

Reviewing Justice for Victims of Crime against Women in the Cyber Space: Is More Law the Answer?

*Akshi Narula*¹

Synopsis

Introduction.....	174
Internet-A virtual backdoor for offenders.....	176
Cybercrime	176
Cyber crime v. Crime	177
An analysis of crimes as mentioned under the Indian Penal Code and the Information Technology Act 2000.....	178
Stalking and Cyber Stalking.....	178
Sexual Harassment v. Sexual Harassment in cyberspace	180
Voyeurism:.....	181
Ramifications of harassment on the Internet	182
An analysis on the basis of data:.....	182
A glance to the effects on lives of females:	183
Factors invigorating crimes on the internet	183
Retention of data	183
The illiterate's bane.....	184
Self Regulation a solution?	184
Conclusion.....	185
Lower satisfaction:.....	185
Lower offline reporting.....	185

¹ Student, University of Petroleum and Energy Studies, Dehradun, Uttarakhand

Introduction

Cyberspace and the new opportunities that have arisen as a result, has been described as “cyberspace idealism” and a “utopian realm” where “all can participate equally, free from social, historical, and physical restraints.”² It can be accounted that the internet has the potential to be regarded as a virtual form of society where the people irrespective of the specifications of jurisdictions are of the same stereotypical or contemporary conceptions as can be observed in the real world. It may also be brought out that the acts done on the internet have a greater impact on the real life of a person. The reason for the same lies in the *larger approachability* feature of the Internet.

The internet serves as a capacious medium of exchange of information that contains vast information comprising of data (personal, professional, commercial, etc) which is stored and uploaded or downloaded, linked or distributed by using computers, cell phones and other devices. The veneration of massive flow of data on the internet is conferred to the daily augmentation of internet users. The internet as is assumed by us as a new technology is not so.³ It owes its origin to the ‘Arpanet’ which is the brain child of the US military deployed in 1969.⁴ It was privatized and released from the control of US Department of Commerce in later 1990s.⁵ This precursor version to the Internet now led to the creation of World Wide Web.⁶

It serves as an intermediate which connects people with the world. It draws a person an active membership of the society since through the mode of internet the voice of the person in form of opinions, comments, etc is more evident and visible to the social group with which the person is connected. The medium is now considered the

² Shlomit Yanisky-Ravid & Amy Mittelman, *Gender Biases in Cyberspace: A Two-Stage Model, the New Arena of Wikipedia and Other Websites*, 26 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 381.

³ Dr. Shilpa Jain & Hemavathi S. Shekhar, PL (HR) May 90, 2017.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

most powerful instruments of the 21st century since it facilitates transparency in the conduct of the authorities, has led to easier access to information and encouraged active citizen participation in building democratic societies.⁷

The ramifications of using the internet include crucial set of benefits with drawbacks running parallel to the same. There are numerous sites on the internet. Many of them may have been formed to socialize and others to provide a platform to facilitate discussions on a given agenda or no serious agenda. Also, news channels have their sites where they update the audience on the news feed on a minute to minute basis. It is true that *Google.co.in* holds such a precision of giving results in 0.46 seconds of whatever subject your query belongs to, *youtube.com* gives varied entertainment video options including free virtual classes regarding the academics, news or other activities. Also, sites like *Facebook.com*, *MySpace.com* and other sites provides an individual, free access where he/she can make a private account giving his/her private information and socialize.

The drawbacks, as discussed above, are many. Narrowing them to the threats (acts not recognized as crimes) in form of crimes (acts recognized as crimes) which one may have to face as the consideration for using the internet and on the basis of the consequent group of sufferers they may be divided as: (i) The threats to which every user of the internet is subjected to (like the right to privacy); (ii) The crimes to which the financially viable parties, large corporate houses or the parties having a larger stake in a particular dealing are subjected to (like data theft, cyber terrorism, etc.); (iii) The crimes in which the victim is an individual (like stalking, harassment, etc.). In the current paper, I will be dealing with the (iii) category of crimes which are narrower in scope and will further alter it to the cyber crimes to which the females are habitually prone to and refuse to protest against.

⁷ Sheila S. Coronel, *The Role of Media in Deepening Democracy* available at <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan010194.pdf> (last accessed Nov. 8, 2017 10:00AM).

The internet itself, far from the frontiers of discrimination has provided undifferentiated results for both men and women. However, it becomes pertinent to note here that the cyberspace which emerged as a new space towards globalization, offering equal opportunities, etc. suffers from similar inequalities than those manifested in the real world. The paper will further analyze in detail the present set of circumstances which have emerged as a result of such exploitation of women on the internet and hint at the introduction of a stronger law towards the protection of women in the cyber space.

