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Research Article



**CYBER STALKING AND ONLINE HARASSMENT IN INDIA :
A SOCIO-LEGAL ANALYSIS**

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ABSTRACT

Currently, the world of internet is fast and becoming a way of life for millions of people. Internet though offers great benefit to the society, also present opportunities for crime using new and highly sophisticated technology tools. Cyber crimes are emerging as a serious threat, and have been reported across the world invariably. With the rise of industrial revolution, rapid means of communication, and modern scientific invention, new dimensions of crime have been discovered, of them, cyber stalking is one. This new phenomenon is growing very fast on the internet and spreading in alarming proportions throughout the world. Cyber stalking generally involves harassing or threatening behaviour that an individual engaged repeatedly such as following a person, appearing at a person's home or place of business, making harassment and can disrupt the life of the victim, and leave them feeling very afraid and threatened. It may involve threats, identity theft, and damage to data, solicitation of minors for sexual purposes, and any other form of repeated offensive behaviour, and in some cases ultimately lead to very serious consequences including rape, suicide, and murder of the hapless victims.

Key Words : online harassment, cyber privacy, enforcement problems, Information Technology,

I. INTRODUCTION

Computer technology and communication ramifications over the globe introduced the concept of internet to the electronic world. Internet is a worldwide broadcasting capability, a fantastic mechanism of information dissemination and interaction between the animate individual and inanimate computer without regard to any geographical boundaries. Cyber crimes take their nature from the internet and cyberspace. The privacy provided by the internet makes the cyber criminal almost invisible at the time when cyber crimes are committed. Cyber crimes can be said to be technology-based crimes, in which technology is the weapon as well as the target at the victim's end. Cyber crimes are offences that are committed against individual or group of individuals with a criminal motive to intentionally harm the reputation of the victim, or cause physical or mental harm to the victim, directly or indirectly, using telecommunication networks such as internet, e-mail, notice boards and groups, mobile phones. The internet is a boon for information seekers the work over, have been trying to tackle by way of legislative, executive and judicial action.

Cyber Crime is an evil having its origin in the growing dependence on computer in modern life. Of various cyber crimes such as online gambling, e-mail spoofing, cyber pornography, cyber defamation, e-mail bombing, hacking, planting viruses, cyber stalking etc., wherein the computer is a

tool for an unlawful act. Currently, the rate of cyber stalking is assuming an exponential growth which is by and large ignored. Many people do not consider cyberstalking dangerous, due to lack of physical contact between the offender and the victim. In most of the cases, this cyberstalking has spilled over to the physical space and resulted in disastrous consequences for the victims. According to Professor Lamber Royakkers, Cyber stalking is the repeatedly harassing or threatening of an individual via the internet or other electronic means of communication. A cyber stalker is someone with amorous or sexual motives who constantly harasses someone else electronically via the bulletin board, chats box, email, spam, fax, buzzer or voice-mail. Stalking generally involves the constant harassment or threatening of someone else, following a person, appearing at someone's house or workplace, making harassing phone calls, leaving written messages or objects, or vandalizing someone's property. Because the stalking activities are so diverse and have to be seen in their connection it is difficult to give a precise description of stalking." This paper explores in regard to various parts. The second part explores about the conceptualisation of cyber stalking and online harassment typologies and various kinds of cyber stalkers. The third part analyses the legal protection on cyber stalking in various countries such as United States of America, United Kingdom and India, while the fourth part discusses the problems under enforcement. The fifth part analyses the preventive measures through various internet service providers, and at last final part dealt with conclusion.

II. Conceptualisation of Cyber Stalking:

It is difficult to define stalking because there are so many ways in which this threatening behaviour can manifest itself, which actions can be subsumed under this criminal offence varies from legislation to legislation. Therefore, stalking cannot be easily described like most other crimes. But in deriving the smallest common denominator of all of the anti-stalking laws one can overall conclude that stalking is '*persistent and unwanted*' attention of one person towards another.

According to Oxford Advanced Learners Dictionary, stalk means to move through a place in an unpleasant or threatening way. Stalking is not new, and was prevalent in the society for many centuries, and it occurs when one person harasses another person or causes a fear by resorting to repeated, unsolicited contact. It is an expressed or implied a physical threat that creates fear through the use to computer technology such as internet, e-mail, phones, text messages, webcam, websites or videos. Stalking behaviour can also include harassing the other person by following, appearing at the place of work or home, making threatening telephone calls, sending threatening messages with the aim of harming or causing severe apprehension of imminent danger in the minds of victims. Cyber stalking is used interchangeably with online harassment and online abuse. It is a new form of computer related crime occurring in our society.

