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Cyberstalking and remedies under Indian law

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In cyberspace, a new type of crime is gaining some traction: frequent efforts by one individual to contact another, instilling fright in the other person's mind. This new kind of crime is referred to as "cyberstalking." In this article, the author has made a concerted effort to address the issue of cyberstalking, which is a fairly young problem. The piece starts with a detailed study of cyberstalking. In addition, the article examines several cyberstalking modalities and techniques. The article then delves into the legal provisions and remedies available under Indian law for cyberstalking. An explanation of how these regulations apply to cyberstalking will be provided, as well as an assessment of the provisions' flaws. Finally, the author will provide some concluding remarks, as well as some tips and preventive steps for avoiding cyberstalking.

Keywords: *anonymity, cyberspace, emotional distress, harassment.*

INTRODUCTION

Cyberstalking is described as a crime in which stalkers track someone using the internet or another technological device. Stalking may take several forms, including following a person until he returns home or goes about his business or pestering an individual over the phone. The offenders are continuously under the belief that they are untraceable and have the ability to hide. As a consequence, competent cyber instruments are needed to investigate cybercrime, plan for its prevention, and prosecute the perpetrators. Human activities have grown more

reliant on technology, particularly information technology, in the era of digitalization. Cyberspace, in addition to having a borderless and ethereal nature, is intangible in scope and rising rapidly in volume and wealth. This virtual area has allowed individuals to communicate with one another and has provided a simple and accessible medium for information, ideas, and data sharing. Cyberstalking is a prime example of someone abusing and exploiting the anonymity that the internet provides to its users. Miscreants take advantage of this anonymity to carry out unlawful and fraudulent acts. The creation of a new species of crime known as cybercrime has come from this category of acts performed in an electronic form, particularly inside the internet.

COMMONLY USED METHODS AND TACTICS FOR CYBERSTALKING

The perpetrator's activities might be direct or indirect when it comes to cyberstalking. A perpetrator can engage in direct cyberstalking by emailing, calling, or texting the victim, using the internet media to communicate intimidating or threatening messages to the victim, messaging through various social networking sites, or using other forms of electronic communication to communicate indecent or defamatory comments and remarks. The offender may also utilize communication technologies to track and follow, or in other words stalk, the victim's online activities. These are a few examples of how cyberstalking is carried out by direct acts. When a perpetrator compromises the device of the victim and steals information regarding him/her or when a perpetrator posts false and misleading info or remarks about the complainant on the internet, indirect cyberstalking can occur.

Cyberstalking is defined as an attacker's persistent and practically voyeuristic conduct over a period of time in order to humiliate or terrify the victim. When the victim disables the account from which the friend or follow request is issued, the perpetrator may continue to make similar requests by establishing other accounts. As a result, there is a constant urge to seek the victim in order to make contact. The attackers cyberstalk the victim by meticulously analyzing the victim's page and tracking the victim's online activity via the social media accounts of shared acquaintances and coworkers. It's also crucial to understand what motivates or initiates such online stalker conduct. Some of the more common psychological motivations for stalking

include harassment, which may take the form of cyber harassment of women which is sexual in nature, desiring payback or a feeling of hatred towards the sufferer, holding jealousy towards the victim, and so on. The stalker may invade the victim's privacy by sending inappropriate messages via various methods of communication, harassing or irritating the victim in the process. The offender may accomplish this by fusing the victim's picture with that of others. All of the examples above are examples of how the crime of cyberstalking expresses itself. As a result, the internet cyberspace offers a safe refuge for offenders who, cloaked in anonymity, may monitor and observe the victim's online and offline actions with or without their awareness. By efficiently disguising their identity, the internet offers a perfect setting for criminals to perpetrate the crime of cyberstalking. Cyberstalkers' acts and behavior jeopardize the victim's security while also blatantly invading his or her privacy.

LEGISLATIVE PROVISIONS AND REMEDIES UNDER INDIAN LAW

The IT Act of 2000

This act was designed to legalize transactions completed using different electronic forms of communication. The Cyberstalking offense is not specifically addressed in the Information and Technology Act of 2000. However, instead of being treated as a typical cyber-crime, cyberstalking is treated as an intrusion or violation of one's privacy and confidentiality under the IT Act. As a result, cyberstalking is prosecuted under Section 72 of the act¹. This section deals with the “penalty for breach of confidentiality and privacy”. According to the provision, anybody who acquires access to a document or content without the person's consent and then discloses such knowledge to some other individual shall be punished. As a result, the aforementioned rule obviously encompasses the crime of cyberstalking.

The IT act was revised in 2008 by an amendment act of the same name² to meet the emerging types with the objective of countering legal difficulties that society is facing in an increasingly digital environment. Chapter XI of the IT Act was amended in 2008 to encompass several sorts of cyber offenses. Section 66E, which punishes privacy violations, Sections 67, which precludes

¹ Information Technology Act, 2000, s 72

² Information Technology (Amendment) Act, 2008

the publication or transmission of obscene material in digital mode, Section 67A, which prohibits the publication or communication of material that contains the graphic sexual act in electronic form, and Section 67B³, which prohibits the publication or transmission of material portraying youth in the sexually suggestive act. Despite the fact that the act has not specifically mentioned cyberstalking, a perpetrator may be charged under the several laws listed above, all of which include the word "stalking." Furthermore, unlike the IPC, the sections of the IT Act relating to numerous cyber offences are gender-neutral.

