



## “Cyberstalking: Issues and Regulations”

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### **ABSTRACT**

Stalking means any act of following a person closely without being heard or seen and cyber stalking means when a person is harassed online through the internet with various means like liking someone's pictures or follow their activity or commenting in an inappropriate way or unwanted mails or messages which consist abusive or obscene content and doing all of this in the hope of not getting noticed.

These days when internet is basically running our whole lives as it is present in every single thing, this cyber stalking and bullying has also become common as the usual form of sexual harassment but it does not limit to only sexual harassment, it also includes the transmission of threats or false accusations or data theft or identity theft or any other sort of aggression. Similarly, in India, the cases related to cyber stalking are increasing at an exponential rate and that is why the laws required to deal with the issue are still not in place or up to the required mark or standard. The laws that exist right now in regard with this issue are still not up to date because of lack of awareness in both people and our legislature as well. In this research the researcher will be focusing on the regulations for this issue, what are the actual types of offenses that are happening in this context and where do the regulations can't keep up with the trends and some possible solutions for the same.

**Keywords:** Cyber Stalking, Internet, Sexual harassment, Cyber Bullying and Online harassment.

### **(I) INTRODUCTION**

Internet exists on cyber space which is on its own a virtual reality, a whole other reality which exists on servers and Internet is it's biggest medium to communicate with people, now a days everything exists on internet, everything runs on or through internet be it Google, YouTube or social media platforms like Facebook, Instagram, WhatsApp or shopping websites like Amazon, Flipkart, Snapdeal, etc. what all these websites have in common is that they have access to us literally, every one of these platforms are connected to us through our e-mail id and that is why they know everything we search for or do. Now this does make our life simple but it leaves people vulnerable because this information can be used to commit cyber crimes like cyber stalking which includes data theft, identity theft, false accusations, cyber bullying, harassment, etc. These types of crimes they come under Cyberstalking. Ever since Internet went online, it created a whole ocean of opportunities but along with that it gave birth to a whole new way of committing crime and an additional benefit of committing that crime with the power of being anonymous because learning computer languages is hard and that is why most people don't know them and are victim of the few that do. Now, not all those who how to navigate through these are criminal but a specific section of people who do this for

either fun or for revenge or to make money or all of the above. As we proceed further we will be talking about the difference between physical and cyber stalking, the constitutional framework through existing laws, legislative framework through cases reported or unreported, enforcement issue because of the mindset or laws and in the end conclusion and some possible suggestions which can help in enforcing better up to date laws.

## (II) MEANING OF CYBER STALKING

“Cyber Stalking is defined as the crime where the stalker stalks the victim with the help of internet.”<sup>1</sup> To understand this term better we have to first understand how this crime is committed through the internet which we have already talked about in the previous heading. Cyberstalking is generally confused with only sexual harassment through internet but in reality just like physical stalking it has many forms which includes blackmail, false accusations, identity theft, bullying, etc. in this paper we will be focusing on the harassment, blackmail, false accusations part of the cyber stalking. Cyber Stalking is committed through following social media activity of a person on social media platforms by commenting inappropriately, sending unwanted sexual or abusive mails, tracking someone’s shopping activity, social media activity all in all doing whatever possible to keep a track on the victim through any means necessary and the anonymity of internet helps make it even more harder to track and easier for the criminal to commit the crime as it masks the location of the user easily so a victim and the offender could literally be on the opposite sides of the globe and the new technology and softwares makes it even more harder to track the person because they literally be right next door but their location can be shown in the USA or UK. Cyberstalking is a very serious threat now more then ever since our whole lives are on the internet, we have become so much used to the internet that we depend on it to do the very basic or simplest of tasks and so it is even more necessary to deal with this type of crime because the future of these crimes can extend to a whole new level if it is not taken seriously or with the required seriousness it deserves.

## (III) DIFFERENCE BETWEEN PHYSICAL AND CYBER STALKING

The major difference between physical and cyber stalking is the way in which the crime is committed because that is the only main thing that separates physical stalking from cyber stalking and is also the biggest weapon of the cyber stalker that he can stalk his victim on internet which gives him/her several defenses to begin with. To commit Stalking Physically the offender needs to be close to the victim at all times do track them, follow them, trying to send unwanted signals, messages, contact them through call also comes under physical stalking which makes it easier for the police to retrace the steps of the stalker and it makes it comparatively easier to track down and arrest the person responsible for the offense. But stalking someone on internet gives them not only the power of anonymity but also the general defense of “normal” behavior, why? Because commenting on someone’s pictures, activity is considered normal in these times where people literally post everything they do on the social media platforms so it is easier to stalk someone by just being on their friend list. There has been many cases which never even made their way to court because of this one single defense. Now, let’s look at the basic differentiating points between physical stalking and cyber stalking.

