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*How safe are Women in the Virtual
World: An Analysis of Women Rights*

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ABSTRACT

The trivialization of harms suffered by women is nothing new. Society ignored or downplayed domestic violence's brutality for over 200 years. No term even existed to describe sexual harassment in the workplace until the 1970s, despite the pervasiveness of the practice. In light of this history, the current refusal to take seriously the cyber harassment of women is as unsurprising as it is disappointing. A large number of women hesitate to use the cyber space owing to the fear of being stalked online or victimized in the virtual world. Cyber-crime indeed has become a cause of concern in the current scenario. If it continues unabated, cyber harassment could very well be the central front of struggles against sexual harassment in the coming decades given our increasing dependence on the Internet.

In this view, the paper seeks to examine the various legislations around the world with regard to cyber stalking, voyeurism and morphing. This research study does in depth of all the three cyber-crimes, discusses what are they, why are they done so, who can be the victims and how can the culprits be punished.

Lastly it recommends changes that can be brought in by law enforcing agency in the country.. This research paper has used secondary research methodology. Analysis is made by interpreting books, laws, acts, journals, articles online and in newspaper, online websites, etc. the stakeholders for this research paper is everyone one of us. As almost all the women in India or abroad uses the internet and thus has a threat to being exposed to cyber-crime. It is not only the women who are studied here, the men who commit cyber-crime like cyber stalking, voyeurism and morphing are also the stake holders here.

Key words Cyber stalking, Voyeurism, Morphing, Criminal Law Amendment Act 2013, Indian Penal Code 1860, Information Technology Act 2008, Child Obscenity, Computer Forensic

- **INTRODUCTION**

In the digital age, Information and Communication Technology (ICT) is benefiting billions across the world by bridging certain gaps and multiplying human potential in every walk of life. Although acquaintance with technology is positive aspect that can be considered important for the development of any country but at the same time it is becoming the source to increase the crime rate with technology against the weaker section of the society. The safety of women in virtual world has been a cause of concern especially after an increase the crimes against women in cyberspace. No woman wants to be a virtual prostitute who would be 'enjoyed' by millions. It can turn women victim suicidal too¹. Crimes like Morphing and Cyber stalking has been a serious crime of late where instances of these acts have become common.

- **CYBER STALKING**

The use of the term stalking in this cyberspace is relatively recent². In general terms stalking may be described as a "course of conduct" in which one individual inflicts on another repeated unwanted intrusion and communications to such an extent that the victim fears for his or her safety³. While women are more likely to be victim of stalking, offenders are predominantly male⁴. In the United States, electronic monitoring was used to stalk 1 in every 13 victims⁵. Another study involving female college students found that from a total of 696 stalking incidents 24.7 percent involved emails⁶.

¹ . Halder D. (2013), "No relief for women from stalking and morphing" 15th April ,2013, published in <http://debaraticyberspace.blogspot.com/>

² The Oxford English Dictionary cites the first example in 1984

³ R.Pursell, M Pathe and PE Mullen "Stalking: defining and prosecuting a new category of offending"(2004)27 International Journal of Law and Psychiatry 157

⁴ P.Tjaden and J .Thoennes " Prevalence , Incidence , Consequence of Violence against Women . Finding from the national Violence against women survey U S Department of Justice , Official of Justice Programme (1998)

⁵ Katrina Baum and Michael Rand, "Stalking Victimization in the United States U.S. Department of Justice, Office of Programs <http://www.ovw.usdoj.gov/docs/bjs-stalking-rpt.pdf>

⁶ B.S. Fisher ,F.T Cullen and M.G.Turner , "Being pursued: Stalking victimization in a national study of college women (2002) i Criminology and Public Policy

The situation is worse in India where a study was conducted on 72 women which states that 12.5% of the respondents had intimate relationship with their cyber stalker before the stalking started. According to the research, 62.5% cases of harassment started through emails and online chats⁷.