Internet-A virtual backdoor for offenders

Cybercrime

Cybercrime is often associated with acts leading to virtual violence. Cybercrime differs from other crime in at least two ways.⁸ The first being that it operates within a highly generative system making it more likely to create beneficial effects that outweigh its costs.⁹ Second, the perpetrators often possess a particular psychology that makes them amenable to more innovative law enforcement methods.¹⁰ Internet has developed as a virtual backdoor for the offenders. The internet has emerged as a new world where there is no accountability of your actions unlike the real world. A medium where you can do what you cannot do in the real world. It has the potential to bear the same effects of an act as would have been in the real world. It has the capacity to track the record of the activities as done by an individual and maintaining a history which will be easily viewable to the people using the social networking sites.

⁸ *Immunizing the Internet, or: How I Learned to Stop Worrying and Love the Worm*, 119 HARV.LAW REV. 2442-2463 (jun., 2006).

⁹ *Ibid.*

¹⁰ *Ibid.*

Cyber crime v. Crime

No difference lies in thrusting off these crimes since both involve “conduct”¹¹. However, a notable difference may reside when we talk of the inner conscience while doing acts while amount to crimes on the internet and in the terrestrial space. The reason, why we most of us as the users of digital technology do the right thing is not that we fear the sanction law in but is our inner conscientious which has been accustomed to abiding by the broad norms which prevail in our culture. But because of the presence of a section of population which have been habitually deviant from these broader social norms there exists a need for setting up tools to safeguard things of value on the internet as well. Just like the possessions we tend to protect in the terrestrial world, there exist things of value which are the object of protection under the cyber laws.

A cyber law expert and Supreme Court advocate Pavan Duggal stated that “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.”¹² The reason for giving specific protection to the women lies in the emergence of acts leading to derogation of integrity of women on the internet. Halder and Jaishankar, in their book “Cyber Crime and the Victimization of Women: Laws, Rights and Regulations”, have said that, “The issues of women’s rights in cyber space could be contributed largely to the sluggish modes of the governments in executing the gender equality and gender justice promises made by the States in the form of

¹¹ Dr. S. K Mohapatra, *Victimisation of women under Cyberspace in Indian Environment*, 2 IJAR (2015).

¹² *For victims of cyber stalking, justice is elusive*, LIVEMINT, July 6, 2016 available at <http://www.livemint.com/Politics/St93190XdGvpiclGWwnX0I/For-victims-of-cyber-stalking-justice-is-elusive.html> (last accessed Nov. 10, 2017 8:35 AM).

fundamental rights.”¹³ They have also reported in India cyber gender harassment is often seen as “less important sexual harassment.”¹⁴ The criminal law in India along with wide legislation of specific criminal Acts has shown a development towards covering each and every derogatory act of individual. There is a need to develop specific laws in form of an offence or a new legislation towards protection of women. The application of laws which cover the abuse of women in the real world must be extended to this newly emerged virtual world.

An analysis of crimes as mentioned under the Indian Penal Code and the Information Technology Act 2000

A deduction that the Indian criminal laws are in complete absence of laws governing women on the internet cannot be gathered. The Indian Penal Code, 1860 and the Information Technology Act, 2000 spell a number of crimes which though not exhaustively but cover crimes against women in part. These laws envelop a bunch of crimes which include: Stalking, obscene acts affecting morals and decency, voyeurism, cyber bullying, insult, etc.

Stalking and Cyber Stalking

Stalking, inspired by the Indian cinema as quoted in one of the articles¹⁵, was never referred to as a crime. However, it is long since the insertion of this provision and a need has arisen to abide by the law owing to the dwindling number of cases pertaining to cyber stalking. As reported, in the last 180 days, a stalker has been

¹³ Halder, D., & Jaishankar, K. *Cybercrime and the Victimization of Women: Laws, Rights, and Regulations* Hershey, USA: IGI Global. 56 (2011).

