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Sexual Offences Against Women



Professor (Dr.) B.P. Singh Sehgal
Dr. Minaxi Tomar

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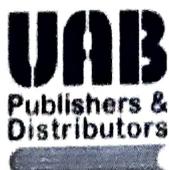
SEXUAL OFFENCES AGAINST WOMEN

Chief Editors

Prof. (Dr.) B.P. Singh Sehgal
Dr. Minaxi Tomar

Editors

Dr. Neelam Seam
Soumya Khanna
Shraddha Shukla
Preeti Gautam



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CYBER STALKING AS A NEW ERA OF STALKING: LEGAL IMPLICATIONS IN INDIA

Dr. Gagandeep Kaur*

Abstract

The internet has opened voluminous doors by facilitating communications around the world; however, it has revealed a dark side that creates danger, fear, terror and fright when used for erroneous purposes. In the last few years, the crime of cyber stalking and cyber harassment through it has emerged enormously in the lap of cyberspace. The term stalking means any act of following a person closely without being heard or seen. In the same context, 'Cyber stalking' can be defined as engaging in conduct through an electronic communication device that causes substantial emotional anguish in a person and serves no legitimate purpose. It involves repeated communications through email blogs, instant messages, text or video messages, chat rooms, online social networks and other websites; generally without the consent of the concerned person. The communications have coercive, intimidating or sexual overtone that commission threat. Women have become a soft target for it and victimized silently. Moreover, technology has led to tremendous advancements that have given sophisticated tools for stalkers to use. New technology has made it more difficult for prosecutors and judges to hold cyber-stalker accountable as the digital footprints sometimes lack shreds of evidence. It threatens the victims' privacy, security, liberty and freedom to use the internet. This article is focused on (i) the menace of cyber stalking against women; (ii) the legal framework in India to curb this menace and (iii) the judicial outlook with the recent case laws.

Keywords: Cyberstalking, Cyber Harassment, Cyberspace, Internet crime, The IT Act, 2000, Women Annoyance

INTRODUCTION

"The woman was made of a rib out of the side of Adam; not made out of his head to rule over him, nor out of his feet to be trampled upon by him, but out of his side to be equal with him, under his arm to be protected, and near his heart to be beloved."

– Matthew Henry¹

* Assistant Professor in Law (SG), School of Law, University of Petroleum & Energy Studies, Dehradun,

Matthew Henry has most beautifully depicted the importance of women in the life of mankind. India has always gained a prominent place among the galaxy of nations of being a nation that values "sanskaras". The classical society of India puts women in a very respectable place with high regards. The holy scriptures have lauded women as goddesses who create the world by giving life. Is it true in the context of shameful activities that are occurring against women in the era of information and communication technology? Everyday newspapers and electronic news bulletin apprising us about the menace of a woman getting targeted, harassed and victimized by the various crimes committed against them despite the implementation of the Indian criminal legislation. Not only in the physical world, however, they have also become easy and soft targets to the criminals in cyberspace.² While crimes against women are on the rise in all sectors, being a victim of cybercrime can be a devastating blow to women.

The internet has opened voluminous doors by facilitating communications around the world; however, it has revealed a dark side that creates danger, fear, terror and fright when used for erroneous purposes.³ In the last few years, the crime of cyber stalking and cyber harassment through it has emerged enormously in the lap of cyberspace. The term stalking means any act of following a person closely without being heard or seen. In the same context, 'Cyber stalking' can be defined as engaging in conduct through an electronic communication device that causes substantial emotional anguish to a person and serves no legitimate purpose. It involves repeated communications through email blogs, instant messages, text or video messages, chat rooms, online social networks and other websites; generally without the consent of the concerned person. The communications have coercive, intimidating or sexual overtone that commission threat. Women have become a soft target for it and victimized silently. Moreover, technology has led to tremendous advancements that have given sophisticated tools for stalkers to use. New technology has made it more difficult for prosecutors and judges to hold cyber-stalker accountable as the digital footprints sometimes lack shreds of evidence. It threatens the victims' privacy, security, liberty and freedom to use the internet. Cyber stalking is the most perilous crimes of all because of the magnitude of the loss it causes due to its scene-less-ness and the types of people involved in the commission of it. The biggest drawback of such types of crime is that it is very difficult to understand the modus operandi adopted by predators to commit it.

