

GOVERNMENT OF INDIA
MINISTRY OF WOMEN AND CHILD DEVELOPMENT

LOK SABHA
UNSTARRED QUESTION NO. 3825
TO BE ANSWERED ON 10.08.2023

ONLINE CHILD ABUSE

3825. SHRI KHAGEN MURMU:

Will the Minister of WOMEN AND CHILD DEVELOPMENT be pleased to state

- (a) Whether the Government sees merit in employing checks and balances on the use of internet by children to prevent instances of child sexual abuse;
- (b) If so, the details thereof and if not, the reasons therefor;
- (c) Whether the Government has introduced any such guidelines to regulate the usage of internet amongst children in the country;
- (d) If so, the details thereof;
- (e) Whether the Government has explored any other alternatives to address the issue of online child abuse in the country; and
- (f) If so, the details thereof and if not, the reasons therefor along with measures taken/proposed to be taken in this regard?

ANSWER

MINISTER OF WOMEN AND CHILD DEVELOPMENT
(SHRIMATI SMRITI ZUBIN IRANI)

(a) to (f): As per the information received from National Commission for Protection of Child Rights (NCPCR), NCPCR has developed information, education and communication (IEC) material to support the Centre and State Governments for dissemination of information and awareness on POCSO Act 2012. The following IEC material is available on the NCPCR's website www.ncpcr.gov.in.

- (i) An easy guide for implementation of the POCSO Act 2012.
- (ii) A Guide for District Administration for Implementation of Juvenile Justice Act 2015 and POCSO Act 2012
- (iii) Child Victims of Cyber Crime – Legal Tool Kit
- (iv) User Handbook on the POCSO Act 2012
- (v) Do's and Don'ts for Stay Safe on Internet

Since March 2020, NCPCR organized different online programs for awareness generation on various aspects of Child sexual abuse and POCSO Act on its official social media platforms (Facebook, Twitter and YouTube), which are as follows:

- (i) Chairperson, NCPCR conducted a Twitter Chat in collaboration with Cyber Peace Foundation on the subject of "Child Online Safety during COVID 19" on 8th April 2020.
- (ii) Webinar on Cyber safety- Keeping Children Safe Online (Making online schooling cyber safe) was organized on 18th May 2020.

- (iii) Webinar on Cyber safety- Keeping Children Safe Online (How can school participate in cyber safety – A whole school approach in cyber safety) was organized on 19th May 2020.
- (iv) Webinar on Cyber safety- Keeping Children Safe Online (Cyber safety at Home) was organized on 20th May 2020.
- (v) Webinar on “Child Sexual Abuse: Forensic Jurisprudence & Role of Police” was organized 29th June 2020.
- (vi) Webinar on “New Age Cyber Crime & Online Protection of Children: Challenges and Solutions” was organized 23rd September 2020.
- (vii) Informative posters and material on following topics was circulated on social media platforms on 8 June 2020 onwards.

- Safe Online Learning in Times of COVID -19
- Cyber Bullying
- How to stay safe online
- How to prevent and counter bullying

NCPCR has also developed Cyber Safety Guidelines and included these as a separate section in the 'Manual on Safety and Security of Children in Schools' which was developed in 2017. The updated Manual including the section on Cyber Safety is available on NCPCR's website at the following Link – [https://ncpcr.gov.in/uploads/165650391762bc3e6d27f93_Manual%20on%20Safety%20and%20Security%20of%20Children%20in%20Schools%20\(Sep%202021\).pdf](https://ncpcr.gov.in/uploads/165650391762bc3e6d27f93_Manual%20on%20Safety%20and%20Security%20of%20Children%20in%20Schools%20(Sep%202021).pdf)

Further, as per the information received from Ministry of Electronics and Information Technology, the policies of the Government are aimed at ensuring a Safe and Trusted and Accountable Internet for all its users. Publication or transmission of obscene material in electronic form, is cybercrime. The Information Technology Act, 2000 (“IT Act”) and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“IT Rules, 2021”), provides for penalty and punishment for such act and also casts an obligations on the intermediaries, including social media intermediaries, to observe due diligence as per rule 3(1)(b). In case of failure to follow diligence as provided in the IT Rules, 2021, by intermediaries, they shall lose their safe harbour protection under section 79 of the IT Act and shall be liable for consequential action as provided in such law.

The Information Technology Act, 2000 (“IT Act”) penalises publishing or transmission of material containing sexually explicit act in electronic form (section 67A and 67B) and publishing or transmitting of obscene material in electronic form (section 67), and makes them punishable with imprisonment for a period that may extend to three and five years respectively, and as per section 77B such cybercrimes are cognizable offences. As per the provisions of the Code of Criminal Procedure, 1973, prevention and investigation of cognizable offences is to be done by the police, and as per the Seventh Schedule to the Constitution, ‘Police’ is a State subject. As such, States are primarily responsible for the prevention, investigation etc. of such cybercrimes through the State police departments, which take preventive and penal action as per law, including in respect of the said cybercrimes pertaining to publishing or transmitting of material containing sexually explicit act or obscene material in electronic form.

