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Cyberbullying – A Critical Analysis of Laws, Criminal Responsibility and Jurisdiction

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Abstract: It is vital to look upon the data of Cyber Bullying cases and the age for which the accused is held responsible. Statistics reveals that criminal minded people who are on the borderline of the 'age' who could be charged under IPC for some blunt crimes are being treated liberally. Cyberbullying, also known as Internet bullying, is a form of criminal activity that falls under the broadcategory of cybercrime. Since there are different types of cyberbullying and abuse, it's crucial to know what counts as "cyberbullying." If we look at the dictionary meaning of a bully, we can see that it is described as "seek to hurt, threaten, or coerce - someone perceived as vulnerable". Bullying is described as any individual or group of individuals who seeks to injure, coerce, intimidate, or threaten another.Such actions or action are most commonly seen on social media sites as well as in chat boxes and gaming websites. Cyberbullying occurs when an individual or group of people bullies or harasses another person using digital technology on the internet or in another digital sphere. This can include things like posting private photographs and videos without permission, creating fake accounts and spamming groups or individuals online, body shaming, making memes and videos of people, often celebrities, making mess ups or slips, and so on. According to a 2016 UNICEF survey, one in every three internet users worldwide is a child, while the latest 'India Internet Report 2019' indicates that two out of every 3internet users in India are between the ages of 12 and 29. As a result of their psychological nature, this community of internet users is often targeted by online bullies. The number of incidents of cyberbullying and abuse has increased as a result. Indian women and teenagers became the victim of Cyberbullying and cases increased by 36% in just one year.

Keywords: Cyberbullying

INTRODUCTION

Cyber-bullying can take many forms. The severity and nature of these cyber crimes too vary. Cyberbullies are more likely to engage in repetitive actions with the aim of humiliating, frightening, angering, or shaming their victims. Some examples are as below.

- Spread of wrong information about others or sharing vulgar or defaming images of them on social media.
- Threatening others to commit a violent act.
- Following others and sending them inappropriate messages.
- Taking on someone's identity and sending hurtful messages on their behalf.
- Hacking into personal accounts on a regular basis.
- Flaming, which is when someone is attacked with obscene or insensitive language.
- Harassing others by sending them threatening, hurtful, or inappropriate messages.
- Sharing someone's private messages or photographs, or threatening/blackmailing them into doing so.
- Pornography involving minors or threats of pornography involving minors, and so on.

It's also likely that a person will engage in online practises that he or she believes are harmless butactually constitute cyberbullying or cyber harassment.Trolling or spreading memes, for example, can appear innocuous on the surface or be done as friendly banter, but they can have a negative psychological impact on the 'victim.'Such cyberbullying is normal to such an extent that we don't think twice about engaging in such conduct. Before forwarding, sharing, or commenting on such blogs, photos, or notifications, one should exercise extreme caution and caution. A 2020 survey of kids between the age of 13-18 reported that over 22 percent of surveyed kids who surfed the internet for over 3 hours everyday were prone to cyberbullying. This figure was 28 percent among kids who surfed for ovre 4 hours everday. By a new analysis by the non-governmental body Child Rights and You, 9.2 percent of 630 teenagers sampled in the Delhi-National Capital Area hadfaced online

harassment, with a majority of them declining to report it to teachers, family, or the social networking firms responsible to minimize such incidents.

Harassment carried out utilising automated devices such as computers, tablets, smartphone, and laptops is referred to as cyberbullying. It happens on all major and minor social media and interactive platforms on the internet. According to NCRB statistics, incidents of online harassment or stalking of female users and kids have rose by 36percent between 2017 to 2018. As per the poll, about one in four adolescents has seen a manipulated video or photo of themselves, although several of these cases going unreported.In the meantime, the prosecution rate for such online bullying and harassment declined by 15 percentage points during the same period. Consequently, case pendency too increased by a percentage point to 96 percent, according the findings.

However, over the same period of time, the amount of reported instances of threatening/blackmail diminished by 28.3%, from 311 to 223 cases, which analysts refer to underreporting. According to NCRB estimates, the number of cybercrime cases increased by 25% between 2017 and 2018. The Indian Penal Code 1860 (IPC), on the other hand, neither specifies nor punishes cyberbullying; instead, certain ill-advised clauses of the Indian Penal Code and the Information Technology Act 2000 (hereinafter referred to as the "IT Act") are used to comply with such scenarios.

