support.

I convey my thanks to my colleagues Smt. Rupa Kapoor, Member Child Health and Nutrition, Shri Priyank Kanoongo, Member Education, Shri Kulbir Krishan, Advisor (JJ & POCSO), Dr. Dhani Ram, Senior Consultant (JJ & POCSO) and Ms. Nidhi Sharma, Consultant (Legal) for their valuable contribution.

New Delhi
Dated: September 2017

Yashwant Jain
Member, NCPCR

Dated: August 2017

Chairperson, NCPCR

Table of Contents

DEFINITIONS	1 - 3
ABBREVIATIONS	4
INTRODUCTION	5 – 6
I. Child Pornography	7 – 16
II. Cheating	17 – 20
III. Cyber Stalking	21 – 23
IV. Cyber Bullying	24 – 25
V. Defamation	26 – 27
VI. Grooming	28 – 29
VII. Hacking	30 – 32
VIII. Identity Theft	33 – 34
IX. Online Child Trafficking	35 – 37
X. Online Extortion	38 – 40
XI. Online Sexual Harassment	41 – 45
XII. Violation of Privacy	46 – 48
ENDNOTE	49

DEFINITIONS

Bitcoin¹

A type of digital currency with encryptions, operating independently of a central distribution system

Child

A Person who has not completed 18 years of age (Section 2 (12), Juvenile Justice (Care and Protection of Children) Act, 2015)

Consent

Two or more persons are said to consent when they agree upon the same thing in the same sense (Section 13, Indian Contract Act, 1872) In the context of a sexual act, minors cannot legally give consent

Cyber

Relating to information technology/the internet and virtual reality#

Dark Web²

Portion of the internet that is intentionally hidden through masked IP addresses

Dishonestly

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing 'dishonestly' (Section 24, Indian Penal Code, 1860)

Fraudulently

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise (Section 25, Indian Penal Code, 1860)

Happy Slapping³

Use of a mobile or camera to record an incident where a child is cyberbullied and then circulated on social media

Identity⁴

The fact of being; who or what a person is; this includes information about the person's name, address, family details or any other unique particulars about an individual

Keylogger⁵

A software program or hardware that records all keystrokes used on a keyboard

¹ Retrieved from <https://www.merriam-webster.com/dictionary/Bitcoin> (last visited on 11 April, 2017)

Retrieved from <https://en.oxforddictionaries.com/definition/bitcoin> (last visited on 11 April, 2017)

² Retrieved from <http://www.dictionary.com/browse/dark-web> (last visited on 11 April 2017)

³ Karnika Seth, Protection of Children on the Internet, Universal Publishers, 2015, Delhi

⁴ Retrieved from <https://en.oxforddictionaries.com/definition/identity> (last visited on 11 April 2017)

Retrieved from <http://dictionary.cambridge.org/dictionary/english/identity> (last visited on 11 April 2017)

⁵ Retrieved from <http://www.dictionary.com/browse/keylogger> (last visited on 11 April 2017)

Malware⁶

Software like spyware or other virus, worms or trojans that infect and intend to damage or take control over an electronic device like computer, mobile etc.

Media⁷

Medium of Mass Communication which can include print media (books, magazine, newspaper), television, movies, video games, music, software, online content

Online Safety

Knowledge of ensuring personal safety and mitigating security risks when using the internet

Phishing⁸

A financial crime where the criminal sends a fake email or message to a person to authenticate an account and thereby extracts the password details to cause unauthorized debits

Privacy⁹

The state of being free from unwanted intrusion, public scrutiny, secret surveillance or unauthorized disclosure of one's personal data or information

Prostitution of children¹⁰

The use of children in sexual activities for monetary gain or other forms of non-monetary payment

Publishes

Reproduction in printed or electronic form while making it available to the public. (Section 66E of IT Act, 2000)

Revenge Pornography¹¹

Publishing, transmitting or distributing sexually explicit pornographic clips of a person who has estranged relationship with the accused

Rumour Spreading¹²

Circulating gossip, through email, text messages or pictures or other means

⁶ Retrieved from <https://en.oxforddictionaries.com/definition/malware> (last visited on 11 April, 2017)

⁷ Retrieved from <http://www.businessdictionary.com/definition/media.html> (last visited on 11 April, 2017)

Retrieved from <https://en.oxforddictionaries.com/definition/media> (last visited on 11 April, 2017)

⁸ Glossary of IT Security Terms, Information Technology Faculty, ICAEW at <https://www.icaew.com/-/media/corporate/files/technical/information-technology/information-security/161-glossary-of-it-security-terms.ashx?la=en> (last visited on 11 April, 2017)

⁹ Retrieved from <http://www.dictionary.com/browse/privacy> (last visited on 11 April, 2017)

¹⁰ Retrieved from <http://www.victimsofviolence.on.ca/research-library/child-prostitution/#definition> (last visited on 11 April, 2017)

¹¹ Citron, Danielle Keats; Franks, Mary Anne (2014). "Criminalizing Revenge Porn". Wake Forest Law Review. 49 (2): 345–392. p. 346

¹² Karnika Seth, Protection of Children on the Internet, Universal Publishers, 2015, Delhi

Sexting¹³

Sending sexually explicit content by a person to another. While the purpose can be for mutual pleasure, it is also aimed to harass, insult, or cause alarm to the receiver

Simulated¹⁴

In imitation of; real or fake

Sexual Exploitation¹⁵

The use of a child for sexual purposes in exchange for cash or in-kind favours between a customer, intermediary, or agent and others who profit from the trade in children for these purposes – parent, family member, procurer, teacher

Trolling¹⁶

Cyberbullying a person online by making repeated and persistent harassing comments or intimidating remarks

Woman

The word “woman” denotes a female human being of any age (Section 10, Indian Penal Code, 1860)

¹³ Retrieved from <http://www.dictionary.com/browse/sexting> (last visited on 11 April, 2017)

Retrieved from <https://www.nspcc.org.uk/preventing-abuse/keeping-children-safe/sexting/> (last visited on 11 April, 2017)

¹⁴ Karnika Seth, Computers, Internet & New Technology Laws, Lexis Nexis, 2015 , Delhi, Second Edition.

¹⁵ Sexual Exploitation - UN Glossary on Sexual Exploitation and Abuse can be found here http://reliefweb.int/sites/reliefweb.int/files/resources/un_glossary_on_sea.pdf (last visited on 11 April, 2017)

¹⁶ retrieved from <https://en.oxforddictionaries.com/definition/troll> (last visited on 11 April, 2017)

ABBREVIATIONS

CD

Compact Disc

FIR

First Information Report

IPC

The Indian Penal Code, 1860

IT

Information Technology

IT Act

The Information Technology Act, 2000

ITPA

The Immoral Traffic (Prevention) Act, 1956

JJ Act

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

MMS

Multimedia Messaging Service

NCRB

National Crime Records Bureau

NCPCR

National Commission for Protection of Child Rights

Ors.

‘Others’

POCSO Act

The Protection of Children from Sexual Offences Act, 2012

U.P.

Uttar Pradesh

USB

Universal Serial Bus

V.

Versus

INTRODUCTION

Access to the internet, smart phones and other forms of electronic media offer children and young people unimaginable access to information, culture and entertainment. At the same time, this technology provides sexual predators with an anonymous and swift medium to contact potential victims with ease, share images of sexual abuse, online exploitation of children across borders and create networks that encourage the commission of further cybercrimes.

While cybercrime is a global phenomenon with criminals acting at a transnational level, India is recognised as the country with some of the highest rates of child abuse both online and offline. The National Crime Records Bureau (NCRB) registered 1540 cases of online child abuse between 2013-2015.¹⁷ 3% of children who called the Childline Helpline in 2015 cited problems related to online abuse. However, it is difficult to account accurately how many children are affected by online abuse in India because child victims and their families are often unable to report a crime due to shame, guilt, lack of knowledge on reporting or lack of realization that they are being abused.

The Chairperson of the National Commission of Protection of Child Rights (NCPCR) has noted that cybercrimes against children have pervaded our 'system'.¹⁸ As a corollary, state authorities must provide robust and effective responses including preventative measures to protect the rights of child victims and potential victims of cybercrime.

Therefore, as part of the Group on Legislation for the NCPCR's wider consultation on child online safety, this Toolkit was produced. This toolkit is provided as a ready reckoner to assist with the identification of crimes and the application of the law to cater to front-line service providers including the police and investigating officers who may encounter cases of online child sexual abuse in their daily work. Through this toolkit, they can identify this new stream of criminal activity in a timely manner and understand the procedure of implementation of existing legislative provisions so that there is effective prosecution and conviction of perpetrators.

Relevant legislation in India is highlighted as part of a wider effort to generate awareness and initiate a national response to the systemic problem of online child abuse. This toolkit does not identify the international legal framework for child protection in this context.

The 12 criminal offences covered in this handbook, while not exhaustive, were carefully selected with reference to existing case laws and current issues in the country. Topics include: child pornography, cheating, cyberstalking, cyber bullying, defamation, grooming, hacking, identity theft, online child trafficking, online extortion, sexual harassment and the violation of privacy. The relevant applicable legislation includes the Indian Penal Code (IPC), 1860 and Protection of Children from Sexual Offences (POCSO) Act, 2012 as well as legal provisions as provided in the Information Technology (IT) Act, 2000 and Immoral Trafficking (Prevention) Act, 1956.

