

Cyber child pornography: A critical analysis of human right , social and legal issues

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Abstract

“Child pornography, wherever it exists, creates a market for abuse. No, you can't "argue" that it does not impose risks, because it does.”

Ian Miles Cheong,

Cyber child pornography is an increasingly visible problem in society today. With the growth in home Personal Computer usage and more readily available access to the World Wide Web over the past decade, child pornographers have found a convenient venue for sharing horrific pictures of children being sexually abused. Also, police and lawyers around the globe have found that detecting and prosecuting cyber child pornographers have become onerous chores, often with a high failure rate of placing perpetrators behind bars. The methods currently employed by law enforcement officers to combat cyber child pornography may be considered to be primitive and inefficient. In this paper, we review the major social, legal, and technological issues facing citizens, lawmakers, and the police regarding cyber child pornography. We also propose a new technological approach for combating online child pornography. In particular, we propose a source address reputation system based on Bloom filters and a novel classification system utilizing a stochastic weak estimator, coupled with a linear classifier. We believe that our proposed method for identifying offensive online material would be attractive to law enforcement globally, because it can be implemented with acceptable overheads.

Keywords Pornography, Personal Computers, Cyber child pornography, internet ,Website cybercrime, cloud forensics,

Introduction

Cyber crime is a very wide term which involves offences related to computers or the computer networks for the purpose of communication and to transfer the information to another person in a very short span of time. The use of internet and computers are getting people more closure in the modern society for business and e-commerce purposes, hence we understand that there are much advantages for the use of computers and internet and our society cannot even function properly without them. Cyber crime is defined as a crime in which a computer is the object of the crime hacking, phishing, spamming or is used as a tool to commit an offense child pornography, hate crimes. Cyber criminals may use computer technology to access personal information, business trade secrets or use the internet for exploitative or malicious purposes. Criminals can also use computers for communication and document or data storage. Criminals who perform these illegal activities are often referred to as hackers. Cyber crime may also be referred to as computer crime. Internet gives the facility to the people to connect worldwide in order to communicate with any person irrespective of any place, time. The internet and the computers does not bound any person with the territorial limits and gives the access to any person in any of the jurisdiction. It

enables the people to come up and share their new ideas, views and take knowledge about anything they wish to know. The way in which people share their ideas, communicate, do online transactions is one of the big reason that internet will continue to contour the world. These kind of freedom also enables the computer experts to indulge into other unlawful cyber criminal activities such as hacking, bugging, cheating, fraud, etc. With the regular use of internet in mold of websites and blogging, people engage themselves in chatting on the internet without knowing the other person. There are many elements that have given birth to the sources concerning about the society where the Pornography has been the major issue in the society.

Porn today is more freely and widely available on Internet than ever before. Younger generation is therefore able to access it very easily and quickly than ever without any chances of being caught by the guardians and therefore leads to the mentality of unemotional sex which is very detrimental for the development of the children because they at that time are in the raw stage of their life cycle .

INTERNATIONAL INSTRUMENTS ON CHILD RIGHTS

Convention on the Rights of the Child

“There can be no keener revelation of a society’s soul than the way in which it treats its children.”

Nelson Mandela

Based on various major principles laid by the United Nations in different International Conventions , different measures has been taken for ensuring the human rights of children was adopted by the General Assembly of the United Nations in 1990. The agreement contemplates an extensive diversification of the term ‘*Human Rights*’ for children containing cultural, political, civil and social rights.

In the year 2000 the United Nations General Assembly adopted two Optional Protocols to the Convention of which one was the Rights of the Child in order to protect children from involvement in armed conflicts and also to stem the sale of children, child prostitution and child pornography. Here in this article we will focus only on the second aspect of the protocol. OPSC is the prime international instrument serving as regulation for rights concerning child on the internet. Fifteen nations have sanctioned or assented to the OPSC⁴¹, India ratified it in 2005. The OPSC is one of the most significant international officially requisite instruments that can be used to examine the jurisdictive and supervisory methods of Asian Countries to address child pornography crimes in arrangement with applicable universal principles. Art. 3 (1) (a) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children Prostitution and Child Pornography (OPSC in short), declares that each State Party shall safeguard that, as a minimum, the acts of manufacturing, distributing, disseminating, importing, exporting, offering, selling, or possessing for the above commitments child pornography as demarcated in its Art. 2 are fully enclosed under “its criminal or penal law”, whether such crimes are committed natively or trans-nationally either on an individual or prearranged basis. OPSC comprises provisions authorizing State Parties to forbid unlawful behavior in association to child pornography, in totality as per the meaning of child pornography under Art. 2 (c) as identified below:

1. Art. 3 clause 1 (c) of the OPSC entails State Parties to craft felonies casing the acts of making, dispensing, broadcasting, importing, exporting, offering, selling child pornography or owning it for the drive of making, dissemination, broadcasting, importation, exportation, offer, or sale.
2. Art. 3 (3) of the OPSC assists State Parties to make such crimes indictable by suitable punishments that take into account their severe nature.
3. Art. 3 (4) of the OPSC dictates State Parties to take actions, whether suitable, to create accountability of legal persons for felonies recognized in its Art. 3 (1), subject to the provisions of their state laws and such charge may be criminal, civil, or administrative.
4. Art. 4 (2) of the OPSC lay down that a State Party may take such actions as may be essential to institute extraterritorial prerogative over the crimes referred to in Art. 3 (1) in one of the subsequent instances: (a) when the suspected criminal is a national of that State or a person who has habitual residence in its territory; or (b) when the victim is a national of that State.
5. Art. 7 (a) of the OPSC states that State Parties shall, subject to the provisions of their national law, take actions to provide for: (i) the impounding of properties used to commit or assist felonies under the current procedure; and (ii) the seizure of proceeds imitative from such crimes.