¹⁴ *Ibid.*

¹⁵ S. Sree Govind Baratwaj & Ashima Jose, *Deification of Stalking Crime (Indian Penal Code – Section 354D) as representation of love in South Film ‘Remo’*, American Intl. Journal of Research in Humanities, Arts and Social Sciences available at <http://iasir.net/AIJRHASSpapers/AIJRHASS16-359.pdf> (last accessed Nov. 7, 2017 9:31 PM).

arrested every day in Delhi.¹⁶ 259 cases were registered in the first six months of 2017 and a number of 203 men have already been arrested for stalking.¹⁷

In real life, the stalker wants the victim to see him/her and be aware of his/her presence.¹⁸ The object of the same may be any ranging from anxiety, anticipated commission of crime, etc. which are much more frequent than material gain or sexual obsession. However, the concept of closeness gets a new meaning on the internet. In the cyber space each one of us live in the illusion of being close to each other being actually physically distant. The offence may not end by commission of the act but may deal with repetitive acts

The crime of Stalking was inserted in the Indian Penal Code in the year 2013 as Section 354D wherein “(1) Any man who- (i) 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 (ii) monitors the use by a woman of the internet, email or any other form of electric communication, commits the offence of stalking. However, the provision is subject to a number of provisos stating that such an act shall not be considered as stalking if the act to keep a track of the actions of the individual was (i) done for the detection of a crime (ii) was pursued under any law (iii) in the particular circumstances such conduct was reasonable and justified.

Clause (i) to sub-section (1) to Section 354D deals with stalking in general. Whereas, Clause (ii) to the same deals with ‘cyber stalking’ due to the use of words ‘internet, email or any other form of electric communication’. The offence of ‘cyber stalking’ can be referred to as an extension of the offence of ‘stalking’. One of the obvious

¹⁶ *Why stalking is rampant in India despite a strict law*, HINDUSTAN TIMES, July 10, 2017 available at <http://www.hindustantimes.com/editorials/why-despite-a-strict-law-stalking-is-rampant-in-india/story-0SA8xmi4rbP3o6B4kZpGRL.html> (last accessed at Nov. 7, 2017 9:41 PM).

¹⁷ *Ibid.*

¹⁸ Vida Vilic, *Stalking and Sexual Harassment on the Internet* 11 *Facta Universitatis Law and Politics* 39-48 (2013).

differences between stalking and cyber stalking is 'geographical distance' between the stalker and the victim.

Sexual Harassment v. Sexual Harassment in cyberspace

Sexual Harassment is a widespread social phenomenon to which the most common victims are women. Sexual Harassment is almost impossible to define since the term can take many forms which cannot be covered by a single definition. In the broadest sense, "sexual harassment is an act of violence against another person which implies different types of behavior ranging from sexist discrimination to sexual aggression."¹⁹

Gender harassment in cyberspace is very common and can be manifested either in different active or passive verbal forms of behavior or in different active or passive graphic formats of online delivery. Where in a research by the digital security firm Norton over a population of particular country, nearly half the 1,000 respondents had experienced some form of abuse or harassment online.²⁰ Further, among women under 30, the incidence was 76 per cent. Also, according to the Pew survey, women were much more likely than men to say that their recent experience with harassment online was "extremely" or "very" upsetting.²¹

The crime is defined under the Indian Penal Code, 1860 under Section 354A and was inserted by Act 13 of 2013 in the Act. According to the provision, "a man who (physically contacts and advances involving unwelcome and explicit sexual overtures; or demands or requests for sexual favors; or shows pornography against will of a woman; makes sexually colored remarks shall be guilty of the offence"

¹⁹ *Ibid.*

²⁰ *Online harassment of women at risk of becoming 'established norm', study finds*, THE GUARDIAN, Mar. 7, 2016 available at <https://www.theguardian.com/lifeandstyle/2016/mar/08/online-harassment-of-women-at-risk-of-becoming-established-norm-study> (last accessed 9th Nov., 2017 11:09PM).

²¹ *Internet harassment and online threats targeting women: Research review*, JOURNALIST'S RESOURCE.ORG available at <https://journalistsresource.org/studies/society/gender-society/internet-harassment-online-threats-targeting-women-research-review> (last accessed 9th Nov. 2017 11:08PM).

Voyeurism:

According to Section 354C of the Indian Penal Code, 1860, “Any man who watches, captures the image of woman engaging in a private act in circumstances where she would usually have the expectation of not being observed by the perpetrator or by any other person at the behest of perpetrator or disseminates such image shall be punished...” In a recent incident on October 5, 2017, the Mahadevapura police have arrested a 25-year-old man on charges of sneaking into a house where four women were staying at Hoodi in Whitefield and trying to misbehave with them was booked for voyeurism.²² The crime however does not have a cyber element. The crime limits itself to capturing an image.

Further, Section 67 of the Information Technology Act, 2000 applies where such obscene information is published in electronic form. It reads as: “Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished..”

In a recent incident dated October 31, 2017, a Ludhiana-based man was arrested for allegedly uploading nude images of a female on the social media websites followed by intimidating and blackmailing her.²³ He was booked under Section 67 of the Information Technology Act.