Cyberstalking: A Tool for Online Harassment

"Cyber stalking" is an offence in which a stalker uses the internet or any other electronic device to stalk someone. Cyber stalking is similar to cyber bullying and cyber bullying. It includes repeated harassment or threats to anyone. It can be done in many ways: to follow a person to his home or his business, to destroy the property of a person, to leave written messages or objects, or to harass through telephone calls. Cyber-stalkers are always believed to be anonymous and that

they can hide easily. In other words, the greatest strength of the cyber stalker is that they can rely on anonymity on the Internet to control their victim's activity without revealing their own identity. Effective cyber instruments are therefore necessary to investigate and to be ready to defend against cyber crimes and bring victims to justice.

It is very tricky to find out the reasons for the increasing instances of cyber stalking. Strong narcissism, hatred, anger, punishment, jealousy, excessive love, mental dysfunction, power and control, sexual misconduct, Internet reliance, and religious fervour are all psychological causes. Jealousy can be a powerful motivator to follow, especially in the interests of ex-partners and their existing partners. Awareness and attraction can be another reason to follow. The tracker may be sexually or psychologically attracted to the victim. There is a big difference between following and commending. It is the belief that an angry person believes that the victim, usually a stranger or an acquaintance, is in love with him or her. It always involves the sexual orientation of someone. The victim is not the cause of the hatred and revenge in the mind of the one who is stalking you, but the victim becomes the victim of the one who stalks you. The Internet seems to be an easy way to express hatred and revenge on the part of the person watching us. Professor Lamber Royackers remarked:

"Cyber stalking is a recurring pattern of cyber bullying or cyber bullying. A cyber stalker is a person who is having fun and/or sexually harassing another person with a computer: bulletin board, chat box, email, spam, fax, bus and email. Tracking often involves ongoing harassment or threatening another person by following someone, appearing at someone's home or work, making abusive phone calls, leaving messages or items, or destroying someone's property. Because tracking functions are so different and should be visible in their interactions it is difficult to give a precise definition of tracking."

Old Crimes in New Bottles: Is Cyberstalking different from Physical?

To discuss the difference between cyber-stalking and physical stalking, there is a need to understand what does physical stalking mean. Physical stalking means and includes acts that are intended to harassing the victim.⁴The difference between these two is as follows:

Basis of Distinction	Physical Stalking	Cyber Stalking
Geographical Proximity	Geographically, the closest to the victim is close. The stalker cannot easily encourage third parties to harass or threaten the victim. There is a need for some physical fight.	The victim and the stalker could probably not be within the same geographical limits as physical stalking. In contrast, it is easy for the stalker to instigate the third party to harass or threaten the victim. To achieve the intended objective, there is no need for physical confrontation.

Predictability	The stalker follows the victim to his / her home, workstation, etc. It can be predicted. It is easy to track the offender for the investigators.	The stalker uses a cyber platform and physical confrontation doesn't happen easily predictable. The stalker hides its identity which makes it hard for investigators to trace the offender.
Familiarity with the victim	It takes place in people's relationships. The stalker usually knew the victim as a celebration, a relative, or people living near the stalker.	The stalker randomly selects the victim in this case. For example, when the stalker is following the victim on social networking sites, information is only available on the website.
Anonymity	In the event of physical stalking, hide the stalker's identity becomes difficult.	The cyber-stalkers are anonymous, in comparison. Anyone with immense technological expertise in the virtual world can hide their identity.
Personal Interaction	There is a personal interaction between the stalker and the victim. Thus, shy people are not able to commit criminal acts as they may not feel comfortable talking to people on the telephone or in a letter with words to give a feeling of threat.	The stalker does not have to face the victim because the Internet gives him / her anonymity. It's easy for the stalker to choose how to behave in cyberstalking.
Constant Monitoring of activities	Although the stalker is able to monitor his victim's activities in the real world, it poses a serious risk to his or her close associates.	The Internet allows stalkers to monitor their victims' activities so that the stalker can enter into a discussion with the victim on some forums of discussion or chat rooms, or access their personal information via the ongoing monitoring of their virtual movement, or even direct access to information stored on the computer of the victim. As the identity of the stalker is hidden, the risk is relatively smaller.

Although the behaviour that is often known as stalking exists for centuries, its presence in recent decades has only been codified by the legal system. Only after the evolution of the internet in the 90s, cyber stalking has gathered legal attention. The rise of cyber stalking crimes through online media is an extension of traditional stalking using high-tech modus operandi. The statute is different in each jurisdiction in terms of cyber stalking. Indian law recognizes cyber stalking, but we have no law specifically to deal with this. The IT Act 2000 contains no provision concerning cyber-harassment, cyber-bullying or cyber-stalking. It is a glaring lapse on the part of the government agencies.