The Convention on the Rights of the Child 1989 defines child as “ *every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier*”. Art. 34 of the Convention mentions that, States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For this purposes, States parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent the exploitative use of children in pornographic performances and materials.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2000, outlines “*Child Pornography as any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purpose*”

ILO mentions about the prevention and instant activities to be taken for the Abolition of the Nastiest Practices of Child Labour, the use, obtaining or proposing a child for prostitution, for the making of pornography or for pornographic acts is included among the worst forms of child labour.

“It is easier to build strong children than to repair broken men.”

Frederick Douglass

Indian Constitution and Pornography

The Constitution of India is the supreme law of the land that is available in India . It guarantees the right to freedom of speech and expression expressed in Art. 19. It gives all citizens of the country the freedom to speak and express their views in any form. However, other clause of Art. 19 lays down reasonable restrictions upon this freedom by mentioning about decency and morality Indian Laws on Child Pornography Child pornography is nowhere expressly defined in the Indian Penal Code, Information technology Act and Protection of Children from Sexual Offences Act. However, these legislations somehow manage to express about the offence of production, possession and distribution of

sexually explicit content featuring a child below the age of 18 years. Introduction of Information Technology Act, 2000 lays down guidelines and directions as to what crimes are referred to as “cybercrimes” and how the competent and concerned authorities should work and implement and repeal the existing laws keeping in mind the rapid development of technology and the possible harm caused by it. The problem of child pornography is not new to India. However, it came into attention of the law-making bodies only after the introduction of the Information Technology Act, 2000. Initially, the act was introduced to provide legal recognition for transactions that had taken place in electronic communication and to repeal the existing Penal Code of the Country, Indian Evidence Act, 1872, RBI act 1934 etc. The major Sec. that provides the safeguard to children concerning child pornography falls under Sec. 67B that states “*punishment for publishing or transmitting of material depicting children in sexually explicit conduct in electronic form*”.

CHILD PORNOGRAPHY: SOCIAL, LEGAL ISSUES

“Any technology throughout history has been adapted by two things - first of all pornography and secondly, the paranormal”

James Alcork McIlray .

If unlawful and detrimental content in cyberspace needs to be regulated then the foremost question arising in the minds of people is ‘how should this is done’? Internet poses a major challenge for valid leadership and governance. To understand the technical issues relating to child pornography in cyberspace, first we need to look into the technological development that helped in evolution and distribution of child pornography in internet worldwide.

Social, Technical and legal issues pertaining to child pornography

The effect of child pornographic materials on adult viewers, to some extent young children and the society as whole has always a negative one and depraves and corrupts the mind of the viewers especially the young adult, who is new to this world. In most cases parents are unaware of the fact of ‘what their children are going through’ or ‘what sort of activities they are involved in over the internet and what are the effects’ which reveals the sad fact that parents are least concerned with the activities of their children in cyberspace. Child pornography on the internet is pregnant with the possibility that adult predators may contact the child through this medium for the purpose of sexual abuse.

To understand both social and legal issues pertaining to child pornography, it is important to differentiate between online child pornography, which is illegal in most countries, and the online adult pornography, which is not necessarily illegal, unless contents exceed the community’s Enter Exit 44 standard. Also, such content is protected under the ‘freedom of speech and expression’ under various jurisdiction, which is not so in the case of child porn.

Cyberspace is very complicated and in the international environment the old concepts of regulation will not work so readily. Therefore, a wider concept of governance and regulations needs to be implemented.

Protection of human rights vis-a-vis cyber child pornography

Human rights are the first and foremost rights. If given a radical approach to human rights considers the essence of human rights as the right to be human. Such an approach links human rights with basic needs. Man's faith in human rights stems from the belief that each human being has certain rights which all governments and other human beings have a duty to respect. These rights originate with the very birth of the individuals and are essential for the adequate development of various phases of human life. In this regard all are equally entitled to human rights without any discrimination'. The principle of non discrimination under Universal Declaration of Human Rights, 1948 (herein after referred to as UDHR) is the heart of the human rights discourse. It calls for the global application of all human rights to all people irrespective of their difference. It is evident from this principle that there shall be no discrimination in providing rights to children and treating them in par with other human beings. It was only during the 20th century that the concept of children's rights emerged. This shift in focus from the welfare to the rights approach was significant. Rights are entitlements. They also imply obligations and goals. The rights approach was primarily concerned with issues of social justice, nondiscrimination, equity and empowerment. The children like any other human being are entitled to live in a peaceful environment'. These natural individual rights cannot be taken away or arbitrarily deprived of by anyone or be given up by the holder of the rights. The right for the protection of children marks the starting point of human life because they form the majority of the deprived sections of our world

