

SOCIAL MEDIA; THREAT TO PRIVACY OF CHILDREN

Written by **Shreya Bansal**

LLM, GNLU Student

Children are perpetually creating digital footprints on social networking sites as they learn their ABC's – apple Bluetooth and chat. Widespread technology and access to internet has brought its own evil along with it. Unlike adults children are not mature enough to understand the consequences of sharing of information thus it becomes important to educate them as to what must be disseminated on internet. The larger problem at hand is that age group which even though does not have access to social media yet are showcased by their parents for attention and acknowledgment among their peers. Parents are violating the right of their children and also putting them under threat and abuse due to constant sharing of information online. The aim of this paper is to analyze that there is an urgent need to understand the pro's and con's of the this era of technology, so that when the child enters adulthood he is not pushed into a pit of depression, anxiety, or bullying. The paper focuses on certain case laws and studies which support the claim that children must be protected from excessive sharenting by parents.

KEYWORDS:- Privacy, Children, Sharenting

INTRODUCTION

Right to privacy-with respect to children

To say children have right to privacy is to say that, they have right to control personal information about themselves and that they are at liberty to do certain things with their personal information about themselves, and others are obliged to refrain from interfering with disposition of such information.¹ We are currently living in the so-called information age which can be described as an era where economic activities are mainly information based (an age of informationalization). This is due to the development and use of technology and the main characteristics of this era can be summarized as a rise in the number of knowledge workers, a

¹Phillip Montague < <https://www.jstor.org/stable/40435666> >last accessed on 2017-08-25.

world that has become more open - in the sense of communication (global village/Gutenberg galaxy) and internationalization (trans-border flow of data).² This shifting towards better technology has brought new ethical and juridical challenges which are mainly related to issues such as the right of access to information, the right of privacy which is threatened by the emphasis on the free flow of information.

For a long time right to privacy was not within the reach of citizens of India. But, recently in a Supreme Court judgment, Justice K.S. Puttaswamy and anr. Vs. union of India. A nine-judge bench of the Supreme Court has recently ruled that Indians enjoy a fundamental right to privacy, and it is intrinsic to life and liberty and thus comes under Article 21 of the Indian constitution.³ The bench, led by Chief Justice J.S. Khehar, pronounced a unanimous judgement even though the judges had slightly different arguments as to how privacy is intrinsic to right to life and liberty. The bench comprised Chief Justice Khehar and Justices J. Chelameswar, S.A. Bobde, R.K. Agrawal, Rohinton Nariman, A.M. Sapre, D.Y. Chandrachud, Sanjay Kishan Kaul and S. Abdul Nazeer.⁴ In its 547-page judgment that declares privacy to be a fundamental right, the Supreme Court has overruled verdicts given in the *M.P. Sharma* case in 1958 and the *Kharak Singh* case in 1961, both of which said that the right to privacy is not protected under the Indian constitution.

Right to privacy now with this judgement becomes explicit in nature by the virtue of Article 21-A. Citizens of India now have right to safeguard the privacy of his own family, marriage, procreation, motherhood, and child bearing among other matters. Thus the researcher has attempted to highlight importance of privacy in lives of children who do not have much means to protect the same. Right of a child with respect to online privacy is a legitimate matter of concern because once a subject becomes a public record through social media, right to privacy no longer subsists.

International concept

² J.J. Britz < <http://web.simmons.edu/~chen/nit/NIT%2796/96-025-Britz.html> > last accessed on 2017-08-24.

³ <[http://supremecourtindia.nic.in/pdf/LU/ALL%20WP\(C\)%20No.494%20of%202012%20Right%20to%20Privacy.pdf](http://supremecourtindia.nic.in/pdf/LU/ALL%20WP(C)%20No.494%20of%202012%20Right%20to%20Privacy.pdf)> last accessed on 2017-08-24.

⁴ <<https://thewire.in/170303/supreme-court-aadhaar-right-to-privacy/>> last accessed on 2017-08-24.

