**Legal Aid & Support Centre**

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**Comments On The Draft General Comment On Children’s Rights In Relation To The Digital Environment**

The **Legal Aid & Support Centre (Legal Aid Committee)**[[1]](#footnote-1) appreciates the **Draft General Comment on Children’s Rights in Relation to the Digital Environment**. The Committee acknowledges the document is thorough and has covered all relevant and important points. However, there are certain points where we would like to add our observation, comments and suggestions.

The comments are enlisted below:

1. **Paragraph 33** includes the recommendation of minimizing risks as well as to recognize a child victim of online harm and respond appropriately. While stating it, important provisions like “display of helplines”, “make a complaint” (for specific instances of bullying or any offensive content experienced at the moment), or other such methods where help is easily “accessible” at the instance when it is required — must be mentioned. Explicit mention of such accessible examples will help clarify the extent the States’ have to ensure the provision of help available and accessible to the children in the digital environment.
2. **Paragraph 36** emphasizes the States’ obligations ensuring the business sector’s responsibilities. It should be mentioned that the business sector has to understand their responsibility and cannot evade the same while violating a child’s respect and data. The functioning of the business sector and various aspects like “business promotions” should ensure strict regulations and any content harming children must not be circulated without any “warning” or “authenticity verification”.

Separate and special emphasis on this sector is focused on with the intention of not letting the sector evade responsibility by acting as an ‘intermediary’. The onus of responsibility lies with each step of the content distributor/dispenser and that can be clarified while mentioning the same explicitly in the provision of the Draft Comment. Any content with any inclusion of child exploitation, of child harm, in any percentage, will create a liability on the business which is dealing with the same. Fortifying measures around the business sector can ensure a diminution of loopholes in cases of international, cross-border businesses and help add on the responsibility in the form of international obligations.

1. **Paragraph 45** states about the effective remedial judicial and non-judicial mechanisms for the violations of children’s rights. Another addition can be that the mechanisms established to provide justice to those children who have been wronged need to be solved in a specific time period to ensure faith in the justice system and the seriousness of such mechanisms. A time-bound mechanism will help the children involved to move on from the situation as soon as possible.
2. **Paragraph 55** - Digital Platforms and social media websites and apps should have a mandatory feature of providing Trigger Warnings and mark such offensive content with a “Trigger Warning (TW) sticker” or text to ensure that mentally vulnerable children can safeguard their mental well-being.

In a world where minors are becoming increasingly involved in the global political landscape, it becomes imperative to shield them from false political propaganda. It is proposed that the term ‘propaganda’ be also included to create overarching protection.

Agreed that Article 13 of the Convention on the Rights of the Child gives the child the freedom of expression, it also lays down certain restrictions that are provided by the law and are necessary. The Draft General Comment adequately recognizes the risk that children are exposed to while expressing their political views on the internet. Be it criticism, hostility, threats, and the like, States need to ensure that they take adequate steps to protect children from such harassment.

1. **Paragraph 73** states about data that is stored with the public authorities or private individuals or bodies and its storage policy. But it lacks the provision wherein a period is specified till when the data can be stored and processed.

Additionally, the provision should also provide that, as when the required purpose for which the data was sought or lawfully used, it should be disposed of in adherence to the laws and regulations concerning them. As paragraph 74 also mentions, clearly defined periods of retention, therefore there should be a proper provision for routine destruction of superfluous and outdated data as in many cases there has been damage due to data being kept for too long and taken out of context. The Provision should have timelines for categories of data held by the authority for addressing its retention and deletion. And, also children whose consent was taken, should have the right of erasure after becoming an adult.

1. **Paragraph 76** focuses on the issue of digital surveillance and constant scrutiny of children. Special focus regarding aspects of unconventional technological developments must also be discussed and highlighted. [Clothing tags](https://www.informationweek.com/apparel-maker-tags-rfid-for-kids-sleepwear/d/d-id/1034320), toy tags, and other such developments may have noble intentions for the children in consideration, however constant surveillance (especially with the possibility of lack of consent) will amount to a violation of privacy and rights of the child. Children, may or may not be aware while wearing these clothes, or playing with such toys. In situations of lack of knowledge and awareness, the scope for violation/exploitation does exist. Certain balanced measures regarding these must be looked into.
2. **Paragraph 79** states, “…exempt from any requirement for a child user to obtain parental consent to access such (preventive or counseling) services”. A total ‘exempt’ may be problematic — often people in a position of power and authority over children also turn out to be predators/non-understanding, etc. Also, not every child would be capable of comprehending the nature of such services; so, having exemption from parental consent might turn the other way round and become a problem for the child.

It is thus suggested that the provision should entail a case-based analysis of the situation and then allow ‘exemption’ or involvement of consent — and not an overall blanket of ‘exempt’ in such sensitive cases.

1. **Paragraph 81** mentions providing assistance and protection to re-establish a child’s identity, where the child is illegally deprived of some or all of the elements of his or her identity. The scope of the same can be looked into for expansion – considering children produced through assisted reproductive technologies (ART), and some countries (for example the U.K, Australia) having mechanisms in place for providing information related to their identity via [dispensing information](https://www.hfea.gov.uk/donation/donors/#:~:text=Get%20information%20about%20the%20outcome,may%20be%20able%20to%20help.) about their donor parents. This is also an essential factor that needs to be included since ‘preserving’ identity and related provisions are discussed, but providing the non-existent/ non-prevalent factors of identity are not – and can be looked into.
2. **Part IX –** It is suggested that in general the template of the online mode and platforms should entail the suggestion of options of ‘personalized learning’ being enabled for children with different disabilities. (‘Personalized’ should incorporate the ambit of type of disability, literacy level, accessibility, language/dialect, other factors which should be aligned with the provisions of paragraph 98 and 99.)
3. **Paragraph 102** is an essential, and again, a very sensitive provision. Clear mention of maintenance of data privacy of such queries/questions raised can instill further confidence. The same is suggested to be included in paragraph 102.
4. As per **paragraph 125-126**, a digital environment can empower children and others with valuable information about situations during armed conflicts, seeking asylum, and natural disasters which may be the difference between life and death. While Part XII of the Draft General Comment deals with the same, there is also the flip side of the situation required to be taken into consideration.

Issues like commercial (or non-commercial) exploitation of vulnerable children from such environment – photography, videography, drone surveillance, or other such modes for activities like documentary-making etc.; especially when non-consensual (issue of lack of ‘informed’ consent) is a grave violation of child rights. The same must also be included in Part XII of the Draft General Comment for the reasons stated.

1. **In general, Part VI** should also include the growing issues of cyberstalking and mention certain ways and established mechanisms to deal with it. Children are the easiest and most common victims of cyberstalking. They usually keep their social media profiles public or have lesser privacy control over their information on such websites/ apps, since they are unaware of the repercussions about the same.

The alternate position of the parents/ legal guardians is also needed to be considered wherein their child is the bully or the stalker online. Such children must not be dealt in a direct manner since minds of children are very fragile in nature instead, the child needs to be counselled by trained psychologists who are experienced and knowledgeable enough to handle such sensitive situations.

Unreported issues make up for the most crimes. A compulsion provision must be made so that such crimes do not go unreported.

The Committee appreciates the opportunity to be able to contribute for the Draft General Comment on Children’s Rights in Relation to the Digital Environment. We would be honoured to be able to contribute and assist in any subsequent tasks, through any other means, if and when required.

1. The Legal Aid & Support Centre (Legal Aid Committee) of Kirit P. Mehta School of Law, NMIMS University, Mumbai, India. [↑](#footnote-ref-1)