Right to Privacy

Privacy is a broad concept related to protection from others. It has become one of the most important human rights of modern age with the advent of digital technology. The right of privacy must be respected and guaranteed to all including children wherever they are located. Children's right to privacy is specifically guaranteed by CRC'. Children need privacy to protect them against the manipulations of commercial entities as well as against the government, child pornographers, pedophiles and others. Children even young ones need physical privacy in order to develop their individuality, their independence and their self reliance, as well as for the sake of their creativity and other attributes important to personal development. Therefore the child victims' right to privacy is absolute, as the CRC takes precedence. The privacy is an important value underlying the right to be free from unreasonable search and seizure and the right to liberty. However, the privacy of those who produce, distribute or possess child pornography is not the only interest at stake in this appeal. There is a widespread consensus that children show less concern than adults about privacy. Actually privacy is important to children, though their conceptions of privacy differ from those of adults In the digital technology, the children should be given an individual right for privacy against all, while recognizing that this right should be qualified according to the child's age and evolving capacities'. The privacy interests of those children who are depicted in child pornography need to be protected, being such depictions a permanent record of their sexual exploitation. This privacy interest is also triggered when materials are created by teenagers under consent ignorant of the seriousness of its consequences. In digital environment, technologies do not preserve in native mode, user's privacy'. The privacy concept in the cyberspace looks like a luxury'. The privacy needs are more often neglected or is ignored by ordinary internet users. Here it is for the right of individuals to control the collection and use of information about themselves. The free and unsupervised use of information and communications technologies means confidentiality and integrity of data flow without active or passive listening 'By their capacity to intercept data, to intrude systems and access data, cyber criminals are able to affect user's privacy. This causes the enforcement authorities to put greater pressure to bear on norm violating actors like pedophiles, individual criminals and organized

groups through targeted information flows and new and increased levels of activism'. This right to privacy of an individual user provides an ongoing obstruction to law enforcement especially when the individual turn out to be a law breaker. To tackle this, personal information of the user or the subscriber need to be gathered to control the flow and data monitoring by the ISPs or other concerned authorities. These processes however must be well mastered and controlled, respecting democratic principles and rights as that may raise issues of privacy.

Freedom of Speech and Expression

The freedom of speech and expression is always considered a basic human right, in other words free and unfettered authorship is clearly privileged. However to hold opinions without interference and to seek, receive and impart information and ideas through any media like internet regardless of frontiers sounds like a symmetrical claim of information rights which necessitates concerted efforts by governments to restrict freedoms and basic human rights such as the right to privacy and freedom of expression. However international human rights law does not permit freedom of expression to be restricted or prohibited simply on the grounds that others may find it offensive or that the authorities opines it to pose a risk to public order.

LEGISLATION AND POLICIES TO COMBAT CHILD PORNOGRAPHY IN INDIA WITH REFERENCE TO POCSO ACT, 2012

“Child Pornography is spreading like cancer and it would not be out of place to call it a moral cancer not on the ground of individual morality but on the foundation of obscenity which is an offence under the Indian Penal Code”

Ms. Mahalaxmi Pavani

Child pornography laws in India are modelled on the International Legal Instruments. Currently there are three main legal instruments dealing with child pornography at the international level. They are Optional Protocol to the United Nations, Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Council of Europe Convention on the Protection of Children against Sexual abuse.

Conclusion

“If we nurture the dreams of children, the world will be blessed. If we destroy them, the world is doomed!”

Wess Stafford

There are places where pornography is liberally permissible while in other countries there are restrictions, prohibitions on such acts. There are countries where the prostitution is legal but is also a source for earning foreign money by attracting tourists and thus it is promoted as a business in an industry. Whereas, in India, where prostitution is prohibited and is illegal under the eyes of the law. due to lack of knowledge, lack of intimacy, increasing crime rate, huge gender gaps, liquor addiction and generation gap, etc. India being one of the youngest nations in the world has a large population of children to account for. There is various form of exploitation that a child of tender age could meet with but sexual

exploitation is the more severe one as it leaves a deep and mammoth impact on the child for the rest of the life, so laws should be framed in accordance so that this problem can be tackle out. The present technology needs to be improved to churn out child pornography from the internet. Moreover, the law enforcement agencies, must evolve to meet the needs of the society and protect the interests of the children. Cyber pornography has proven to be a menace to across the world. It trigger the thoughts of sexual nature in unhealthy manner in young generation. This could be easily curbed by providing appropriate sexual education to young minds. Pornographic content tend to influence the minds of young generation in a manner which is unhealthy and not desirable by society as whole.

Let us reach out to the children. Let us do whatever we can to support their fight to rise above their pain and suffering.”

Nelson Mandela

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