Article 12 of Universal Declaration of Human Rights (1948) states that “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attack upon his honor and reputation. Everyone has the right to protection of the law against such interference or attacks.”⁵

Article 17 of International Covenant of Civil and Political Rights (to which India is a party) states “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence, nor to unlawful attacks on his honor and reputation”⁶

Article 8 of European Convention on Human Rights states “Everyone has the right to respect for his private and family life, his home and his correspondence; there shall be no interference by a public authority except such as is in accordance with law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the protection of health or morals or for the protection of the rights and freedoms of others.”⁷ Thus, ensuring that States enact laws to protect individual’s right to privacy. India has ratified the above conventions. The ratification of the Conventions mandates the State to take steps to enact laws to protect its citizens. Although, human right activists have periodically demanded that the State take adequate measures to protect human rights of the vulnerable in society, the right to privacy has received little attention.

Similarly, Article 16 of the Convention on the Rights of the Child (CRC) provides protection to a minor from any unlawful interference to his/her right to privacy and imposes a positive obligation on States who have ratified the convention to enact a law protecting the same. India does have safeguards in place to protect identity of minors, especially, juveniles and victims of abuse. However, there are exceptions when the law on privacy does not apply even in case of a minor.⁸

Privacy of children on social media

⁵ < <http://www.un.org/en/universal-declaration-human-rights/> > last accessed on 2017-08-24.

⁶ < <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> > last accessed on 2017-08-24.

⁷ < http://www.echr.coe.int/Documents/Convention_ENG.pdf > last accessed on 2017-08-25.

⁸ Sonal makheja < <https://cis-india.org/internet-governance/blog/privacy/privacy-media-law> > last accessed on 2017-08-25.

This Article argues that “sharenting,” a term used to describe the ways many parents share details about their children’s Social media has made world smaller and more accessible. Sharing your personal information is a common practice in the digital world as it provides a huge platform to flaunt one’s accomplishments.

One common practice that has recently emerged is parents posting about lives of their children without any express consent. Through sharenting, or online sharing about parenting, parents now shape their children’s digital identity long before these young people open their first e-mail.⁹ Using innocence of your tiny humans for likes and shares on facebook and instagram not only hampers privacy of a child but also gives them an online identity which will follow them into their adult life.

lives online,¹⁰ must be a central part of child-rearing discourse and legal analysis of the conflict between children’s rights and parental rights. There has been ample discussion focused on how young people often create (and harm) their digital identities,¹¹and scholars have explored the threats children face from third parties online.¹²Yet little discussion is centered at the intersection of parents’ choices to publish information about their children in the virtual world and the effect such disclosures can have on the children.¹³The dearth of discussion on this topic means that even some of the most well-intentioned parents likely press “share” on their digital devices without thinking about how their postings may affect their children’s overall well-being.

Imagine waking up one morning to see some has posted pictures of you on internet while you were casually going on with your day, now imagine this being the person who is your closest confidant. The sheer horror on the invasion of privacy would be beyond thoughts. Social media platforms like Instagram, Facebook are pervaded with pictures and videos of children being

⁹ Stacey B. Steinberg < <http://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1796&context=facultypub> > last accessed on 2017-08-26.

¹⁰ The Pros and Cons of ‘Sharenting’, THE GUARDIAN < <http://www.theguardian.com/lifeandstyle/2013/may/18/pros-cons-of-sharenting> > last accessed on 2017-08-26.

¹¹ METRO. CORP. COUNSEL, < <http://www.metrocorpcounsel.com/articles/10146/what-are-limits-cyber-bullying-internet> >. Last accessed on 2017-08-26.

¹² Supra 6

¹³ Ibid 9

exposed to this unsafe platform, by their very parents who are the guardians for their children's online identity.