The Indian Penal Code of 1860

When it was initially founded, it had no regulations against stalking. The charge of stalking was finally addressed in January 2013 following the horrible Delhi gang-rape case, the Nirbhaya case, when the Criminal Law (Amendment) Act, 2013 included Section 354D into the Indian Penal Code.

The IPC section 354D⁴ defines stalking. It states that stalking is committed by any male who tracks a female and approaches, or attempts to reach, her on a regular basis to encourage personal involvement notwithstanding her obvious lack of interest, or who observes her use of the internet or any other kind of communication. When you look at the clause more closely, you'll see that it's gender-specific and only applies to the stalking of women. Does this rule out the possibility of guys being stalked? Because of the widespread usage and reliance on the Internet through computers and other communication devices, it has become crucial in many ways. In this context, a gender-neutral provision is urgently needed. The Section, on the other hand, has tackled both real and internet stalking (online). However, there are some flaws to this section's interpretation. To begin with, it is gender-specific. To put it another way, the clause solely protects women, not males. This isn't to say that guys aren't victims of stalking. Second, the clause fails to address one of the most important components of a criminal offence, namely, the intent. As a consequence, the cognitive element of an individual's intent to violate the law is not included in the clause.

³ Information Technology Act, 2000, s 66E, 67A and 67B

⁴ Indian Penal Code, 1860, s 354D

Criminal intimidation through anonymous communication is dealt with under Section 507⁵ of the IPC. It states that anyone who employs anonymized transmission to unlawfully terrify other individuals, or who takes steps to hide or disguise their identity, including the name or address of the person who is threatening them, shall be prosecuted under this section. Section 507, on the other hand, makes no mention of the method by which anonymous communication is carried out, leaving its scope up to interpretation. As a result, the conduct of stalking, and more especially cyberstalking, by contacting anonymously to criminally frighten any individual, is included within the section's scope.

Cyberstalking is distinguished by the fact that the offender utilizes cyberspace anonymously, i.e., he or she hides his or her identity in order to send disrespectful and threatening messages or remarks with the purpose of criminally intimidating the victim. In such circumstances, the victim is completely oblivious of the source of the threats. The clause goes much further, punishing individuals who take steps to conceal the identity of the person who is threatening them. Section 509⁶ of the Indian Penal Code makes it illegal to offend a woman's modesty. Anyone who, with the purpose to degrade a female's dignity, spouts any phrase, emits any noise or action, or displays any item with the intention that such speech, sound, gesture, or object be heard, or that such gesture or object be seen, by such woman, is reprimanded. As a consequence, if a person offends a woman's modesty or breaches her privacy by using words, gestures, or the display of any item in emails or any other sort of electronic communication, he may be prosecuted with cyberstalking under Section 509 IPC. This provision is also gender-specific, safeguarding just the modesty of women while leaving men out. After going through the various legal measures available to a person to combat cyberstalking, it's important to emphasize that cyberstalking is a gender-neutral offence. Stalking may happen to both men and women on the internet. The section's scope is limited to the degree that the words said, the sounds heard, and the gesture and item saw do not constitute an insult to a woman's modesty or invasion of her privacy. Internet communications have an inherent flaw in that the

⁵ Indian Penal Code, 1860, s 507

⁶ Indian Penal Code, 1860, s 509

perpetrator's intent to insult a woman's modesty or breach her privacy cannot be determined with confidence.

CONCLUSION

Cyberstalking is a fairly young kind of cybercrime that has grown in popularity in recent years as people become more reliant on technological gadgets and the Online world. Cyberstalking is a manifestation of the perpetrator's compulsive behavior pattern. Before digitization and the Net took over every aspect of our existence, stalking was widespread in its physical reality. People have now become digitally more communicative, interconnected, and sociable as a byproduct of the convenience with which they may use the Online services and the interconnectedness it affords. Each individual is in danger of being observed, stalked, followed, and chased because of the widespread availability and simplicity of access to personal information. With the growing usage of the Internet, stalking has now expanded into the digital realm. The offenders can readily utilize cyberspace to their advantage in order to irritate, torment, and intimidate people digitally. The sphere of obscurity inside which these offenders operate is the most diabolical weapon that technology offers. Most cybercrime may be committed more easily because of this invisibility.

Cyberstalking may have serious and life-altering effects on the victim's mental health. In many ways, the regulation addressing cyberstalking is insufficient to appropriately deal with the multifarious character of this crime. The Information Technology Act of 2000⁷, which is India's only law dealing with Internet-related crimes, needs to properly define and regulate cyberstalking as a crime. The number of recorded incidents of cyberstalking is very low, indicating a lack of knowledge and understanding of the crime. Because cyberstalking actually occurs in cyberspace, gathering electronic evidence against the perpetrator is challenging. Cybercriminals are typically computer adept and well-versed in the intricacies involved, making it much easier for them to disguise their online actions and proof connected to those actions.

⁷ Information Technology Act, 2000

However, since cyberstalking doesn't really happen in a vacuum, the current provisions of the Indian Penal Code⁸ and the IT Act, which were addressed before, may be used to charge someone with the offense of cyberstalking. It presents itself in a myriad of different ways, including sexual harassment, criminal intimidation, outraging a woman's modesty, and publishing or communicating obscene or sexually explicit content, to mention a few. As a result, strong legislation addressing the problem of 'cyberstalking' is urgently needed to make the virtual realm safer and more secure for users. In view of adopting measures, the necessity for legal protections cannot be overlooked. Effective legislative mechanisms to deal with such cyber-crimes are urgently required.

⁸ Indian Penal Code, 1860