¹⁷ <http://ncrb.nic.in/> (accessed on 12.04.17).

¹⁸ 'Use technology to protect kids from cyber crimes: Eights body' Indian Express, 16 March 2017 (accessed on 24 April 2017).

Each section clearly explains as well as provides the legal (where applicable) and working definition of the offence and the key elements to establish it as a criminal act. Wherever a Statute defines a cybercrime, such definitions have been reproduced herein for easy reference. However, where a Statute has not defined a cybercrime, the term has been explained by the Authors of the manual in easily comprehensible words, using various established national and international sources. Thereafter, the applicable section in law is highlighted. Some sections are applicable for multiple types of cybercrimes; this toolkit has repeated these sections for ease of access. In this toolkit, the sections related to offline crimes can be applied to online crimes wherever the context and facts requires such interpretation. Case studies and analysis are also provided as examples of how cases are dealt with by investigating officers and the type of decisions Indian courts are making with respect to cybercrime. Where case law is not available, we have provided fact patterns for reference.

We hope that this Toolkit will be a 'go-to' reference point for all stakeholders working in the field of child protection.

**No part of this Toolkit may be reproduced or otherwise used without
prior written permission from the owner.*

CHILD PORNOGRAPHY

Whereas there is no legal definition in the Indian Legislation, one accepted definition of Child Pornography is the representation of a child engaged in real or simulated sexual activities¹⁹. Pornography can be found on, and circulated through various mediums, both online and offline. This includes the circulation of any form of media (video, picture, sound recording) via the internet through a computer, telephone, mobile or tablet.

Children can be enticed and groomed into engaging in sexual activity, which is then documented and distributed for personal or commercial consumption on the internet. In some cases, children are recorded with their knowledge. In India, any sexual act performed with a child, whether consensual or otherwise, is a criminal offence. For example, if a person engages in sexual intercourse with a child and records the act, the perpetrator of such an activity could be charged with rape under the Section 376 IPC and Section 4 of POCSO along with specific sections that address child pornography.

‘Revenge pornography’ is a recently socially recognised form of pornography and can also be used against children²⁰. While various countries have passed laws to combat this issue, in India, it has only recently entered public knowledge and lacks specific provisions under Indian laws. It is popularly understood as the real or simulated portrayal of a person (or persons) in a sexually explicit way that is then circulated without the person’s consent²¹. Such portrayal is circulated with the sole intent of harassing, hurting and defaming the image of the child. The offending media is often created by a person who is the victim’s partner or more often, former partner. As above, any portrayal of a child engaging in sexual activity, with or without their consent, is child pornography.

The sections below address the following issues:

- Browsing/viewing/downloading child pornography;
- Distributing/hosting a child pornography video; and
- Showing a pornography video to a child

APPLICABLE LEGAL PROVISIONS

Section 11(v) and (vi) Protection of Children from Sexual Offences (POCSO) Act, 2012

Description: Whereas Section 11 is specifically about the sexual harassment of a minor, subsections (v) and (vi) include elements of child pornography²². These sections discuss the use or threat of use of a child for pornography.

¹⁹ Article 2 of the Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography, 2000 (OPSC) <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>

²⁰ Karnika Seth, “Overview of Laws against online child sex abuse in India, U.K, U.S”, 2(1) *International Journal of Research* 75 (2015) available at <http://internationaljournalofresearch.org>

²¹ Citron, Danielle Keats; Franks, Mary Anne (2014). "Criminalizing Revenge Porn". *Wake Forest Law Review*. 49 (2): 345–392. p. 346
at http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2424&context=fac_pubs (last visited on 11 April 2017)

²² Karnika Seth, “Overview of Laws against online child sex abuse in India, U.K, U.S”, 2(1) *International Journal of Research* 75 (2015) available at <http://internationaljournalofresearch.org>

When there is any threat to depict a child taking part in a sexual act, a person can be charged under Section 11 (v) which states that:

“threats to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act”.

If a child is groomed for pornographic purposes, the perpetrator can be charged under Section 11(vi) which provides that it is an offence to:

“Entices a child for pornographic purposes or gives gratification therefor”.

*It is a **cognizable** and **bailable** offence. **Section 12** prescribes **punishment** for an offence under Section 11 of POCSO Act for a term of upto three years of imprisonment and fine.*

Section in Law:

“Section 11. Sexual harassment: A person is said to commit sexual harassment upon a child when such person with sexual intent,-

- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- (iii) shows any object to a child in any form or media for pornographic purposes; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- (vi) entices a child for pornographic purposes or gives gratification therefor.”

Ingredients of the Law:

- Threatens to use child in sexual act
- The sexual act(s) can be a real or fabricated depiction of the child or his/her body
- The act can involve any part of the body of the child that is demonstrated in or as a sexual act
- The act has to be recorded or threatened to be recorded through a media whether it is phone, camera, video recorder, computer or other modes

Section 13/14/15 POCSO Act, 2012

Description: POCSO Act specifically criminalises using children in pornography both online and offline. For the purposes of online, the section outlines that any portrayal of a child for sexual gratification on the internet or any other electronic format would constitute as child pornography. Under this section, the ‘use’ of a child for pornography can be during *“preparation, production, offering, transmitting, publishing, facilitation and distribution”*;

The section mentioned below of POCSO Act penalise a person who:

- Uses a child for pornography;
- Engages in sexual activity on any media with a child;
- Stores and distributes child pornography (For example, website owners, even if they did not partake in creating the child pornography, are also culpable under this law)

Section 13: *“whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification... shall be guilty of using a child for pornographic purposes.”*

It is a **cognizable** and **non-bailable** offence with **punishments** prescribed in Section 14 and 15.

Section 14 specifies the punishment for acts covered by Section 13 with imprisonment for a term of upto five years and in case of subsequent conviction, for a term upto seven years and fine. Where the accused takes direct part in any pornographic act, the punishments are as follows:

- *Penetrative sexual assault: minimum ten years but may extend to imprisonment for life and also liable to fine*
- *Aggravated penetrative assault: rigorous imprisonment for life and also liable to fine*
- *Sexual assault: minimum of six years but which may extend to eight years and also liable to fine*
- *Aggravated sexual assault: not less than eight years but which may extend to ten years and also liable to fine*

Section 15 is a **cognizable** and **bailable** offence with **punishment** for storage of child pornography for commercial purposes with upto three years of imprisonment or fine or both.

Section in Law:

“13. Use of child for pornographic purposes: Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes—

- (a) representation of the sexual organs of a child;
- (b) usage of a child engaged in real or simulated sexual acts (with or without penetration);
- (c) the indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes.

Explanation.—For the purposes of this section, the expression “use a child” shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.”

“14. Punishment for using child for pornographic purposes:

- (1) Whoever, uses a child or children for pornographic purposes shall be punished with imprisonment of either description which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also be liable to fine.

(2) If the person using the child for pornographic purposes commits an offence referred to in section 3, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(3) If the person using the child for pornographic purposes commits an offence referred to in section 5, by directly participating in pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine.

(4) If the person using the child for pornographic purposes commits an offence referred to in section 7, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than six years but which may extend to eight years, and shall also be liable to fine.

(5) If the person using the child for pornographic purposes commits an offence referred to in section 9, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than eight years but which may extend to ten years, and shall also be liable to fine.”

“15. Punishment for storage of pornographic material involving child : Any person, who stores, for commercial purposes any pornographic material in any form involving a child shall be punished with imprisonment of either description which may extend to three years or with fine or with both.”

Ingredients of the Law:

- Use of the child in the pornographic material for sexual gratification which can include representation of the child’s sexual organs or the use of a child, in a real or simulated sexual act or for indecent representation
- Creation of child pornography for personal or commercial use, or storage/distribution of the material
- Use includes preparation, production, offering, transmitting, publishing, facilitation, and distribution of pornographic material

Case Law:

In *Manaf V.B. S/o Badhusha v. State of Kerala*²³ the accused was denied bail in a case where he was charged under section 366(A), 370, 120(B), 212, 34 IPC, 66C/67 IT Act, 13/14 POCSO Act and 4 (1,2(a,b,c)), 5 (a,b,c) of the ITPA. The petitioner created a website with pornographic images of a child and ensured wide circulation. Although the petitioner was charged under multiple sections of various acts, he was found guilty only under Section 13/14 POCSO Act for having a website hosting child pornography.

Section 66E Information Technology (IT) Act, 2000

²³Bail Appl. No. 1769 of 2016.

Description: Any person who intentionally or with knowledge captures, publishes or transmits the image of the private part of any person without consent in a manner that violates the privacy of such person shall be punished. This applies where a child's private parts are recorded or the image is captured and distributed/transmitted which violates privacy of child.

*It is a **cognizable** and **non-bailable** offence. It is **punishable** with imprisonment of upto three years or fine not exceeding two lakhs, or with both.*

Section of Law:

"66E. Punishment for violation of privacy.- 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

Explanation - For the purposes of this section--

- (a) "transmit" means to electronically send a visual image with the intent that it be viewed by a person or persons;
- (b) "capture", with respect to an image, means to videotape, photograph, film or record by any means;
- (c) "private area" means the naked or undergarment clad genitals, pubic area, buttocks or female breast;
- (d) "publishes" means reproduction in the printed or electronic form and making it available for public;
- (e) "under circumstances violating privacy" means circumstances in which a person can have a reasonable expectation that--
 - (i) he or she could disrobe in privacy, without being concerned that an image of his private area was being captured; or
 - (ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place."

