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ANTI-CYBER BULLYING LAWS IN INDIA

AN ANALYSIS

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Bullying

Bullying may be characterised as an intentional act by a perpetrator which, though may not amount to a criminal offence, causes pain or anguish or suffering to the victim, either physically or emotionally. The victim is usually at the mercy of the perpetrator and the bully uses tactics such as name-calling or intimidation or social ostracization to achieve his or her goal. Bullying may take place in both public and private spaces. It traumatises the victim and may result in permanent emotional damage.

Traditional Approach to Bullying

The traditional approach to bullying in educational institutions and workplaces has been to brush it aside, with excuses such as 'boys will be boys' or 'tough men don't complain', though it is possible that bullying which involves intimidation or the threat of violence could trigger the offence of assault¹ or battery.²

Examples of bullying which do not tantamount to a traditional criminal offence are, classmates calling a school boy 'fat' or 'stupid' or an employee being shouted at by a senior or superior officer. When classmates threaten or rough up another in the school yard or when a subordinate is threatened with the imminent application of force or is slapped, an offence is committed, though such actions usually go unpunished.

As more and more women enter workplaces, women too become targets for bullying in such workplaces. At times, bullying takes the form of sexual harassment.

Cyber Bullying

Cyber bullying refers to bullying or harassment of any kind inflicted through electronic or communication devices such as computers, mobile phones, laptops, and usually involve text messages, phone calls, e-mails, instant messengers, social media platforms, or chat rooms. It ranges from the posting of hurtful words, derogatory comments, fake information on public forums or blogs to threats to rape or kill.

The most frequently used definition of cyber bullying is '*an aggressive, intentional act or behaviour that is carried out by a group or an individual, using electronic forms of contact, repeatedly and overtime against a victim who cannot easily defend him or herself.*'³

The Anonymous Bully

Bullying traditionally involved a stronger person asserting his or her superiority over a weaker person to his or her advantage. With the advent of the internet, it has become possible for a person with neither superior physical strength nor financial clout to bully another. In many cases, the bully

¹S. 351, Indian Penal Code, 1860 defines assault as: Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation – Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.]

²] S. 350, Indian Penal Code, 1860 defines battery or criminal force as : Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

³ Smith, P. K., del Barrio, C., & Tokunaga, R. S. (2013). *Definitions of bullying and cyberbullying: How useful are the terms?* In S. Bauman, D. Cross, & J. Walker (Eds.), *Routledge monographs in mental health. Principles of cyberbullying research: Definitions, measures, and methodology* (p. 26–40). Routledge/Taylor & Francis Group.

uses a fake identity and the anonymity offered by the internet to stay away from the clutches of the victim and the law.

Laws against Cyber Bullying

The Indian Penal Code, 1860 (“**IPC**”), neither defines bullying nor punishes it as an offence. However, various provisions of the IPC and the Information Technology Act, 2000 (“**IT Act**”) can be used to fight cyber bullies.

Cyber Stalking of Women

The National Commission for Women (“**NCW**”) in its legal module on ‘Gender Sensitization and Legal Awareness Programme’⁴ defines cyber stalking as following:

‘Stalkers are strengthened by the anonymity the internet offers. He may be on the other side of the earth, or a next-door neighbour or a near relative!’ It involves following a person’s movements across the Internet by posting messages (sometimes threatening) on the bulletin boards frequented by the victim, entering the chatrooms frequented by the victim, constantly bombarding the victim with emails, etc. In general, the stalker intends to cause emotional distress and has no legitimate purpose to his communications’

Cyber Stalking is an extension of the physical form of stalking, committed over the internet, through e-mail or other electronic communication devices and can take different forms including slander, defamation and threats.

Cyber stalking includes, *inter alia*, the following:

- Sending threatening or obscene messages, posts or emails;
- Stealing a person’s identity online and circulating false information with the intent to humiliate or harass;
- Tracing the location of a person through illegal means;
- Uploading obscene pictures;
- Posting derogatory remarks online with the intent to harass.

The Press release on ‘Digital Exploitation of Children’, by the Ministry of Women and Child Development states that the sections 354A and 354D of the IPC provides punishment for cyber bullying and cyber stalking against women.

Cyber-stalking of women was recognised as an offence, subsequent to the insertion of section 354D in the IPC through the Criminal Law (Amendment) Act, 2013.

Section 354D of IPC defines stalking as following:

‘Any man who

1) 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

2) monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking: (emphasis supplied)

Provided that such conduct shall not amount to stalking if the man who pursued it proves that

i) it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the state

⁴ Ministry of Women and Child development. National Commission for Women. 2019. *Legal module on ‘Gender Sensitization and Legal Awareness Programme’*. <http://ncw.nic.in/notice/legal-module-gender-sensitization-and-legal-awareness-programme-collaboration-kendriya>.

