

Unveiling the Shadows: Exploring Online Sexual Grooming in Malaysia

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Abstract

Nowadays, the Internet benefits people in our world, as everyone has access to it. However, the internet still poses a number of risks, particularly to children. Among the dangers of the internet towards children is online sexual grooming. Due to that reason, it is important to safeguard the children from sexual online predators through the laws and enforcement. Therefore, the purpose of this paper is to assess the adequacy of current laws and enforcement in dealing with online sexual grooming on children in Malaysia, particularly on enforcement and implementation by authorities. This is a qualitative research project that draws on primary sources such as federal legislations like the Child Act of 2001, Sexual Offences against Children Act 2017, and the Penal Code. Simultaneously, secondary sources such as published articles, official news, government statistics, international publications, and other reputable results were analysed in order to arrive at a precise and dependable conclusion. According to the findings, laws in Malaysia are designed to ensure the safety of children, as the government demonstrates a strong commitment in addressing this matter, while enforcement still has to be improved to a certain extent. This study finds that the existing legislations in Malaysia are adequate in dealing with online sexual grooming of children but the enforcement of the law requires more attention besides of the parental control on children's internet activity. Therefore, further studies should be done to examine the role played by the Royal Malaysia Police (PDRM), particularly the Malaysia Internet Crime against Children Investigation Unit (MICAC), the Malaysian Communications and Multimedia Commission (MCMC) and other agencies from various sectors to curb and tackle this issue in relation to the prevention, investigation, and prosecution of online sexual offences.

Keywords: Children, Sexual cybercrimes, Sexual grooming, Sexual Offences against Children Act 2017

Introduction

Online sexual grooming is a global issue. The phenomenon commonly referred to as online sexual grooming, alternatively known as online child exploitation or online child grooming, pertains to the purposeful and frequently concealed behaviours exhibited by adults in order to establish connections with children and adolescents in virtual environments, with the explicit aim of engaging in sexual exploitation. The present matter, which is of great significance, has garnered international recognition as a result of the extensive utilisation of the internet and various social media platforms. The internet is an ever-growing threat to society. Although we benefit a lot from it, we cannot deny that the internet still poses a plethora of dangers. When it comes to children, the dangers are significantly amplified where children are more likely to be victims of cybercrimes (The Star, 2022). In this day and age, it becomes more difficult to control and monitor what children do on the internet because, not only that the dangers are many, but also because children themselves are easier to be influenced by online criminals (Livingstone, 2013). When left unmonitored, children are exposed to the infinite risks harboured by the internet. Online sexual grooming being one of them. Online sexual grooming is a crime whose victims are primarily young children where the victim would be groomed or prepared for future sexual abuse by the offender. Left unchecked, this crime could potentially leave the children of Malaysia, mentally, emotionally and physically traumatised, at the same time, impede the growth of our nation. Thus, the objective of this research is to review the effectiveness of current laws and government policy in dealing with online sexual grooming on children in Malaysia and to deduce said laws/policies are enforced properly by the authorities.

With the development and enhancement of sexual offences laws in Malaysia since the past two decades, it is evident that Malaysia is taking the issue of sexual offences against children more seriously. Federal statutes like the Child Act 2001, Sexual Offences against Children Act 2007 (SOCA) and the Penal Code all contain provisions addressing sexual offences against children. In addition, existing international standards like the United Nations Convention of Child's Rights (CRC) also ensures the rights of a child is protected within the international community. However, it must be emphasised that both local and international laws vary in inclusivity, practicality and efficiency. Therefore, this paper will also address recommendations and suggestions to ensure the law is inclusive and extensive as well as enforced appropriately.

Methodology

This study was conducted purely on a doctrinal basis where the objective is to ascertain, review, analyse and finally discuss the relevance and suitability of current online sexual grooming laws in Malaysia. The research has basic aims where knowledge, theories and predictions are developed in an explanatory manner where existing research is used to further develop the cause of the research. It is qualitative and descriptive in nature. Meaning the research focuses more on words and its meanings instead of numbers and formula where there are no variables to be controlled. This writing relies on primary sources such as federal legislations like the Child Act 2001, SOCA 2017 and the Penal Code. At the same time, secondary sources like published articles, news, government statistics, international

publications and other reliable findings were systematically dissected to come to a precise and dependable deduction.