Ingredients of the Law:

- Use of a child
- Depiction of child's private parts
- In a manner that violates the privacy of the child
- Transmission, publishing or capturing of child's private parts
- Explanation:
 - o 'Transmit' , for purpose of this section means to send electronically a visual image with intention that it will be viewed by a person or persons
 - o 'Capture' means to film or record by any means
 - o 'Private area' means naked or undergarment clad genitals, pubic area, buttock or female breast
 - o 'Publishes' means reproduce in printed or electronic form and making it available for public

Section 67 IT Act, 2000

Description: Section 67 of the IT Act specifies the punishment of the act of **publishing or transmitting** obscene material. There are subsections that identify the various methods of either

‘publishing’ or ‘transmitting’ and accordingly, provide punishment.

*It is a **cognizable** and **bailable** offence, **punishable** with imprisonment of up to three years and fine up to five lakhs; in subsequent conviction, imprisonment of up to five years and fine up to ten lakhs.*

Section 67A of the IT Act, 2000 penalises publishing sexually explicit material whereas Section 67B/D/E punishes not only the publishing or transmitting but also the creation, collection, browsing, downloading, advertising, promoting, exchanging, recording, facilitating abuse, distribution, and enticement of minors (see grooming). **Section 67B** grants exception to publication which is justified for the public good; this includes in the interest of science, literature, art, learning or other objects of general concern or material for bonafide heritage or religious purposes.

*Offences covered by Section 67A and Section 67B are **cognizable** and **non-bailable** offences.*

*Offences covered by Section 67A and 67B of IT Act are **punishable** with a term of imprisonment of up to five years and fine up to ten lakhs and in case of subsequent conviction, a term up to seven years and fine up to ten lakhs.*

Section in Law:

“67. Punishment for publishing of information which is obscene in electronic form. -

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.”

“67A. Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form. -

Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.”

“67B. Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form. - Whoever-

- (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or
- (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or
- (c) cultivates, entices or induces children to online relationship with one or more children

for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or
(d) facilitates abusing children online, or
(e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,

shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees:

Provided that provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form-

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing drawing, painting representation or figure is in the interest of science, literature, art or learning or other objects of general concern;

or

(ii) which is kept or used for bona fide heritage or religious purposes.

Explanation. -For the purposes of this section "children" means a person who has not completed the age of 18 years."

Ingredients of the Law:

- Section 67
 - o Publishing, transmitting or causing to transmit or publish
 - o Material that is intended to corrupt or "deprave" persons
- Section 67A
 - o Publishing, transmitting or causing transmission/publication
 - o Material that contains a sexually explicit act or conduct
- Section 67B
 - o Publishing, transmitting, assisting in transmission, collecting, seeking, browsing, downloading, advertising, promoting, exchanging, distributing, grooming, facilitates abusing children, recording own abuse or of others regarding sexually explicit acts with children
 - o Material that depicts children engaged in sexually explicit act or conduct or engaging children online with the purpose of a sexually explicit act

Section 292 Indian Penal Code (IPC), 1860

Description: Sale of obscene books, drawings, etc. is a crime. 'Publication' is a term used for both online and offline material and therefore Section 292 is applicable to anyone selling child pornography.

*It is a **cognizable** and **bailable** offence, **punishable** with imprisonment of up to 2 years and fine up to Rs.2000 and on subsequent conviction, imprisonment of up to 5 years and fine up to 5000 rupees.*

Exceptions to the Section 292 IPC include any material published for public good/interest which is kept for bonafide religious purposes/any ancient monument (in case of engravings/sculptures, etc).

Section in Law:

“292. Sale, etc., of obscene books, etc.-

(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt person, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) Whoever—

- (a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or
- (b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or
- (c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or
- (d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or
- (e) offers or attempts to do any act which is an offence under this section, shall be punished [on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees

Exception —This section does not extend to—

- (a) any book, pamphlet, paper, writing, drawing, painting, representation or figure—
 - (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or
 - (ii) which is kept or used bona fide for religious purposes;
- (b) any representation sculptured, engraved, painted or otherwise represented on or in—
 - (i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or
 - (ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose”

Ingredients of the Law:

- Selling, hiring, distribution, exhibiting publically or for such purposes produces, creates or is in possession of obscene material, import or export, knowingly receive profits from such

business, advertises, offers or attempt to do abovesaid act(s)

- Obscene material would include a sexual depiction of a child; or describing or showcasing a child involved in a sexual act

Case Law:

*Maqbool Fida Husain V. Raj Kumar Pandey*²⁴ discusses the meaning of the word 'obscene' under Section 292 IPC by referring to other cases and Section 67 IT Act. The judgment specifies that "Sex and obscenity are not always synonymous and it would be wrong to classify sex as essentially obscene or even indecent or immoral. The basic concern should be to prevent the use of sex designed to play a commercial role by making its own appeal." Furthermore, for something to qualify as obscene, the judgment refers to Section 292 stating that "On a bare reading of Sub-section (1) of Section 292 it is obvious that a book etc. shall be deemed to be obscene (i) if it is lascivious; (ii) it appeals to the prurient interest, and (iii) it tends to deprave and corrupt persons who are likely to read, see or hear the matter alleged to be obscene."

Section 354A(iii)/C IPC, 1860

Description: Section 354A (iii) criminalises "showing pornography against the will of a woman" which can be applied in the context of a female child.

*It is a **cognizable** and **bailable** offence. **Punishment** prescribed is up to three years imprisonment or fine or both.*

Section 354C Voyeurism refers to capturing a private sexual activity without consent to the act or dissemination of such image. Whereas there is no legal definition or provision for '**Revenge pornography**' in the Law, the definition and consequent interpretation of this section can be applied to crimes of 'Revenge Pornography.'

*It is a **cognizable** and **bailable** offence in case of first conviction and on subsequent conviction, it is **non-bailable** offence. **Punishment** prescribed is minimum one year imprisonment which may extend to three years and fine, on first conviction. On subsequent conviction, term of not less than three years imprisonment but which may extend up to seven years and fine.*

Section in Law:

"354A. Sexual harassment and punishment for sexual harassment.

- (1) A man committing any of the following acts-
 - (i) Physical contact and advances involving unwelcome and explicit sexual overtures; or
 - (ii) A demand or request for sexual favours; or
 - (iii) Showing pornography against the will of a woman; or
 - (iv) Making sexually coloured remarks,shall be guilty of the offence of sexual harassment.
- (2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

²⁴MANU/DE/0757/2008

- (3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

“Section 354C. - Voyeurism

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanations

1. For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim’s genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.
2. Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.”

Ingredients of the Law:

- 354A
 - o Woman or female child shown pornography
 - o Against will of the child (female)
- 354C
 - o Woman or female child
 - o Capturing women/female child in sexual act without knowledge or distributing without knowledge

Case Law²⁵:

Hyderabad Revenge Porn Case - Rupesh Banda was in a relationship with a woman. After the woman initiated the end of the relationship, Rupesh started blackmailing her with videos he had secretly taken of her. He then circulated these videos. The woman registered a complaint and Banda was charged under 354C IPC and relevant sections of the IT Act.

²⁵Retrieved from <http://www.ndtv.com/hyderabad-news/revenge-porn-case-in-hyderabad-video-mailed-to-womans-in-laws-1427434> (last visited on 11 April, 2017)

CHEATING

‘Cheating’ means deceiving someone so that the person deceived acts in a way that can cause him/her wrongful loss or harm in mind, body, loss of property or reputation²⁶. It can be said that a child is ‘cheated’ when they are deceived into doing something that he/she would not have otherwise done. The IPC and IT Act have various sections that punish ‘cheating’.

APPLICABLE LEGAL PROVISIONS

Section 415/417 IPC, 1860

Description: Section 415 provides that if any person is deceived fraudulently or dishonestly by another person which compels him to deliver any property, or make him do or omit anything which he is not legally liable to do, where such act causes or is likely to cause damage or harm to that person being deceived in body, mind, reputation or property, the other person is said to “cheat” the person deceived. In the context of online child safety, if a child is deceived in an online platform to commit an act that can cause him harm, this section can be applied to charge the perpetrator.

A dishonest concealment of facts is considered to be ‘deception’ within the meaning of this section. The definitions of “fraudulent” and “dishonest” are provided in Section 25 and 24 of the IPC respectively.

*It is a **non-cognizable** and **bailable** offence. The **punishment** is prescribed under Section 417 which states that whoever cheats shall be punished with imprisonment of either description²⁷ for a term which may extend to one year, or with fine, or with both.*

Section in Law:

“415 Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

- (a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
- (b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.
- (c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby, dishonestly induces Z to buy and pay for the article. A cheats.
- (d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonored, intentionally deceives Z, and thereby

²⁶ Section 415, Indian Penal Code, 1860

²⁷ “Either Description” refers to the two type of imprisonment: rigorous and simple.

dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds article which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats."

"417. Punishment for cheating.—Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

Ingredients of the Law:

- Perpetrator who acts fraudulently or dishonestly.
- Harms or intended harm to the body, mind, property or reputation of a child
- Deceiving a child on an online medium

Section 416/419 IPC, 1860

Description: A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly presenting another person for someone else, or misrepresenting that he or any other person is a person other than he or such other person really is.

