

## Are You A Criminal? (Technologically Speaking)

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Section 66 A of the Information Technology Act, 2000 (hereinafter referred as the IT Act) punishes a person for broadcasting any information which is “grossly offensive” or “menacing” in character on the cyberspace. This Section has however been struck down by the Supreme Court in *Shreya Singhal v. Union of India*<sup>2</sup> and now gives us the right to freely express ourselves in the cyber world. This however, does not mean that a person can post defamatory content<sup>3</sup> or send threatening messages or post obscene pictures online. People in the ambit of ‘Freedom of Speech and Expression’ do not take caution and thereby forget that they can be penalised under other laws as well. This piece is going to deal with these hidden acts and penalties.

In this world of technology, we use the social media to socialise with people we know. But sometimes we tend to get messages or even emails from strangers. We tend to ignore these but these texts can lead up to threatening and taunting emails. And just like that we can become victims of cyber bullying. The Global Youth Online Behaviour Survey 2011 by Microsoft, ranked India behind China and Singapore in cyber bullying. The Cyber Bullying Research Centre in United States defines cyber bullying as “wilful and repeated harm inflicted through the use of computers, cell phones and other electronic devices.” But most of the people do not even think of it to be a big deal to cause problem. However, with today’s technology, bullying on the cyberspace has become much easier. These bullies even set up a fake profile to harass a person. Opening fake accounts amounts to forgery<sup>4</sup> and is punishable with 2 years imprisonment.<sup>5</sup> Any activity done through these fake accounts can increase the liability by another 3 years in jail.<sup>6</sup> Cyber bullying is therefore any harassment that occurs via the Internet and Mobile Phones, vicious forum posts, name calling in chat rooms, posting fake profiles and mean or cruel messages. As per Section 77 B of IT Act the above offence shall be cognizable and bailable. While bullying, if defamation is caused then it is covered under Section 500 of the Indian Penal Code, 1860. But merely because some news item or article is published, attributing certain utterances to that person then it is not defamation.<sup>7</sup>

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<sup>2</sup> AIR 2015 SC 1523

<sup>3</sup> Article 19(2) of The Constitution of India

<sup>4</sup> Section 463 Indian Penal Code, 1860

<sup>5</sup> Section 465 Indian Penal Code, 1860

<sup>6</sup> Section 66 D IT Act 2000

<sup>7</sup> Laloo Prasad v. State of Bihar, ( 1997)

## **Precedent : A Publication of Jus Dicere Center of Research In Law**

In 2001, one Mrs. Ritu Kohli started receiving a series of emails from unknown source. The person, through the mails, threatened her to either pose nude for him or give him Rs. 1 Lac. Initially she ignored the mails. But then she started receiving similar letters through posts. In the mails and letters, the accused threatened Kohli, that, he would put up her morphed pictures on the adult sites along with her telephone number and home address. The accused then sent her the photographs, through mail, which Kohli confirmed to be the pictures she had in her mail folder. She was also receiving calls from strangers at odd hours. She lodged a police complaint and the Delhi Police arrested Manish Kathuria as the accused who had hacked Kohli's email and also chatted on her behalf distributing her number.

This case was the first case of Cyber Stalking registered in India.

Cyber stalking is the use of computer and computer services to threaten or harass a person repeatedly. Stalkers are mostly motivated by a desire to exert control over the victim. India has crossed the danger mark in cyber crimes. Mumbai tops this list followed by Delhi. It is believed that about 75% of the cyber crimes are targeted at women, adolescents and children.<sup>8</sup> According to a research, 62.5% of the cases of harassment started through emails and online chats. A study conducted on 72 women by Megha Desai and K Jaishankar<sup>9</sup> states that, 12.5% of the respondents had intimate relationship with their cyber stalker before the stalking started.

Criminal Law Amendment Ordinance, 2013 added Section 354D to the Indian Penal Code, 1860 to define and punish the act of stalking. It guarantees a minimum punishment of 1 year which can be extended upto 3 years and the offender is also liable to fine.

In Ritu Kohli case, there were obscene pictures of the victim being created by the accused. This is punishable under Section 67 of the IT Act. Thus, a person cannot post or tag you in an offensive photo. It makes a person liable for 3 years of imprisonment and if it contains sexually explicit content then punishment is increased to 5 years.

Every action on the social media can create a liability and should be carefully controlled and monitored. National Crime Record Bureau data confirms that cyber crime is on the rise and since many cases are not reported the actual number may be a lot higher than the statistics show. Technology is percolating in our lives faster than the awareness about its security threats. One should not delete the threatening messages or email texts and should report the matter to the police

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<sup>8</sup>Tiwari, Garima-Understanding Cyber Laws and Cyber Crime, Lexis Nexis, 2015

<sup>9</sup> Desai, M and Jaishankar, K, Cyber Stalking- Victimization of Girl Students: An Empirical Study (2007)

or to the nearest cyber crime branch. Screenshots can be taken of the threats, to be produced in the Court of law as evidence. In the end, one must take a preventive step and never put too much personal data on any networking site.

Surf safely!