Children have a right to privacy – and not in the technical or legal sense (though in that too, because it's enshrined in Article 16 of the United Nations Convention on the Rights of the Child, but in the real and natural, sense. They want privacy. They *need* privacy. They *demand* privacy. Anyone who has children, who spends time with and listens to their children, who *respects* their children should be able to see that.¹⁴ Right of a child to be able to enter into adulthood freely and create his digital foot print must be recognized.

Justice Sanjay kishan Kaul in his separate but concurring judgment holding right to privacy is a fundamental right, also observed that children are perpetually creating digital footprints on social networking sites as they learn their ABC's – apple Bluetooth and chat. Thus not only do we need to stop parents from posting pictures of their kids online without consent, but we also need to protect children from making mistakes in the digital world which results in permanent storage in some way or the other and makes it difficult to begin life again from their childish mistakes.¹⁵

There have been times when courts have intervened and taken up the responsibility on behalf of the children and their interest, for example when it is not in a child's interest to appear on the television even if the parent has consented for the same.

In the case *Murray v. Express News Paper and others* (2008)¹⁶ this case concerned the publication (April 2005) of a photograph of J.K. Rowling's son which was covertly captured by a photographer from big pictures, the same publication was accompanied by an article on famous children's author's attitude on motherhood. The parents began an injunction proceeding in June 2005 against both big pictures and express newspaper, citing breach of confidence of photograph and article 8 on behalf of the child, further it was claimed under the data protection act 1998, to remove the same. Subsequently the injunction was not granted and

¹⁴ Paul burnel <<https://paulbernal.wordpress.com/2013/01/21/children-have-a-right-to-privacy/>> last accessed on 2017-08-25.

¹⁵ The Hindu <<http://www.thehindu.com/news/national/protect-privacy-of-children-justice-kaul/article19555803.ece>> last accessed on 2017-08-27.

¹⁶ [2008] EWCA Civ 446.

parents appealed. The court of appeal reversed the decision on the basis that greater focus was given on parents than the child.¹⁷

Unlike adults, children are very unlikely to derive any benefit from publications of information¹⁸. In case of a child the legitimate expectations of privacy are much greater than those of adults because they can expect greater degree of intrusion as part of their daily lives.¹⁹ This does not mean that children must not be photographed in public, but reasonable care must be taken that such pictures do not cause any detrimental mental effects on children in present or in future. There is a trend to include children of famous personalities in lifestyle magazines or reality programmes which can hamper privacy of children greatly. The Murray case was dealt with the issue that whether parents can waive their child's right to privacy, to which court ruled that a child's right to privacy is distinct from that of his parents.²⁰

Disney is also facing harsh questions about its mobile games. The company is allegedly violating privacy laws regulating how children's personal data can be collected and used, according to a lawsuit filed this august in federal court. The class action lawsuit claims that ad-tracking software embedded within Disney's mobile games illegally keeps tabs on its users and makes personal identifying information of children available to third-parties.²¹

While ad tracking software is commonplace in the App Store, the FTC has strict regulations about how and when internet companies can collect data about children under the age of 13. The lawsuit, filed in San Francisco District Court, says Disney has violated these rules by using ad tech that potentially exposes identifying information about the children who play its games. The suit, filed by a mother and her child, centers around a game called *Disney Princess Palace Pets*.²² Thus information of children is being exploited by big companies for illegal means.

There have been numerous other cases where pictures of celebrity kids have been used without unauthorized supervision; it's mainly because these pictures are so readily available online that

¹⁷ Media & entertainment law, Ursula Smartt, first edition published in 2011. By routledge. Pg 68

¹⁸ Ibid.

¹⁹ Campbell v MGN Ltd [2004] 2 AC 457 (HL)

²⁰ Supra 17

²¹ < https://www.lieffcabraser.com/pdf/Complaint_Rushing_v_Disney_20170803.pdf > last accessed on 2017-09-04.