Explanation to Section 416 provides that the offence is committed whether the individual personated is a real or imaginary person.

*It is a **cognizable** and **bailable** offence. The **punishment** is prescribed under Section 419 which states that whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

Section of Law:

"416. Cheating by personation.—A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustration

- (a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.
(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.”

“419. Punishment for cheating by personation.—Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Ingredients of the Law:

- Perpetrator who impersonates another
- Harms or intended harm to the body, mind, property or reputation of a child

Section 420 IPC, 1860

Description: Whoever cheats so that he dishonestly induces another to deliver property to any person or to alter, destroy, the whole or any part of valuable security, or anything that is signed and is capable of being converted into valuable security is punishable.

*It is a **cognizable** and **non-bailable** offence, **punishable** with imprisonment for a term upto 7 years and fine.*

Section in Law:

“420. Cheating and dishonestly inducing delivery of property.—

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Ingredients of the Law:

- A child who is deceived to handover any property or deceived to destroy any valuable property
- Perpetrator acts fraudulently or dishonestly

66D IT Act, 2000

Description: While Section 415 of the IPC punishes both online and offline cheating, Section 66D specifies that the use of electronic media in cheating someone is separately punishable. According to Section 66D, whoever cheats by personation using any communication device or computer resource, shall be punished.

*It is a **cognizable** and **bailable** offence, **punishable** 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.*

Section in Law:

“66D. Punishment for cheating by personation by using computer resource. -

Whoever, by means for any communication device or computer resource cheats by personating, 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.”

Ingredients of the Law:

- Deceiving any person to do an act which he would not do if he was not so deceived
- To cause damage to that deceived person in body, mind reputation or property
- In cheating by personation, a person must grab another person’s identity for cheating
- Deceiving through any communication device on computer resource

Case Law:

In *Emarajan v. The State by Madras High Court*²⁸, the victim in this case was a 17-year-old girl who had a physical relationship with the accused on the pretext that the accused would marry her. When the accused came to know that the victim was pregnant he threatened her not to disclose this fact or he would not marry her. The victim’s parents came to know about her pregnancy and tried to resolve the issue through marriage. However, the accused refused to marry the victim and subsequently a complaint was lodged against the accused.

The trial court sentenced the sole accused for seven years rigorous imprisonment for commission of an offence under Section 376 and 417 of IPC. On appeal, the Madras High court confirmed the accused’s conviction and held that he is guilty of an offence under 417 IPC (and not Section 376 IPC). A fine of one lakh INR was imposed on the accused, but the sentence was reduced to imprisonment of six months.

²⁸Crl.A.(MD)NO.335 of 2011

CYBERSTALKING

Cyberstalking is generally understood as the use of the Internet or other electronic means to stalk or harass an individual, group or organization²⁹. There is no legal definition or provision in the law specifically relating to Cyberstalking. However, there have been cases where various sections of law have been used to address this crime, till the lacunae in law is addressed.³⁰ A child is said to be cyberstalked when he is repeatedly or constantly followed, watched or contacted through any electronic means. The movement of the child is tracked and privacy is invaded. Cyberstalking a child may be directed at sexually harassing a child or for other malafide motives.

APPLICABLE LEGAL PROVISIONS

Section 11(iv) POCSO Act, 2012

Description: Cyberstalking with the sexual intent to commit sexual harassment of a child can be interpreted to be covered in Section 11(iv) of POCSO Act 2012. Section 11(iv) of the POCSO Act 2012 states that when a person “monitors or follows a child through digital media”, he or she is committing sexual harassment upon a child. However the “monitoring” or “following” of a person has the characteristics of stalking; the addition of “digital media” in the section, also makes it applicable for cyberstalking crimes. Before the Supreme Court of India declared Section 66A of the IT Act, 2000 as unconstitutional, cyberstalking was an offence that was also covered by Section 66A of IT Act, 2000. It was struck down by the Apex court in *Shreya Singhal v. UOI* (2013) 12 SCC 73.

*It is a **cognizable** and **non-bailable** offence. Section 12 provides that whoever commits sexual harassment upon a child, such person shall be **punished** with imprisonment of a term which may extend to three years and fine.*

Section in Law:

“11. Sexual harassment :

A person is said to commit sexual harassment upon a child when such person with sexual intent,-

- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- (iii) shows any object to a child in any form or media for pornographic purposes; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- (vi) entices a child for pornographic purposes or gives gratification therefor.”

²⁹ Brian Spitzberg, Gregory Hoobler, Cyberstalking and the technologies of interpersonal terrorism, New Media & Society, February 2002, pp. 71–92, at <http://victimsofcrime.org/docs/Information%20Clearinghouse/cyberstalking-and-the-technologies-of-interpersonal-terrorism.pdf?sfvrsn=6> (last visited on 11 April 2017)

³⁰ <http://www.thehindu.com/2000/06/18/stories/14182186.htm>

“12. Punishment for sexual harassment:

Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be.

Explanation.—Any question which involves “sexual intent” shall be a question of fact all also be liable to fine.”

Ingredients of the Law:

- Sexual intent of perpetrator
- Constantly follows/watches/monitors or contacts a child
- Stalking through use of electronic, digital or any other means

Section 354D IPC, 1860

Description: Section 354D has specific provisions that deal with stalking. It includes sub-sections that speak of monitoring electronic communication of a woman. This, it is a section that can be interpreted to address the crime of cyberstalking.

*It is a **cognizable** and **bailable** offence on first conviction. Whoever commits the offence of stalking shall be **punished** on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine*

Section in Law:

“354D. Stalking

(1) Any man who-

- (i) Follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- (ii) Monitors the use by a woman of the internet, email or any other form of electronic communication,

Commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that-

- (i) It was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- (ii) It was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- (iii) In the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished in first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.”

Ingredients of the Law:

- Monitoring a woman through the internet, email or any other form of electronic

communication, including mobile phones

- Female Child

Case Law:

In *Dara Singh & Ors v. State of U.P.*³¹ the accused stalked a 16 year old girl over a period of time. They caught her in a field one day, attempted to rape her and made an obscene video of her, which was circulated to other people in the village. The accused i.e. Dara Singh, Pankaj, Ramu alias Ram Kumar and Sanjay were sentenced under Section 11/12 of POCSO Act instead of Section 354D IPC to one and half years rigorous imprisonment and a fine of Rs. 5000 and in default of payment of fine one month simple imprisonment each amongst other punishments for other offences including Section 66, 67 of IT Act, 2000 were included. As per Section 42 POCSO, where an accused is charged with an offence (and also under Section 354D of IPC), the offender found guilty of such offence shall be liable to punishment under POCSO Act or under the IPC which provides for punishment that is greater in degree.

Section 509 IPC, 1860

Description: Although this section is applicable in cases of online sexual harassment, it has been used previously in cases of cyber stalking specifically because it “intrudes upon the privacy of such woman.”

*It is a **cognizable** and **bailable** offence, **punishable** with simple imprisonment which may extend to three years and fine.*

Section in Law:

“509. Word, gesture or act intended to insult the modesty of a woman.—

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, [shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.]”

Ingredients of the Law:

- Outraging the modesty of a woman, including a female child
- Establish that the modesty of child has been insulted through a word, gesture or act

Case Law³²:

Ritu Kohli, a 32 year old married woman working for an embassy in Delhi was receiving a series of emails from an unknown source. The emails contained threats that her morphed photographs will be leaked on adult websites with her personal details. The stalker later sent her morphed photographs of her. These were accompanied by telephone calls from strangers asking for sexual favours. The Delhi Police traced the Internet Protocol (IP) address and the cyber stalker was identified as Manish Kathuria who was arrested and charged under Section 509 of IPC for outraging

³¹ MANU/UP/1124/2016

³² Retrieved from <http://www.thehindu.com/2000/06/18/stories/14182186.htm>.

the modesty of a woman. This case led to the necessary amendments in the IT Act.

CYBER BULLYING

'Bullying' is defined as harassing someone with unwanted and repeated written, verbal, or physical behaviour. It also involves the use of intimidation, threat or insult to another person. Cyberbullying is a form of bullying or harassment using electronic form of contact by use of computers, or mobiles and/or internet³³. Some hybrids include 'trolling', 'rumor spreading' and 'happy slapping' which are different methods of cyberbullying using social media. Unlike cyber harassment, the intent of cyberbullying is to solely intimidate another person. Therefore, without express legal definition of 'cyberbullying' in the relevant legislations, the definition of 'criminal intimidation' given in the IPC has been made applicable to this crime.

APPLICABLE LEGAL PROVISIONS

Section 503, 506, 507 IPC, 1860

Description: Section 503 provides that "*whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of anyone in whom such person is interested, with the intention that he is put under threat so that it causes such person to do act which he is not bound to do legally or omit to do act which he is legally entitled to do, as means to avoid execution of such threat commits criminal intimidation.*" Before the Supreme Court of India declared Section 66A of the IT Act, 2000 as unconstitutional, criminal intimidation was an offence that was also covered by Section 66A of IT Act, 2000. It was struck down by the Apex court in *Shreya Singhal v. UOI* (2013) 12 SCC 73.

Cyberbullying is a form of criminal intimidation as the intention is to put another person under threat.