Findings and discussion

Overview of the current online sexual grooming situation in malaysia

Statistics and data

Online sexual grooming is the process where an adult launches or develops a relationship with a child, for sexual motives through the internet or other related online methods (International Centre for Missing & Exploited Children, 2017). This is divided into 3 phases, generally summarised as communication, grooming, and culminating in meeting in person. Malaysia has an approximate population of 32.9 million and almost 9.13 million of the population are children. That is almost 30% of the entire population (Department of Statistics of Malaysia, 2022) (Department of Statistics Malaysia, 2021). Following that, according to the Internet Users Survey conducted in 2017 by the Malaysian Communication and Multimedia Commission (MCMC), 83.2% of internet users were children within the age of 5 to 17 years old. An alarming 93% of the children have access to the internet from smart phones. Among the popular activities were messaging, social networking, gathering information and watching videos (Malaysian Communications and Multimedia Commission, 2017).

Malaysia is definitely a hotspot for online sexual grooming offenders since a big portion of children in Malaysia, own their own gadgets. This provides a larger pool of victims for the online predators to select from. In addition, there has been a recent trend among these online sexual grooming offenders whereby child pornography websites are increasing every day with thousands of new contents released every other week. The current trend shows a despicable interest for contents relating to babbies and toddlers (Simantiri, 2017). The increase of interest towards child pornography will lead to an increase of online sexual grooming crimes as when there is a market to distribute and consume child pornography, surely the act of collecting and making new content will increase (Kirama Nasim Manbi Ushama, 2020).

Another example is the obscenities committed by a British citizen against children in Malaysia in 2016 that caused public indignation. The British national was arrested by the Malaysian Police for posing as a photographer, English teacher, and philanthropist to acquire access to children from underprivileged communities. Based on the official report, he had abused about 200 children whereby police found more than 20,000 child pornographic content in his personal computer. He was charged with 71 charges of sexual abuse against children between the age of 12 years old to as young as 6 months. He was convicted by the British court where he was sentenced to 22 years of imprisonment for his crimes (McVeigh, 2016).

Based on the foregoing discussions, surveys, statistics and reported incidents, it is safe to say that online sexual grooming is definitely an extremely pressing and relevant issue to be discussed. Factors like internet accessibility and how, many children use the internet without proper supervision becomes an open window for online predators to prey on these innocent children. With that been said, government efforts, including existing laws and policies must be analysed to determine whether the online sexual exploitation of these children are prevented and handled efficiently.

Legal Position of Online Sexual Grooming in Malaysia

In recent years, Malaysia has taken significant steps in combating sexual crimes committed against children. The Malaysian government has taken legislative efforts, enforcement enhancement and also social steps attempting to impede the increase of sexual crimes within Malaysia. Malaysian laws specifically and extensively address online sexual grooming as a criminal offence. The adoption of the Sexual Offences against Children Act 2017 and the development of definite police divisions/units to handle sexual crimes against children, show just how far the Malaysian government have gone in recent years to solve the issue of increasing sexual abuse cases (Noor Dzuhaidah Osman, 2021).

Sexual Offences against Children Act 2017

In 2017, Malaysia witnessed a pivotal moment with the enactment of the Sexual Offences against Children Act 2017, a law dedicated solely to addressing sexual offences involving children. This legislation meticulously defines the range of sexual offences against children and their corresponding penalties (Kirama Nasim Manbi Ushama, 2020). Part III of this Act focuses on the crucial issue of child grooming, spanning three sections. Section 11 stipulates that engaging in sexual communication with a child is an offence carrying a maximum prison sentence of three years. This includes both verbal exchanges and online interactions perceived as sexual. Child grooming, characterised by befriending minors with the intention of sexual exploitation, is elaborated in Section 12. Offenders may face a prison term of up to 5 years and whipping, regardless of whether the actual abuse transpired. Moreover, if grooming escalates to physical meetings, the perpetrator could be imprisoned for up to 10 years and subjected to whipping, irrespective of realised intent. The Act's all-encompassing nature is evident in its comprehensive approach to addressing various facets of child exploitation.

