

AMOGHVARTA

ISSN : 2583-3189



Cyberstalking: Issues and Challenges

ORIGINAL ARTICLE



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Abstract

Cyberstalking is the term for when someone is harassed online through various means, such as liking someone's pictures or following their activity, commenting inappropriately, or sending unwanted emails or messages that contain abusive or obscene content, all in an attempt to avoid being noticed. Stalking is defined as any act of closely following someone without being heard or seen. These days, with the internet permeating every aspect of our lives, cyberstalking and bullying have become commonplace as standard forms of sexual harassment. However, these forms of harassment extend beyond simple sexual harassment, encompassing the dissemination of threats, false accusations, data theft, identity theft, and other forms of aggression. Comparably, cyberstalking instances are emerging in India at an exponential rate, which is why the necessary legislation to address the problem are still lacking or do not meet the necessary criteria. The current laws pertaining

to this matter are still out of date as a result of a lack of understanding on the part of the public and our legislators. The regulations pertaining to this matter, the kinds of offences that really occur in this context, the areas where the restrictions fall short of current trends, and potential remedies for these issues will all be the main topics of this study.

Key Words

Cyber Stalking, Internet, Sexual harassment, Cyber Bullying, Online harassment.

Introduction

Nowadays, everything runs on or through the internet, whether it be Google, YouTube, social media platforms like Facebook, Instagram, and WhatsApp, or e-commerce websites like Amazon, Flipkart, Snapdeal, etc. The internet exists on cyber space, which is on its own a virtual reality, a whole other reality that exists on servers. All of these websites are linked to us by our email addresses, so they literally have access to our information. As a result, they are aware of everything we look up and do. While this does simplify people's lives, it also exposes people to cybercrimes such as cyberstalking, which encompasses identity theft, data theft, cyberbullying, harassment, and other related offences. These kinds of offences are classified as cyberstalking. Since the Internet went online, a plethora of opportunities have arisen, but it has also given rise to a whole new avenue for criminal activity and the added advantage of anonymity due to the difficulty of learning computer languages, which leaves most people ignorant of them and vulnerable to the few who do. Now, not everyone who knows how to get through them is a criminal; there is a subset of people who do this

for financial gain, vengeance, amusement, or any combination of these reasons. As we go along, we'll discuss the distinctions between physical and cyberstalking, the constitutional framework created by current laws, the legislative framework created by reported or unreported cases, issues with enforcement due to laws or mindsets, and, finally, some potential solutions that could aid in enforcing more modern and better laws.

Effects of Cyber Stalking

Every crime has repercussions, some of which are severe and others of which are not. Cyberbullying, identity theft, bank fraud, and cyberstalking are only a few examples of the major mental consequences that come with cybercrimes. Physical consequences are not as severe as they may be. The victims of crimes committed online are always more afraid as a result of the crime. The distinction is in the mode of crime; when a crime is committed physically in the real world, an investigation is launched, the offender is apprehended, and they are sentenced to prison. While these crimes do leave a mark on the victim, they do not have the same degree of effect as online crimes, particularly cyberstalking. After a victim is stalked online, things never go back to normal because these types of stalking instill a deeper fear in the victim, which leads them to take far more precautionary measures than necessary. To cope with this fear, the victim tries to remove themselves from as many people as possible out of fear of becoming the target of future stalkers. Changing email addresses, locking oneself in one's home because it is easier to locate strangers on social media than in person, and deleting social media accounts are common responses from victims of cyberstalking. However, as I previously mentioned, the world depends on the internet to function, so losing access to it means cutting oneself off from the outside world.¹ Some more effects of or consequences of a cyberstalking offense are:

Paranoid Personality Disorder: This mental illness, which is also referred to as PDP in the medical community, causes a person to constantly question the intentions, motives, and loyalty of others. It causes them to constantly be on guard because they believe that the other person is trying to take advantage of them, deceive them, or that they will eventually mistreat or threaten them. Following their experience of being cyberstalked, the majority of victims develop this illness, which causes them to misinterpret signals from an innocent person as an attempt by the harasser or stalker to assume that everyone they speak to is responding to them for their harassment. In addition, they have a tendency to react to perceived persecution, rejection, or slighting by hurling temper tantrums, exercising control over others, or shifting the responsibility elsewhere.² This is the actuality of the crime, which worsens the victim's situation beyond that of physical stalking.