²² Karris Bell < <http://mashable.com/2017/08/04/disney-lawsuit-ad-tracking-kids-mobile-games/#RQjXPIadmqm> > last accessed on 2017-09-04.

access is a click away. In a recent controversy famous internationally-renowned clothing brand Tommy Hilfiger used pictures of Hrithik Roshan's son's to promote its kids collection without his consent.²³ Media has powerful tools and can make two month old kid's multi-millionaire stars, but the questions remains that when the child has not consented to this, who gives them the ultimate power to shape one's life like that.

Problems that may emerge due to excessive sharing information of children.

The advancement in technology has brought people together, but there needs to be a strict check as to what information is being disseminated with this medium. With phones and internet becoming easily accessible, there is large amount of information which is passed on without having sufficient knowledge as to how this information can be used inappropriately.

Baby-role playing

A newly emerging tendency on social media is baby-role playing. It is a process whereby users copy the pictures of children from social media sources and pretend that that the picture is of their child. It is a very common practice which lets the user live a life as a parent and create fictional families for themselves. It is very popular on instagram but has also seen to be emerging on other social media platforms. Even though this practice seems like mere usage of pictures but it can largely lead to digital kidnapping which can be horrifying for both parents and children. There are even Instagram accounts that will post a photo of a child with his or her made-up information, pretending the child is available for adoption.

Child pornography

Pictures of children doing perfectly normal things —” a snapshot of a child at a gymnastics performance”,” a toddler playing with a toy car” — have been stolen and implanted on child sexual abuse imagery sites, pedophile photo-sharing galleries and highly sexualized “child modeling” websites. With the existing technology and photo shopping apps any innocent family picture can be easily converted into pornographic content, these pictures are often picked from facebook accounts blogs or other online platforms and then modified into sexually explicit content. Sometimes the pictures aren't doctored but are associated with such sexually

²³ < http://www.huffingtonpost.in/2017/02/10/hrithik-roshan-slams-tommy-hilfiger-for-using-his-childrens-pho_a_21711225/ > last accessed on 2017-09-02.

inappropriate content that the captions or comments lead to child pornography.²⁴ In some cases, the images grabbed from Facebook, Instagram and other social media accounts are being manipulated and photo-shopped, so that the head of the child is pasted onto another child's naked body. "(A pedophile) might like the way a particular child looks, so they take that face and morph it onto another shot they've come across online of a child sexual abuse image".²⁵ One mother in Utah recently found pictures of her two young daughters together with captions implying extremely disturbing situations. Especially enticing are photos where a user can make eye-contact with their victims or where there is partial nudity, like a bath or diaper photo.²⁶ Therefore there needs to be a check on how and where these pictures can land the reputation of a child.

Advertising

Would you want your child's picture used to promote a product without your permission? When the access is so easy, unfortunately pictures end up in advertisement in some other part of the world without the knowledge of both the parents and children. This process is often adopted by companies because it has no financial liability attached to it and it is easy promotion of products. Some advertisers go to such length that they will use the pictures to promote illegal products which not only harms the reputation of the child but will also lead them with an identity they wouldn't choose for themselves. This happened with a mother when a picture of her daughter who has (Down's syndrome) was stolen by a Swiss bio-medical company named Genoma. They advertised her picture on the front page of their website and a building sized banner in Spain. Her daughter's picture was used for the poster child for a prenatal testing kit called Tranquility. The mother quoted that it was portrayed "As if she were a cautionary tale: don't let this happen to you".²⁷ It happened to a teenager from Texas²⁸ who had her photo

²⁴ Mindy Raye Friedman < <https://familyshare.com/21786/5-horrifying-ways-your-childrens-pictures-might-be-used-on-the-internet> > last accessed on 2017-09-01.

²⁵ Sharon Kirkey < <http://nationalpost.com/news/canada/photos-shared-on-pedophile-sites-taken-from-parents-social-media-accounts> > last accessed on 2017-09-02.

²⁶ Rachel Bertsche < <https://www.yahoo.com/news/mom-horrified-after-kids-photos-stolen-from-118210047777.html> > last accessed on 2017-09-01.