### Physical Stalking

1. The stalker and the victim are generally in the same area all the time
2. The offender is easy to track down comparatively because of the being in the same proximity of the victim
3. The offender is generally someone known of the victim
4. It is difficult for the stalker to hide the identity himself/herself.
5. There is always an interaction between the victim and stalker so shy people can never do physical stalking generally.
6. The stalker is always at the risk of being discovered
7. It is easier for the victim to understand the intentions of the stalker because the sense of intimacy is never false in the physical stalking.

<sup>1</sup> Ms. Heena Keshwani, Cyberstalking: A Critical Study, Bharti Law Review, Page No. 131, 1, 2017

## Cyber Stalking

1. The stalker and the victim can be anywhere in the world no need to be in the same area
2. The offender is very hard to track down as he/she doesn't need to be in a physical interaction with the victim.
3. The offender can be anyone doesn't need to be someone from close relation can either be friend of a family member or just a random person.
4. It is very easy for the stalker to hide his/her identity because of internet.
5. The need of interaction between the victim and stalker is not a necessity and even shy people can do that since there is no physical interaction.
6. The risk of being discovered is very low.
7. It is much harder for the victim to know the intentions of their stalker since the internet can help the stalker to create a false sense of intimacy or closeness with their victim.

### (IV) RATIONALE BEHIND CYBER STALKING

Every type of crime has a motive which is common knowledge and since we know the motive or rationale behind a crime the easier it gets to narrow down the suspects. Just like any other crime cyberstalking is often done by someone close to the victim yes there are some people who do it for fun or because of some twisted reason but most of the time the offender is always someone who knows the victim personally and this understanding alone helps the investigators solve majority of cases because no matter how different the story is behind a crime the rationale is more or less the same almost everywhere. So let's look at some of the possible reasons behind a person committing the offence of cyberstalking:

1. **Jealousy** – there are 3 main reason behind every cyberstalker and jealousy is one of them against their ex-partners or obsession on someone to a point where they can't see that person with anyone else which can also include their current partners as well.
2. **Attraction** – This is another one of the 3 main reasons behind a cyberstalker and it can be a strong emotion doesn't matter if the offender is attracted to the victim sexually or just mentally but it is a strong and one of the common motives.
3. **Revenge or Hate** – This is the third reason of the 3 main reasons I just mentioned and it is the most harmful of 3 because the incidents because of attraction generally don't lead to violence but revenge or hate are two very powerful emotions in a person and if abused can do serious damage and internet certainly helps seeking revenge these days because of it being a integral part of our lives.
4. **Sexual Harassment** – This is the only motive which is present with all the other reasons behind someone cyberstalking other person whether because of hate or revenge or attraction or jealousy.
5. **Erotomania** – it is another symptom not a very common one as it includes the offender believing that a certain celebrity is in love with them, but since it is risky as the celebrities have other people handling their social media accounts so these types of cases are not that common.

Based on the possible reasons listed above it can be seen that there are mainly 3 types of cyberstalkers exist. First ones are those whose motive is generally sexual harassment, secondly are those who do it for self-satisfaction of proving their superiority or power over the others, thirdly are those who do it for revenge or hate but there is one more type of cyberstalker and considerable the most dangerous then all of them and those are the ones who just do it for fun just to mess with someone for the fun of it because they can be anyone and that makes them that harder to identify in a case.

These rationales as we just discussed helps police to narrow down the suspects because like any other crime, to find or identify a suspect requires the common reasons behind a crime to narrow down the list to a few. This discussion of rationale behind this crime was only done to understand the mentality of cyberstalkers and the researcher does not support them by the way of this heading.

## (V) EFFECTS OF CYBER STALKING

Every crime have consequences of after effects some crimes have serious ones and others not so serious. Cybercrimes have always been the one with more serious after effects not physical ones though but grave mental ones be it cyber bullying, identity theft, bank fraud or cyberstalking. Crimes committed online always leaves more fear on the victims who have been targeted. The difference is the mode of crime, when a crime is committed physically in real world scenario the investigation starts offender gets caught and goes to prison but the chances of a same person being a victim of the same offense again are very less and sure they leave their effect on the victim too but not to the degree an online crime specially one like cyberstalking leaves. Once a victim is stalked through internet, the things are never the same because they cause more fear among the victims then real-life stalking and causes the victim to take way more protective measures then necessary because it creates a deep fear on the victim so they deal with that fear by cutting off from everyone they know and try to distance themselves from everyone because of the fear of the next stalker. The common effects on the victims of cyberstalking are switching email accounts, locking themselves in their houses since it is comparatively easy to find even a stranger on social media then in real life, deleting their social media accounts and that results in getting cut off from the world because like I explained earlier that the world survives on the internet as we really rely on it for our day-to-day tasks.<sup>2</sup> Some more effects of or consequences of a cyberstalking offense are –

