



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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ISSN

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CHILD RIGHTS IN DIGITAL ENVIRONMENT: THE CONUNDRUM OF BALANCING PROTECTION AND PARTICIPATION

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Abstract

Law-making and enforcement authorities around the globe are grappling with the challenge of interconnected digital services, technologies, and products as well as constantly evolving techniques that can harm children. However, reactive policymaking to arrive at quick-fix solutions could unreasonably constrain children's access and deprive them of the opportunities and benefits that the digital environment offers. The United Nations Convention on the Rights of Child, 1989 (Hereinafter UNCRC), largely considered to be the foundation of children's rights divides the rights of children into three broad categories of protection, participation, and promotion (3 P's). State parties to the convention are under an obligation to fulfill children's rights in the digital environment. This article explains how overly protectionist legislation can be antithetical to children's participation in the digital environment. It further advocates that a balanced approach is the need of the hour.

Keywords: Digital Environment, Child Rights, UNCRC, Participation, Protection

INTRODUCTION

The advent of the internet followed by a speedy development in information and communication technologies resulted in the creation of a digital environment. The term digital environment encompasses much more than just the Internet as it refers to an array of digitally networked and computing technologies, including but not limited to the Internet, smartphones and networks,

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online applications, social media platforms, online gaming, big data, the internet of things, etc.² The digital environment is constantly restructuring children's lives providing them with newer avenues to interact, learn, grow, and participate. It continues to grow at the behest of global commercial interest, innovative efforts, institutional policies, and practices at both national and international levels and to serve the evolving needs of the end user.

With the growing interaction of children with digital technologies both at the individual and institutional level, the line between offline and online is blurring. This has become a cause of concern for organizations engaging in child rights issues. The expanding ICT access of children around the world is a double-edged sword, as it provides them opportunities for participation, health, communication, education, and entertainment while risking their safety, mental well-being, and privacy.³ Therefore, while digital technologies do play a crucial role in a child's development by building up capacities and strengthening abilities, their current and potential ill effects on the well-being of children, call for policy interventions.⁴

The UN Convention on the Rights of Child (UNCRC), ratified in 1989, is largely considered the fountainhead of the human rights of children in the world. All member states of the United Nations are parties under the convention except the United States of America. The Convention provides for the minimum basic standards, entitlements, and freedoms to be made available to all children free of any discrimination. 'Child' under the convention is defined as a person up to the age of 18 years.⁵

The UN CRC plays a complementary role to the Universal Declaration of Human Rights⁶, marking the significance of children in terms of human rights and states that "*the child because of his*

² *Child protection & Children's rights in Digital World*, CHILDREN'S RIGHTS DIGITAL <https://childrens-rights.digital/einstieg/index.cfm/topic.277>, Accessed 11 August 2021.

³ Sonia Livingstone, Sharon McLaughlin, Brian O'Neill, Eva Lievens, and Valerie Verdoodt, *Children's Rights and Digital Technologies* in Ursula Kilkelly & Liefaard Ton (eds), *International Human Rights of Children* (Springer 2018). (hereinafter, 'Ursula 2018')

⁴ UNICEF, *Protecting Children from Online Sexual Exploitation* (June 15, 2016)

<https://www.unicef.org/media/73506/file/FBO-Guide-for-Religious-Leaders-Communities-2016.pdf>. accessed August 14, 2021.

⁵ Sonia Livingstone & Brian O'Neill, *Children's Rights Online: Challenges, Dilemmas and Emerging Directions* in Simone van der Hof, Bibi van den Berg, & Bart Schermer (eds) *Minding Minors Wandering the Web: Regulating Online Child Safety* (T.M.C Asser Press 2014). (hereinafter, 'Minding Minors').

⁶ It must be noted here that "children are entitled to special care and assistance" (UNCRC, art.25) and that "Parents have a prior right to choose the kind of education that shall be given to their children" (UNCRC, art.26). Beyond this, there is no implication that children should be treated in any way differently from adults as regards fundamental rights.

physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth". There is a consensus among nation-states on the three fundamental principles of UN CRC namely: "*provision of basic needs, protection against neglect and abuse, and children's participation in their families and communities*"⁷.