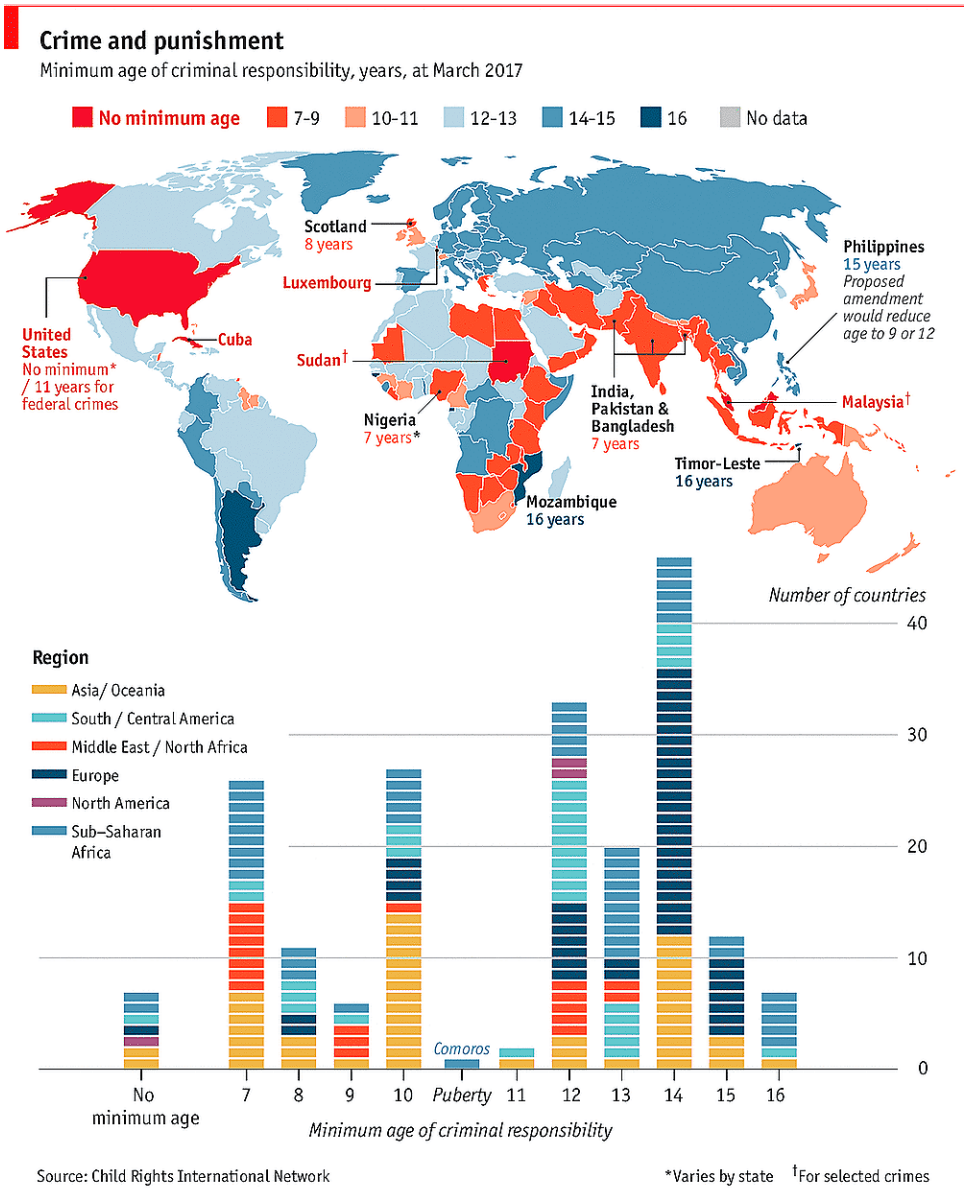

Fig.1: Overview of cybercrume in India (Image Credit: The Economist)

1. Background and Literature Review

2.1 Anti-cyberbullying legislation.

IPC neither describes nor punishes bullying as a crime. So many provisions of the IPC as well as the IT Act have to be employed instead to deal with cases of cyberbullying. Since women are often at the receiving end of cyber crime, National Commission for Womendefines cyberstalking as:

"Stalkers are strengthened by the anonymity the internet offers. He may be on the other side of the earth, or a next door neighbour or a near relative! It involves following a person's movements, across the Internet by posting messages (sometimes threatening) on the bulleting boards frequented by the victim, entering the chat-rooms frequented by the victim, constantly bombarding the victim with emails, etc. In general, the stalker intends to cause emotional distress and has no legitimate purpose to his communications."

