

“Cyberstalking and its Legal Aspects”

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INTRODUCTION

Cyberstalking is defined as a crime where a stalker uses cyber platforms including social media and various network modes for illegal and unlawful surveillance. According to section 354D of IPC stalking refers to unwanted and/or repeated surveillance by an individual or group toward another person. It is often related to harassment and intimidation and may include physically following the victim and spying on them. The word stalking in itself indicates the illegitimacy making it a heinous offense. Therefore, cyberstalking ipso facto becomes a grave crime.

The term cyberstalking is derived from the word “cyber” meaning anything related to computer or computer network like the internet while stalking refers to the crime of monitoring someone illegally. This term doesn’t instil a very new concept. As the field of interaction and communication developed by the way of internet both the concept and its practice came into existence.

In general terms cyberstalking includes repeated acts of harassment like making harassing phone calls or leaving threatening messages or threatening behaviour of the cyber-criminal towards the victim by using internet services. Cyber stalkers operate in the following ways:

1. The stalker starts by collecting victim’s personal details like name, address, family background, telephone numbers, daily routine information regarding the work place, date of birth etc. The stalker gathers the information through internet.
2. The stalker may misuse this information by posting it on websites related to sex or dating services posing to be the victim.
3. People from all nooks of the world can access this information and may start calling or messaging the actual victim at their residence or work place.
4. Some stalkers may even subscribe the e-mail account of the victim to multiple pornographic sites because of which victim starts receiving innumerable unsolicited e-mails.
5. In online stalking the stalker can use a third party to harass the victim. Stalkers make sure that the victim knows that he or she is being followed.
6. A cyber stalker may even track down the residence of the victim and commit the crime of stalking.

LEGALITIES

The legal provisions under which cyber stalking can be dealt in India are:

1. Information technology act 2000.

2. The criminal law (Amendment) act 2013.

The information technology act 2000

Section 66A of information technology act 2000 states Punishment for sending offensive messages through communication service, etc.—Any person who sends, by means of a computer resource

- (a) any information that is grossly offensive or has menacing character; or
 - (b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will; or
 - (c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to mislead the recipient about the origin of such messages,
- shall be punishable with imprisonment and fine.

Section 67 states the Punishment for publishing or transmitting obscene material in electronic form. According to it, whoever publishes or transmits or causes to be published or transmitted any obscene material in the electronic form, shall be punished with imprisonment which may extend to three years and with fine which may extend to five lakh rupees.

The criminal law (Amendment) act ,2013.

In 2013 the Indian Penal Code was amended by the criminal Law amendment act which was passed through the justice Verma committee after the Delhi Gang Rape case in 2012 and as the number of crimes against women kept increasing. Online as well as offline stalking was identified as an offense under section 354D.

Stalking laws in India are stated under the 353-357 section of the IPC. However, there is no specific provision that criminalises cyberstalking in India.

As per the section 354D of IPC, Anyone who-

- 1. 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
- 2. monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking

In case of the crime of cyberstalking in India, section 500 of Indian penal code that deals with defamation can be applied if the stalker forges the victim's personal information to post an obscene message or comment on any electronic media. Whoever publishes such a message or comment shall be punished with imprisonment up to 2 years, fine or both.

Ritu Kohli's case was the first case in India dealing with cyber stalking. In 2003 her name and contact details were posted by her husband's friend on a chatting site, without her consent. A complaint was filed by her with the cyber cell under section 509 of the Indian penal code for outraging her modesty.

Prior to ritu kohli case the information technology act, 2000 did not recognise the term cyber stalking but amendments were made.

