JUDICIAL ANSWERS TO CYBER INTIMIDATION AND SEXTING

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ABSTRACT

The availability and usage of social networking sites provide both possibilities and dangers for their young users, depending on their circumstances. Using the examples of (cyber)bullying and sexting, this essay examines the relevance of the existing legal framework to these two kinds of (possibly harmful) behaviour that are increasingly happening amongst peers in the social networking environment. It includes a mapping of applicable legislative provisions at the European and national levels, an analysis of the Terms of Service of the largest social networking provider, Facebook, as well as an overview and assessment of self-regulatory initiatives taken by the industry in this area in Europe, among other things. Overall, the aim is to establish a number of components for a complete plan to make certain that the dangers of (cyber)bullying and sexting are addressed in a way that empowers young users.

KEYWORDS: *Bullying, Cyber Bullying, Harassment, Photograph, Sexting.*

1. INTRODUCTION

Children growing up in the early twenty-first century are exposed to cutting-edge technology, including a variety of social networking sites, unrestricted access to the internet and chat rooms, and a variety of mobile phone communication options, among others. This has had a major impact on the manner in which youngsters interact with one another and learn about one another's lives. A significant shift in the kind and quality of information they communicate with one another about themselves and their peers, as well as the manner in which they express themselves verbally, has occurred as a result of this. The advancements in technology, the variety of communication mediums, and the general shift in communication patterns have resulted in unacceptable and undesirable communication behaviour (or misbehavior) among children as a result of the use of these technologies, which has resulted in the use of these technologies[1].

In part, the apparent distance and associated emotions of anonymity engendered by different electronic communication techniques have led to the development and manifestation of some of this inappropriate conduct. Children's access to and use of electronic communication technologies, which is frequently unmonitored and limitless, has resulted in the emergence of two relatively new phenomena: cyberbullying and sexting. Adults are unfamiliar with the technology being utilized and the types of misbehavior that children are engaging in, making it harder for parents to avoid and deal with the phenomenon. Even the legislators and law

enforcement authorities seem to be unprepared and under-equipped to deal with these new events in a balanced and effective way, according to the latest reports.

A kid is defined as a person under the age of 18 in the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) as a person who is not yet 18 years old. The age of majority in the United States is considered to be 18 years old, and a person is recognized as such in the criminal justice system once that age is reached. It is not specifically provided for in the legislation for young people (18–25 years of age). This study investigates the phenomenon of cyberbullying and sexting in South Africa. Within the context of South Africa's current legislative frameworks and legal remedies, the paper focuses on how to respond to emerging trends in unwanted communication behaviour. It also highlights some of the gaps and dangers in the legal responses to children who are engaged in these activities, and it makes some suggestions in an effort to close some of the gaps and reduce the risks to children involved in these activities[2].

1.1 Cyberbullying and Sexting:

The internet, and to a lesser degree, mobile phones, contribute to the creation of a "virtual" environment. Children grow up spending a significant amount of time in this virtual environment, in which there is no personal interaction with people - just words and pictures are exchanged between them. Children (and adults) may more easily shed their inhibitions in this virtual environment, allowing them to behave and say things that they would not normally do or say in intimate, face-to-face encounters. The virtual world fosters a feeling of anonymity and disconnection from the real world. This may lead to emotions of alienation, which can then lead to the incidence of cyberbullying and sexting among both adults and children, among other things. Cyberbullying is prevalent in this virtual world, where perpetrators may lose sight of the fact that they are causing harm to a 'real' person, or where their intentions for engaging in this misbehavior may be different from the actual harm caused to their victims. Cyberbullying is a serious problem in today's society, and it is becoming more prevalent[3].

1.2 Bullying On the Internet:

There are many different definitions of cyberbullying, but the majority of them involve actions of bullying and harassment that are carried out via the use of electronic devices or technology. There are also a variety of methods through which cyberbullying may be perpetrated. Burton and Mutongwizo3 draw attention to the following approaches:

I.   Text messages are a kind of communication.

II.   Photographs and video clips (via mobile phone cameras)

III. Phone calls made from a mobile device

IV.   Use of e-mail

V.   Message boards

VI.   Messages sent instantly

VII. Websites and blogs are a good example of this.

VIII. Websites for social networking (such as Facebook, Twitter)

IX.   Playing games on the internet.

Researchers have identified a number of different kinds of cyberbullying, which include the following:

1.2.1 Harassment:

Constantly sending a nasty or threatening message to someone's e-mail account or mobile phone is considered to be harassment. It is often persistent and repetitive, and it is aimed at a particular individual. It has the potential to create alarm, irritation, or significant emotional stress to the recipient. There is a distinction between direct and indirect internet harassment, according to the South African Law Reform Commission. Direct harassment involves electronic communications that are delivered directly to the victim, such as threats, bullying, or intimidation. Among the forms of indirect harassment include circulating rumors about the victim on internet discussion groups, subscribing the victim to undesirable online services, and publishing information about the victim on online dating or sex services[4].