In its General Comment No.25⁸ the United Nations Child Rights Committee, in a historic step, extended the implementation of UNCRC to the digital environment and guided state parties on formulating policies, framing laws, and other such relevant measures for the purpose. Therefore, state parties signatories to the convention must fulfill children's provision, participation, and protection rights in the digital spaces as well.

Provision rights entail the production of beneficial content for the social and cultural development of children; age-appropriate options to exercise their right to leisure and recreation; resources for online education and information, as well as required digital literacy and awareness of online threats. Participation rights include children's rights to 'freedom of expression, 'freedom of association', 'freedom of thought, conscience, and religion', and 'freedom of peaceful assembly. Whereas protection rights provide for a child's right to be protected from 'sexual abuse and sexual exploitation, 'trafficking', all forms of 'abuse and neglect, and 'all other forms of exploitation prejudicial to any aspects of the child's welfare.'⁹

The majority of the laws, policies, and regulations, both at national and international levels are passionately inclined towards protecting children online. Current measures under the UNCRC also offer models to categorize illegal content and all other harmful activity against children in member states or transpose the frameworks under the convention into national laws.¹⁰ This inclination towards protection rights overshadows the significance of the provision and participation rights of children in digital spaces.

This article studies the growing interaction of children with digital technologies and the opportunities and risks they encounter in digital spaces. It demonstrates that the current law and policy approach considers children as hapless victims of cyber -crimes and is disproportionately

⁷ Onora O'Neill, *Children's Rights and Children's Lives*, 3 Ethics (1988). Also, P E Veerman, *The aging of the UN Convention on the Rights of the Child* 4 Int. J. Of Children's Rights, 18 (2010).

⁸ United Nations Committee on the Rights of Child, General Comment No. 25, *Children's Rights in relation to the digital environment* (2021) (hereinafter, 'GC 25').

⁹ Ursula 2018, *supra* note 2.

¹⁰ UNCRC art.34 & art.19.

inclined towards their protection in digital spaces. It argues that a balanced approach that provides due consideration to children's provision and participation rights in digital spaces without compromising their protection is the need of the hour.

THEORETICAL FRAMEWORK: DISTINCTION BETWEEN RISK AND HARM

There is an evidence-led theory that explains that risk and harm are distinct. Not everyone is harmed when they encounter risk and risk merely points to a probability of harm. Factors that explain harm are not the same as those accounting for risk encounters.¹¹ Therefore, the complete elimination of risks is not a feasible plan. As Sonia Livingstone¹² puts it "*Society does not wish to keep children forever in a 'walled garden', recognizing that they must explore, make mistakes and learn to cope in order to develop into resilient adults and responsible digital citizens*".¹³ Evidence demonstrates that there is a positive correlation between risks and opportunities. With greater emphasis on protection, there is a higher risk of denying or suppressing participation, similarly enabling provision and participation increases the need for protection in equal measure.¹⁴

A UNICEF report¹⁵ reveals that many children can comfortably avoid risks while surfing the net and they view themselves as an agent to bring change as well as act as acting as protectors of young children online. The report recognizes this ability of children to express their opinions on the mitigation of risks and suggests that children's opinions should be given careful attention and incorporated into schemes that empower them to safely use the internet. However, the report cautions against overestimating children's ability to protect their interests. The ultimate responsibility rests with adults to ensure safe and equitable access to the internet for children. A UNESCO report on digital citizenship in Asia-Pacific also points to providing a safe online environment to children by empowering them and minimizing risks through top-down policies.¹⁶

¹¹ Ingrid Schoon, *Risk and Resilience: Adaptations in Changing Times* (Cambridge University Press 2006) (hereinafter, 'Schoon 2006').

