Stalking in India: A Critical Analysis

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The Concept of Stalking

As the nation progresses towards a developed and advanced India, it is a matter of thought if the same has helped the safety of women or not. The crimes related to women are increasing on a regular basis be it rape or any other heinous crime. One such crime which acts as a base of all other crimes related to women is Stalking. Melroy and Gothard have defined stalking as the wilful, malicious, and repeated following or harassing of another person that threatens his or her safety.[3] University of Mexico states out that Stalking is a series of acts or a course of conduct and never a single incident. It can escalate and ultimately result in actual physical harm to its intended subject.[4] Usually the stalking leads to an even more serious offence. In the case of State Of Uttarakhand vs Ajam[5], accused had been stalking the victim and forcibly asked her to stop. When she refused; he poured acid upon her, causing severe burn injuries. Another example is the case of Shri Deu Baju Bodake v/s State of Maharashtra[6] where the accused would always stalk her during work and insist upon getting married to her which led to her committing suicide.

The technological advancements have also brought another serious problem: Cyber Stalking. To some extent, cyber stalking is fundamentally an extension of traditional stalking in which the offender utilizes a high-tech modus operandi to committing the crime.

The cyber stalker's greatest quality is that they can depend upon the namelessness which web gives to them that enables them to keep an eye on the exercises of the victim without their personality being identified. One of the key scholars to address cyber stalking, Paul Bocij, defines it as[7]:

"A group of behaviours in which an individual, group of individuals, or organization uses information and communications technology to harass another individual, group of individuals, or

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[3] Meloy JR, Gothard S. Demographic and clinical comparison of obsessional followers and offenders with mental disorders. Am J Psychiatry. 1995;152:258–63.
[4] 'Tutorial on the crimes of stalking and harassment for New Mexico judges', Judicial Education Centre (Visited on 19-01-19) http://jec.unm.edu/education/online-training/stalking-tutorial/definition-of-stalking
[5] MANU/UC/0175/2017
[6] Malavika Rajkumar and Rohit Ghosh, '#MeToo: How the law protects you against Stalking' Bar & Bench (published on 28-10-2018) https://barandbench.com/me-too-law-protects-you-stalking/
[7] (Bocij, 2004:14)

organization. Such behaviours may include, but are not limited to, the transmission of threats and false accusations, identity theft, data theft, damage to data or equipment, computer monitoring, solicitation of minors for sexual purposes, and any form of aggression."

Cyber Stalking is extraordinary and more forceful than the physical or conventional stalking. For example, quite possibly the victim and the stalker may not be in the same topographical limits. It is nearly a simple errand for the stalker to impel the third-party to hassle or undermine the victim. Aside from this, the web gives a chance to the stalkers to keep a beware of the exercises of his/her victims to such an extent that the stalker may get into a talk with the victim on some dialog discussion or online chat rooms, or access his/her own data by following their virtual development or even inspire guide access to subtleties put away in the victim's PC.[8]

India's Legislative framework & its shortcomings

Before the coming of the internet age, the offense of stalking was not in any case perceived in the resolution. Internet based life stages like Facebook, Twitter and so forth have given stalkers another weapon to victimize women and annoy them on the web. The acknowledgment of stalking as an offense was a moderate and steady process which at long last got presented in the rule after the 2013 Criminal Law Amendment through the Justice Verma Committee. Stalking, both on the web and conventional form, was perceived as an offense under Section 354D. The act states out that

"Any man who 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 monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking."

Although the amendment has recognised Stalking as a serious crime, it is still believed to be biased towards the accused. 354D (2) states out that 'Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.' The first offense of stalking is "bailable", suggesting the charged need not be delivered under the watchful eye of the court for bail and can stroll to freedom from police station

[8] J. Joseph, Cyberstalking: An International Perspective 105 Y. JEWKES ED. (2002).

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itself. It was simply because of this "bailable" segment of Section 354 (D) that Vikash Barala, the charged in the Varnika's case, was out on bail the day he was captured.[9]

Apart from the Indian Penal Code, 1860, the Information Technology Act, 2000 tries to deal with the problem of Cyber Stalking. These laws don't explicitly provide arrangements for dealing with the issue of Cyber Stalking and the defamatory or threatening messages sent by the stalker amid stalking the unfortunate casualty through texts, calls, e-mails or by publishing online journals under the name of the person in question.