Psychological Distress: Where the sufferer has intense feelings of loneliness, agitation, or even guilt. These symptoms can be broadly similar to those of post-traumatic stress disorder, even though there is no reason for them to feel guilty because they were the victims (PTSD). Therefore, it's crucial to realise that, despite their potentially troubling motivations, cyberstalking's effects are insignificant in comparison to those on the victim.

Reasons for Cyberstalking

Cyberstalking can occur for a variety of reasons. However, all of these motives have one thing in common: the offender's infatuation with the victim. First of all, the level of infatuation is so strong that it becomes acrid possessiveness. It gives the offender the desire to bother the victims in their minds. The process involves manipulating the victim's photos, extorting them to have sex, and if they refuse, threatening to have it leaked online. Second, in cases of one-sided love, the victim finds it intolerable that the perpetrator is rejecting them. As a result, the victim wishes to exact revenge on the perpetrator by forcing the victim to accept her by force or coercion through constant torture, disruption, blackmail, restlessness, and lack of peace. Thirdly, the offender may have felt degraded and undeserving of respect in the eyes of the public as a result of the victim making fun of them in public. The offender then starts stalking in an attempt to exact retribution. Fourthly, the offender is a psychopath who causes a lot of issues since he or she is infatuated with the victim. In such circumstances, the offender is unable to recognise the type of behaviour they are committing.

Relevant Legislations

Section 509 in The Indian Penal Code

Word, gesture or act intended to insult the modesty of a woman. Whoever, intending to insult the modesty of any woman, utters any word, make statement, gesture, or action meant to belittle a woman's modesty. Everyone who, with the intent to violate a woman's modesty, speaks, gestures, or displays objects with the knowledge that the target of the speech or gesture will hear it from her, or who violates her privacy with the intention of offending her will be punished with a fine, simple imprisonment for up to a year, or both any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.³

Nevertheless, after reading the passage, one might get the conclusion that the IPC's above provision primarily addresses words, gestures, and actions that are meant to belittle women's modesty. However, it omits to specify any online behaviour, such as cyberstalking, in which the use of the hearing or vision senses is prohibited, as stated in the previous section.

The Information Technology Act of 2008 made no explicit reference to stalking. Nonetheless, it primarily addressed the issue of stalking by referring to it as an "intrusion of one's privacy." Cyberstalkers may utilise such a vague insinuation or interpretation, which does not fully encompass the crime of cyberstalking, as an escape route. Because cyberstalkers are anonymous, their actions generate more fear and invasion of privacy than traditional stalking does. They also discourage modesty and cause more anxiety than traditional stalking does. In the worst case, some deluded or psychopathic cyberstalkers might transform their victim into a pornographic image that they then post on social media and other websites, completely destroying the dignity of the victim.

Section 72 in The Information Technology Act, 2000

Penalties for violating privacy and confidentiality. With the exception of what is specifically stated in this Act or any other law currently in effect, anyone found to have obtained access to any electronic record, book, register, correspondence, information, document, or other material through the use of any of the powers granted by this Act, rules, or regulations made thereunder and then disclosed such information to another person without the consent of the individual in question faces a term of imprisonment that could last up to two years, a fine that could go up to one lakh rupees, or both.⁴

The aforementioned clause places a strong emphasis on penalising anyone who obtains access to electronic records, books, registers, correspondence, information, or documents belonging to another person and divulges any of that person's property to a third party without that person's agreement. When we narrow the focus to cyberstalking, however, we find that it encompasses not only the leaking of any electronic material but also ongoing or persistent disruption of the victim through messages, the sending of altered or obscene pictures with threats to post them on social media, or surveillance of the victim whenever they are using a computer or phone. This last type of stalking is known as computer stalking, which is a subset of cyberstalking.