Cyber stalking is a descriptive term for the use of new technologies for the purposes of stalking ;that is the use of internet ,e mail and other electronic communication devices to stalk another person⁸.Issues have also arisen in context of online harassment amongst the young people called Cyber bullying⁹ where even young girls are subjected to harassment and bullying.

The anonymity of the Internet can cause a loss of social inhibitions and constraints, thereby emboldening offenders to Act. It also provides a direct line of communication to the victim which may be more difficult to replicate in the off line environment¹⁰. A person who would not contemplate confronting their victim personally may feel no hesitation in sending threatening messages via email¹¹. Lack of personal contact may also encourage the projection of fantasy such that the victim becomes an easy target for the stalker's projections and narcissistic fantasies that can lead to real world rejection humiliation and rage.¹²

1.1. ELEMENTS OF THE CRIME OF CYBER STALKING

- **CONDUCT ELEMENT**

The definition of the conduct element is undefined in most of the jurisdictions. In the U.S Federal provision "Course of conduct is left undefined¹³.

⁷ Desai, M and Jaishankar, K (2007).Cyber Stalking - Victimization of Girl Students: An Empirical Study.

⁸ U.S Attorney General Report to Congress on Stalking and Domestic Violence (US Department of Justice ,Office of Programs ,2001)

⁹ A.Gillespie" Cyber bullying and harassment of teenagers: a legal response (2006)28 Journal of Social welfare &Family Law

¹⁰ M McGrath and E Casey, "Forensic psychiatry and the Internet :Practical perspectives on sexual predators and obsessional harassers in cyber space '(2002) 30 Journal of the American Academy of Psychiatry and the Law 81,85

¹¹ Jonathan Clough , "Principles of Cyber Crime" Cambridge University Press

¹² Mc Grath and Casey "Forensic psychiatry and the Internet 86

¹³ 18 USC S 2261A(2)

In U.K. 'Course of Conduct' is defined but only to the extent that 'conduct includes speech .At another extreme some jurisdictions provide a definitive list of conduct that constitutes of stalking which is not flexible to accommodate new acts or conduct .The US Model Anti-Stalking Code¹⁴ defines Course of Conduct as

"Course of conduct" means repeatedly maintaining a visual or physical proximity to a person or repeatedly conveying verbal or written threats or threats implied by conduct or a combination thereof directed at or toward a person;

- **FAULT ELEMENT**

There are two important aspect considered while deciding on the fault element

I. Intention /Recklessness

Proof of Intention is required as per the U S federal Provisions in order to prosecute a person of stalking. However the intention behind the stalker is mainly due to (i) sexual harassment, (ii) obsession for love, (iii) revenge and hate, (iv) ego and power trips. The U S Model of Anti-Stalking code that defendant must know that his or her conduct will place victim in fear¹⁵

II. Misguided Intention

Many stalkers do not intend to harm, they just possess a misguided intention to establish a relationship with the object of their attention¹⁶ . it may be therefore be difficult to prove a subjective fault element as the defendant may claim to be unaware that his or her conduct was harassing¹⁷.Further a significant proportion of stalkers suffer psychiatric conditions such as erotomania or other delusional conditions¹⁸

¹⁴ National Institute of Justice Michael J. Russell U S Model Anti-stalking Code" Project To Develop a Model Anti-Stalking Code for States"

¹⁵ National Institute of Justice , model Anti-Stalking Code

¹⁶ Purcell ,Pathe and Mullen 'Stalking'.163

¹⁷ 18 USC S 2261A(2)

¹⁸ Purcell ,Pathe and Mullen, Stalking 163

In addition the subjective fault elements some jurisdictions impose an objective fault element whereby the defendant may be guilty because of what he or she ought reasonably to have known

1.2 GLOBAL ISSUES

Although cyber stalking has a serious impact on the society .In most of the countries it is still considered as a general stalking offence¹⁹.