According to the British Crime Survey, stalking is "two or more incidents causing distress, fear or alarm of obscene/threatening unwanted letters or phone calls, waiting or loitering around home or workplace, following or watching, or interfering with, or damaging personal property carried out by any person". In parallel, the psychiatric literature has defined stalking as a course of conduct by which one person repeatedly inflicts on another unwanted intrusions to such an extent that the recipient fears for his or her safety. Stalking and harassment are distinctive in law since the offending behaviour is said to occur only when the victim reports him/her self to be distressed as a result of the behaviour of another to whom they believe to be threatening. The victim's perception of the offending behaviour and its effects are therefore pivotal in providing criteria on which to make a change.

Cyber stalking victims are characterised as four categories of offenders. They are

1..**Vindictive cyberstalkers** : are characterized by relentless harassment of their victim without a specific reason. They are frequently suffering from psychological disorders.

2. **Composed cyberstalkers:** aim to cause constant annoyance and irritation to the targeted victim. They have no desire to establish a relationship with their victim, and are motivated to cause them distress.

3. **Intimate cyberstalkers:** are characterized by the desire to attract the attention or affection of their victim. They usually have detailed knowledge of the person being targeted.

4. **Collective cyber-stalkers :** consist of a group of individuals harassing their victims through the use of communication technology.

And depending on their behaviour, they are of rejected stalkers, resentful stalkers, predatory stalkers, delusion stalker, erotomaniac stalkers, harasser stalkers, love rats, Trolls.

III. LEGAL REGULATION :

At International level, the Universal Declaration of Human Rights proclaims in relation to harassment, and Budapest Convention on Cyber Crime dealt with the illegal access and illegal interception. This Convention asks the State parties to adopt legislative measures as may be necessary establish as criminal offences under its domestic law when committed intentionally, the access to the whole or any part of the computer system without right and made by technical means of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data.

United States of America:

The Department of Justice statistical report of June 29, 2006 indicates that, on average, more than three women are murdered by their husbands or boyfriends in this country every day. The Federal Bureau of Investigation reports that domestic violence is the leading cause of injury to women between the ages of 15 to 44 more than car accidents, muggings, and rapes combined. Cyber Stalking provides astonishingly easy and cheap tools for an abuser to locate women who have tried to move away or go into hiding.

There are certain laws to protect cyber stalking victims. The Violence Against Women Act, passed in the year 2000, which made cyber stalking a part of the Federal Inter-State Stalking Statute. The following States in the United State have begun to address the issue cyber stalking such as Alabama, Arizona, Connecticut, Hawaii, Illinois, New York, and they have included prohibitions against harassing through electronic communications. While the State of Texas enacted Stalking by Electronic Communications Act, 2001, State of Missouri revised its State harassment Statutes to include stalking and harassment by telephone and electronic communication as well as cyber bullying after the Megan Meier suicide case. In some of the States, both stalking and harassment Statutes criminalise threatening and unwanted electronic communication, and also prohibited misuse of computer communications and e-mail, and included broad language that can be interpreted to include cyber stalking behaviour. As per Naval Criminal Investigative Services, the net usage grows occurrences of harassment will escalate.

United Kingdom : In legal sense, there is no distinction between stalking and harassment and it would be regulated by the Protection from Harassment Act, 1997, which provides that a person must not pursue a course of conduct which amounts to harassment of another and which he knows or ought to know amounts to harassment of the other. This kind of online harassment may lead to prosecution under Malicious Communications Act, 1988. (It is a summary offence to send any indecent, offensive, threatening letter, electronic communication and other article to another person, who does the act inflicted with maximum six months imprisonment) and Communications Act, 2003.

India: According to National Crime Records Bureau data, the number of cases for obscene publication and transmission in electronic form under the Information Technology Act, 2000, has risen since 2007, when 99 such cases were reported. The number rose to 105 in 2008, 139 in 2009, 328 in 2010, 496 in 2011 and 589 in 2012. The figure more than doubled to 1,203 in 2013. In 2014, 758 crimes were reported, in which 491 people were arrested. "Online harassment and cyber crimes have

not been given the kind of priority in India as these deserve. The mindset is such that these crimes are perceived as minor crimes. And going by the numbers, we know that by and large, India has failed in getting the requisite cyber crime convictions, and the number of such crimes is rising.