- **Paranoid Personality Disorder** – also known as PDP in the medical field and is a type of mental sickness where a person continuously doubts others intentions and motives or their faithfulness and are always on guard because of the surety that the other person wants to take advantage of them or deceive them or that they will eventually mistreat them or threaten them. After going through being cyberstalked this disorder develops in most of the victims where they start to think that every person they talk to is talking back to them for harassing them they misread signs of an innocent person in the way that the other person is trying to stalk them, harass them, etc. and when they perceive they're being persecuted, rejected, or slighted, they're likely to respond with angry outbursts, controlling behavior, or by deflecting the blame onto others<sup>3</sup>. This is the reality of this crime which leaves a victim in even worse condition then the physical stalking.
- **Psychological Distress** – Where the victim goes through immense wave of feeling isolated, or irritability or even guilt. Although there is nothing to feel guilty about as they were the victim but still it happens these types of symptoms can be broadly compared to the symptoms seen in Post Traumatic Stress Disorder (PTSD). So, the important thing to see is that although the reasons behind cyberstalking may seem troublesome but they are nothing when compared to the effect they have on the victim.

## (VI) CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK IN INDIA

As of till now there is no concrete law on the issue of cyberstalking which means there is no legislation separately to cover the known ambit of cyberstalking known till date but that doesn't mean there is no law, law is there covering some aspects of cyberstalking but it is scattered over different acts and legislations instead of being in one place. From constitutional point of view this crime is against the Right to privacy under Article 21<sup>4</sup> and falls under the restrictions of Freedom of speech and expressions under Article 19(2)<sup>5</sup> which explains that the use of this right by one person shall not violate the freedom or rights of any other person. These Articles apply in every single case because even if one person so much as touches other person in public without their consent even then they are violating the victim's Right to Privacy and Freedom of speech and Expression. But what about separate laws for the

<sup>2</sup> <https://www.nbcnews.com/id/wbna50787128>

<sup>3</sup> Lawrence Robinson and Melinda Smith, Paranoid Personality Disorder (PPD), helpguide.org, (December 15, 2020, 6:56pm), <https://www.helpguide.org/articles/mental-disorders/paranoid-personality-disorder.htm>

<sup>4</sup> Indian Constitution, Article 21, Acts of Parliament, 1950 (India)

<sup>5</sup> Indian Constitution, Article 21, Acts of Parliament, 1950 (India)

offense of cyberstalking, for that there are 2 sections which are an attempt to cover some aspects of cyber stalking and they are –

- **Section 67 of IT Act, 2000<sup>6</sup>** - This section explains that any publication of any material that is sexually explicit or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt other person after seeing or reading that material is punishable with imprisonment up to five years and fine up to one lakh in the event of first conviction and may increase to ten years and fine up to two lakh rupees if the offender is convicted for the second time.
- **Section 354 D of IPC, 1860<sup>7</sup>** - This section is the only section which directly considers cyberstalking as an offense and recognizes it as a crime too. Specifically sub-clause (ii) of clause 1 of Section 354D of IPC which actually mentions the monitoring of women through the use of Internet whether by e-mail or any other form of electronic communication and whoever committing this offense against a women will be punished with imprisonment up to three years with fine on first conviction and up to imprisonment up to five years with fine in second consecutive conviction.

These mentioned above are all the laws we have on cyberstalking as of now and among all these only section 354D of IPC is the only one which have touched the issue of cyberstalking. Although they have basically covered all they could at the time it was added but it got one major loophole and that is that it only talks about and recognizes this offense against women only, so what about men? What the legislature fails to understand is that cyberstalking is a crime just like any other crime and that is why it can be committed against a man too and a man can be a victim as well just like any other crime be it murder or anything else. A crime is a crime and any gender can be the victim of that said crime it should not depend on the gender of the victim because if a woman wants to file for cyberstalking against a man then they have the remedy present but what if the case is opposite what will happen then? Where is the remedy for men and this is against the very basic human right to treat everyone equally?