Child Act 2001

Section 2 of this Act defines a child as an individual under the age of 18 (Child Act 2001(Act 611), facilitating the application of child-oriented laws. Although the Act incorporates provisions aimed at shielding children from exploitation, it does not explicitly address online sexual grooming (Child Act 2001, Act 611). The absence of such provisions can be attributed to the Act's enactment in 2001, a time when cybercrimes against children were not as prevalent. In response, Malaysia introduced the Sexual Offences against Children Act 2017, a comprehensive piece of legislation covering sexual offences involving children, including online grooming. Consequently, amending the Child Act 2001 becomes superfluous due to the existence of the Sexual Offences against Children Act 2017.

Penal Code

The Malaysian Penal Code (Act 574) encompasses a broad spectrum of criminal offences, ranging from minor misdemeanours to grave crimes like rape and murder (Penal Code, Act 74). Although it does not explicitly address "online grooming," certain provisions within the Penal Code pertain to behaviours resembling those associated with online sexual grooming. For instance, Section 377E criminalises the incitement of children under 14 to engage in indecent acts. Interpretation is aided by the concept of "gross indecency," encompassing acts falling short of rape or sodomy, as defined in the case of *Public Prosecutor v. Kamarul Azamin bin Mohamad* [2021] 8 MLJ 502. While the Penal Code lacks specific clauses

regarding online sexual grooming, Section 377E does encompass similar behaviours, albeit with some ambiguity (Penal Code, Act 574).

Communications and Multimedia Act, 1998

The Communications and Multimedia Act 1998 (CMA) regulates the communication and multimedia industries, addressing the dissemination of obscene content online (Malaysian Communication and Multimedia Commission, 2022). Although the term "online grooming" is not explicitly used, CMA Section 211(1) prohibits the spread of indecent, obscene, or offensive content online. The definition of obscenity is broad and centres on the content's potential to corrupt minds (Daniel Pollack, 2015). This definition extends to online sexual grooming involving the exchange of obscene content, enabling convictions under Section 211(2) of the CMA (Communication and Multimedia Act 1998 (Act 588)).

Case of Online Sexual Grooming in Malaysia

In the case of Syed Naharuddin bin Syed Hashim v. Etiqa Takaful Berhad [2018] MELRU 3143 page 1, it is commonly observed that individuals with pedophilic tendencies often employ strategies to establish emotional bonds, trust, and companionship with minors prior to engaging in more intimate interactions of a sexual nature. The word "sexually communicate" refers to any form of communication that pertains to sexual behavior. In the case of Syed Naharuddin, the company was notified through email of allegations implicating two officials as individuals who had engaged in sexual activities with underage females, specifically those under the age of 13, and therefore being classified as sexual offenders. It has been purported that they purportedly engaged in a meeting with individuals of a minor age in the Seri Pacific Hotel located in Kuala Lumpur, using the name of K-Boy. Additionally, there exist leaked tapes depicting interactions between the parties involved, which have been publicly disclosed and disseminated by the media. He met with an undercover journalist who appeared to be a 15-year-old girl and acknowledged of using the K-Boy name. He had a meeting with her at the hotel while talking about sexual things and later on persuade her to spend a night with him. Later on, he also meets the journalist again and talked about sexual things and for the 30 minutes conversation, he only talks about his sexual desires. Furthermore, he contended that the behaviors he engaged in with the journalist were merely figments of his imagination, and that there was no substantiating proof to corroborate the allegations. He acknowledges he engaged in sexual communication which involve their interaction with the alleged "victim" through online platforms before their in-person meeting, during which he admitted that they were 15 years old. A person of his social standing and representing an insurance company should have been on guard given the time and place. Furthermore, the conversations predominantly revolved on topics pertaining to sex and sexual acts, which are deemed inappropriate for a young woman to engage in with a male individual of his age.