Cyber stalking is the new facet of cyber crime in India. Unfortunately, the present laws are not sufficient to cope with this new form of cyber stalking. Though, in India is one of the countries which can boast of having a legislation such as Information Technology Act, 2000, to fight against the cyber crime. There is no direct provision relating to cyber-stalking and even nowhere it has used this term nor has recognised this type of behaviour in the whole Act. There is an amendment in the year 2008 to the IT Act, and recognised the cyber staling under Sec. 66-A. By this section, sending of messages through electronic means are grossly offensive or sending the information that the sender knows to be false with the intention of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill-will, or sending of e-mail in order to cause annoyance or inconvenience is punishable with imprisonment of three years or with fine which may extend to rupees one lakh or with both. Under Information Technology (Amendment) Act, 2008, Sec. 72 specifically provides breach of confidentiality and privacy. Whereas Sec. 72-A of the Amended Act dealt with punishment for disclosure of information in breach of lawful contract. Under the Amended Act, the Government of India had taken several initiatives to review the existing criminal laws especially after the Delhi Gang Rape in the year 2012. During the course, anti-stalking law was introduced under Sec. 354-D of Indian Penal Code, which specifies as whoever follows a person or contacts or attempts to contact such person to foster personal interaction repeatedly despite a clear indication of disinterest by such person or whoever monitors the use by a person of the internet, e-mail or any other form of electronic communication or watches or spies a person in a manner that results in fear or violence or serious alarm or distress, in the mind of such person or interferes with the mental peace of such person, commits the offence of stalking.

Provided that the course of conduct will not amount to stalking if the person who pursued it shows that it was pursued for the purpose of preventing or detecting crime and the person accused of stalking had been entrusted with the responsibility of prevention or detention of crime by the State, or that it was pursued under any enactment or rule of law, or to comply with any condition or requirement imposed by any person under any enactment, or that in the particular circumstances the pursuit of the course of conduct was reasonable, and whoever commits the offence, shall be punished with imprisonment of either description for a term which shall not be less than one year but shall extend to three years and shall also be liable to fine.

Sec. 503 of the Indian Penal Code provides that whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of anyone in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, such person commits criminal intimidation. Cyberstalking in effect is committing criminal intimidation with the help of computers. The offender might be causing alarm by sending messages via the internet to the victim threatening injury to him, his property or reputation. The computer is merely used as a tool for committing the offence or rather improving upon the act of committing the offence and to be able to more effectively threaten his victim. The anonymity over the internet gives the offender a suitable shield to commit the offence without being easily detected.

In 2001, The Delhi Police registered India's First Case of Cyber stalking. One Mrs. Ritu Kohli complained to the police against a person who was using her identity to chat over the Internet at the website www.mirc.com, mostly in the Delhi channel for four consecutive days. Mrs. Kohli further complained that the person was chatting on the Net, using her name and giving her address and was talking obscene language. The same person was also deliberately giving her telephone number to other chatters encouraging them to call Ritu Kohli at odd hours. Consequently, Mrs Kohli received

almost 40 calls in three days mostly at odd hours from as far away as Kuwait, Cochin, Bombay and Ahmedabad. The said calls created havoc in the personal life and mental peace of Ritu Kohli who decided to report the matter.

IV. ENFORCEMENT PROBLEMS:

The biggest problem with police and law enforcement agencies is that they are not bothered unless bodily harm is involved or the crime is a very serious one. Due to the nature of cyber stalking, in most of the cases, police consider it to be a harmless crime. The normal perception in police circles is prosecution of these criminals is difficult and hence, any time and effort spent on these cases is a waste. This is due to the ignorance on the part of the police and other officials about the potential effects of cyber stalking. Establishing specialised units to investigate cyber crime and training the police and other law enforcement agencies will help in investigation and prosecution of cyber stalkers.

It reaching epidemic proportions on the internet, which can have a devastating effect on the victims. Most of netizens feel that it is harmless because the victim and perpetrator may be in continents apart. "Even with the most carefully crafted legislation, enforcing a law in a virtual community creates unique problems never before faced by law enforcement agencies." These problems pertain mainly to international aspects of the Internet. It is a medium that can be accessed by anyone throughout the globe with a computer and modem. This means, as explained below, that a potential offender may not be within the jurisdiction where an offence is committed. Anonymous use of the Internet, though beneficial in many instances, also promises to create challenges for law enforcement authorities.

The Internet is a global medium regardless of frontiers, and this creates new possibilities for the so-called cyber-stalker. Cheap and easy access to the Internet means that distance is no obstacle to the cyber-stalker. The Internet is not a "lawless place", but there are difficulties in applying laws that are made for specific nation states and this would be also true of applying national harassment and stalking laws to the Internet. Internet technology creates possibilities for anonymous communications and hence for anonymous cyber stalking. The identity of a cyber-stalker may, therefore, not be revealed or found. The fluidity of identity on the Internet has been described as one of its chief attractions. Anonymity on the Internet can be achieved by using an anonymous re-mailer. Re-mailers are computer services which cloak the identity of users who send messages through them by stripping all identifying information from an e-mail and assigning a random replacement header. The ease with which users can send anonymous messages would render legal regulation of on-line harassment a difficult, if not impossible, task. Tracing a cyber-stalker may prove an insurmountable obstacle to any legal action when the electronic footprints which users leave behind are effectively eliminated by re-mailer technology.