Section 506 outlines the **punishment** for criminal intimidation with imprisonment for a term of either description that may extend to two years or fine or both. Where the threat is of death. Grievous hurt, or cause of an offence punishable by death/term up to seven years or impute unchastity to a woman, the punishment may extend to seven years, or with fine, or with both.

Section 507 makes criminal intimidation by anonymous communication (for example by concealing his location or identity, which is often done through online modes) **punishable** with imprisonment of up to two years in addition to the punishment prescribed by Section 506 of IPC.

It is a **non-cognizable** and **bailable** offence.

Section in Law:

³³ Kift, Sally; Campbell, Marilyn; Butler, Des --- "Cyberbullying in Social Networking Sites and Blogs: Legal Issues for Young People and Schools" [2010] JLawInfoSci 13; (2010) 20(2) Journal of Law, Information and Science 60 at <http://www.austlii.edu.au/au/journals/JLawInfoSci/2010/13.html> (last visited on 11 April, 2017)

“503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

Illustration A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B’s house. A is guilty of criminal intimidation.”

“506. Punishment for criminal intimidation.—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

“507. Criminal intimidation by an anonymous communication.—Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.”

Ingredients of the Law:

- Threat to a child, his reputation or property OR to the person or reputation of anyone in whom such person is interested
- Intention is any of the following: threaten; cause such person to do an act which he is not bound to do legally or omit to do act which he is legally entitled to do
- For Section 507 IPC, it involves, hiding one’s true identity or location through malware, or other technical tools

Case Law³⁴:

A boy was trolled by his classmates on social media who made a hate page about him. As a result, he became depressed and was reported to indulge in self-mutilation by cutting his right forearm. On complaining the trolling to seniors, the trolling stopped. In such a case, Section 503 IPC can be applied because there was a threat to the reputation of a person.

³⁴“With cyber-bullying on the rise, children, women being pushed over the edge”, Millenium Post, 2 April 2017, available at <http://www.millenniumpost.in/delhi/with-cyber-bullying-on-the-rise-children-women-being-pushed-over-the-edge-234633> (last visited on 11-4-2017)

DEFAMATION

Defamation is any intentional false communication, either written or spoken, which is published to harm a person's reputation³⁵. This method is often utilized to commit other cybercrimes like cyberbullying, cyber harassment among others.

APPLICABLE LEGAL PROVISIONS

Section 499/500 IPC, 1860

Description: Defamation has a legal definition and related provisions in Indian legislation. While section 499 and 500 does not specifically use the term 'online defamation', the same can be applied in the online medium as well. When someone writes or speaks about a child to harm their reputation, for this context, in an online space, the person is defaming a child.

*It is a **non-cognizable** and **bailable** offence. **Section 500** states that whoever defames another shall be **punished** with simple imprisonment for a term which may extend to two years, or with fine, or with both.*

Section in Law:

"499. Defamation - Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 1- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3- An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful."

Section 499 lists 10 exceptions which are briefly stated as follows-

First Exception- imputation of truth which public good, requires to be made or published

Second Exception- Public conduct of public servants

Third Exception- Conduct of any person touching any public question

Fourth Exception- Publication of reports of proceedings of Courts

Fifth Exception- Merits of case decided in Court or conduct of witnesses and others concerned

Sixth Exception- Merits of public performance

Seventh Exception- Censure passed in good faith by person having lawful authority over

³⁵ Section 499, Indian Penal Code, 1860.

another

Eight Exception- Accusation preferred in good faith to authorized person

Ninth Exception- Imputation made in good faith by person for protection of his or other's interests

Tenth Exception- Caution intended for good of person to whom conveyed or for public good

“500. Punishment for defamation.—Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

Ingredients of the Law:

- Intending to cause harm of any child's reputation
- Verbal or written publication which makes false imputation's against a person

Case Law (Illustration):

X, a 12 year old child is defamed online by a cybercriminal by hacking his facebook account and uploading morphed pictures of the child which are obscene in nature and aimed at defaming the child. The cybercriminal commits the offence of defamation.

Section 469 IPC, 1860

Description: The core element of defamation is the intention to hurt the reputation of another. Section 469 addresses harming of one's reputation under the guise of another or through anonymity.

*It is a **non-cognizable** and **bailable** offence, **punishable** with imprisonment of either description for a term which may extend to three years and shall be liable to fine*

Section in Law:

“469. Forgery for purpose of harming reputation.—Whoever commits forgery, [intending that the document or electronic record forged] shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.”

Ingredients of the Law:

- Intending harm or knowing harm will be caused to any person's reputation
- Commitment of forgery

Case Law:

In *State of Tamil Nadu v. Suhas Katti*, Criminal Case No. 4680 of 2004, Court of the Metropolitan Magistrate, Egmore, a woman complained to the police about a man who was sending her obscene and defamatory messages in a Yahoo message group. The accused was a known family friend and was reportedly interested in marrying her. She married another person at which point the accused took up the harassment through the Internet. The case was filed in February 2004 and in a short span of about seven months from the filing of the FIR, the Chennai Cyber Crime Cell achieved the conviction; the accused was found guilty of offences under section 469, 509 IPC and 67 of IT Act 2000.

GROOMING

Grooming refers to the process of establishing an emotional connection with a child by gaining his/her trust, with the intention of exploiting the child at a later stage³⁶. In grooming, the resulting exploitation is usually sexual in nature such as creating child pornographic content or sexual abuse³⁷. In India, although the term 'grooming' is not explicitly used in the law, there are a few cases which allude to the issue of 'grooming' in nature, not definition³⁸. One such example is cited in *Re: State and Ors., 2014*³⁹ where the accused's "*inducement was to such a level that the victim's mother was made to believe the assurance given by the petitioner that the victim would be given better education even though the petitioner is a stranger.*" Although the identified sections below were not included, "*the ingredients of kidnapping from lawful guardianship are clearly made out*" as well as the subsequent abuse under Section 377 of the IPC. Although the term 'grooming' is not expressly used in the relevant legislation, the acts constituting grooming have been described in the relevant provisions of the Indian Law.

APPLICABLE LEGAL PROVISIONS

Section 11 (vi) POCSO Act, 2012

Description: Section 11 talks about sexual harassment. A person is said to commit sexual harassment upon a child when such person with sexual intent under sub-section (vi) "*entices a child for pornographic purposes or [gives] gratification therefor*". Enticement can be interpreted as a method of gaining the trust of a child.

*It is a **cognizable** and **bailable** offence. Section 12 makes this act **punishable** with imprisonment of upto three years and fine.*

Section in Law:

"11. Sexual harassment : A person is said to commit sexual harassment upon a child when such person with sexual intent-

- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- (iii) shows any object to a child in any form or media for pornographic purposes; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of

³⁶ Dr. Mike McGuire and Samantha Dowling, *Cyber crime: A review of the evidence – Research Report 75 Chapter 3: Cyber-enabled crimes – sexual offending against children 4*, Home Office, Oct. 2013, at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/246754/horr75-chap3.pdf (last visited on April 15, 2017)

³⁷ Julia Davidson and Petter Gottschalk, (ed), *Internet Child Abuse*, Routledge (2011).

³⁸ Karnika Seth "Inadequacy of laws Protecting children against Online Sexual abuse in India", 12(1) *Indian Journal of Human Rights & the Law* 43-59 (2015).

³⁹ [MANU/TN/3816/2015](#)

the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.”

Ingredients of the Law:

- Enticement of a child
- Developing a relationship with the child to gain his/her trust
- Ultimate aim is for pornographic purposes

Grooming 67B (c) IT Act

Description: Section 67B(c) provides a broader definition of ‘grooming’ by including the *creation of a relationship* with a child that is sexually motivated. This relationship is a crucial element of ‘grooming’. The section provides that it is an offence when a person: *“cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource”*.

*It is a **cognizable** and **non-bailable** offence, **punishable** with imprisonment of up to 5 years and fine up to 10 lakhs on first conviction, and 7 years and fine up to 10 lakhs for subsequent conviction*

Section in Law:

“67B. Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form. -Whoever-

(a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or

(b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or

(c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or

(d) facilitates abusing children online, or

(e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,

shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees:

Provided that provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form-

- (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing drawing, painting representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or
- (ii) which is kept or used for bona fide heritage or religious purposes.

Explanation. -For the purposes of this section "children" means a person who has not completed the age of 18 years.”

Ingredients of the Law:

- Cultivating, enticing or inducing a child

- Creation of a relationship
- With the ultimate purpose of a sexually explicit act

HACKING

While 'hacking' is not legally defined, the components of this cybercrime are covered in Indian legislation under the IT Act. Hacking means dishonestly or fraudulently accessing a computer system/communication device such as a mobile phone without the permission of the owner of that system or device with the intention to steal, copy, alter, destroy any data therein or cause destruction to such system or device or to alter or disrupt the functioning of the system/device⁴⁰. There are some similarities between the ingredients of the offences of 'hacking' and 'identity theft', for example the fraudulent access of someone else's information. However 'identity theft' is for the purpose of using a person's identity for some gain, while 'hacking' is unauthorisedly accessing a person's data or system to steal data, introduce a virus, destroy a system, etc⁴¹.

APPLICABLE LEGAL PROVISIONS

Section 43 IT Act, 2000

Description: Section 43 of IT Act penalizes the various acts one can engage in once they have access, without permission, a computer, computer system or computer network.