Despite being in Industrial Court, Kuala Lumpur, this case involves sexual online grooming. The claimant was suspended and fired immediately because it tarnish the company's reputation. He further claimed that the dismissal was unreasonable because the image was blurred and could not be traced, never harming the organisation. After reviewing the facts, the court concluded that social media may have made the public aware that he works for the firm. According to the court, he was the company's senior worker and had to protect its reputation at all times. Therefore, his dismissal was justified.

The Underlying Problems in Malaysia's Legal Position on Online Sexual Grooming

Based on all the existing laws presented, it can be seen that Malaysia takes online sexual grooming quite seriously by preparing multiple provisions regarding the issue in multiple acts/laws. In addition to SOCA, in Malaysia, other laws such as the Child Act 2001, Penal Code and Communication and Multimedia 1998 does briefly address online sexual grooming in its provisions. Even so, the cases of online sexual grooming seem to be incessantly increasing, with more and more predators on the net and more victims coming out (Pillai, 2022). So, what could possibly be the problem in the ready-made laws? The answer is, its enforcement.

According to John Austin, an English jurist, "law is a command from sovereign enforced with sanctions." Based on his views, enforcement of law is of high importance as without it, people would be blatantly disregarding it (Menia, 2019). Consistent with this, since all the laws regarding online sexual grooming is extensively laid out, the only logic explanation as to why there are still many such cases happening is that the enforcement is not strong enough. By all means, the Malaysian Police has already open up new divisions and units to handle these cases, but the reality is, they are still happening infectiously in Malaysia (Junaidi, 2022). At the same time, parents who fail to monitor their child's activities online also contributes a lot to this unprecedented increase.

Insufficient Enforcement

The Malaysian Police does indeed take the online sexual crimes against children seriously. However, the truth of the matter is that the MPR lacks resources to track down online criminals. This is contended by Bukit Aman's SWCCI (D11) principal assistant director, Siti Kamsiah Hassan, who made a statement that between 2017 and March this year, the police received 93,368 IP addresses suspected of being involved in child pornography through the information sharing system comprising members such as Interpol and the United States Federal Bureau of Investigation (FBI) She continued to suggest that due to the lack of trained officers to filter and investigate the information received, only 103 IP addresses were checked which led to the arrest of 50 individuals. This is a significantly low number compared to the 93, 368 IP addresses acquired. It shows how the division (D11) needs better resources to better tackle online sexual exploitation of children.

Parents Fail to Supervise Child's Online Activities

Putting the legal perspective aside, it cannot be denied that parents play a significant role in ensuring their children are safe online as everything starts at home. Parents should pay more attention on what their child do online to prevent them from associating with the myriad of internet dangers (Duerager & Livingstone, 2012). In addition, children are gullible. They are more susceptible to be fooled by online predators. The most common technique of online sexual groomers is to make friends with the victim first, and after developing a secured relationship with them, they begin to experiment with the victim by sending out obscene medias/chats. This subconsciously makes the child accustom to the lewd exchanges and finally it will result in the child suffering from emotional and mental effects from online sexual exposure (Juliane A. Kloess, 2019). In accordance to this, it is obvious how children are easier to be swayed to become victims of online sexual grooming as they simply are not matured enough to understand the complexity of the internet. Thus, parents should be more attentive and cautious with what their child is doing online to avoid exposing them and putting them at risk – surely, prevention is better.

Recommendation

Since Malaysia is a developing country, issues such as sexual violence, trafficking, and cybercrimes, are most definitely pertinent to be dealt with. Issues like these require sufficient provisions under the law as they are, not only detrimental to society, but also to the nation's advancement. Hence, several recommendations and suggestions are presented to ensure, that the Malaysian law protects and deals with said issues, particularly, these suggestions are for better tackling online sexual grooming in Malaysia.

Firstly, more laws regarding online sexual grooming should be enacted in the country. Despite Malaysia having quite extensive provisions regarding this issue, it is only within Sexual Offences against Children Act 2017 that our laws explicitly talk about online sexual grooming, namely Part III of the act. In accordance with that, other laws such as the Penal Code and the Child Act 2001, does indeed subtly address online sexual grooming, but not in detailed.

