Problems of the New Law Regulating Internet Dating Sites

Turning Victims into Criminals

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“Epoch-making” law regulating Internet dating sites

The year 2003 will be etched in history, since children, victims of crimes, are seen as criminals under a newly enacted law. The law regulating Internet dating sites, which was implemented on September 13, 2003, defines illegal soliciting as posting a message on Internet bulletin boards in exchange for money, and imposes punitive measures against such acts. The reason for the law being “epoch-making” is that minors under the age of 18 are subject to punishment for posting messages. Whereas the Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting Children in 1999, it is those who commit child prostitution and brokers that face punishment, not minors who are seen as “victims”, the new law, which did an about-face, puts adults and children on an equal footing, ignoring the power relationship between them.

Punishment of minors for illegal soliciting

Article 6 of the new law states that “the following acts through Internet matchmaking sites are prohibited”. The acts include soliciting minors for sexual acts, soliciting a person (excluding minors) to conduct sexual acts with minors, soliciting minors for sexual acts with a person of the opposite sex in exchange for money, soliciting a person to engage in sexual acts with a person or a minor in exchange for money.

Article 6 also states that anyone who commits the crime is subject to punishment for the following reasons (Tatsuya Suzuki, “Enforcement of the Law for Regulating Solicitation of Minors through Internet Matchmaking Sites: First Volume”. Kōsatsu Kōron, November 2003, P. 14)

- Child sex commercialization will be enhanced by illicit solicitation in public.
- Children who see open solicitation will be encouraged to solicit themselves, thinking that everyone else is doing the same.
- As a result, many children will be victimized by child prostitution or other crimes.

Furthermore, it states “the addition of Article 6 will not change the position that sees children who commit illicit solicitation as victims of child prostitution.”

Even reading this thoroughly and taking a close examination of reports of deliberation in the Upper and Lower House by the Chief of Community Safety Bureau, the National Police Agency and by the Chairman of the National Public Safety Commission, who are
in charge of this legislation, it is very difficult to understand the reason for punishing children for illegal soliciting.

In February 2003, before the law was passed, the National Police Agency announced “Proposals for prevention of victimizing children in online dating sites cases” issued by a task force against harmful environment surrounding minors.

According to the proposals, 93.8% of child prostitution cases in the first half of 2003 were solicited by children. Therefore, as the proposal states, “it is necessary to establish regulations that prohibit illicit soliciting on matchmaking sites as a basic rule in Internet society (P. 19).” It also states “endorsing certain punitive measures, not just prohibiting acts, is necessary to make the regulations more effective because children themselves willingly solicit (P. 20).” There is a mindset that by turning the attention to children who solicit, crimes in online dating sites can be prevented by punishing such children. The next chapter will analyze reasons behind this mindset.

**Putting children and adults on an equal footing**

Society sees adults as mature and children as being far behind adults. Under this logic, children are not categorized as adults, falling short of having the abilities that adults possess.

In general, children are expected to be members of society who are to accumulate responsibilities and duties as they mature. They are expected to grow fully to become an adult. The view of children as non-adults must be taken into consideration when examining legal punishment of children. However, the proposals suggested by the committee ignore this view, treating children as adults engaged in illegal soliciting.

**Adults disregard social power**

In an adult-centered society, adults are the ones who possess power over law and society. This power defines children and their role in society. Children whose rights and being are not acknowledged are always in a vulnerable existence in their power relationship with adults. For instance, adults define female high school students as ones who possess the will to decide whether to willingly sell their bodies for sex or not. As a result, these students act within their role as defined and expected by the society.

This shows that children are not placed on an equal footing with adults. Equality may exist in some cases, but this does not resolve all imbalance relating to the category of children. Equality between child and adult exists, but within an imbalanced relationship. Punishment of children for illicit soliciting shows a disregard of the structural power relationship between adults and children in society when trying to understand the nature of child solicitation. In addition, this view does not consider that money creates a power structure in the proposal, as money flows from adults to children.

It is nothing but child maltreatment to presume that a child who solicits is in an equal relationship with adults, as the relationship occurs in a power structure that consists of two tiers, the adult-and-child relationship and monetary considerations.