Cyber stalking is an next level of the common physical stalking that takes place on the internet platform, via e-mail or other e-communication technology, which may include slander, defamation, and intimidation.Cyber stalking entails, among other things, sending abusive, obscene, or threatening texts; online identity theft and dissemination of wrong information with the willingness to humiliate or threaten another person; using unlawful means to track a person's location; uploading lewd pictures, and; making offensive comments online with the purpose to abuse.

Cyberstalking against women are punishable under IPC sections 354A and 354D. The latter section was added with a 2013 amendment to the Criminal Law (the Amended) Act 2013 and resulted in cyberstalking of women getting recognition in Indian criminal law.

Section 354D explains stalking of women as "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 women; or

(ii) monitors the use by a woman of the internet, email or any other frm 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;

(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."

Section 354D further states that such act are an act of offence and thus punishable, for first time offenders, with a jail time of upto three years and/or fine on first conviction, and imprisonment of up to five years and/or fine on second time conviction. The wordings of Section 354D makes it crystal clear that the section punishes all offline as well as online stalking, even though the term "cyber" is absent. The section also leaves enough room to protect someone becoming convicted as a false accused/criminal. Furthermore, the section punishes repeat offender harshly.

Talking about the case of State of West Bengal v. Animesh Boxi, the accused hacked into the victim's mobile phone and stole some private and obscene images, teased or threatened to upload those personal pictures and mmson the net, and then uploaded her private and intimate photos and video posts to apornographic website or portal.The accused was proved guilty as per sections 354A, 354D, 354C,509 of the IPC. He was also held guilty under certain sections like 66C and 66E of the IT Act by the district court. The district court also explained that the victim had not been only stalked on online platform, but also been sufferer of "virtual rape" every time when any user of the publicly reachable website watched that video content. It is important to know that, the court stated that one of the crucial factors in convicting the accussed was deterrence, and that an insufficient punishment would lead to more harm than something good by undermining public trust in the seriousness of the matter.

2.2 Sexual Harassment in the Online World

In India, sexual assault was commonly referred to as "eve-teasing," a term that minimised the seriousness of the criminal activity. Although, the combined genuine tries by Indian courts, legislator of the country,women's activists, the Law Commission of India, NGOs, and have resulted in a significant shift that shows how women are treated when they are sexually harassed. The famous Prevention of Sexual Harassment of Women at Workplace or the POSH Act (also famously known as the Vishakha GuidelineS) has sent a strong indication about the nontoleration of sexual abuse of women at work by the Indian judiciary and legislation. In addition, a host of landmark revisions to the Code of Criminal Procedures, Indian Penal Code, and the Indian Evidence Act of 1872 have made it easier to prosecute offenders of sexual assault crimes.

Sexual assault is now a criminal offense under Section 354A of the IPC with effect from 3 February 2013. Attempting to make any kind of coerced physical touch, making sexual gestures, exhibiting vulgar remarks, etc.

constitute criminal offence under sections 354A and 354D and the accused can be sentenced to upto 3 yrs of jail and/or a fine.

Any use of e- tool to regularly make phone calls, send vulgar of obscene SMSs, mails, or have vulgar conversations, or pressuring a woman to do friendship or indulge in sexual relations are all examples of online sexual harassment. Section 354A of the IPC, on the other hand, involves physical advances, so any sort of harassment by an e-medium would be beyond the scope of Section 354A of the country's IPC. If there are sexual overtones of cyber stalking, it may be considered online sexual harassment.