²⁷ < <https://soheresus.com/2015/06/12/down-syndrome-genoma-copyright-infringement/> > last accessed on 2017-09-02.

²⁸ < http://www.nytimes.com/2007/10/01/technology/01link.html?_r=0 > last accessed on 2017-09-03.

snapped at a church activity and ended up on a billboard in Australia. These are the few cases that actually came to light, rest of these advertisements are beyond reach and knowledge.

Fake profiles

Social media has a tendency of building up pressure on people for acceptance and it often persuades them into stealing pictures of others, lot many people due to likeable personality of children steal pictures posted by parents online for the purpose to scam others. Fake identities can often lead teenagers into traps of pedophiles, which can force information out of them and later use it as pornographic contents. Fake profiles can lead to cyber stalking, phishing, online defamation and other modes of online harassments. Those who create these profiles often use stolen images because they are believable and give credence to their profiles. Thus parents need to restrict the accessibility of such pictures and keep children from entertaining unknown profiles.

Memes

A 'meme' is a virally-transmitted cultural symbol or social idea. The majority of modern memes are captioned photos that are intended to be funny, often as a way to publicly ridicule human behavior. Other memes can be videos and verbal expressions. Some memes have heavier and more philosophical content. The world of memes (which rhymes with 'teams') is noteworthy for two reasons: it is a worldwide social phenomenon, and memes behave like a mass of infectious flu and cold viruses, traveling from person to person quickly through social media.²⁹

When parents post funny pictures with intention to embarrass them or ridicule their behavior it might end up becoming viral on social media platform. This is not a typical case of becoming famous, rather it can lead to major negative publicity and child can be made fun of in all parts of the world. But even if some people think it's funny, if it's done without permission, it's no laughing matter. Once it's out there, it becomes impossible to delete something that has been shared by multiple users on multiple sites.

²⁹ Paul Gil < <https://www.lifewire.com/what-is-a-meme-2483702> > last accessed on 2017-09-07.

Online Bullying

According to a survey, large amount of social media bullying takes places on Facebook.³⁰ This happens due to many factors which includes its widespread popularity and its capacity to share photos and other media. In fact, according to a report by the Washington Post³¹, nine out of 10 teen Facebook users have reported that they have witnessed bullying on this social media site.³²

Other social media sites are also becoming the breeding ground for bullying behavior.³³ For example-

- Twitter is a hub of bullying content, with up to 15,000 bullying tweets shared daily according to Huffington Post.³⁴
- Ask.FM and Snapchat have also caused serious problems among teenagers, where it resulted into suicide of a 14-year-old girl in 2013³⁵ was linked to bullying on ask.fm. The new owners pledged to end the bullying or shut down the site altogether.

Bullying constitutes harsh comments or posts made with reference to a person; it includes identity theft as well as abusive behavior. Children often fall victim to such negativity and become self destructive and tend to withdraw from their society. Online bullying has proven to a dangerous process which leads to low self-esteem, chronic depression, often the naivety brings self-harm and feelings of isolation that can affect performance in school, social skills, and general well-being drastically.

This sharing of information has drastic effects on the lives of the child; they often in the long term tend to lose confidence in their parents and leads to permanent trust issues. Further these activities like shaming children online can often lead to anxiety and depression; some

³⁰ <<https://nobullying.com/facebook-users-shocking-stories-cyber-safety-gone-wrong/>> last accessed on 2017-08-26.

³¹ Cecilia Kang < https://www.washingtonpost.com/business/economy/nine-of-10-teenagers-have-witnessed-bullying-on-social-networks-study-finds/2011/11/08/gIQAPqUq3M_story.html?utm_term=.db475e5042c5 > last accessed on 2017-08-26.

³² < <https://nobullying.com/social-media-bullying-has-become-a-serious-problem/> > last accessed on 2017-08-26.

³³ <<https://nobullying.com/cyberbullying-social-media-and-your-child/>> last accessed on 2017-08-27.