Such offences exist in each jurisdiction with adopting the term harassment. Some commentators have suggested this is an appropriate framework, reflecting the difference between harassment and stalking type behaviour²⁰

In Australia there is no specific anti-stalking offence under the federal law although it is an offence to use carriage service to harass.

For Instance Section 21 A of Crimes Act 1958 being one of most comprehensive state provisions, penalizes stalking as an offence where stalk means to engage in a course of conduct 'with the intention of causing a physical or mental harm or of arousing apprehension or fear in the victim for his or her own safety or that of any other person'

In Canada the offence of criminal harassment is found in sec 264 (1) of the criminal code which makes it an offence to engage in specified conduct ,without any lawful authority ,that causes another person reasonably in all circumstances to fear for their safety or safety of another person known to them.²¹

Although a number of U.S. Federal Provisions may apply to cyber stalking²²,The most relevant one is stalking under 18 USC 2261A which recently amended specifically to address the issue of

¹⁹ N.H.Goodno,"cyberstalking:A new Crime :evaluating the effectiveness of current state and federal laws (2007)72 Missouri law Review 125, 144

²⁰ T.McEwan,P Mullen and R MacKenzie,'Anti-Stalking laws in 1993

²¹ The Canadian Provision Introduced in 1993 and carries a maximum penalty of 10 years Imprisonment

²² 18 USC S 875(c) and 47 USC223(a)(1)

Cyber stalking .Under this provision it is an offence to use E Mail ,any interactive computer service ,or any facility of interstate to engage in a course of conduct that causes substantial emotional distress to the person or places the person on a reasonable fear of death or serious injury to that person , a member of their immediate family ,or their spouse²³ .

Stalking offences are found in all U.S. States and the District of Columbia with many having been influenced by Model Anti-Stalking Code developed by the National Institute of Justice²⁴

- **INDIAN SCENARIO**

The Indian Government passed Information Technology Act notified on 17th October 2000 in compliance with United Nation’s adoption of the Model Law on Electronic Commerce in 1997, which was later amended in 2008 with effect on 27th October 2009. The IT Act 2008 does not address stalking.

This issue is therefore dealt under “**intrusion on to the privacy of individual.**”

Section 66–A²⁵: *Punishment for sending offensive messages through communication service, etc.: Any person, who sends, by means of a computer resource or a communication device,*

- a)Any information that is grossly offensive or has menacing character;
- b)Any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will, persistently makes by making use of such computer resource or a communication device
- c)Any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to two three years and with fine.

Also Sections 72²⁶ deals with breach of confidentiality and privacy

²³ 18 USC S 2261A(2)

²⁴ National Institute of Justice ,Project to Develop a Model Anti-Stalking code for States, Department of justice (1993)

²⁵ Information Technology Act 2008

²⁶ Information Technology Act 2008

- **Indian Penal Code**

The Aspect of Cyber stalking has been included in the IPC Section 509 “Word, gesture or act intended to insult the modesty of a woman. – Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine or with both.”. Though it does not exactly speak about the issue of Cyber stalking, in the first cyber stalking case as reported with the Delhi Police, the stalker was penalized under this provision

- **Criminal Law Amendment Act 2013**

The recent amended Criminal Law Act 2013 provides sanctions for the offence of Cyber Stalking .The Provision states that

"Whoever commits the offence of stalking shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to three years, and shall also be liable to fine."

Though the Act addresses the core concern of many women right activists, the implementation of the same is questionable.

- **Shortcomings in the legal provisions**

Information Technology Act

The object of the IT Act is crystal clear from its preamble which shows that it was created mainly for enhancing ecommerce hence it covers commercial or financial crimes i.e. hacking, fraud, and breach of confidentiality etc. but the drafters were unaware about the safety of net users. The majority of cyber-crimes are being prosecuted under Section 66 (Hacking), 67(publishing or transmitting obscene material in electronic form), 72(breach of confidentiality). The most of the cyber-crimes other than e- commerce related crime are being dealt with these

three sections. Cyber defamation, cyber defamation, email spoofing, cyber-sex, hacking and trespassing into one's privacy is domain is very common now days but IT Act is not expressly mentioning them under specific Sections or provisions.