1.2.2 Denigration:

Denigration is the act of spreading nasty talk or rumors about another person in order to harm that person's reputation or relationships with others. Posting or transmitting digitally changed photos of someone to others, especially photographs that depict the victim in a sexualized or damaging manner, is also considered harassment. Impersonation or identity theft are two terms that come to mind. This happens when someone hacks into another person's e-mail or social networking account and pretends to be that person, posting messages or other information or images online in an attempt to harm the victim's reputation and friendships, or to put the victim in danger or difficulty.

1.2.3 Outing:

In outing, someone's secrets, humiliating facts, or pictures are shared online with individuals who were never meant to see the material in the first place. There have also been cases in which deceit has been utilized to mislead someone into disclosing their secrets or humiliating information, which is subsequently shared with others online. Cyber stalking is a kind of harassment that takes place over the internet. Cyber stalking is similar to conventional stalking in that it includes persistent online harassment and threats that are intended to cause damage or intimidation. Happy slapping refers to instances in which individuals approach someone and slap them while another person records the event with a mobile phone camera[5].

1.2.4 Sexting:

It is the transmission of nude or semi-nude pictures or videos as well as sexually suggestive messages via a mobile phone texting or instant messaging service. Sexting is a combination of the words "text" and "sex." Using a different perspective, the participation of children in sexting may be defined as follows: There is a strong focus on the fact that children are sending sexually explicit messages or nude or partly nude pictures of themselves to other minors, and that these images may be classed as child pornography in certain cases. When sexting happens, there are three major situations that may occur:

I. Images that are only sent between two amorous partners are prohibited.

II. Exchanging thoughts and feelings with a love partner that are subsequently shared with people outside of the partnership

III. Exchanges in which at least one party expresses an interest in beginning a romantic relationship.

Many individuals (even youngsters) believe they have the right to privacy and the freedom to express themselves, and think they consequently have the right to capture and transmit nude or semi-nude pictures or videos, as well as sexually suggestive words, to others through mobile phone texting or instant messaging. Furthermore, taking and retaining nude or semi-nude photographs or films of oneself for one's own personal use is not prohibited by law.When sending these kinds of pictures or communications, the sender loses control over

what happens to the photos or messages once they have been sent by pressing the 'send' button on the phone or computer. There is a good chance that these pictures or words will wind up on the internet, where they will remain for all time. Once a photograph or message has been uploaded on the internet, the sender will not be able to recover or remove it. Other people are concerned about the possibility that compromising pictures or films of a kid may get into the hands of a pedophile and will be used for unlawful reasons, such as images to groom other youngsters[6].

The fact that some of these pictures, videos, or texts of children may be considered as child pornography is another unexpected consequence of sexting between children, and it is particularly relevant to minors. Sending or distributing them may, as a result, be considered a violation of state and federal laws banning the ownership, distribution, creation, or production of child pornographic material. This may result in children being tried on very severe charges, with potentially life-altering repercussions, for something that they do not necessarily consider to be bad or unlawful in the first place.

1.3 Cyberbullying Prevention:

With the advent of internet communication, children have been able to broaden the range of methods in which they may do harm to one another. This may be accomplished by sending hurtful or threatening emails and SMS messages to the recipient. Students may circulate stories and create webpages that make fun of someone else's actions on the internet. Everyone who want to engage may do so in chat rooms, blogs, and social networking websites, which are all freely accessible. It is possible for them to include untruths, harmful falsehoods, personal information, and humiliating secrets about a student. With a single click of a mouse, this information may be sent to the whole student body and beyond. It makes no difference whether the material is accurate or not after it has been published. Others may just pick up on it and take it to even more heinous levels of cruelty than they already are[7].

When the victim is not in their immediate vicinity, children seem to become considerably more courageous and ready to write or transmit hurtful comments. Parents should be aware of the people with whom their children are talking and should be acquainted with their children's online and cellular pals, just as we are familiar with their children's classmates, schoolmates, and neighbors. Because of the widespread use of text messaging and other global communication technologies, exposure to cyberbullying has become more frequent, and children are no longer secure even when they are in the company of adults. Many youngsters believe that text messages are solely between the sender and the receiver or recipients, and that they are not shared with anybody else. Make it clear to them that they have become a part of the virtual world and that they may be recovered if needed. It is also possible that communications will be forwarded and shared with others who were not meant to receive them.