¹² Sonia Livingstone et al., *One in Three: Internet Governance and Children's Rights* (UNICEF Office of Research-Innocenti Discussion Papers No. 01, 2016) (hereinafter, 'Livingstone 2016').

¹³ Andrea Duerager & Sonia Livingstone, *How can parents support children's internet safety?* (hereinafter, 'Duerager 2012') (March 2012) <http://eprints.lse.ac.uk/42872/>>accessed April 26, 2022.

Helen Whittle et al., *Review of young people's vulnerabilities to online grooming* 18 Aggression and Violent Behavior, (2013).

¹⁴ Minding Minors, *supra* note 4.

¹⁵ Schoon 2006, *supra* note 10.

¹⁶ UNESCO, *Fostering Digital Citizenship through Safe and Responsible use of ICT*, (2014)

Interestingly, there is no evidence backing the claim that rising internet use in societies leads to increased occurrence of harm in childhood. On the contrary, the past decades have witnessed an overall decrease.¹⁷ Therefore researchers continue to comprehend the nature of risks and harm in digital spaces. As longitudinal studies to study benefits and harm are lacking, there are no established baseline measures and recorded index changes. Results from studies conducted by international child protection NGOs in Asia, Africa, and Latin America reveal that the internet provides avenues for self-expression and socialization in addition to facilitating learning and entertainment.¹⁸ The same studies also report harms experienced by children that range from coming across disturbing pornographic and violent content online to dangerous offline encounters with people they met online.¹⁹

European research reveals a positive correlation between risks and opportunities available online.²⁰ In the offline context, this can be understood concerning opportunities that expose children to risks such as climbing trees and crossing roads. Societies usually manage such risks through parenting, education as well and some regulation. Cultural differences also mark variations in this approach. For instance, countries in the global north consider exposure to some amount of risk helps in developing the abilities of a child whereas in the global south, it is not the same as safety mechanism are often absent. However, the idea of protecting children by restricting their access to the internet is slowly gaining momentum in the global north as well. Moreover, evidence supporting claims for protecting children online by restricting access is likely to undermine children's privacy and participation rights in countries that adopt a disciplinarian approach towards child-rearing.²¹ Restrictive management practices tend to limit children's opportunities to explore, learn, participate, and become empowered entities in digital spaces.²² Therefore, the relationship between risk and harm needs to be reassessed in the digital age including the factors

https://en.unesco.org/icted/sites/default/files/2019-04/62_fosteing_digital_citizenship_through_safe_and_responsible_use_of_ict.pdf Accessed April 21, 2022.

¹⁷ Ursula 2018, *supra* note 2.

¹⁸ Linda Raftree & Keshet Bachan, *Integrating information and communication technologies into communication for development strategies to support and empower marginalized adolescent girls* (August 2013)(hereinafter 'Linda Raftree 2013'). https://communityengagementhub.org/wp-content/uploads/sites/2/2020/04/ICTPaper_Web.pdf accessed April 20, 2022.

¹⁹ *Id.*

²⁰ Sonia Livingstone & Ellen Helsper, *Balancing Opportunities and Risks in Teenagers Use of the Internet: The Role of Online Skills and Family Context*, 2 *New Media & Society* 12 (2010).

²¹ Gerrit Beger, Priscilla Koukou Hoveyda, Akshay Sinha, *Indonesian youth online: An exploratory study of the Indonesian digital landscape* (January 31, 2012) <https://www.youthpolicy.org/library/wp-content/uploads/library/2012_Indonesian_Youth_Online_Explanatory_Study_Eng.pdf> accessed August 11, 2021.