Indian Penal Code

Whereas IPC, Criminal Procedure Code and Indian Constitution give special protection to women and children for instance modesty of women is protected under Section 509. A perusal of the entire section shows that the said section does not cover cyber stalking. The important ingredients of the said section includes

- that a word must be uttered or a sound
- or gesture must be made or any object must be exhibited. .

Another issues is that if no word has been uttered in the eyes of law or no sound or gestures has been make or object exhibited, then the question of intention behind the same would be very difficult to establish in a court of law, more so when the case relates to Cyberspace.

Hence a question arises as to, how would law enforcing agencies and the courts of law be able to find out about the intention to insult the modesty of any woman in cyberspace? It will be equally difficult to apply the other condition which talks about intruding upon the privacy of such woman stipulated in Section 509 IPC to cyber stalking

Effectiveness of the Criminal Amendment Act

The new criminal amendment Act which mirrors the recommendations of the Justice Verma Committee penalizes the cyber stalking of women. but the effectiveness of the Act is questionable. This is because; most of the cyber-crimes remain unreported due to the hesitation and shyness of the victim and her fear of defamation of family's name. Many times she believes that she herself is responsible for the crime done to her. The women are more susceptible to the danger of cyber-crime as the perpetrator's identity remains anonymous and he may constantly threaten and blackmail the victim with different names and identities. Whether it is in the real world or the virtual world they prefer to shun off the matter as they feel that it may disturb their family life.

- **JURISDICTION ISSUES**

The transcendental jurisdiction of Internet causes the major threat to the society in the form of cybercrime. The main victim of this transgression can be considered women and children. the inter-jurisdictional difficulties in many ways pose a substantial challenge to Legislative and regulatory controls that rely upon clearly definable jurisdictional contexts

- **RECOMMENDATIONS**

The reduction in instances of cyber stalking is mostly in the hands of the internet users rather than the state .but this does not discharge the state form its obligations towards the citizens

What the State can do?

The crime of cyber stalking can be curbed by some measures taken by the state .Firstly the state can regulate and restrict the online surfing by using filters so that the internet users are safe in the virtual world .The crimes relating to internet must be addressed with a lot more seriousness and it is important to nab the offender and strictly punish the wrong doer irrespective of his nationality .This is very challenging as it involves the two different countries and law enforcement agencies .Also a training or education must be given to the internet users regarding the preventive steps to be taken while disclosure of any personal information cyber stalking cases. Also the state can train on the topic of cyber stalking for all officers, Train personnel on cyber stalking and establish specialized units to investigate cyber stalking cases

What an internet user can do?

Simple strategies such as not providing personal information to strangers are just as, if not more, applicable in cyber space. People who participate in the cyber world will minimize the likelihood of their being stalked by using techniques such as gender neutral and age neutral names. Personal information should not be recorded on the Internet and people should hesitate before filling in electronic forms which request names, age, addresses, together with personal likes and dislikes. Similarly, people can be pro-active before signing on to an ISP provider by researching

beforehand on whether there are specific policies prohibiting harassment, abusive behaviors, and cyber stalking.

- **CONCLUSION**

Stalking is often not reported as a separate category in crime statistics and there is considerable variation as to precisely what constitutes stalking²⁷. Indian context tackling cyber stalking seems like a distant dream. The offenders mainly escape due to the jurisdiction problems where the cause of action arises in another country whose laws are not in conformity with the Indian law

Hence there is an urgent need to spread awareness and take immediate cognizance of this offence so that such crimes do no harm the moral health of the society

²⁷ Jonathan Clough "Principles of Cyber Crime "Cambridge University Press