²² *Man arrested for voyeurism*, THE HINDU, Oct. 5, 2017 available at <http://www.thehindu.com/news/cities/bangalore/man-arrested-for-voyeurism/article19801973.ece> (last accessed 9th Nov. 2017 11:37 PM).

²³ *Man arrested for uploading nude photos of woman*, PTI NEWS, Oct. 31, 2017 available at http://www.ptinews.com/news/9196545_Man-arrested-for-uploading-nude-photos-of-woman.html (last accessed 9th Nov, 2017 11:46 PM).

Ramifications of harassment on the Internet

An issue highlighted by the article is that the online abuse is distinct from the real world contexts.²⁴ The reason for the same is the use of the ‘feature’ of anonymity on the internet as a shield. An emphasis on calling such an act as ‘online harassment’ has been made. It is said that what happens on the internet are still experienced as reality and cannot be ignored for the reason that the same does not amount to commission of a crime.

An analysis on the basis of data:

- A number of females were studied, where a number as large as 79 per cent of high users who used the internet for 3 hrs or more on a daily basis were subjected to harassment, 60 per cent to physical threats, 57 per cent sexually harassed, 50 per cent received sexual threats, 49 per cent defamed, 40 per cent stalked and 18 per cent were impersonated.²⁵
- In studying the impacts on the sample it was found out that only 7 per cent reported that they were ‘not bothered’ 39 per cent of the sample reported that ‘it was just one of those things, I shrugged it off’, per cent of them reported that ‘it was really traumatic and I keep on thinking about it even though I don’t want to’. Further the author of the paper is of the view that for the ones it was ‘just one of those things’ points to the normalization of online abuse while the others have decided to work it out by ‘managing’ their emotional reactions to minimize the harm done by it.

The approach of ‘normalization’ remained non-condemned and was undisputed before it was revealed that this approach was resorted to even in response to ‘death and rape threats’, ‘abusive messages, detailing threats of physical and sexual violence’, etc. There rests a significant difference in the effects of both a ‘simple, mild threat’ and a ‘threat to rape or death’.

- “Indeed, respondents who experienced it more often (‘most weeks or constantly’) were more likely to experience stronger reactions. The majority (64 per cent) of those who

²⁴ Ruth Lewis et. al, *Online Abuse of Feminists as an emerging form of violence against women and girls* Brit. J. Criminol 1464 Oxford University Press on behalf of the Centre for Crime and Justice Studies (2017).

²⁵ *Ibid.*

found it ‘really traumatic’, received abuse ‘constantly’ or ‘most weeks’, while the majority (71 per cent) of those who ‘shrugged it off’ received it once a month or less often. While some women interviewed stated that the frequency of online abuse *lessened* its impact, the survey data indicate that, in general, more frequent abuse increased impact.”

More routine impacts of receiving abusive messages included emotional and physical effects. Forty-two per cent of respondents reported they were ‘worried’ after the last incident and ‘stress’ and ‘anxiety’ were frequently reported. “While 30 per cent said they did not report the last incident to anyone, 70 per cent talked to informal contacts (friends, family, online contacts and colleagues) and nearly half (43 per cent) to formal contacts (police, Internet service provider (ISP), Twitter, Facebook). There may be several reasons for this.”

A glance to the effects on lives of females:

Such harassment has often discouraged the women from writing and earning a living online. It interferes with their professional lives. It has raised vulnerability to offline sexual violence leading to considerable emotional distress. For the ‘digital native’ generation, forsaking aspects of the internet means missing innumerable social connections. Hence, the females have found this mode of abandonment if they have been the ‘innocent victim’ in the crime committed by the offender with little danger to the offender. It is hence a violation to the right to freedom of speech and expression due to the absence of a mechanism to regulate the activities on the internet and absence of an effective safety mechanism.

Factors invigorating crimes on the internet

Retention of data

The information which one submits or uploads on his own may be retained by such sites for an unreasonably long duration without erasure even after the person has withdrawn from the site. One of the cardinal principles of privacy protection is that personal information acquired for one purpose should not be used for another

purpose without the consent of the individual to whom the information pertains.²⁶ The issue hence forms an extension to the Right to Privacy and another Right which is named as the Right to be Forgotten on the Internet and hence, must not be discussed in detail in the present study.

The illiterate's bane

Publically available data poses a greater risk for Indians owing to the illiterate majority and unavailability of a law mandating data protection. A huge amount of data is transmitted on the internet for a number of activities. However, the secondary use of such information, security mechanisms for protecting such information, destruction of such information are aspects which still remain in question. When cyber harassment is understood as a form of Gender Discrimination and not a triviality to be ignored, women are more likely to complain about it rather than suffer in silence. The use of internet must be made limited for the people who are skilled enough to use it and can tackle with the drawbacks which come in the form of harassment or such remedies must be legislated easy so that everyone comprising the user population can make use of the internet.