## (VII) JUDICIAL DECISIONS

There has been many cases of cyberstalking and more and more cases are coming recently because this is becoming a common practice among the stalkers these days because of the sudden increase of usage of internet ever since the 4G internet was introduced in India. Some landmark judgements which changed the stand of law and courts on the issue of cyberstalking are –

- **Manish Kathuria case, 2000** – it is also known as Ritu Kohli Case, this was the first ever case of cyberstalking reported in India where this Manish was harassing Ritu ever since they met and chatted on internet on a website named ‘www.mirc.com’, he used abusive language and obscene material and when she tried to ignore him he distributed her number to different people and then started chatting with others using her name as a result of which she got around 40 calls at odd hours for 3 days continuously. As soon as she filed the complaint, police tracked the IP address and he was arrested under Section 509 of IPC as the IT Act was not enforced at that time. This case was also the reason behind the Amendment of 2008 in the act which introduced Section 66A in the act.
- **Vinupriya Case, 2016** – This case is the most recent case and a reality check of the results of cyberstalking or harassing or bullying, here a mere 21 year old girl who just finished her B.Sc committed suicide because someone posted obscene photos of her on facebook and despite begging police for investigation police could not find the the offender. 2 photos were posted on Facebook and the second one was taken down few hours after posting because the news of the death of the girl went viral, this shows that the offender was someone inside her friend circle and that person is still living freely while a family was destroyed in the matter of days. These types of cases shows the difference between a law on paper and actually applying it in real-life scenario. Any law cannot be fully enforced without some drawbacks and that is when the law is there but in India, there is still no concrete provision for cyberstalking even after witnessing this famous horrible incident and many more that happen on a nearly every 3<sup>rd</sup> or 4<sup>th</sup> day basis. There has been many unreported cases where the girls or boys going through same type of trauma but still there is no legislation.

<sup>6</sup> Information Technology Act, § 67, No. 21, Acts of Parliament, 2000 (India)

<sup>7</sup> Indian Penal Code, § 354D, No. 45, Acts of Parliament, 1860 (India)

**(VIII) LOOPHOLES IN EXISTING LEGISLATION**

There are three major problems which makes it impossible to enforce the law or provisions we already have on cyberstalking and those are –

- **Lack of concrete and separate Law** – The major and most important loophole is the law itself, even as of now in 2020 the legislature have not introduced any law which talks about every aspect of cyberstalking presently known to the society and the one section that we do have which is Section 354D of Indian Penal Code is also vague as it doesn't gives guidelines to follow that how much amount of monitoring will be called as stalking and that is understandable to some extent as it was introduced in 2013 in an amendment but that was 7 years ago internet and the society as a whole have taken leaps ahead since then and because the law is not harsh or the lack of any single law gives the offenders an upper hand in stalking their victims.
- **No Gender Neutral Laws** – After 2013 amendment in IPC with adding section 354D was a good news for women on paper at least but what legislature seemed to forgot was that just like any other crime which can be committed against anyone whether it is a male victim or female, cyberstalking can be committed against men too but surprisingly there is no remedy in the case of a man being the victim of cyberstalking and the offender is female or male. Even when the amendment came they did not recognized the possibility of a man being the victim of cyberstalking and now after 7 years later when the statistics have changed drastically as we hear men complaining about being stalked by a girl but there is nothing that they can do about it legally or ask for any remedy because the remedy is not there which makes men completely defenseless against the crime of cyberstalking. The harsh reality is that the current law on cyberstalking is ill-equipped to protect women and what is even worse is the law is non-existent for men. Karnika Seth, Supreme Court Lawyer says that “I get at least 4-5 cases of cyberstalking everyday, till a few years ago 75% of cases had women as the victim but now the ratio is already down to 50:50”. This shows that the legislature is failing miserably when a man is the victim and a woman is accused of cyberstalking. Now the critics will say if this is the case then where is the proof that men are suffering but the truth is even the cases of cyberstalking hardly make their way to the court when it is against women and we have a law provision for that then how will the cases against women for cyberstalking reach court. There are many cases being reported everyday to the police but the police doesn't know what to charge the girl for since they are practically immune as of now for stalking someone on internet. Some reported cases in newspaper are –

1. Rizwan, a 29 year old guy reported that for 3 months a girl who was his acquaintance stalked him and left random comments on all his social media posts so everyone thought we both knew each other, the problem started when she started texting his girlfriend to stay away from him. He brought her to cops and the cops said what section should we charge her under that's when I realized whatever she had done till now wasn't technically a crime as there is no law against it.<sup>8</sup>
2. Amit, a 27-year-old guy from Lajpat Nagar, Delhi says that there was this girl who kept sending me messages from fake Facebook profiles which was annoying at first and became scary later. When I told her to stay away, she increased the frequency of messages when I went to cops the cops said “there hasn't been a crime committed when she sends you an obscene picture or text only then we can take against her”, although she stopped after that but it was still scary.<sup>9</sup>

There are many more incidents just like these where the men don't know what to do as whatever girls or women are doing while stalking them on internet isn't technically a crime which is already grave injustice.