²² Sonia Livingstone et al., *A Global Research Agenda for Children's Rights in the Digital Age*, 8 *J. Of Children and Media*, 4 (2014).

that link opportunities to benefits, rather than vulnerabilities.²³

RISK, OPPORTUNITIES, AND RISKY OPPORTUNITIES

Risks in the digital environment can be categorized as “*content, contact, and conduct risks*”. As digital spaces are largely blind to age, children are free to access content inappropriate for their age and maturity. Inappropriate content can have long-term adverse effects on the developing minds of young children and can shape their conduct both in the digital and physical world.²⁴ For instance, there is evidence supporting the fact that viewing pornography adversely impacts children.²⁵ Adult content objectifying women as sex objects leads them to develop distorted notions about sex and derogatory opinions about women in general.²⁶ Additionally, content promoting alcohol or drug consumption is equally harmful to children as they are in a stage of life where addictions usually begin.²⁷ Contact risks comprise harms arising from unpleasant contact online that may lead to harassment, emotional distress, bullying, etc. Child sexual abuse, Child trafficking, child pornography, grooming, and cyberbullying are some of the specific threats that children face in the digital environment. Further, conduct risks comprise of publication of unpleasant content, such as distasteful comments on social media, sharing adult content, violating online privacy, etc. There may be instances where conduct risks in the digital world transcend to the physical offline world and lead to more serious offenses. Although users of all ages face risk online, children due to their young and impressionable age become easy targets for predators in digital spaces.

Children do face a multitude of risks online and safety mechanisms that help them deal with the risk will go a long way in fulfilling their right to be protected. However, it is undeniable that the digital environment offers children a host of opportunities to participate and make themselves

²³ Linda Raftree 2013, *supra* note 17.

²⁴ Elena Tilovska-Kechedji and Darian Rakitovan, The Digital World Affecting Children’s Rights and the effects of Internet Governance J. E.-EUR. CRIM. L. 140(2018).

²⁵ Athena Duffy et al., Self-Perceived Pornography Addiction in Adults: A Systematic Review of Definitions and Reported Impact’ 13 J. of Sexual MED,760 (2016).

²⁶ Miranda A. H. Horvath et al., Basically... Porn Is Everywhere: A Rapid Evidence Assessment on the Effects that Access and Exposure to Pornography Has on Children and Young People, Middlesex Univ.’S Res. Repository 33 (2013)

²⁷ Ellen Johanna Helsper, *R18 material: Its Potential Impact on People under 18- An Overview of the Available Literature* (January 2005) <https://www.researchgate.net/publication/43194364_R18_material_its_potential_impact_on_people_under_18-an_overview_of_the_available_literature> accessed April 26, 2022.

heard. Research conducted by Amanda et al.²⁸ revealed that despite uneven access to the internet around the world, the purpose of its use by children was similar. Children generally use digital media for education, accessing information, entertainment, creative expression, connecting to people, etc. Children reported that although the risks of abuse on digital media are a cause of concern for them, they recognize digital media as largely playing a positive role in their lives. As children remain connected to the digital world, they feel aware and empowered and in a better position to exercise their rights to education, speech, expression, etc. The use of digital media helps them to foster relations and contribute better to society which goes on to provide a sense of well-being.

Another report on the use of digital technologies by children around the world brings forth that, children find it easy to access required information online; learn new skills; acquire knowledge about their origin, traditions, and culture; share their problems; express opinions, and also provide suggestions to problems concerning them. Also, the digital space offers them an opportunity to participate and make their voice heard on matters concerning their well-being. As the digital environment affords newfound platforms for creative expression, some use it to show their hidden talent as they are too shy or hesitant to do the same in offline spaces. Whereas, some others are also using their talent to voice the concerns of their community. For instance, a 17-year-old boy from Lebanon shares his use of digital technology in the following words- *“Through rap (sharing YouTube videos), I express the needs of the community and the suffering of the citizens and weaknesses of politics, and [uncertain] security situation, and the youth’s future and feelings”*²⁹.