- ii) *it was pursued under any law or to comply with any condition or requirement imposed by any person under any law*
- iii) *in particular circumstances such conduct was reasonable and justified.'*

The language of Section 354D of IPC makes it clear that the section penalises both the offence of offline and online stalking, without discriminating on the basis of presence or absence of the 'cyber' component. However, sub-section (2) fails to clarify the manner in which the victim can be said to be 'monitored' or 'watched' or what constitutes such acts.

In the case of *State of West Bengal v. Animesh Boxi*⁵, the accused took possession of some private and obscene photographs of the victim by hacking into her phone, blackmailed her by threatening to upload the stolen pictures and videos on the internet and subsequently uploaded her private pictures and intimate videos onto an obscene website.

The District Court of West Bengal convicted the accused under sections 354A, 354C, 354D, 509 of IPC and sections 66C and 66E of the IT Act. The court held that the offence u/s 354D of the IPC is proved as the victim was not only stalked online but also suffered from 'virtual rape' every time a user of the openly accessible global website viewed the video. The court commented that deterrence was one of the prime considerations for convicting the accused and an inadequate sentence would do more harm than justice, as it would undermine public confidence in the seriousness of the issue.

Cyber Stalking of Men

At present, if a man is a victim of cyber stalking, Section 354D will not apply. However, it is possible that other provisions of the IPC or the IT Act may apply. For example, let's assume that Mr. ABC, the manager of a reputed venture capital fund, is being stalked online by XYZ, who may be a male or a female. XYZ had initially sent a polite email to ABC's work email address, seeking an appointment, so that he could make a pitch for an investment by ABC's venture capital fund into his struggling start-up. A PDF document attached to the email gave relevant details of XYZ's start-up. ABC replied to politely decline the meeting and the investment opportunity, which he felt wasn't worth pursuing. Subsequently, XYZ's emails started to get angrier and nastier. XYZ has now started posting some derogatory remarks regarding ABC on various online venture capital forums. He has also sent a few emails to ABC in which he explicitly threatened to harm ABC.

The posting of derogatory remarks regarding ABC on various online venture capital forums would tantamount to defamation, as defined under Section 499 of the IPC. Section 500 of the IPC provides that whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

XYZ is also likely to be found guilty of criminal intimidation under Section 503 of the IPC on account of having made threats to ABC through emails. Section 506 of the IPC provides that whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. If the threat was to, inter alia, cause death or grievous hurt, it shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both. If the emails sent by XYZ to ABC were anonymous, section 507 of the IPC provides that XYZ shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment prescribed under section 506 of the IPC.

Online Sexual Harassment

In India, it used to be common for sexual harassment to be called 'eve-teasing', which downplayed the severity of the offence. However, the concerted efforts of Indian courts, the legislature, the Law

⁵ *State of West Bengal v. Animesh Boxi*, GR No. 1587 of 2017.

Commission of India, non-governmental organisations and women's activists have led to a radical change in the treatment of sexual harassment of women. The enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 ("**POSH Act**") has conveyed a stern message that any form of sexual harassment of women in the workplace shall not be tolerated. Further, there have been a number of milestone amendments to the Criminal Procedure Code 1973 ("**CrPC**"), IPC and the Indian Evidence Act which facilitate the prosecution of sexual harassment.

With effect from February 3, 2013, Section 354A was inserted in the IPC to penalise the offence of sexual harassment. Section 354A states that the act of making physical contact and advances involving unwelcome and explicit sexual overtures, or demanding/requesting for sexual favours, or showing pornography, or making sexually coloured remarks amounts to the offence of sexual harassment, shall be punishable with 3 (three) years of rigorous imprisonment and/or a fine.

Online sexual harassment includes, *inter alia*, using an electronic medium to make calls repeatedly, send vulgar SMSes, emails or make vulgar conversation or pressure a woman to engage in friendship or to establish sexual relations. However, Section 354A of the IPC requires physical contact or physical advances and hence harassment through an electronic medium will fall outside of the purview of Section 354A of the IPC.

Overlap between Cyber Stalking and Online Sexual Harassment

Cyber stalking could amount to online sexual harassment if it has sexual overtones. However, a stalker is usually an anonymous person unlike a sexual harasser who is unlikely to hide his or her identity.

Fake Facebook Profiles

Creation of a Facebook profile in someone else's name is relatively easy and such a profile makes it possible to show the victim in a false light. There have been instances where vulgar or obscene photos of a victim have been linked to such fake Facebook profile, causing the victim extreme mental anguish.

When the creation of a fake Facebook profile is accompanied by the uploading of vulgar or obscene photos of the victim on to such profile, Section 354A (*Sexual harassment and punishment for sexual harassment*), Section 354D (*Stalking*), Section 499 read with Section 500 (*Defamation and Punishment for defamation*), Section 507 (*Criminal intimidation by an anonymous communication*) and Section 509 (*Word, gesture or act intended to insult the modesty of a woman*) of IPC may apply.