The Information Technology Act, 2000 (“IT Act”) and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“IT

Rules, 2021”), together, have made a framework which cast obligations on the intermediaries, including social media intermediaries, to observe due diligence and provide that if they fail to observe such due diligence, they shall no longer be exempt from their liability under law for third-party information or data or communication link hosted by them. Such due diligence includes the following:

(i) To make reasonable efforts to cause the users not to host, display, upload, modify, publish, transmit, store, update or share, information which is harmful to child, or obscene, or invasive of another’s bodily privacy, or violates any law;

(ii) On a voluntary basis on violation of the above, and on actual knowledge upon receipt of a grievance or court order or notice from the appropriate government or its agency, to not host, store or publish unlawful information prohibited under law for the time being in force in relation to the interest of decency or morality or defamation;

(iii) Upon receipt of an order from a lawfully authorised government agency, to provide information or assistance for prevention, detection, investigation or prosecution under law in a timebound manner within 72 hours;

(iv) To have in place a grievance redressal machinery, and resolve complaints of violation of the rules within 72 hours of being reported and, in case of a complaint by an individual or her/his authorised representative, remove within 24 hours any content which prima facie exposes the private area of such individual, shows such individual in full or partial nudity or shows or depicts such individual in any sexual act or conduct; further, the rules have been amended on 28.10.2022 to provide for the establishment of one or more Grievance Appellate Committee(s) to allow users to appeal against decisions taken by Grievance Officers on such complaints;

(v) In case an intermediary is a significant social media intermediary (i.e., an intermediary having more than 50 lakh registered users in India), to additionally observe due diligence in terms of appointing a Chief Compliance Officer, a nodal contact person for 24x7 coordination with law enforcement agencies and a Resident Grievance Officer, and to endeavour to deploy technology-based measures, including automated tools or other mechanisms, to proactively identify information that depicts any act or simulation in any form depicting child sexual abuse or conduct.

(vi) In case a significant social media intermediary is providing services primarily in the nature of messaging shall enable the identification of the first originator of the information on its computer resource for the purposes of prevention, detection, investigation, prosecution or punishment of an offence related to rape, sexually explicit material or child sexual abuse material.

Keeping in view complaints regarding action or inaction, on the part of the social media intermediaries and other intermediaries on user grievances regarding objectionable content or suspension of their accounts, the Central Government has also established three Grievance Appellate Committees (GACs), as provided for in the said IT Rules, 2021 to enable users to appeal against the decisions taken by Grievance Officer of intermediaries on user complaints.

In addition, under the Code of Ethics prescribed in the Part III of IT Rules, 2021, publishers of an online content curator are required to classify all content transmitted or published or exhibited by them, based on the nature and type of content, into various

rating categories, including content suitable for children, content suitable for persons aged 7 years or 13 years or 16 years and above or persons under the said ages with parental guidance, and to display such classification. They are further required to restrict access to certain curated content by a child through implementation of appropriate access control measures.

Further, The Government of India (GoI) had enacted Protection of Children from Sexual Offences (POCSO) Act, 2012 to protect the Children from Offences of Sexual Assault, Sexual harassment and pornography with due regard for safeguarding the interest and well being of children. The Act is gender neutral and defines a child as any person below eighteen years of age. It regards the best interest and welfare of the child as the matter of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child. Mandatory reporting of the crime by any one aware of such crime has also been stipulated under the Act, to challenge the culture of silence often noticed around such crimes.

GoI, further made the provisions of the Act stringent through amendment of Section-14, Section-15 and introducing the definition of Child Pornography under section-2(da) of the POCSO Act, 2012 to curb the child pornography and to stop child exploitation. The provisions available under POCSO Act to curb the child pornography are as follows:-

i.) Section-2(da) of the POCSO Act explicitly defines the term child pornography -*Definition of Child Pornography: "Child Pornography means any visual depiction of sexually explicit conduct involving a child, which include photograph, video, digital or computer generated images indistinguishable from an actual child, and image created, adapted, or modified, but appear to depict a child"*

ii.) Section-14 of the Act prescribes Punishment for using a child for *pornographic purposes*

Section 14(1)- *"Whoever, uses a child or children for pornographic purposes shall be punished with imprisonment for a term which shall not be less than five years and shall also be liable to fine, and in the event of second or subsequent conviction with imprisonment for a term which shall not be less than seven years and also be liable to fine".*

Section-14(2)- *" whoever using a child or children for pornographic purposes under sub-section(1), commits an offence referred to in section 3 or Section-5 or Section-7 or Section-9 by directly participating in such pornographic acts, shall be punished for the said offences also under Section-4, section-6, section-8, section-10, respectively, in addition to the punishment provided in sub-Section(1)".*

iii.) Section 15 of the Act provides Punishment for storage of pornographic material involving child. The section which was initially prescribing punishment for commercial use of child pornography, has been expanded to provide graded punishment commensurate with the level of crime. The amended punishment is as follows:-

Section-15(1)- Any person, who stores or possesses pornographic material in any form involving a child, but fails to delete or destroy or report the same to the designated authority, as may be prescribed, with an intention to share or transmit child pornography, shall be liable to fine not less than Rs. 5000/-, and in the event of second or subsequent offence, with fine which shall not be less than Rs. 10,000/-.

Section-15(2)- Any person, who stores or possesses pornographic material in any form involving a child for transmitting or propagating or displaying or distributing in any manner at any time except for the purpose of reporting as may be prescribed, or for use as evidence in court, shall be punished with imprisonment of either description which may extend to three years, or with fine, or with both.

Section-15(3)- Any person, who stores or possesses pornographic material in any form involving a child for commercial purpose shall be punished on the first conviction with imprisonment of either description which shall not be less than three years which may extend to five years, or with fine, or with both, and in the event of second or subsequent conviction, with imprisonment of either description which shall not be less than five years which may extend to seven years and shall also liable to be fine.