THE DOWNSIDE OF AN OVERLY PROTECTIONIST APPROACH

Initiatives implementing provision and participation measures under the UNCRC are often put aside by the protection agenda³⁰. Even research is inclined towards the risk factor in digital spaces and has its share of challenges. *Firstly*, there is a wide array of risks that demand consideration,

²⁸ Third, Amanda, Belerose, Delphine, Dawkins, Urszula, Keltie, Emma, Pihl, Kari, *Children's Rights in the Digital Age, A download from children around the world* (October 2014) <http://www.aeema.net/WordPress/wp-content/uploads/2014/10/Childrens-Rights-in-the-Digital-Age.pdf> accessed April 21, 2022.

²⁹ *Our Rights in a Digital World* (March 2021)

<https://5rightsfoundation.com/uploads/OurRightsinaDigitalWorld-FullReport.pdf> accessed April 22, 2022.

³⁰ Gerison Lansdown, *Promoting Children's Participation in democratic decision-making* (February 2001) <https://www.unicef-irc.org/publications/pdf/insight6.pdf> accessed April 26, 2022.

including but not limited to, child trafficking, online grooming, ethical, racial, and religious hate, adult content, cyberbullying, sexual abuse, misinformation, etc. *Secondly*, there remains confusion as to what should be classified as harmful on the internet. *Thirdly*, it is difficult to draw a clear line between risks and opportunities as too often teenagers explore and learn through avenues that could be termed as “risky opportunities”.³¹

Exposure to risks and harm to children in digital spaces occupies center stage in public discourses.³² Such an approach promotes a protectionist policy that inhibits a child’s access to the internet and opportunities linked to it. Protectionist approaches further establish parental hegemony in policies as well as in cyber safety legislation. Also, as this parochial narrative fails to recognize children’s rights, violation of a child’s right to privacy and data protection rights is not accounted for.³³

The impact of the protectionist approach is twofold. Firstly, digital discourses are largely defined by adults, excluding the perspectives of children and there is apprehension regarding the digital capabilities of children in the Internet age. Secondly, these frameworks view children as passive entities lacking the ability to deal with risks in the digital environment, thereby undermining their agency to meaningfully contribute to digital spaces.³⁴ The following examples from Japan and Australia respectively, bring forth certain disadvantages that arise when protectionist measures are undertaken or proposed by States without assessing their impact on children’s participation rights.

With an aim to provide a safe internet environment for children, content filtering and blocking mechanisms have increasingly become a common practice in the global south. But it has its share of disadvantages. Japan, for instance, passed a law in 2008³⁵ that requires a range of internet-related businesses to filter content that can be harmful to children. These businesses include software developers, manufacturers of equipment used to access the internet, internet and mobile service providers, etc. The policy of filtering and blocking content often follows a blanket approach risking possibilities for adolescents to explore digital spaces for individual growth.

³¹ Sonia Livingstone, Taking Risky Opportunities in Youthful Content Creation: Teenagers Use of Social Networking Sites for Intimacy, Privacy and Self-expression 10 NW. MED. SOC. 3 (2008).

³² Sarah Wilson, Digital Technologies, Children and Young People's Relationships and Self-Care, 14 Children's Geographies 3 (2016).

³³ *Id.*

³⁴ *Id.*

³⁵ Act on Development of an Environment that Provides Safe and Secure Internet Use for Young People, 2008 (Japan).

Adoption of such mechanisms is susceptible to both over-blocking and under-blocking. Under blocking suffers from the defect of failing to block all identified content. Also, over-blocking results from often blocking content not intended to be censored.³⁶

Australia presents an example of how legislation with protectionist overtones can be antithetical to children's interests. The Enhancing Online Safety for Children Act 2015³⁷ sets up the office of the Children e- Safety Commissioner with wide-ranging enforcement powers about social media sites with harmful content and the end-user posting such content. The Act provides a mechanism for the quick removal of harmful cyberbullying content from social media sites. It also provides a scheme for the receipt and investigation of complaints regarding harmful content.³⁸ The act has faced backlash from several stakeholders criticizing it for criminalizing adolescents and being detrimental to the right to free speech and expression. Creating awareness through educational programs involving schools, guardians, and parents is viewed as a more effective option by some to tackle cyberbullying.³⁹

The liberating effect digital technologies have had on young people's personal expression and development emphasizes the dangers of imposing statutory limitations and censors in digital spaces that children use for development. Young people have highly fluid conversations which makes it difficult to contextualize harm in some situations. For instance, a bully can be a victim in another social context. Research suggests several social and psychological factors contribute to a state known as 'Bully victims.'⁴⁰ Therefore institutionalizing punishments can have adverse effects on the development of children.