It is relatively easy or simple task to build a social media account taking on somebody else's face and identity. Such acts are committed to bully the victim whose identity is taken. There were incidents in which a vulgar or sexual photograph of the victim was attached to a fake Facebook page, adding emotional trauma to the victim. When creating a fictitious or false social media profile, the obscene / indecent image of the victim is shown in that specific profile, IPC Section 354D, Sections 354A, , Section 499 read along with Section 500, Section 507, and Section 509 are applied on the accused.

We also need to look upon the exemplary case of Sazzadur Rahman v. The State of Assam and Ors., the defendant built a false account on Facebook for the victim, who mererely 15 years old. The accused listed the victim's name in the fake profile, uploaded lewd images, and made derogatory remarks about her, causing her to become mentally ill and hindering her academic progress. The accused's was held under Section 311 of the India'sCriminal- Procedure Code was denied by the trial court. Following that, a petition in the court was filed with the High Court (Guwahati) under section 482 along with sections 401 as well as section 397 of the Indian CRPC to have the trial court's order quashed. Although rejecting the appeal, the honourable court held that the trial court's discretion, which had been performed judiciously as per the basis of available and relevant documents, could not be overturned either in provisional jurisdiction of the system or under the Section 482 of CRPC.

TheShubham Bansal v. The State (Govt of NCT Delhi) case is vital to this discussion. The accused had formed a false or wrongsocial media profile of the victim and had shared the victim's phone contact and pictures. This caused the victim a great deal of trouble, harassment, and of course, annoyance and insult following which she filed an FIR against the accused. The victim then filed a secondFIR under Section 173 of the CRPC, requesting the investigating officer should conduct the further inquiry, and the case was remanded to the city magistrate for further investigation. Following that, the accused filed an application to have the trial against him to removedas per Section 66A of the Information Technology Act of India and Section 509 of the Indian Penal Code. Although the benchdid not attend to the appeal, it requested a delay in submitting the report until the magistrate ordered guidelines on the pending application. The court noted that the investigating officer's alternative course of action was to refile a report basing tht upon the findings completed up to that point, while reserving the supplementary applications on request of the victim's pending application for further consideration under section 173 of CrPC.

Now discussing upon the case of Mr. Jitender Singh Grewal v. The State of West Bengal, the defendant built a fake account on Facebook on the name of the victim and used it to post obscene images of her. The accused filed a bail application after the authorities charged him under Sections 500/509/507/354A/354D/of the IPC and Section 67A of the Indian IT Act. The trial court dismissed the application of bail of the accused in the case and the honourable high court upheld the decision of the trial court.

In yet another case, the accused had formed a fake social media profile pretending to be the victim and sharing her personal pictures and exchaing inappropriate texts with other profiles on the platform. The accussed was consequently punished under sections 66C, 67, and 67A of the IT Act. The Madhya Pradesh High Court also rejected the accused's application for bail.

In Hareesh v. State of Kerala case,it involved the applicant creating a fake profile on Facebook, posting editedvulgar images of the victim on the internet, and posting her mobile phone number under that post, to enable internet users to call her. Following that, the claimant anticipating arrest filed an anticipatory bail application for activities punishable under Section 354(D) of the IPC and Sections 67 &67E of the Indian IT Act. The plea for anticipatory bail was rejected by the Kerala High Court as per the points that the materials on record confirmed the applicant's involvement in the crimes and it may be inappropriate for the court to intervene with the proceedings.

2.3 Bullying in Educational Institutes

In India, there are anti-bullying or cyberbullying laws that apply to bullying in schools as well as colleges.There is no any separate law in India to deal with cases of bullying at school, but there is an urgent need to stop bullying. Bullying in educational institutions is very common in India. To combat bullying in educational institutes, the Human Resources Development Ministry has established anti-ragging councils or committees in the schools to discipline students who engage in anti-bullying activities. In the rarest of cases, the penalty may include the student's rustication.Anti-ragging committees have also been formed by the UGC in UGC-

accredited colleges and universities. The UGC also stated that colleges or universities are required to follow anti-ragging regulations/rules, and that if they fail to do so, the UGC may revoke their recognition. The "UGC Regulations on Curbing the Menace of Ragging in Higher Education Institutions, 2009" is enforced to combat bullying at the higher education. Under the terms of the CrPC, a college student who engages in cyberbullying may be held criminally liable. However, neither the Indian Penal Code nor the Code of Criminal Procedure contain any provisions that apply to school students who are bullied at school.The question now is, why are the school students excluded from anti-bullying as well as cyberbullying provisions and laws? The explanation for this is that school students are considered juveniles, and according to the Criminal Justice Act, juveniles in India are treated differently and aren'tsubjected to strict laws. Work with good cyber crime lawyers to have a better understanding of the nature of bullying and how to avoid it.