The main initiative to formulate a legal framework for the cyber space was perceived in India as E-Commerce Act, 1998. Afterwards, the essential law for the cyberspace transactions in India emerged as the Information Technology Act, 2000 which was fundamentally amended in the year 2008. The IT Act additionally amended some of the arrangements of the Indian Penal Code, 1860, the Indian Evidence Act, 1872, the Bankers Book Evidence Act, 1891 and the Reserve Bank of India Act, 1934.

The offense of cyber stalking was not consolidated in the IT Act when it came into force in 2000 except if the act included production or transmission of revolting material inside the significance of Section 67 of the IT Act.[10] In regard with the anonymity of the stalker, there has been a suggestion to put restrictions on keeping the identity anonymous. In Re RamlilaMaidan Incident v. Home Secretary[11], the court observed that the freedom of speech and expression as provided under Article 19(1) (a) is not an absolute right. This case plays an important role in the present case because freedom of expression and speech does not mean stating out things or sending materials that are obscene in nature or which hamper the mental or physical state of a person's existence.

Since Section 509 of IPC defines this act as one of privacy, Section 72 of IT Act was used to deal with cases of cyber stalking to an extent. With the amendment of IT Act in 2008, Section 66A was inserted in the IT Act under which all the cases of cyber stalking were dealt with. But in Shreya Singhal v. Union of India[12] a two-judge bench of the Supreme Court in 2015, struck down Section 66A of the Information Technology Act, 2000, identifying with restrictions on online discourse, unconstitutional on grounds of damaging the right to speak freely ensured under Article 19(1)(a) of the Constitution of India. The Court additionally held that the Section was not spared by virtue of

[9] Aakash Kumar, 'Stalking - a precursor to serious crimes, make it non-bailable', The Indian Express (Visitied on 22-01-19) https://indianexpress.com/article/india/stalking-indian-laws-bailable-offence-crimes-4992783/
[10] JUSTICE YATINDRA SINGH, Cyber Laws, 23 (2012).
[11] (2012) 5 SCC 1
[12] (2013) 12 SCC 73

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being 'reasonable restrictions' on the right to speak freely under Article 19(2). The case was a watershed minute for online free discourse in India. The striking down of section 66A meant that there was no section in the IT act which dealt with cyber stalking in particular.

Section 67 of Information Technology Act, 2000 is replica of Section 292 of Indian Penal Code. This section identifies with distributing profane material in "electronic shape". Along these lines, this section covers the internet stalking. In the event that the stalker attempts to distribute any indecent material about the victim via web-based networking media i.e., in electronic shape in order to menace the victim, he will be blameworthy of offense under Section 67 of IT Act. Section 67A of Information Technology Act, 2000 identifies with a piece of cyber stalking wrongdoing. This section was included after the correction in 2008. It expresses that if stalker endeavours to distribute any "explicitly explicit" material in electronic shape i.e., through messages, messages or via web-based networking media then he will be blameworthy of an offense under Section 67A of IT Act and will be rebuffed in like manner. Offense under Section 67A of the I.T. Act as made out by all appearances for this situation against the applicant is non-bailable.[13] Section 67B of Information Technology Act, 2000 was embedded by Amendment Act 2008. The section centers around when a stalker targets youngsters underneath the age of 18 years and distributes material in which kids are occupied with sexual activities so as to terrorize the kids.

Section 66E of Information Technology Act, 2000 and Section 354C of Indian Penal Code deals with “voyeurism”. “Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished.”[14][15]

Section 75 clarifies that whether an offense is submitted outside or in India, the wrongdoer will be represented by the arrangements of Information Technology Act independent of the fact whether he is a national of India or not. Given such an offense identifies with the PC frameworks or network that is arranged in India. The proviso to this section again puts up a restriction because it is applicable to the computer systems or networks situated in India giving rise to the topographical factor of the stalker.