In the case of *Sazzadur Rahman v. The State of Assam and Ors.*⁶, the accused created a fake Facebook profile of a 15-year-old victim. In the fake profile, the accused mentioned the victim's name, uploaded obscene pictures, and posted some derogatory remarks against her, which caused her to be mentally unstable and hampered her academic growth. The trial court rejected the application made by the accused under Section 311 of CrPC. Thereafter, a petition under section 482 read with sections 401/397 of CrPC was filed before the Gauhati High court for quashing the order of the trial court. The Gauhati High Court, while dismissing the application, held that discretion of the trial Court, which, *ex facie*, has been exercised judiciously on the basis of relevant materials, cannot be interfered with either in revisional jurisdiction or under Section 482 CrPC.

In the case of *Shubham Bansal v. The State (Govt of NCT Delhi)*⁷, the accused created a false Facebook account in the name of Nidhi Taneja and included the telephone number of the victim,

⁶ *Sazzadur Rahman v. The State of Assam and Ors.*, Criminal Petition No. 654 of 2019.

⁷ *Shubham Bansal v. The State (Govt of Nct Delhi)*, Criminal Miscellaneous Petition No. 2024 of 2018.

which caused her annoyance, insult, and harassment and, therefore an FIR was registered against the accused. The victim further moved another application under Section 173 (8) of CrPC requesting further investigation by the investigating officer on account of which the matter was remanded to the Metropolitan Magistrate for consideration. Thereafter, an application was made by the accused for dropping the proceedings against him under Section 66A of the IT Act and Section 509 of IPC.

The Delhi High court while refusing to entertain the application of the accused, ordered that the investigating officer refrain from submitting his final report till the Magistrate issued directions on the pending application filed by the victim. The honourable court noted that the alternative course available to the investigating officer was to file a report based on the investigation carried out until then, reserving the right to file a supplementary challan/report in response to the pending application made by the victim under Section 173 (8) of CrPC seeking further investigation.

In the case of *Jitender Singh Grewal v. The State of West Bengal*⁸, the accused created a fake Facebook account of the victim and uploaded her obscene pictures to such fake Facebook account. After the authorities charge sheeted the accused under Sections 354A/354D/500/509/507 of IPC and Section 67A of the IT Act, he filed a bail application. The trial court rejected the bail application of the accused and the Calcutta High court upheld the trial court's decision.

In the case of *Prakhar Sharma v. The State of Madhya Pradesh*⁹, the accused created a fake Facebook account of the victim, posted some vulgar messages along with the photos of the victim downloaded from her original Facebook account. The accused was charged under Sections 66 (c), 67 and 67(a) of the IT Act. When the accused applied for bail, it was denied by the Madhya Pradesh High Court.

In the case of *Hareesh v. State of Kerala*¹⁰, the applicant created a fake Facebook profile, posted morphed obscene photographs of the victim online, posted her mobile number under the said obscene post in order to enable strangers to contact her. Thereafter, an anticipatory bail application was made by the applicant apprehending arrest in respect of offences punishable under Section 354(D) of IPC and Sections 67 and 67E of the IT Act. The Kerala High court denied the application for anticipatory bail on the ground that materials on record affirmed the involvement of the applicant in the offences and it would not be proper for the court to interfere with the investigation.

Bullying Inter-se School Mates

H, a twelve-year-old school boy was increasingly withdrawn and introverted. He looked worried most of the time but refused to divulge his troubles to his parents who were aware that he spent an extra-ordinary amount of after-school time on his I-Pad. One night, after H went to bed, his parents accessed his I-Pad and found that he was on various chat groups and was being bullied online by his classmates. The bullying involved name calling and derogatory remarks regarding his clothes and his grades.

In such scenario, the remedies available to H's parents are as following:

- Take prompt steps to show support to H;
- File a complaint reporting the online bullying to the school authorities. The complaint shall be looked into by the Anti Bullying Committee required to be formed in every school in accordance with the 'CBSE Guidelines for prevention of Bullying and Ragging in Schools';

⁸ *Jitender Singh Grewal v. The State of West Bengal*, Criminal Miscellaneous Petition No. 7252 of 2018.

⁹ *Prakhar Sharma v. The State of Madhya Pradesh*, MCRC No. 377 of 2018.

¹⁰ *Hareesh v. State of Kerala*, Bail Application No. 4858 of 2018.

- Report the online bullying to the nearest police station, who shall refer the matter to the cyber-crime cell for investigation. Thereafter, the cyber-crime cell shall report the matter to the Juvenile Justice Board, which will conduct an inquiry and deal with the incident as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

This paper has been written by Vinod Joseph (Partner) and Mitali Jain (Associate).

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