In India, *Ritu Kohli's Case* is the first one dealing with cyber stalking after which the profundity of cyber stalking came into the limelight in India.⁵ In *Rithika Sharma Case*, Ritika Sharma (name changed), who studies at a prominent Delhi school, went to the police after being stalked by a Facebook user whom she had befriended on the site a month ago. She had given her cell-phone number to the man who was later found to be using a fake name, photo and phone number. Experts say cyber-bullying and cyber-stalking are increasingly becoming a daily problem for the city's school kids with people using electronic communication like email, social networking and texting to harass or pursue them. Delhi Police has been launching cyber safety awareness programmes in schools in which students are informed to avoid giving personal information online to anyone they don't know.⁶

In India, there are few cases that are coming to the limelight but cases related to cyber-stalking are rapidly increasing. Few people know about cyber stalking crime. Some even do not know that cyber stalking exists in society or it is termed as a crime. Very few people are aware of the legal aspect of cyber stalking. We need to aware people about these crimes and how can they avoid these kinds of crime. The legal provision has to be stringent and the police personnel to need to get regular education and training regarding the new emerging crime in the world.

Important Case Studies

Women are targeted by trolls, bullies, lovers of the past, in-laws, strangers, abusive relatives, jealous colleagues, sometimes completely random and anonymous people online with profanity, slander, slander and hatred.⁷ Even if women and girls are not connected to the World Wide Web, they can be harassed and caught on unnecessary calls and SMS. This can create a major problem where women are not completely barred from using any form of telecommunications services or even talking to their parents, teachers, or accessing any kind of information that can be accessed through digital communication services.⁸ Some are being circulated to create awareness that gives little weight to the fact that such videos or their distribution can cause serious damage to the victim's attitude; some are distributed to share sexual pleasure that one can experience by experiencing pain, fear, or in some cases, exposed genitals; some videos or pictures are accompanied by text to make it "more enjoyable" and more "satisfying". Therefore, we see two types of violations of the rights of women and girls by abusing the right to speak and speak online.

Case 1: Ritu Kohli Case

In the month of June 2000, one Manish Kathuria was all over the news channels, print media and additionally on the web. He was arrested for "harassing" Ritu Kohli, a lady in her age of 30 years.⁹ The case introduced a one of a kind circumstance as both the police and the courts were completely

confounded concerning the right laws that could have been applied in such a scenario. The case merited consideration for three particular reasons:

- **The medium of harassment:** Includes discussion times on the site by Kathuria on behalf of Kohli. Also included was the distribution of Kohli's cell phone number by Kathuria, where he began receiving dirty calls.
- **Type of exploitation:** For the first time in the history of Indian criminal justice there was a situation where the murder was not directly committed by the abuser, but rather by the perpetrators by telephone. Similarly, his digital identity, including email and site log in id would be used without his consent.
- **Application of Laws:** Although IT law was enacted in 2000, in this case, no provisions of the law were made and applied during the registration process or in subsequent years. It is because the IT Act did not consider Kathuria's actions to be a crime under any of its terms. The case was under Section 599 IPC, which imposes a penalty on the use of any word, action or other device that warns women to be humble.

Frequently Kohli's case is alluded to as India's first digital stalking case.¹⁰ However the subject matter, in this case, was not only cyber stalking but it included instances of identity theft, creation of a fake profile and so on.

Case 2: State (Cyber Cell) v. Yogisha Yogesh Pandurang Prabhu

In *State (Cyber Cell) v. Yogisha Yogesh Pandurang Prabhu* 2009, the petitioner filed a complaint against the accused of sending nude photographs, pornographic postures, and flimsy and vulgar comment on her through emails after the petitioner un-friended him on social networking site. Thus, the accused was convicted of the offence.

The Criminal Law Amendment Act, 2013 added Section 354-D to the Indian Penal Code to define and punish the act of stalking.

In 2011, a law student at Delhi University was accused of cyber bullying and threatening a woman. This case created profanity on social media. A woman has complained to Delhi police alleging that the accused has been harassing her for more than a year now. She said a law student had been making dirty phone calls and sending threatening emails. The victim, while working in Delhi last year, became acquainted with the suspects. He asked her to marry him. When he refused, he beat her and threatened to kill her. The victim also lodged a complaint with the police earlier and after that, the accused apologized and promised not to bother her in future and also given a written statement to police that he will not stalk her in future. The victim then moved to Goa to live with her parents. But soon after she left Delhi, the accused created her fake profiles on social networking websites. He then uploaded photographs on these sites and declared her to be his wife. The accused also impersonated the victim online and made contact with her friends through these profiles and due to this

the girl's marriage was called off. A case under Section 66-A of the Information Technology Act was lodged in New Delhi.