**Replacing the social power-relationship with a consent-based relationship**

The new regulation, which focuses on children’s soliciting, considers children's act of posting a message on an online dating site to be equivalent to that of an adult. As a result, it is considered that child prostitution is done in an equal relationship based on consent, not to be seen as sexual exploitation. This is
inconsistent with the fact that child prostitution is sexual exploitation, and is an idea that only benefits adult perpetrators, namely men. There is no true consent in an imbalanced relationship between a child and an adult. The new regulation of punishing children for soliciting foments the idea that child prostitution, which is done in an unequal structural relationship reinforced by the power of money, is not equivalent to sexual exploitation.

Reducing the responsibility of perpetrators and adults

Children are treated as victims in the Child Welfare Law, as well as in the Law for Punishing Acts Related to Child Prostitution and Child Pornography. When children solicit adults within a two-tiered power structure, children are deemed to be in a lower rank than the adults. This structure would make it impossible to call children’s message-posting on Internet bulletins as illegal solicitation. Violators of this act are subject to punishment, which enables adult perpetrators to use an excuse of being solicited in legal procedures. In fact, the judge gave the following decision for committing nine crimes of purchasing sex from girls aged twelve to fourteen:

“Although, needless to say, the accused should be severely criticized for taking advantage of the female junior high-schoolers’ immaturity, it has to be said that the victims are to blame to a certain degree, since they engaged in prostitution with the accused for money. Moreover, the accused admitted the allegations without protest, acknowledged his foolishness at the court and showed his remorse for his act. I feel there is true remorse in his attitude. Certain social sanctions, including a high degree of media coverage using his real name, also have been placed on his family as well as the accused. His wife, however, bravely stated in the court that she will continue to support him. It is considered to be appropriate that the penalty in this case should be carried to make the criminal responsibility for the accused clear, but that the sentence should receive a reprieve.” (Sentence delivered at the Iizuka affiliate of Fukuoka District Court on March 18, 2003)

In the first place, the criminal justice lacks a gender perspective. It is widely known that the court occasionally points out there are faults on a victim’s side in a sex offence. The sentence at the Fukuoka court also shows a lack of understanding with regard to child prostitution as sexual exploitation. Therefore, the punishment of the children for illicit soliciting leads to a change in the notion that children are victims of child prostitution.

Lack of support for victimized children

The only point to be valued positively in the punishment of children for illicit solicitation would be that by seeing a child as a criminal, a family court could pave the way to analyze and deal with the issues of children who choose to sell their bodies for sex. However, family courts are often reluctant to hear such cases, thereby preventing the court from playing a role in the investigation, education, and welfare of the children.

This will merely result in stigmatizing a girl who posts messages on dating sites as “a criminal”, as she will not get the support that she needs for her behavior. How can such a system be called restorative when all that it succeeds in doing is to label the girl as “a criminal.”

While children engaged in child prostitution are seen as victims, children who post messages on an Internet dating site are to be punished. The latter system is contradictory to the policy of protecting the
victims. It is also inconsistent with the Criminal Law, since punitive sanction are taken against a preliminary act, not an actual criminal act, as message posting for possible prostitution service is not the actual act of prostitution.

**Prologue to social irresponsibility**

As mentioned above, the law regulating Internet dating sites rejects the view of children as victims of sexual exploitation, as stated in the law of child prostitution and pornography. Instead, it adopts the notion that children are self-directed, independent and capable of calculation and commercial dealings.

This attitude can be found in juvenile crimes as a whole, not just in sex crimes. It indicates that society brings charge only against children who initiate crimes, but not against adults who drive them into crimes. It is not easy to put an end to adults’ irresponsibility, since it works well for such adults. Moreover, because men dominating social power perpetrate sex crimes, a system and its applications are inclined to support perpetrators in our patriarchal society. In this way, children have to survive in such a society where adults’ irresponsibility is taken for granted. It is necessary to implement laws that reduce the burden on children as much as possible, and not impose such burden on them.

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