V. SELF PROTECTION

Preventive measures are very important in dealing with cyber stalking. By observing simple measures, one can avoid this menace to a great extent. The first and foremost thing to remember is not to give one's personal information like real name, address, phone number to anyone through e-mail, chat rooms or newsgroups. This is applicable to everyone who meets on the internet and also for similar requests even from Internet Service Providers, and they are also providing many security features which are aimed at prevention of cyber stalking crimes, and are also appointing moderators or inspectors in various chat rooms to prevent such crimes. Currently, most of the Internet Service Providers have strict policies regarding cyber stalking. One must not reveal his real identity including age and sex, and must be careful while filling user profiles with personal information. It is to be noted that there are number of software filters that can help in filtering the data which one does not wish to share with others on the net. Using these filters, children can also be prevented from sending personal information inadvertently.

There are certain Internet Safety Organisations around the world to protect victims of cyberstalking such as Cyber Angels, Internet Watchdog Group, Working to Halt Online Abuse (WHOA), etc., These are all in the forefront for the battle against cyber stalking.

Cyber Angels: An all-volunteer non-profit organization operated exclusively in cyberspace, offers around-the-clock, one-stop assistance with Internet investigation and education needs. It is the largest and best known internet safety organisation. Cyber Angels was founded in 1995 by Gabriel Hatcher as an online "neighbourhood watch." Originally the group monitored chat rooms directly with the intent of apprehending sexual predators. Later the group took what it had learned and changed its focus to educating police, schools, and families about on-line abuse and cyber crime. Each day Cyber Angels reports 50 child pornography sites to authorities, provides assistance to more than 600 cyber stalking victims, and circulates within its executive levels 2,000 e-mail requests for help. The organization has worked with various national and international law enforcement agencies, including the Federal Bureau of Investigation (FBI), U.S. Customs Service, New Jersey State Police, New York Attorney General's Office, Royal Canadian Mounted Police, Scotland Yard, and Tokyo Metropolitan Police. Currently, the Cyber Angels group has more than 6,000 volunteers residing in 70 countries. Their role is to patrol the Web around the clock in the battle against child pornography and cyber stalking. In 1998, President Bill Clinton honoured the Cyber Angels with the prestigious President's Service Award. In 1999, the organization helped Japanese authorities locate illegal child pornography sites, resulting in the first-ever set of arrests in Japan of Internet child pornographers. In 2003, the Cyber Angels took their online messages into classrooms to teach students how to stay safe in chat rooms and online.

Working to Halt Online Abuse (WHOA)

It was created in the year 1977 by Lynda Hinkle, a victim of cyber stalking. She initially called the organisation as Women Halting Online Abuse, because the majority of online victims at that time are women. When she took over as a President in the year 1999, the name was changed to Working to Halt Online Abuse. The President Jayne Hitchcock said that harassers tend to be white collar, and they don't have a criminal records, are not Internet experts or hackers, and are just like you and me, and they can be teachers, lawyers, businesspeople, students, doctors, the kid who bags your groceries - online harassers and stalkers are not who you may think they are. Most of the Board members are former victims of cyber stalking and online harassment. It works not only with the law enforcement agencies with cases around the world, but also give training as well. The mission of W.H.O.A. is to educate the Internet community about online harassment, empower victims of harassment, and formulate voluntary policies that systems can adopt in order to create harassment-free environments. W.H.O.A. fully supports the right to free speech both online and off, but asserts that free speech is not protected when it involves threats to the emotional or physical safety of anyone. It further asserts that online harassment is about power in a community via the Internet. As such, we must begin to assert our power as a group toward the protection of all people online against harassment targeted against them based on gender, sexual preference, race, ethnicity, age or privilege. It is primarily an organization of women, but the organisation welcome men who demonstrate sensitivity toward the issues of harassment and a willingness to support our cause.

CONCLUSION:

Cyber stalking is one of the most dangerous cyber crimes which is emerging very fast. It would be destructive to human civilisation itself, if not checked properly, because the internet becomes an integral part of the daily life of even the common man. Transnational cooperation and common strategy to counter this cyber stalking is very much essential because it needs to be realised that it is a problem which confronts the entire world. There is a need to comprehensively deal with this new form of cyber crime in order to protect the freedom and safety of netizens by multipronged attack, with the cooperation of all the agencies involved. Our laws are inadequate to deal with cyber stalking and no specific mention is made in our laws in relation to cyber abuse of women. Law

enforcement agencies should be strengthened by opening more Cyber Cells, dedicated helpline numbers and imparting of proper legal and technical training to law enforcement agencies like police and judiciary to combat cyber crimes at every level. The phenomenon of cyber-stalking and on-line harassment looks set to be the focus of the next Internet-related moral panic.

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