Despite the focus of law and policymakers on protecting children online, so far only partial success has been achieved in this regard given the exposure of children to hate, crime, sexual content, and

³⁶ *Internet Society Perspectives on Internet Content Blocking* (Internet Society, March 24, 2017) <https://www.internetsociety.org/resources/doc/2017/internet-content-blocking/> Accessed April 22, 2022.

³⁷ *Enhancing Online Safety for Children Act 2015* (Australia).

³⁸ *Mapping Online Child Safety in Asia Pacific* (July 2017) <https://www.internetsociety.org/wp-content/uploads/2021/01/Online-Child-Safety-in-Asia-Pacific-report-final.pdf> accessed April 26, 2022.

³⁹ Chris Berg & Simone Breheny, *Enhancing online safety for children* (March 2014)

https://www.communications.gov.au/sites/default/files/submissions/Institute_of_Public_Affairs.pdf accessed April 22, 2022.

⁴⁰ Melissa K. Holt, David Finkelhor, & Glenda Kaufman Kantor, Hidden Forms of Victimization in Elementary Students Involved in Bullying, 3 *School PSY.REV.* 36 (2007).

other inappropriate influences in varying degrees in different parts of the world.⁴¹ A global study conducted by UNICEF⁴² reveals that most child protection and response systems do not account well for the risks children face online. There arises a need to examine more nuanced approaches to realize the protection rights of children in digital spaces that improve protection without restraining participation.

BALANCING RISK & OPPORTUNITY

There are clear dangers in positing the protectionist rights of children as superior to participatory rights in digital spaces. The foregoing discussion demonstrates the same. Balancing risks and opportunities for children in digital spaces is a global challenge.

Nonetheless, a blinkered protectionist approach restraining children's participation in digital spaces must be shunned. These do not account for the socio-cultural rootedness of digital media today. Such an approach also shuts out possibilities of child empowerment vide critically understanding and dealing with risks, avoiding harm, and meaningfully contributing to shaping digital spaces. Balanced and judicious exposure to the digital environment can make children resilient to risks and prepare them for adulthood as well⁴³. Also, as this field is emerging, involves multiple stakeholders, and is not restricted to a single discipline, a multi-disciplinary approach accounting for the various legal and social aspects needs to be adopted.⁴⁴

Article 12 of the UNCRC provides requisite guidance in this context. It mandates States to empower children “to actively interact, engage and create communities where their voices are heard and their views acted upon”.⁴⁵ GC No. 12 (2009), on the “right of the child to be heard” mandates states to empower children to formulate their ideas and voice their concerns on “all matters affecting” them.⁴⁶ As the General Comment suggests, lending due credence to children's opinions and incorporating the same in law and policy approaches can lead to inclusive policies

⁴¹ Sonia Livingstone, Leslie Haddon, Anke Görzig and Kjartan Ólafsson *Risk and Safety on the Internet: The perspective of European Children* (2011)

<http://eprints.lse.ac.uk/33731/> accessed April 21, 2022.

⁴² Schoon 2006, *supra* note 10.

⁴³ Aratrika Choudhuri, *Conceptualizing Children's Rights in Digital Spaces: Emerging Issues and Challenges* 15 *Socio-LEGAL REV.* 151. (2019).

⁴⁴ Duerager 2012, *supra* note 12.

⁴⁵ UNCRC, art.12.