*It is a **cognizable** and **non-bailable** offence.*

Section in Law:

"43. Penalty and compensation for damage to computer, computer system, etc. - If any person without permission of the owner or any other person who is in-charge of a computer, computer system or computer network –

- a) accesses or secures access to such computer, computer system or computer network or computer resource,
- b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;
- c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;
- d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;
- e) disrupts or causes disruption of any computer, computer system or computer network;
- f) denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;

⁴⁰ Section 43 (i), Information Technology Act, 2000.

⁴¹ Karnika Seth, Computers, Internet & New Technology Laws, Lexis Nexis, 2015, Delhi, Second Edition.

- g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder,
- h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network,
- i) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means
- j) Steals, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage;
(he shall be liable to pay damages by way of compensation to the person so affected).

Explanation [for the purposes of this section] –

- (i) “Computer Contaminant” means any set of computer instructions that are designed –
 - (a) to modify, destroy, record, transmit data or programme residing within a computer, computer system or computer network; or
 - (b) by any means to usurp the normal operation of the computer, computer system, or computer network;
- (ii) ‘Computer Database’ means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalised manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network;
- (iii) ‘Computer Virus’ means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or some other event takes place in that computer resource;
- (iv) ‘Damage’ means to destroy, alter, delete, add, modify or re-arrange any computer resource by any means.
- (v) ‘Computer Source code’ means the listing of programmes, computer commands design and layout and programme analysis of computer resource in any form”

Ingredients of the Law:

- Any act referred to in Section 43 of IT Act, 2000 committed, such as copying or alteration of data, or unauthorized access to a social media account, destruction of a system or introduction of virus
- Intent to be dishonest or commit fraud
- Unauthorized access to a system/network
- Note that ‘computer resource’ includes means computer, computer system, computer network, data, computer database, or software as per (Sec 2(1)(k) of IT Act, 2000).

Case Law (Illustration):

X, a 13 year old boy is contacted by a hacker on Facebook. The hacker uses malware and introduces

keylogger by sharing a malware infected video with the child. As the boy types his user id and password to access his account, the hacker gets the information. He gains unauthorised access to his account, and furthermore uploads and deletes files to cause the child harassment.

Section 66 IT Act, 2000

Description: Section 66 of IT Act 2000 provides for computer related offences which says if any person, dishonestly, or fraudulently, does any act referred to in Section 43, such person shall be **punished** with imprisonment for a term which may extend to two three years or with a fine which may extend to five lakh rupees or with both.

Section in Law:

“66. Computer related offences. -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 three years or with fine which may extend to five lakh rupees or with both.

Explanation. -For the purposes of this section,-

- (a) the word "dishonestly" shall have the meaning assigned to it in section 24 of the Indian Penal Code (45 of 1860);
- (b) the word "fraudulently" shall have the meaning assigned to it in section 25 of the Indian Penal Code (45 of 1860)."

Ingredients of Law:

- Fraudulent or dishonest act
- Committing any act described in section 43 of the IT Act

IDENTITY THEFT

Identity theft is when someone wrongfully obtains and/or uses another person's personal data deceptively or fraudulently for an illegal purpose, such as for economic gain or sexual abuse⁴². Indian legislation does not formally define 'Identity Theft'. However, it outlines the punishment. Child identity theft occurs when a minor's identity is used by another person for the impostor's personal gain⁴³. The impostor can be a family member, a friend or even a stranger who targets children.

'Phishing', a financial cybercrime, is one example of how identity theft occurs in the online space⁴⁴. It is a term used to denote fraud wherein a cybercriminal creates a fake email account to steal personal/sensitive information of victim, such as debit/credit card, pin netbanking details etc., to carry out unauthorized transactions. Such fraudsters often use another's identity to cheat by impersonation. For example, a fake email from HDFC Bank may be directed at children who may gullibly give their parents' financial information to cybercriminals.

APPLICABLE LEGAL PROVISIONS

66C IT Act, 2000

Description: According to Section 66C of the IT Act, 2000, "*whoever, fraudulently or dishonestly makes use of the electronic signature, password or any other unique identification feature of any other person, shall be punished*"

This section of the IT Act, 2000 penalizes the unauthorized use of someone's unique identification feature but does not limit the purpose of such usage to financial theft.

*It is a **cognizable** and **bailable** offence, **punishable** with imprisonment of either description of a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh.*

Section in Law:

"66C. Punishment for identity theft. -

Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine with may extend to rupees one lakh."

Ingredients of the Law:

- Misuse of E- signature, password or other authorizing information of a child by any person

⁴² Glossary of IT Security Terms, Information Technology Faculty, ICAEW at <https://www.icaew.com/-/media/corporate/files/technical/information-technology/information-security/161-glossary-of-it-security-terms.ashx?la=en> (last visited on 11 April, 2017)

⁴³ Karnika Seth "Inadequacy of laws Protecting children against Online Sexual abuse in India", 12(1) *Indian Journal of Human Rights & the Law* 43-59 (2015).

⁴⁴ Glossary of IT Security Terms, Information Technology Faculty, ICAEW at <https://www.icaew.com/-/media/corporate/files/technical/information-technology/information-security/161-glossary-of-it-security-terms.ashx?la=en> (last visited on 11 April, 2017)

- Without the child's permission or consent
- Element of fraud or deception

Case Law (Illustration):

"A", a child, was assigned with an Aadhar card. A's Aadhar card was stolen by "B", an imposter, who then used the identity to obtain a loan for his personal gain. After a few years, A received a demand letter for return of the loan. A lodged a complaint of fraud and the police investigated the case and found that A's identity was stolen through his Aadhar card by B who had used it for his personal gain. B can be charged under Section 66C of the IT Act.

ONLINE CHILD TRAFFICKING

Child trafficking, according to UNICEF, is defined as “any person under 18 who is recruited, transported, transferred, harbored or received for the purpose of exploitation, either within or outside a country”.⁴⁵

Online child trafficking is the use of the internet to commit the offence of child trafficking. The online space can provide an unprecedented window into observing, tracking, monitoring and notifying prospective buyers as well as identifying targeted children. However, this online trade happens through the dark web using mediums such as bitcoin and cross-chain technologies, which cannot be easily tracked. In India, the Immoral Traffic Prevention Act 1956 (ITPA) covers offences related to child trafficking as well as the IPC and can be interpreted to cover online cases.

APPLICABLE LEGAL PROVISIONS

Section 5 Immoral Traffic Prevention Act (ITPA), 1956

Description: Section 5 of the ITPA speaks specifically about trafficking for the purposes of prostitution stating that “procuring, inducing or taking any person for the sake of prostitution” is an offence.

*It is a **cognizable** and **non-bailable** offence.*

*Forcing any child below 16 years of age into prostitution is **punishable** with a minimum imprisonment of seven years and a maximum imprisonment of a life sentence. Forcing any child between 16-18 years of age into prostitution is punishable with a minimum imprisonment of seven years and a maximum imprisonment of fourteen years.*

Section in Law:

“5. Procuring, inducing or taking [person] for the sake of prostitution.—

(1) Any person who—

- (a) procures or attempts to procure a [person], whether with or without [his] consent, for the purpose of prostitution; or [person], whether with or without [his] consent, for the purpose of prostitution; or
- (b) induces a [person] to go from any place, with the intent that [he] may for the purpose of prostitution become the inmate of, or frequent, a brothel; or [person] to go from any place, with the intent that [he] may for the purpose of prostitution become the inmate of, or frequent, a brothel; or
- (c) takes or attempts to take a [person], or causes a [person] to be taken, from one place to another with a view to [his] carrying on, or being brought up to carry on prostitution; or
- (d) causes or induces a [person] to carry on prostitution, [person] to carry on prostitution,

shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

⁴⁵<http://www.childlineindia.org.in/child-trafficking-india.htm>

Provided that if the person in respect of whom an offence committed under this sub-section,—

- (i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and
- (ii) is a minor, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years;] [***]

(3) An offence under this section shall be triable—

- (a) in the place from which a [person] is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such [person] is made; or [person] is procured, induced to go, taken or caused to be taken or from which an attempt to procure or take such [person] is made; or"
- (b) in the place to which he may have gone as a result of the inducement or to which he is taken or caused to be taken or an attempt to take him is made."

Ingredients of the Law:

- Pursuing or procuring a child online for the purposes of sexually exploiting him/her through prostitution.
- Forcing a child into sex work is punishable under this Section.

Case law:

*T. Sundar and Ors.v. The Superintendent of Police and Ors.*⁴⁶ is also known as the *Puducherry Child Sex Racket* case. Two minor girls aged about 14 and 16 respectively revealed to the Child Welfare Committee, Puducherry that they were administered sedatives and raped by pimps. This act was videotaped and used to blackmail the girls into having sex with many men for money. The accused were charged under the various sections of POCSO Act, IPC and Sections 3, 4, 5 and 7 of ITPA.

Although this case law is about offline trafficking, the element of this case is applicable to online cases. If the children were acquired through chats and other online mediums and subsequently, there was offline abuse, this would then be a case of online child trafficking.

Section 366(A) IPC, 1860

Description: Section 366A criminalises procuring a minor girl. It reads "*whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable.*"

Although this section does not specifically address selling and purchasing of a child, it identifies the procedure prior to those actions, which is procurement of the victim. The person who receives such girl or deceives her by fraud, can be charged with offences under this section.