Section 72A in The Information Technology Act, 2000

Penalties for information disclosure that violates a valid contract. Except as otherwise provided by this Act or any other law currently in effect, anyone, including an intermediary, who, while rendering services in accordance with the terms of a legal contract, gains access to any material containing personal information about another person and discloses that material to another person without that person's consent or in violation of a legal contract faces a term of imprisonment that could last up to three years, a fine that could last up to five lakh rupees, or both.

The aforementioned clauses, however, deal with the abuse of authority by individuals granted it by the act's provisions that is, by a legally binding contract. Stalking is not specifically mentioned. The term "lawful

contract” is used, which makes it clear that stalking is not a contract but rather an illegal behaviour.

Section 441 in The Indian Penal Code

Criminal trespass: Anyone who enters into or onto another person’s property with the intent to commit an offence, or who enters into or upon another person’s property lawfully and then unlawfully remains there with the intent to do so in order to intimidate, insult, or annoy any person in possession of that property, is considered to have committed “criminal trespass.”⁵

Criminal Amendment 2013⁶

After the Nirbhaya case, certain amendments were made. One among them was 354D of IPC. Section 354D reads as follows:

1. Any man who:

- A. Follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
- B. Monitors the use by a woman of the internet, email or any other form of electronic communication, Commits the offence of stalking;

Provided that such conduct shall not amount to stalking if the man who pursued it proves that:

- A. It was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
 - B. It was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
 - C. In the particular circumstances such conduct was reasonable and justified.
2. Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

The Problem of Enforcement in the Context of Indian Constitutional Framework

The main issue of territorial jurisdiction has not been adequately addressed in the Information Technology Act of 2000 or the Information Technology Amendment Act of 2008. The many sections that address the issue of jurisdiction include 46, 48, 57, and 61, which also include a list of the adjudication process and the appeals procedure. Section 80 delineates the authority of law enforcement officials to conduct searches in public areas with respect to cybercrimes and related matters. Cybercrimes are crimes perpetrated through the use of computers, and it can be challenging to identify which P.S. should be held accountable for an offence if someone hacks into the email account of a person residing in a different state or nation.

Because of the issue of jurisdiction in these cases, many police personnel have a tendency to no longer accept the victim’s charges. Since cybercrimes transcend national borders, it is necessary to clarify jurisdiction by stating all pertinent criteria that should be taken into consideration. It is important to specify which State has the jurisdiction to handle cybercrime cases.

The extradition agreement between the two countries may be the answer to the issue. In the event that an extradition agreement is in place between the two nations in question, the offender is repatriated to the nation in which the crime was committed. Just like in the case of cyberstalking, no such enforcement difficulty will arise if there is an agreement between the victim’s and stalker’s home countries.

When a nation’s laws diverge from those of another nation, jurisdictional disputes result. It is possible for a stalker to face consequences in one nation while being unpunished in another. Under such circumstances, the issue of enforcement emerges, and the countries’ extradition and cooperation agreements come into play.

The Information Technology Act's Section 75 establishes India's "extraterritorial jurisdiction. "This section clarifies that an offender will be subject to the Information Technology Act's requirements regardless of whether they were committed inside or outside of India, and this applies even if the criminal is not an Indian citizen. As long as the offence is related to computer systems or networks located in India. As a result, Indian laws only partially address the issue of enforcement.

Conclusion

The phrase "cyber stalking" is very recent. Given the seriousness of the offence and how it impacts the victim's bodily and mental health, this has been classified as a crime. The legislature and judiciary have taken notice of this offence, and it is now felt that appropriate legislation and enforcement authorities are needed to handle situations of this nature. There have been arguments made claiming that although cyberstalking is a new crime in and of itself, it is just a more severe form of stalking. The primary goal of the stalker in the aforementioned offence is to intimidate or harass their victim. As a result, it involves illegal action. There are even specialised laws on the topic in many countries. India does not have any legislation of this kind, and the measures that do exist, either directly or indirectly, are ineffective in decreasing these kinds of offences due to the enforcement issues that this article highlights. There are very few incidents that are recorded since the victim and the stalker may reside in separate countries, making it challenging to determine which country's laws should be applied. This is because the police do not pursue the case due to enforcement concerns. Therefore, the legislature should take into account the aforementioned intricacies in the laws that have already been approved and create a strong legal framework to address these grave offences.

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