⁴⁶ United Nations, Committee on the Rights of Child, *The Right of the Child to be heard*, General Comment No. 12 (2009).

and legislation and effective implementation of the same. ⁴⁷While incorporating children's perspectives is no guarantee against hegemonic practices in law and policy-making as well as decision-making, it will surely broaden the set of stakeholders to propel meaningful negotiation between children's protection and participatory rights in the digital environment.⁴⁸

The Youth Protection Act in Germany is a noteworthy step in the direction of realizing children's rights of participation as provided under UNCRC while providing them with a safe online experience. The Act came into effect on May 1, 2021. It aims to ensure that internet platform providers adopt precautionary methods to protect children against risks arising from interactions with users and the use of services. The legislation also prescribes 'safe default settings at the time of creating a new profile by a child, and as age and experience progress, settings can be relaxed thereby granting more freedom. The foregoing requirement incorporates the principle of 'evolving capacities' as provided under Article 5 of the UNCRC, i.e. "*the capacities that develop as children grow older*". The Act also requires the use of 'age labels' by digital media content and services. Therefore, the legislation aims at enabling young children to safely experience the digital environment. However, this rests on the presupposition that parents and other guardians possess digital literacy and sufficient skills to provide capable guidance to children as they traverse through complexities in the digital world. A federal agency for the protection of children and young people in the media will assess the effectiveness of the regulation in a span of 2 years with the aid of an advisory board that includes young people. The inclusion of young people on the board is likely to increase acceptance of protection measures as children themselves have a voice in the process of evaluation.⁴⁹

CONCLUSION

Discourses on child rights in the digital age have so far centered around the protectionist rhetoric that regards children as hapless victims of cyber-crimes. While it is imperative to protect children from online abuse that often has offline consequences and adversely affects their physical and mental well-being, it's not the only pertinent issue relating to child rights in digital spaces. The rights enshrined under the UNCRC provide for the provision, participation, and protection of

⁴⁷*Id.* Part III.

⁴⁸Linda Raftree 2013, *supra* note 17.

⁴⁹Jutta Croll, *New Youth Protection Law in Germany: Participation of children is a top priority* (March 12, 2021) <https://blogs.lse.ac.uk/medialse/2021/03/12/new-youth-protection-law-in-germany-participation-of-children-is-a-top-priority/> accessed April 27, 2022.

children in equal measure. Preference to one set of rights over the other fails to serve the purpose of realizing child rights in digital spaces. As underlined above, policymakers so far have focused on the protection of children in digital spaces so much so that it compromises their rights to participation. Children have distinct needs in comparison to adults and access to digital technologies provides them with avenues to participate, learn, and make themselves heard. Therefore, any ICT-related legislation needs to evaluate the impact of overtly protectionist policies on children's rights to participate in the digital world.

When children are not recognized as significant stakeholders in all matters concerning them and their views and opinions are not given due consideration, law and policy measures fall flat being short-term and ineffective. Moreover, draconian or authoritarian measures to child safety online could be counter-productive to the rights of both children and adults. While insights from cyber security experts, experience from law enforcement agencies, technology experts, and other stakeholders in internet governance are vital to formulating laws and policy measures for children in cyberspace, providing due weight and recognition to a child's perspective will strengthen measures to provide safe, secure and equal access to children online. It is noteworthy that GC No.25(2021) of the UN CRC directs state parties to provide primary consideration to the principle of "evolving capacities" as enshrined under the UNCRC⁵⁰ while formulating measures to protect child rights online.⁵¹ The principle of evolving capacities of a child refers to the developing competency of a child as their age and experience advances, which leads to lesser requirement of protection due to enhancement in their decision-making ability as well as their ability to contribute to society.

Therefore, a balanced approach to protecting children by empowering them to deal with risks without compromising their rights to participation needs to be adopted.⁵²

⁵⁰ UNCRC, art. 5 & art.14(2).

⁵¹ GC 25, *supra* note 7.

⁵² This article is adapted from author's LLM dissertation 'Configuring Digital Rights of Children: Emerging Issues and Challenges, submitted to NALSAR University of Law in August 2021.