*It is a **cognizable** and **non-bailable** offence with **punishment** of imprisonment which may extend to ten years, and shall also be liable to fine.*

⁴⁶Retrieved from [MANU/TN/0577/2015](#)

Section in Law:

“366A. Procurement of minor girl-

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.”

Ingredients of the Law:

- Procurement of a minor girl (below the age of 18 years): although through online medium is not specified in the law, this section can be used in such cases as well
- Forcefully making the girl available on an online medium for sexual acts

Case Law:

In *Yogesh v. State of Rajasthan*⁴⁷, the minor was kidnapped by the accused from a train in Nagpur and taken to Ram Nagar, where she was raped by him. Subsequently, she was forced into prostitution by him and made to have sex with multiple men in exchange of money. The accused was punished for seven years under 366/366A/368/372/376 of IPC and Sections 3,6 and 9 ITPA. Although this is an offline trafficking case, if the child was lured through an online medium and forced into prostitution, this section would be applied.

⁴⁷2010CriLJ629

ONLINE EXTORTION

Extortion means putting a person under threat of injury to make wrongful gains such as compel him to deliver money, valuable security or property⁴⁸. There are various sections under the IPC that separately identify and punish the different forms of extortion. Although there is no specification of extortion via electronic means, it can be applicable for online purposes as well since the provisions do not exclude online cases⁴⁹.

APPLICABLE LEGAL PROVISIONS

383/384 IPC, 1860

Description: Section 383 defines “extortion”.

*It is a **cognizable** and **non-bailable** offence. Section 384 provides for the **punishment** of either description for a term which may extend to three years, or with fine, or with both.*

Section in Law:

“383. Extortion.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits “extortion”.”

“384. Punishment for extortion.—Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Section 385 IPC, 1860

Description: This section criminalizes extortion committed by putting a person in fear of injury. If a person puts another in fear of any injury to commit extortion, he shall be punished.

*It is a **cognizable** and **bailable** offence, **punishable** of either description for a term which may extend to two years, or with fine, or with both.*

Section in Law:

“385. Putting person in fear of injury in order to commit extortion.—Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

Section 386 IPC, 1860

Description: If a person commits extortion by putting person in fear of death or of grievous hurt to that person or to any other person, he shall be punished.

⁴⁸ Section 383, Indian Penal Code, 1870

⁴⁹ Karnika Seth, Computers, Internet & New Technology Laws, Lexis Nexis, 2015, Delhi, Second Edition.

*It is a **cognizable** and **non-bailable** offence, **punishable** of either description for a term which may extend to ten years, and shall also be liable to fine.*

Section in Law:

“386. Extortion by putting a person in fear of death or grievous hurt.—Whoever commits extortion by putting any person in fear of death or of grievous hurt o that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

Section 387 IPC, 1860

Description: According to Section 387, if any person puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other in order to commit extortion, it amounts to an offence that is punishable.

*It is a **cognizable** and **non-bailable** offence, **punishable** of either description for a term which may extend to ten years, and shall also be liable to fine.*

Section in Law:

“387. Putting person in fear of death or of grievous hurt, in order to commit extortion.—Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Section 388 IPC,1860

Description: This section highlights extortion by threat of accusation.

*It is a **cognizable** and **bailable** offence and is **punishable** with imprisonment of ten years and liable to fine. If the offence is under section 377 of this Code, the offender may be punished with imprisonment for life.*

Section in Law:

“388. Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc.—Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with 1[imprisonment for life], or with imprisonment for a term which may extend to ten years or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with [imprisonment for life].”

Section 389 IPC,1860

Description: This section penalizes putting a person in fear of accusation of offence in order to commit extortion. *“Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit an offence...”* shall be punished.

*It is **cognizable** and **bailable** offence and is **punishable** with imprisonment upto ten years, and shall also be liable to fine. In case the offence is punishable under section 377 of this Code, it may be punished with imprisonment for life.*

Section in Law:

“389. Putting person in fear of accusation of offence, in order to commit extortion.—

Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit an offence punishable with death or with [imprisonment for life], or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with [imprisonment for life].”

Ingredients of the Law:

- Puts any child in fear of accusation to him or to any other person
- The putting in fear must be intentional
- Induce the child in fear to deliver any property or valuable security
- Such inducement must be done dishonestly.

Case Law⁵⁰:

A class 12 student of South Delhi found a pornographic video of herself online. The video was uploaded via a link that was shared by an anonymous user on chat who made demands of money in order to delete it. Her picture was copied from a social media site and was morphed to make it obscene in order to extort money.

⁵⁰Cyber crooks stealing, morphing social media photos to extort victims, Mail today, March 20,2017 available at <http://indiatoday.intoday.in/story/delhi-cyber-crooks-stealing-morphing-photos-porn-sites-extortion/1/907956.html>(last visited 11-4-2017)

ONLINE SEXUAL HARASSMENT

Online Sexual Harassment is a form of abuse where a child is :- (i) exposed to sexual content online (ii) followed or watched digitally (iii) sent text messages with a sexual overtone (iv) a person exhibits any part of the body online with an intent that such an act is seen by the child (v) threatened that his/her body parts will be used on a digital mode while being depicted in a sexual manner (vi) used for pornographic purposes. Cyberstalking, cyberbullying and child pornography are other cybercrimes which have overlapping components with cyber sexual harassment. Under the Indian law, although there is no specific mention of online sexual harassment, there is usage of 'electronic', 'digital' and other similar words therefore, it can be interpreted that those sections can be applied to online sexual harassment as well. As a note, sexual Harassment does not need to occur physically and/or face-to-face.

APPLICABLE LEGAL PROVISIONS

Section 11 POCSO Act, 2012

Description: Any person is said to commit the offence of sexual harassment under Section 11 of POCSO Act, 2012. Sub-sections (iv) and (v) mention electronic use. Therefore, it can be applied to online sexual harassment cases.

*It is a **cognizable** and **bailable** offence. **Section 12** provides that whoever commits sexual harassment upon a child, such person shall be **punished** with imprisonment of a term which may extend to three years and fine.*

Section in Law:

"11. Sexual harassment : A person is said to commit sexual harassment upon a child when such person with sexual intent-

- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- (iii) shows any object to a child in any form or media for pornographic purposes; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- (vi) entices a child for pornographic purposes or gives gratification therefor."

Ingredients of the Law:

- A person making any gesture/sound or exhibiting any object or part of the body with the intention that such an act will be seen by the child through any electronic medium will fall under the purview of this law OR
- Forcing a child to exhibit his/her body electronically for the pleasure of any person OR
- Exchanging any pornographic content with the child OR
- Repeatedly follows/watches child online OR

- Threatening to circulate any sexual explicit content containing the child to a wider audience OR
- Enticing a child for pornography

Case Law:

1. Rajendra Rao of Beltangandy married a woman with a 14 year old daughter. While the wife was away from the home, he sexually harassed his stepdaughter including by exposing her to pornographic material on the television that was stored on a USB drive.⁵¹
2. A girl from Kolkata committed suicide when she learnt that one of her friends, Faizal Imam Khan, a 23 year old who she befriended online, had uploaded her morphed picture on Facebook. Police revealed that the girl was harassed by the accused and his friends because she refused to acknowledge them anymore. It was reported that the victim was also receiving obscene telephone calls and due to this continuing harassment she committed suicide.⁵²

Section 354A IPC, 1860

Description: Section 354A deals with sexual harassment of a woman which includes a female child under the Indian Penal Code.

*It is a **cognizable** and **bailable** offence, **punishable** with imprisonment of either description up to one year or fine or both.*

Section in Law:

“354A. Sexual Harassment and punishment for sexual harassment

- (1) Any man committing any of the following acts—
 - (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
 - (ii) a demand or request for sexual favours; or
 - (iii) showing pornography against the will of a woman; or
 - (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.
- (2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section
Shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
- (3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both”

⁵¹Retrieved from <http://www.mangalorean.com/beltangady-stepfather-arrested-under-pocso-act-for-sexual-harassment-to-14-year-old-girl/> (last visited on 11 April, 2017)

⁵²Retrieved from <http://timesofindia.indiatimes.com/city/kolkata/Girl-kills-self-over-Facebook-harassment/articleshow/37211521.cms> (last visited on 11 April, 2017)

Ingredients of the Law:

- A woman, as defined under Section 10 of IPC which is a female human being of any age, including a female child
- Showing pornography against the will of a female child, making physical advances or request for sexual favors
- Can also include making sexually coloured remarks

Case Law:

In *Dara Singh & Others v. State of U.P.*⁵³ the accused stalked a 16 year old girl victim over a period of time. They caught her in a field one day, attempted to rape her and made an obscene video of the incident, which was subsequently circulated to other people in the village. The accused were convicted by the Sessions Court under 354D and 11/12 of POCSO Act.

Section 509 IPC, 1860

Description: The section aims to protect the modesty and chastity of a woman by criminalising any 'word, gesture or act intended to insult the modesty of a woman'. In order to establish this offence, it is necessary to show that the modesty of a particular woman or a female child has been insulted by a spoken word, gesture or intrudes on her privacy.

The Section provides: "*Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished...*"

It is a **cognizable** and **bailable** offence, **punishable** with simple imprisonment for a maximum of three years and fine.

Section in Law:

"509. Word, gesture or act intended to insult the modesty of a woman.—

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine."