We would not allow youngsters to be exposed to alcohol, drugs, weapons and other hazards. We should also discriminate against youngsters and adolescents visiting virtual sites. Parents must safeguard their children and take responsibility for the usage of technology. Some mobile phones enable youngsters to snap photos, write text and access the Internet anywhere and at any time, so that other children may be harassed 24 hours a day and seven days a week. There are people in the virtual world who require assistance for adults as well as the offenders and victims of cyberbullying. The children must realize that they are participants and equally liable for the harm while reading the cyberbullying content. Correspondence via the Internet through e-mail, SMS, posts and instant messages has an informality that enables any typeface to ignore fundamental grammar and orthography[8].

There is a shortcut language to convey communications with only a few words and letters. This fast approach to virtual communication frequently leads to hasty answers, with little thinking on how to understand or use a message. Online abuse and harassment may influence

the capacity of a kid to focus in school, its participation in extracurricular activities, self-esteem and even its willingness to go to school. Schools must educate students and parents to safeguard the learning environment via cyber-bullying. This implies that everyone understands the nature of cyber bullying and how limitless access is.

2. DISCUSSION

The virtual world offers both network generating possibilities and dangers. There are many variables that affect these risks and possibilities. Educators and parents should recognize technological preferences over face-to-face interactions and assist to educate youngsters through safe online habits. Increased media attention to cyberbullying and online computation highlights the worry of many young people in the real and online worlds. Our children can avoid cyber bullying and safeguard their online reputation in the form of rules and risk training on technology and online activities. Sexing and text are part of the online habits for most youngsters, in which children spend more and more time. Cyber bullying affects our children and young people's general well-being and little study examines online actions of children of primary age, which provide insights into their views of the virtual world. The following five main areas for children's cyber interactions need to be understood: the use of technology in kids and youngsters; prevalence and effect of cyber bullying; sexing; text-based and online reputation; social and emotional aspects of bullying and cyber bullying prevention.

Research over the past decade has shown that cyber bullying has grown and become a major problem among our young people. Mobile phones and internet communication do not enable parties to interpret visual cues. Children cannot realize the effect of their communication, if not impossible. This anonymity may lead to severe attack. Internet harassment is both the harasser and the victim's health. They are psychologically stressful like other kinds of bullying. The problems of cyber bullying involving victims, offenders and spectators are addressed by educators, parents and law enforcement authorities. Before we address this issue, we need to understand our children's online conduct and grasp their views about cyber bullying and online activity in general. Cyber bullying students suffer sadness, worry, trouble focusing and frequently desire a school to skip. Researchers indicate the more probable participation of pupils who perform cyber bullying in hazardous behaviour. Students receiving these messages and seeing online cyber bullying feel frightened and concerned about exposure. Researchers highlighted that good parenting actions prevent teenagers, including cyber bullying, from both bullying and bullying[9].

According to a national study by the National Campaign to Prevent Teen and Unplanned Pregnancy, one in five adolescents engages in "sexing." The United States Pediatric Academy (AAP) advises that parents speak to children about sex when a kid is old enough to use a mobile phone. AAP recommends informing children about the problem with an appropriate age explanation, even if they have not been personally affected. This may be an explanation for very young children why text messages should never include images of kids or adults without clothing, kissing, or touching one other. Explain that "sexing" frequently includes images of a sexual nature and is regarded as pornography for older kids and adolescents. Parents, schools and everyone caring for children and young people need to grasp how cellular and other media apps may be prevented and abused. This involves encouraging good internet behaviour. Researchers describe interpersonal Internet victimization as a report of unwanted sexual intercourse or Internet harassment. Sexual requests, sexual conversations or invitations to disclose personal sexual details are all components of the unwelcome sexual interrogation or harassment category. The ownership and production of child pornography is against to the law. Youth need to realize it's not only unethical, it may be criminal, if they engage in text[10].

3. CONCLUSION

It is obvious that some acts of cyber-bullying and sexual intercourse may come within the scope of either civil or criminal law reactions in South Africa. The present legislation does not, however, cover all forms of online bullying. Two remedies (interdict and demand for damages) of the civil law need a request from the High Court and this generally means that a legal representation to be appointed by the victim, which may be extremely expensive. Consequently, these treatments may not be feasible answers for all cyber bullying victims. The connection between sexual activity and cyber bullying is clear. In cases when, for example, pictures that are freely shared to love partners serve to revenge a broken relationship, the link becomes apparent. In Florida, USA, an 18-year-old high school student who just broke up with his 16-year-old girlfriend emailed her nude photos, which she initially had given to him alone.

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