- **Mindset of Society**

This reason is also a very important one which causes hindrance in enforcing the law we have even for some aspects which is gender neutral but is not able to be enforced because when it comes to a girl stalking someone on internet isn't a crime yet and even the society is still not ready to accept that girls can stalk a boy too. In their eyes only boys or men are the necessary evil who stalks girls or women but vice-versa is not possible. There was an incident reported in Noida where an MBA student Akash was being stalked by a friend of his friend who kept stalking him sending him inappropriate messages and hacking his social media accounts when he brought her to the police they said “tune

<sup>8</sup> The Times of India, <https://timesofindia.indiatimes.com/city/delhi/cyberstalking-law-ill-equipped-to-protect-women-non-existent-for-men/articleshow/59179132.cms>, (last visited December 16, 2020)

<sup>9</sup> The Times of India, <https://timesofindia.indiatimes.com/city/delhi/cyberstalking-law-ill-equipped-to-protect-women-non-existent-for-men/articleshow/59179132.cms>, (Last visited December 16, 2020)

hi kuch kiya hoga warna ek ladki bhala kyu pareshaan karegi kisiko itna?"<sup>10</sup>. This statement here shows the mentality and mindset of the society when it comes to a girl committing this crime because even in this incident police didn't saw a cyberstalker, all they saw was a sweet college girl who must have been wrongfully accused by a girl after provoking her. And this is one of the main problems the legislature is not able to see the need of a law against women in cyberstalking because the cases never reach the court in the first place.

## (IX) CONCLUSION AND SUGGESTIONS

Cyberstalking is a very real threat that needs to be taken seriously and even though the rest of the world takes it seriously Indian legislature have still seems to be turned a blind eye towards it and is still not introducing a separate law for the same because it is also a very heinous crime that needs to be stopped and the law needs to be deterrent against it so that the offenders can understand the message legislature wants to send them. Because of lack of laws the majority of people don't report it to police which in turn gives the stalkers even more confidence to torment more people with this. The situation worsens because the social media platforms failure to provide adequate support too which even more boosts the confidence of the cyber stalkers. Also, the current laws or rather lack of laws and mentality of the society has diluted people's faith in the ability of the legal framework to give them effective remedies and justice because as discussed above when it comes to a female being accused of cyberstalking and a male is the victim there is no legal remedy for it and even the society doesn't seem to care or acknowledge that a girl can stalk someone too just like a girl can murder someone or rob someone.

Cyberstalking is not a new term anymore and it is high time now that the judiciary and legislature take this issue serious and bring a law to deal with this issue and also the society as a whole needs awareness too that a crime is a crime doesn't matter who is committing it and who is the victim.

For suggestions I would like to point some major loopholes as I have already discussed about earlier indirectly as well under different headings. So, I basically have only 3 suggestions but if taken seriously by the legislature help legislature take major leap forward in dealing with this heinous crime and they are –

- **Gender Neutral Laws required** – The current laws we have which includes section 67 of IT Act, 2000 and Section 354D of IPC from 2013 Amendment. But the main thing that these sections specifically section 354D of the IPC missed a major thing that this crime can be committed against men too and there is no mention of that in the section anywhere. So, Gender Neutral Laws are needed to tackle this crime by the legislature.
- **Separate Legislation and Guidelines required** – By far we have only 2 sections which talk about cyberstalking and among these two only section 354D attempts to define cyberstalking but it is not enough because as the section says monitors a woman through internet, it does not describe how long a person has to spend on another person's profile to fall into the category of stalking them. With current technological advances it is possible to track the activity of user when someone is reported for the same but only when there are appropriate guidelines and support of social media apps to the government.
- **General Awareness** – General awareness is also very much required to make people realize that it is a crime and they need to report it to police and file cases too of necessary because a change can only be there if people and police are open minded enough to consider it a crime without being partial on the basis of gender because a criminal is a criminal and gender doesn't make a difference.

These are the suggestions of the researcher in the hope that it makes a difference and helps people realize the truth and that legislature starts taking this issue seriously.

<sup>10</sup> The Times of India, <https://timesofindia.indiatimes.com/city/delhi/cyberstalking-law-ill-equipped-to-protect-women-non-existent-for-men/articleshow/59179132.cms>, (last visited December 17, 2020)