Case 3: Kalki Subramaniam's Case – Cyber Bullying

In another incident, Kalki Subramaniam, a transgender activist was bullied and harassed by people at her social media account as she refused to provide her personal phone number and did not entertain men who wanted to have lewd sex chat with her.¹¹

Such incidents occur to thousands of girls and women in India almost every day. It becomes imperative in such a situation to train young girls and women to deal with like scenarios and simultaneously make them alert of instances so that they are truly empowered and do not fall prey to cybercrimes. Women in picnic or guest rooms, public baths, test rooms at clothing stores, hotels or even in court baths are captured by spy cameras or cell phone cameras. Such voyeur images are still distributed on the internet and because the internet is so large, so versatile and has complex problems, after a while we will not be able to keep the handwriting tab where the image comes to an end. These photographs are sometimes an act carried out intentionally to malign the reputation of these women and maybe a form of revenge porn. These images irrespective of whether they are revenge porn materials or viral voyeur videos or rape videos express numerous human emotions.

Ironically, while deciding the fate of Section 66-A of the Information Technology Act, 2000 (2008) in *Shreya Singhal vs. Union of India*, the Supreme Court emphasized the right to information through free speech, but simultaneously a big lacuna was completely neglected. This lacuna was about the victimization of women on the internet. Victimization of this kind is carried out through the misuse of the right to speech and expression on the internet.¹² Such misuse of rights and expression on the internet can turn extremely dangerous for women especially because of the nature of the internet as a medium of information, which is different from traditional print media.

The above-highlighted facts are blunt violations of:

- Basic human right including the fundamental Right to Privacy¹³
- Right to Live with dignity as guaranteed under Article 21 of the Indian Constitution
- Violation of Right to be informed.

Laws on Women Rights in India: A Reflection

The Constitution of India is one of the most unique and longest Constitution in the world that covers all aspects of society. The founders of the Constitution were aware of the importance of human dignity and dignity and therefore included the term human dignity in the preamble of the Indian Constitution. Women's rights in India can be divided into two categories, namely Constitutional Rights and Legal Rights.¹⁴ Constitutional rights are provided by

the various provisions of the constitution. Legal rights, on the other hand, are provided for in the various laws (Acts) of Parliament and in the Legislatures.

The Indian Constitution on Women Dignity

The Constitution of India did not explicitly mention the 'Right to Respect' clearly in the third part¹⁵ of the Indian Constitution, but the Supreme Court has recognized the right to dignity as enshrined in Article 14, 19 and 21. To protect the women dignity the Constitution of India provides equality before the law under Article 14 and strictly prohibited any type of discrimination under Article 15:

'The State shall not discriminate against a citizen on grounds only of religion, race, caste, sex or place of birth.'

Article 39 (a) states:

'The state to secure for men and women equally the right to an adequate means of livelihood.'

Article 42 states:

'The state shall make provision for securing just and humane conditions of work and maternity relief.'

The notion of women dignity is connected with gender equality and gender justice. Article 51(A) (e) states:

'to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounces practices derogatory to the dignity of women.'

Another important is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993. The Judiciary has also emphasized dignity as a fundamental right in a number of cases. Recently, in *Naz Foundation v. Government of NCT and others*¹⁶, Court observed that

"the Constitutional protection of human dignity requires us to acknowledge the value and worth of all individuals as members of our society".¹⁷

The First Cyber Legislation in India on Women Dignity: The Information Technology Act, 2000 (2008)

The Parliament of India passed its first cyber law, namely the Information Technology Act, 2000, that be responsible for the legal infrastructure for e-commerce in India. The Information Technology Act 2000 in India has been enacted on the lines of the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law, 1996. The Information Technology Act, 2000 was enacted to prescribe punishment and compensation to certain civil and criminal offences.¹⁸

CONCLUSION

Cyber stalking is very common; however, it is not considered a serious

complaint unless it leads to a serious crime such as a threat of rape or sexual retaliation or blackmailing. In society, a piece of general advice is given to complainant to block the intruder and remove all the personal credentials on social media. Additionally, the major blame is imposed on the victim for sharing of their personal information. To make both cyber-sensitive and sexually sensitive, our laws need to be changed. The rules are still in place and IT law has been amended also, however, cases of violence against women require a holistic approach to changing laws, changing legal systems and awareness campaigns involving various sectors of society. Websites should be introduced to register complaints from victims. Women should be 'Cyber Smart Women' to protect themselves from cyber stalkers. Women should know the techniques to strengthen their privacy including reporting to Cyber cell immediately, storing all the documentary pieces of evidence, taking snapshots of images, messages and preserving emails. The author concludes that much prior to law, the smartness would preserve women from cyber-attacks. It is ripe time for women to become 'Cyber smart Women'.

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