Self Regulation a solution?

The element of self regulation and an obligation to enter into an agreement for maintaining terms and conditions between the users and companies, etc. has led to the abuse of such a framework which seemingly protects the user from exploitation. These conditions may themselves get construed and interpreted in such a manner favoring the company and is a subject of contract law majorly depending upon case to case and agreements entered thereto since the company unilaterally has the power to amend the policy. The rhetoric of cyber libertarians, seeking self-regulation of the internet, while challenging perceived essentialities for any kind of regulation, like territorial boundaries, real relationships and notions of property, is firmly grounded on the assertion that cyberspace is capable of being regulated through the creation of

²⁶ Supreme Court of India v Subhash Chandra Agarwal, (2010) 1 CTC 241 (Del) (FB).

institutions and mechanisms for the regulation of conduct in cyberspace through the formulation of community based rules that are constituted, decreed and enforced by its participants without necessitating state intervention.²⁷ Further, such instances where regulation of online behavior without intervention from the state has been successful can also be found. To tackle online infringement of copyright, the Recording Industry of America (RIAA) conducts its own investigations to locate the IP addresses of those who are illegally sharing music.²⁸ It then contacts the ISPs to identify the perpetrators and may sue them directly and/or enlist the support of ISPs in controlling offending behavior.²⁹ However, such a model may not be successful where the crime of 'harassment' is involved.

Conclusion

On the basis of the above analysis, the following points may be noted:

Lower satisfaction:

Many of the crimes and reports still remain unheard. Effect of remedies provided to the chunk of reporters does not make a visible difference to which the people can resort to and hence the remaining population has resorted to the 'normalization' process and choose to remain silent as a consideration for sustaining to use the benefits of the internet.

Lower offline reporting

One explanation for the low rates of reporting is the sense of stigma and shame for revealing such an act. "By contrast, women experiencing online abuse seem less likely to invoke notions of shame and stigma; 14 per cent reported embarrassment or shame about the last incident and 9 per cent said this preventing them disclosing it.

²⁷ Amlan Mohanty, *New Crimes under the Information Technology (Amendment) Act*, 7 Ind. J. L. & Tech. 103 (2011).

²⁸ LENNON YC CHAND & PETER GRABOSKY, *REGULATORY THEORY* (ANU Press, 2017).

²⁹ *Ibid.*

However, a third did not report because they did not believe anyone could do anything about it or would take it seriously.”

As discussed above, like the offline abuse, at the most extreme, both can lead to symptoms of post-traumatic stress disorder. The effect of the abuse is in most cases directly proportional to the frequency of abuse. The perpetrators may be motivated by a transitory sense of entertainment, as a means to cater boredom and may also be unaware that abuse may be experienced as intensely threatening and frightening with such detrimental impacts on the victims.

“Once heralded as a haven for free speech and democracy, the Internet is also revealed as an extension of offline gendered realities, where violence and abuse is the ‘wallpaper’ of everyday life of women and girls.”³⁰

Effective system to report the cases such as the avenues constructed to report cases of sexual harassment at workplace after the 1997 Visakha case. It took 14 years to enact a legislation to prevent sexual harassment at workplace. However, an Act to cater to such harassment on the internet needs to be legislated to prevent the same. According to the recent survey done by the Indian National bar Association,³¹ out of the women surveyed, it was reported that 38 per cent of them have been subjected to sexual harassment and close to 70 per cent women avoided reporting sexual harassment. The reasons for this non filing, as discussed above are cognate to the ones in the present scenario. The women of India have been stranded to live a life of fear and threat on the mercy of the male population even where the females have managed to secure a place after running the rat’s race. A similar initiative named “Cyber Crime Prevention against Women and Children” has been planned to be

³⁰ Lewis, R. and Marine, *Weaving a Tapestry, Compassionately: Towards an Understanding of Young Women’s Feminisms*, 27 FEMINIST FORMATIONS, 118–40 (2015),

³¹ *Close to 70% women avoid reporting sexual harassment*, BUSINESS LINE, Jan. 3, 2017 available at www.thehindubusinessline.com/news/...to...sexual-harassment/article9457405.ece (last accessed Nov. 10, 2017, 12:25 AM).

announced by the Home Ministry wherein a platform for lodging complaints about online harassment will be provided.

Though initiative are being taken by the government on a timely basis but the author hereby strongly supports the legislation of a new provision or a law which makes such acts of harassment more stringent and a mechanism which can be easily resorted to by the victims from the illiterate to the working women.