It is understood that it will be redundant if more acts regarding this matter were enacted, it will be redundant and irrelevant. The reason why is, there is no need for a specific law to be enacted is because there already is, i.e., Sexual Offences against Children Act 2017. However, only Sexual Offences against Children Act 2017 clearly and broadly addresses online sexual grooming. It is suggested that other laws such as the Penal Code, Child Act 2001 and Communication and Multimedia Act 1998 (CMA) addresses it too. So, the recommendation here is to reform new laws within existing laws to clearly and broadly address online sexual grooming. This is to leave no *lacuna* whatsoever in our law regarding this crime. When the Penal Code and the other acts mentioned, also contains provisions relating to online sexual grooming, no room is left for misinterpretation and misunderstanding of the law for, if this is done, laws about this issue could be said complete.

Finally, there should be a specific law to regulate children's conduct on the internet. Although the Communications and Multimedia Act 1998 already exists, it merely talks about virtual conduct in general and was made to cater mostly to adults not children. The fact of the matter is, adults and children drastically differ from how they use the internet. Adults have better understanding on the internet and are less likely to be victims of cybercrimes. In fact, the perpetrators of said crimes are mostly adults. On the other hand, children are more gullible and have a higher tendency to misuse the internet and – in worst case – be victims of online predators. So, a law that specifically addresses this issue will help reduce unclarity. For instance, if parents do not monitor or control what children do online, there are no sanctions imposed on them. Whereas, left unmonitored, children can fall into the hands of online sexual abuser. This, one way another amounts to child negligence as the child is put in danger due to the parents' inattentiveness on what they child does online. However, it is also understood that such a law is difficult to enforce and is somehow impractical. At the same time, the legislator should find a resolution that is both practical and effective in this matter by consulting relevant experts.

All in all, there is so much the law can do to prevent online sexual grooming, but, if it is not properly enforced, ill is the outcome for all, especially children. The parents must play their role too, in ensuring their child does not act foolishly online and get fooled by an online predator. Simultaneously, the legislator must act their part by constantly updating and reforming the law with the flow of time. In addition, the relevant authorities must methodically enforce the law, for there is no point having all this law, extensive and detailed, if the enforcement is weak. Therefore, it is a collective effort to tackle online sexual grooming in Malaysia so that the children of our generation is safeguarded from the dangers of the modern world.

Conclusion

Upon completion of analysing and scrutinising all the data and sources, a vivid conclusion can be made. The law regarding online sexual grooming is rather complete in nature. The issue in this subject matter is not that the law is inadequate, impractical, but it is the enforcement of the law that still needs tending to. The fact is, the existing law is clear and wide. It is indeed inclusive and addresses online sexual grooming be it directly or indirectly. For instance, the Sexual Offences against Children Act 2017, does address online sexual grooming directly, clearly and widely. This is complimented by the other acts such as the Penal Code and the Communications and Multimedia Act 1998 as well as the Child Act 2001. The enforcement of the law however, still needs to be improved. The lack of resources within the Malaysian Police is a major issue. The police already have the intel about online sexual activities but they lack the resources to track down the perpetrators. In addition, with enough resources, like more experts and online crime-detection technology, the Malaysian Police can surely conduct their investigations more effectively, simultaneously reducing the disease that is online sexual grooming. This research is concluded by answering its objectives: to review the effectiveness of current laws and government policy in dealing with online sexual grooming on children in Malaysia and to deduce said laws/policies are enforced properly by the authorities. The first objective is achieved with a conclusion that current laws are sufficient enough to deal with online sexual grooming, just that it needs slight improvements like updating its provisions with the current social needs. The second objective is reached with a deduction that the enforcement of existing laws is not effectively enforced, with a particular emphasis on the police authority's role of investigating the offence. With that been said, this study is closed with a conclusion that there is always room for improvement in the law and it is the responsibility of everyone, as a nation to live up to work for that improvement.

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