Ingredients of the Law:

- Outraging the modesty of a woman, including a female child.
- Establish that the modesty of a female child has been insulted through a word, gesture or act

Case Law⁵⁴:

Ritu Kohli, a 32 year old married woman working for an embassy in Delhi was receiving a series of

⁵³ MANU/UP/1124/2016.

⁵⁴ Retrieved from <http://www.thehindu.com/2000/06/18/stories/14182186.htm>. (last visited on 11 April, 2017)

emails from an unknown source. The emails contained threats that her morphed photographs will be leaked on adult websites with her personal details. The stalker later sent her morphed photographs of her. These were accompanied by telephone calls from strangers asking for sexual favours. The Delhi Police traced the Internet Protocol (IP) address and the cyber stalker was identified as Manish Kathuria who was arrested and charged under Section 509 of IPC for outraging the modesty of a woman. This case led to the necessary amendments in the IT Act.

Sexting

Description: A growing number of sexual harassment cases are being reported under a largely new form of harassment - "sexting". Sexting is the exchange of sexually charged messages, images and videos through the use of electronic medium⁵⁵. Adults engaged in relationships often, with mutual consent, sext. However, when an adult seeking sexual gratification indulges in sexually driven conversations with a child through a digital medium like phone, social media etc, it is an offence. Such adult predators may entice children to create or exchange sexual content through selfies, text messages, pornographic content, sexually explicit conversations, sharing of intimate images etc. This is form of harassment at the hands of these cyber predators which clearly indicates the high level of vulnerability of a child in the digital world. A child can also send sexts to other children, both consensually and as a method of harassment or bullying.

The medium of the exchange could be through text messages, Whatsapp, Facebook, Instagram, Multimedia message (MMS), Social media, Web-cam, Chatting portals etc.

Sexting can attract Section 67, 67A of IT Act, 2000 (publishing/transmitting sexually explicit content) or Section 11, 12 of POCSO Act (sexual harassment) or other provisions depending on facts of a given case.

Section in Law:

IT ACT, 2000:

"67. Punishment for publishing of information which is obscene in electronic form. -

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees."

"67A. Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form. -

Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with

⁵⁵ UNICEF, child online Protection in India , 2016, New Delhi

imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.”

POCSO ACT:

“11. Sexual harassment : A person is said to commit sexual harassment upon a child when such person with sexual intent,-

- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or
- (iii) shows any object to a child in any form or media for pornographic purposes; or
- (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or
- (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or
- (vi) entices a child for pornographic purposes or gives gratification therefor.”

“12. Punishment for sexual harassment: Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be .

Explanation.—Any question which involves “sexual intent” shall be a question of fact all also be liable to fine.”

VIOLATION OF PRIVACY

Similar to 'Identity Theft', while there is no definition in Indian legislation, punishment has been prescribed. Any person who uses any electronic device and/or online medium to record, circulate, transmit, publish or bring into public domain any image, photograph, film, videotape, MMS etc. that has private parts of a child captured in violation of his privacy commits the offence of 'Violation of privacy of a child'.

The IT Act covers issues of online violation of privacy. With regards to children, the POCSO Act prescribes provisions for violation of privacy of a child. A child's privacy may not only be limited to where his private parts are captured and circulated electronically, but also where his personal information is used without authorisation or disclosed to another party or to a wider public through a news reporting or any other medium. These situations are explained below.

APPLICABLE LEGAL PROVISIONS

Section 66E IT Act, 2000

Description: Section 66E of the IT Act provides punishment for violation of privacy of a child.

*It is a **cognizable** but **bailable** offence and shall be **punished** with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.*

Section in Law:

"66E. Punishment for violation of privacy - 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.

Explanation – For the purposes of this section:

- a "transmit" means to electronically send a visual image with the intent that it be viewed by a person or persons;
- b "capture", with respect to an image, means to videotape, photograph, film or record by any means;
- c "private area" means the naked or undergarment clad genitals, pubic area, buttocks or female breast;
- d "publishes" means reproduction in the printed or electronic form and making it available for public;
- e "under circumstances violating privacy" means circumstances in which a person can have a reasonable expectation that—
 - i. he or she could disrobe in privacy, without being concerned that an image of his private area was being captured; or
 - ii. any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place."

Ingredients of the Law:

- Circulation or transmission of image of a child's private area

- The person capturing/circulating such content must have done so with the knowledge and intent to capture/circulate such an image
- The consent of the child is immaterial

Case law:

*Jawaharlal Nehru University MMS case*⁵⁶ - A pornographic MMS clip of two undergraduate students of Jawaharlal Nehru University was recorded by two other students of the University. This MMS was then circulated in the campus inside and outside the university. Some media reports even claimed that the two accused students initially tried to extort money from the girl in the video but when she refused, the video was widely circulated through CDs. If these clips were recorded without the girl's consent, Section 66E would apply.

*Nagpur Congress leader's son MMS scandal*⁵⁷ - Two engineering students in Nagpur were arrested in 2012 for harassing a 16-year-old girl by recording and circulating an MMS clip of their sexual acts. The girl was in a relationship with Mithilesh Gajbhiye, son of an influential Congress leader from Nagpur. He secretly recorded their sexual acts and forced her into making sexual relationships with his friend. As a result of the continued harassment, she objected and subsequently the MMS was circulated to the public. Section 66E would be attracted in this case.

Section 72 IT Act, 2000

Description: Section 72 of the IT Act penalizes any breach of confidentiality or privacy. This would include any personal information of the child that has been obtained without his/her consent by a person and further disclosed or made publically available. The nature of the breach of privacy might or might not be sexual. This section prevents a person from disclosing any personal information of a child to the public at large.

Similar provision exists under Section 72A of IT Act, 2000 which applies to private service providers who have access to a child's electronic record under a lawful contract, such as internet service providers. For example, a social network has record of child's particulars and his registration account details & password.

*It is a **non-cognizable** and **bailable** offence, **punishable** with imprisonment for up to 2 years or up to Rupees One lakh or both.*

Section in Law:

"72. Penalty for breach of confidentiality and privacy.-

Save as otherwise provided in this Act or any other law for the time being in force, if any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to

⁵⁶ Retrieved from: <http://www.hindustantimes.com/delhi/mms-scandal-hits-jnu/story-W8GSA1qM7DKhS7ScAW2EDM.html>

⁵⁷ Retrieved from: <http://www.hindustantimes.com/india/2-engg-students-held-for-mms-scandal/story-ysrcyY5EpgFIRksPFRNLCN.html>

any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.”

Ingredients of the Law:

- Those empowered by the IT Act to carry out any duties, who have access to electronic record of a child
- Wrongfully accessing personal information of a child available on an e-record, book, register, Whatsapp, e-mail exchange, text exchange etc.
- Making such information publically available
- Lack of consent of the child

Section 23 POCSO Act, 2012

Description: Section 23 of POCSO Act provides for procedure for media and specifically deals with the procedure of reporting for journalistic purposes while dealing with sexual offences cases that deal with children. This section protects a child’s identity from being made public knowledge.

*It is a **non-cognizable** and **bailable** offence.*

Section in Law:

“23. Procedure for media:

- (1) No person shall make any report or present comments on any child from any form of media or studio or photographic facilities without having complete and authentic information, which may have the effect of lowering his reputation or infringing upon his privacy.
- (2) No reports in any media shall disclose, the identity of a child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child: Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.
- (3) The publisher or owner of the media or studio or photographic facilities shall be jointly and severally liable for the acts and omissions of his employee.
- (4) Any person who contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with both.”

Ingredients of the Law:

- Media to ensure reporting on a child is made in a manner that does not lower his reputation or infringe his/her privacy
- Media reports to not disclose identity of the child or any other personal details that might disclose his/her identity

ENDNOTE

Prevalence of technology across India raises serious concerns for the safety of children in online spaces. The combination of easy access to potential victims and anonymity of predators provides law enforcement agencies with fresh challenges. Limited knowledge of the scope of online crimes has led to poor implementation of the existing legal framework in India to ensure online safety for children. Therefore the main objective of this Toolkit has been to identify key cybercrimes targeted at children and explain the relevant legal provisions so that front line workers and law enforcement agencies can ensure that perpetrators are charged and convicted.

The analysis provided demonstrates that the Indian justice system currently has provisions to facilitate online child safety. The POCSO Act, 2012 addresses sexual offences committed against children, while the IT Act, 2000 deals with all forms of cybercrimes against both children and adults. The IPC, 1860 provides sections protecting individuals, including children, from crimes to a person's body, mind, reputation and property. Lastly, the issue of child trafficking is covered under the ITPA, 1956. Most of the offences related to online child safety under these various legislations are cognizable with approximately equal numbers of bailable and non-bailable acts. While some offences are punishable with imprisonment of a term between one to three years, there are some grave offences with punishment of over five to seven years. It is also evident, that a number of offences committed against children in the online space occur in convergence with other online and offline offences. For example, online child trafficking may have elements of grooming, along with cyber sexual harassment, cheating and offline prostitution, all of which have been categorized as separate crimes.

While it has not been the task of this publication to highlight lacunae in the law, it is clear that there have been very few cases and convictions in cybercrime. It is essential that any efforts by the government to strengthen online child safety go hand in hand with knowledge of the law, robust implementation and ultimately comprehensive legislative review.