How to Register a complaint

Another issue that has to be tackled is the place or the court where the victim can file a suit against the offender. As when it comes to cyberstalking there is no particular place of action. Cybercrimes are committed without any barrier of boundaries and therefore. Do not have a jurisdiction. Following steps can be taken to file a complaint :

- The crime takes place over internet and not in a physical location. Therefore, the victim is provided with two options- 1) A complaint can be registered by the victim in the cybercrime cell of the local Police Station. furthermore, provisions of filing ‘E-FIR’ have been made in most of the states. 2) In case the victim has already identified the offender and his/ her residence then a complaint can be registered in the police station having jurisdiction over the offender’s residence.
- In case if the local police fail to file the complaint lodged by the victim then there are two options – the victim can send a letter via post to report to the police superintendent. There are cases where women do not have an easy access to police station because of mere hesitation in reporting a harassment incident. In such events, they can approach ‘Online Grievance Redressal Cell’ under the National Commission for Women. The matter is undertaken by the commission.
- A reporting mechanism has been provided by most of the social media websites. They are compelled to act within 36 hours to disable information which relates to any offensive content under the IT (Intermediary Guidelines) Rules,2011.
- Indian Computer Emergency Response Team (CERT-IN) has been designated as the national nodal agency for dealing with the issues related to computer security threats under the Information Technology (Amendment) Act 2008. It operates under the Ministry of Electronics and Information Technology. An e-form has been provided by CERT that has to be filled up by stating the cybercrime that occurred and submit accordingly.

ANALYTICAL REVIEW

1. Enforcement problem

The virtual aspect of the internet community poses some peculiar problems which might be new to enforcement agencies even if the legislation has been carefully crafted. The international aspects of the internet are the major factor pertaining to these problems. Anyone with a computer and internet connection across the whole wide world can use this platform. This implies that the possible offender might reside on the other end of the world and therefore may not be within the jurisdiction where an offence is committed.

On some platforms on the internet the anonymity of the user is quite easy to maintain. Therefore, the internet provides the cyber stalkers with cheap and easy access to the internet removing the barrier of distance as well.

Anyone who uses internet can become a victim of cyber stalking. The internet can not be considered as a lawless place but there are some difficulties in the application of laws.

2. Ill equipped to protect all the victims

Another issue is that cyberstalking laws in India are not only ill equipped to protect the women but are almost non-existent for men. Despite the existence of evidence pertaining to a women's involvement in cyberstalking a man and harassing him online, legal resources available to him are negligible. According Legal experts even as cases of women cyberstalking men are increasing, Indian law is still not certain about how to deal with them. Till a few years ago, 75% cases of cyber stalking had women as their victim but now the ratio is 50:50. The only options available to male victims are an amicable settlement with the accused or to wait for their stalker to make a threat so that it turns into a crime.

There is no legal provision that deals with the accused women cyber-stalkers. As a matter of fact, there is no specific law to tackle cyberstalking in India. Usually it is covered under section 67 of Information Technology act, 2000 but the applicability of this section is entirely based on publication or transmission of obscene material. For cyberstalking police generally files a case under section 354D of the IPC. However, it is clear from the language of the section that it only covers a male accused and a female victim.

The law handicaps male victims to take the legal routes consequently leaving them open to a lot of abuse as they have to wait for their stalker to make a threat or try extortion for it to take form of a crime.

CONCLUSION

As the field of communication has advanced with the introduction of internet, the number of crimes related to the internet has increased significantly as well, and the complexity of these criminal activities have been on rise too. The laws dealing with the cyber offenses are not exhaustive. Quite a few provisions are constantly instilled by the means of amendments. Before the information technology act 2000 evolved tackling the cyber offenses was utterly enigmatic. But after the amendments it has been used sincerely to provide all the possible remedies to the victims of cybercrimes like cyber stalking. Thereupon providing people hope that furthermore the development of these computer networks will be accompanied with development of strict laws regulating the actions online and making the internet a safe place.

Although people need to be self-aware and careful while sharing their personal details on the internet. They should monitor their own activities and not share information with strangers. However, the legislation needs to craft laws dealing with effective prevention of cyber stalking. The need for legal provisions cannot be overlooked in the light of taking precautions.