³⁴ < http://www.huffingtonpost.in/entry/bullying-on-twitter_n_1732952 > last accessed on 2017-08-29.

³⁵ < <https://www.theguardian.com/technology/2014/aug/19/askfm-askcom-bullying> > last accessed on 2017-08-29.

kids are so sensitive to such incidents that they suffer post traumatic stress disorder which even leads to suicide in some cases.³⁶

Children develop low self esteem and often find themselves much easy targets online. Child predators go online for such insecure kids because a parent who publically shames a child also makes him target for bullies on internet.

Social media bullying may be one of the newer forms of bullying, but it could prove to be one of the most serious. The fact that children and teens have a difficult time getting away from it can lead to dire consequences that can have lasting effects. For this reason, it is important for parents, educators and other adults to find ways to help children learn how to interact in a friendly manner and what they can do to fight against bullies. With the right guidance, cyber bullying in all its forms can be reduced and potentially even stopped, giving kids a safer childhood

Suggestions

1. Know your social media sites' privacy policies

Social media has become part and parcel of our lives thus its only prudent to whether the place where we are sharing abundant information deals with what kind of legal policies in case of infringement of rights. It is highly advised that parents must use only authorized sites with respect to sharing information online, so that later online theft can be avoided.

2. Set up notifications to alert you when your child's name shows up in search engines, using Google Alerts and Talk walker Alerts.

With advancement of technology there is rise in effective mechanism to track as to how and when a certain picture is being taken and used. The best way is to generally avoid such pictures but if there is absolute necessity one must keep a track of how their pictures are being used with the help on notifications and alerts. There are certain sites which inform

³⁶ Melisa Willets <<http://www.parenting.com/child/behavior/true-effects-parents-shaming-their-kids-online>> last accessed on 2017-09-02.

the user when a picture is seen or recorded or downloaded, these platforms can ensure higher safety.

3. Parents who choose to share about their children's behavioral struggles should consider opting to share anonymously.

As mentioned above, children are constant delights thus if one needs to share the pictures online, they must strictly adhere to anonymity, this way the child cannot be tracked and remains safe from a creation of digital identity. Use caution before sharing your child's actual location. Because sharing location can help online predators reach the child thus pictures must not disclose the proximity within which a child can be reached.

4. Consider giving older children "veto power" over online disclosures.

At certain age depending on maturity level of each child, parents can consider the opinion of a child as to he/she feels about their picture being shared online. It can bring a sense of confidence in the child with respect to his parents and shall also introduce the element of consent. There is always a certain way a child can feel about his pictures being portrayed to the outside world and often they may not be comfortable about it. Thus parents can introduce them to a concept of veto as to what must be shared and what must not.

Consider the risks before posting pictures of children in any state of undress. A child in state of undress is most vulnerable and very easy target for pedophiles and pornography sites, with technology even a innocent looking picture can be converted into sexual or illegal content thus parents need to Consider the effect of sharing pictures and become aware and responsible regarding any sharing of information.

Conclusion

Children are constant blessing and they delight us in every possible way, thus it becomes very natural to feel an urge to share their beautiful moments with friends and family. But this practice of sharing every tiny detail online raises an important issue because when we choose children as perfect props for self promotion we deny them fundamental right to privacy.

Sharing intimate children online can haunt them in their adulthood, while its natural to want to share those cute, funny moments one needs to analyze how drastically it to can affect their future. The major question remains that, shouldn't a child be given an opportunity and privacy to navigate through the digital world on his own? Should a child not have freedom of choice as what must be shared and when it must be shared? And should they not be protected from becoming fodder for school bullies and online pedophiles.

There is an urgent need to consider the element of consent with respect to children. Thus recent Supreme Court judgment on right to privacy is a welcomed progress in India. It shall enable children a voice of their own distinct from their parents. As social media become a more prominent part of our daily lives it becomes more and more essential to start talking about what becomes of present and future of our children.