2.4 Theory of Criminal Responsibility

The actus reus (guilty act) and mens rea (reasonableness) tests are used in common law to determine criminal liability (guilty mind). This means that a single illegal act isn't enough to bring you to justice. The prosecutor must show that the person who committed the offence was mentally capable of understanding that what he or she was doing was illegal.

Fig.2: Minimum age of criminal responsibility around the world (Image credit: The Economist)

While there is no universally accepted age at which a child should be considered mature enough to understand the consequences of their actions, most countries have a minimum age of criminal responsibility below which it is assumed that a child is not capable of committing a crime and thus can't be punished.Will individuals above the age of the criminal responsbility be put to trial as adults? What is the concept of a criminal majority?Several jurisdications have a far higher criminal responsibility age, usually at 18, than the United States where there is none or India where the same is 7 years. If a minor below this age commits a crime, the coutry's juvenile justice system ensures that the child is put to trial as a child and not as an adult.

The Juvenile Justice(ie provisions related to care and Protection of Children) Act 2015 in India repealed the Juvenile Justice Act ofan 2000 that took a reformist approach to juveniles under the age of 18. The new law requires children between the ages of 16 and 18 to be prosecuted as adults for serious crimes. Most states in the United States allow minors who have committed heinous offences to be charged as adults. Lionel Tate was convicted of killing a 6-yrs-old female child and was sentenced to life in prison without the any chance of parole in 2001. Tate was just 12 years old when he committed the crime, making him the youngest person in the US to receive such a harsh sentence.Nothing committed by a child under the age of 7 years is considered a crime under the Indian Penal Code. If it is determined that the child lacks the capacity to comprehend the meaning and repercussions of his actions, the level of criminal liability is increased to 12 years.

2.4.1 Juvenile Law

A youth who is delinquent is not eligible for incarceration. If a delinquent juvenile over the age of 14 commits a serious crime and it is determined that sending him to a special home is not in his or other juveniles' best interests, the juvenile court which order that the delinquent juvenile be held in safe custody in whatever location and manner it deems appropriate. The Act expressly prohibits detention in police stations or jails. The term "child" has been used in several laws as a term denoting a relationship, a term indicating capacity, and a term denoting special security. Different ideas of the child are at the root of these requirements. Viewing children as a liability entails rights to maintenance and support; viewing children as temporarily disabled entails rights to

special treatment; treating children as particularly vulnerable entails protection; and seeing children as resources for the country's development necessitates their nurturing and advancement.

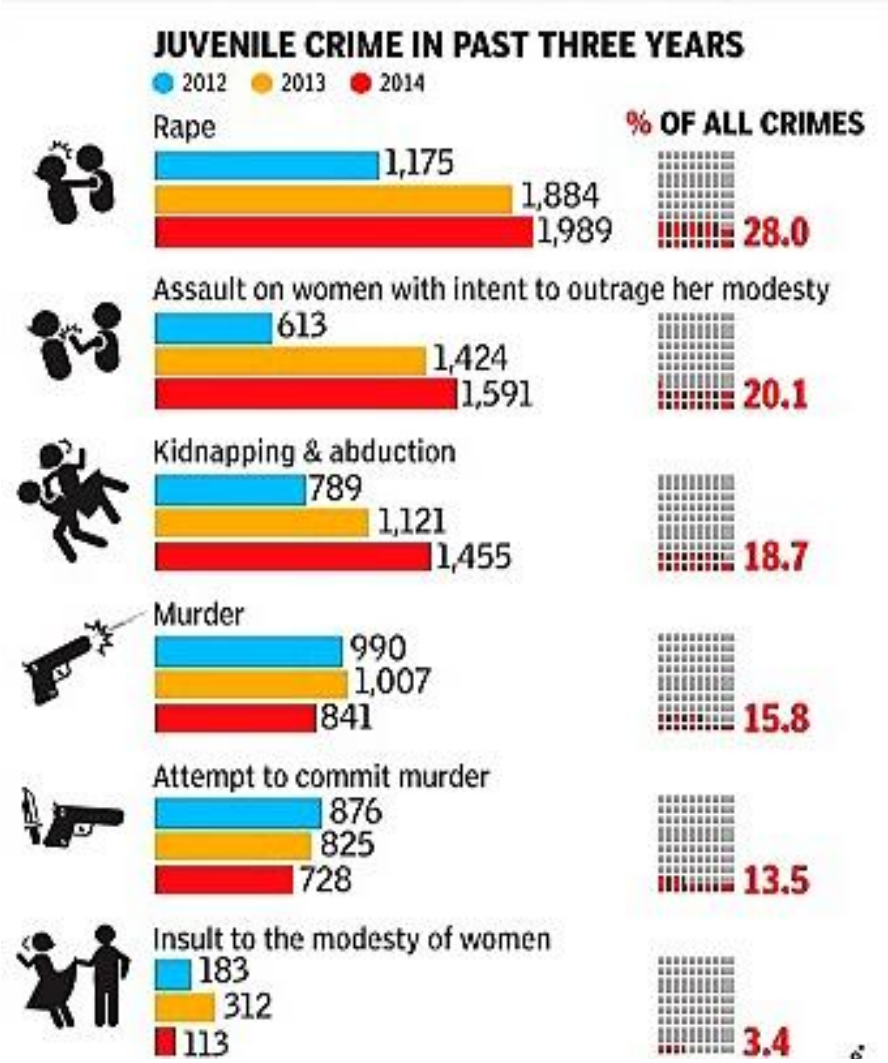

Fig. 3:Data on juvenile crimes in India (Image Credit: The Economist)

Is there a need for a re-evaluation of the concept of? Such questions has been related to the Law Commission - India for consideration in the context of a thorough study of the Code of Criminal Procedure and the IPC, in accordance with Art.1 of the Convention on the "Rights of the Child." The Commission has already revised the CrPC and IPC, and the Indian Evidence Act are likely to be reviewed in the near future.Differential age-specifics are invoked by legal enactments, posing the question of whether the same human being is or is not a child, depending on the statute that is being invoked in a particular case. Given that the birth of a child is sometimes not recorded and sometimes incorrectly recorded, the laws' reliability cannot be controlled in terms of age wholely. The discrepancy between the age-identified child and the relevant laws in terms of maturity levels and the child's capacity to express needs, however, necessitates congruent reasoning in legislation, law statements, and their implementation.

The Convention on the Rights of the Child's concept of a child is likely to have ramifications for programme preparation and budgetary requirements.As a result, the Indian government is reviewing its laws and considering adopting the concept of a child set forth in Article 1 of the Convention, wherever feasible and applicable, to ensure that children's rights are secured in society in all circumstances. The Supreme Court has asked Parliament to "rethink" how to distinguish between juveniles who commit minor offences and those who commit serious crimes, putting pressure on the Centre to rethink the law that gives juveniles light punishment even when they commit serious crimes. A bench of Justices Dipak Misra and Prafulla C Pant said, "the time has come to think of an appropriate law to deal with the situation." The court was responding to a case in which a 17-year-old boy, who was a member of a gang that murdered nine people, was seeking a lenient trial and punishment under the Juvenile Justice Act.

CONCLUSION

Thee involvement of a juvenile accused in thefamous Nirbhaya gang rape case, which shook the whole country in the December of 2012, criminal activity by children under 18 years has remained a burning topic of debate. The Gang rape case in 2012 compelled the entire judiciary to rethink upon the laws related to juvenile crimes. According to the NCRB's new "Crime in India" report for 2018, total 31,591 crimes committed by juveniles were filled in 2018. Maharashtra was responsible for approx 19% of these incidents.

A child's decision to commit these offenses can be influenced by a variety of factors.Parents or guardians, teachers, culture, and the media all play an important role in shaping a child in adults, and it is critical that children receive good care and attention as they develop. Peer pressure, mindset, substance addiction, or even personal exposureto the internet or TV, in addition to socioeconomic factors, may all contribute to this behaviour pattern.

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