In Kalandi Charan Lenka v State of Orissa[16] where the denounced had proposed to wed the person in question and when the marriage couldn't take place, he had transmitted obscene letters and

[13] Kalandi Charan Lenka v State of Orissa MANU/OR/0027/2017
[14] THE INFORMATION TECHNOLOGY ACT, 2000
[15] Indian Penal Code, 1860
[16] MANU/OR/0027/2017

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scandalous mail and even distributed handouts criticizing the character of the person in question, the High Court held that the blamed was at first sight at risk for offenses under Section 354A, for sexual harassment, 354D for cyber- stalking under the Indian Penal Code, 1860, Section 66-C for fraud, Section 66-D for Impersonation and Section 67A for transmitting obscene and sexually unequivocal material on the web. Be that as it may, in the end he was discharged on safeguard of Rs. 50,000 prompting some serious questions on the conveyance of the equity.

In Sharat Babu Digumarti v. Govt. of NCT of Delhi[17], the Hon'ble Apex Court gave a point by point clarification on the significance of IT Act over the IPC. The court interpreted this in respect with a few sections. in the above case under Sections 292, 294 of I.P.C. furthermore, Sections 67, 67A and 67B of the I.T. Act, charge was made yet the Hon'ble Apex Court was satisfied to opine that when the offense under the I.T. Act is made out, similar offense under Section 292 of I.P.C. can't go together for the reason that the I.T. Act being special arrangement would work in the field of offense submitted through electronic shape.

Suggested Changes

As seen from the above discussion, the solutions provided by Indian laws with regard to stalking to the problem of enforcement are limited and clearly have not been up to the mark. The incidents of stalking have seen a steady increase in India. A report released in 2018 by Ministry of Home Affairs showed that in 2016, there were nearly 7,200 cases of stalking registered, while 7,073 accused persons were charge sheeted only 480 were convicted. This means that out of the total cases, the conviction rate was only about 26.6 per cent.[18] Also, several reports show that the offence of stalking goes unreported, be it physical or online.[1920] With the rapid increase, it is pertinent to note that the current law needs to be made more stringent.

[17] MANU/SC/1592/2016

[18] Kamaljit Kaur Sandhu, 'Stalking cases on the rise across country', India Today (published on 7-02-2018) https://www.indiatoday.in/india/story/stalking-cases-on-the-rise-across-country-reveal-data-conviction-rate-at-26-6-per-cent-1162870-2018-02-07

[19] Kirti Banerjee, 'Why Chandigarh stalking is not a shocker: A look at crime against women in numbers', India Today (published on August 7, 2017) https://www.indiatoday.in/india/story/raksha-bandhan-chandigarh-stalking-incident-and-state-of-women-safety-in-india-1028390-2017-08-07

[20] Anindito Mukherjee, 'India has a sexual assault problem that only women can fix', The Conversation (Published on August 27, 2018) http://theconversation.com/india-has-a-sexual-assault-problem-that-only-women-can-fix-101366

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Steps can be taken by learning from what the Uttarakhand High Court[21] did when it noticed that there was a rapid increase various forms of stalking. The Court at Nainital observed that:

- Since the existing provisions have failed to prevent acid throwing/acid attacks on helpless women, the Senior Superintendents of Police, throughout the State of Uttarakhand, are directed to ensure prompt registration of FIR in the offences pertaining to Sections 326A, 326B, 354A, 354B, 354C & 354D of I.P.C. In all such matters, the investigation shall be completed within seven days, under the supervision of the Gazetted Officer.
- The Trial Courts throughout the State of Uttarakhand are directed to hear the cases registered under Sections 326A, 326B, 354A, 354B, 354C & 354D of I.P.C. on day to day basis and conclude the trial within three months.
- The private hospitals all through the State of Uttarakhand are coordinated to give medical help to the acid attack unfortunate casualties according to the dicta of Hon'ble Supreme Court in Laxmi vs. Union of India and others[22]

A separate section needs to be added under the IT Act which specifically deals with the crime of cyber stalking. This new section should be worded in such a manner so as to include the following:

a) It is a punishable offense to harass, humiliate, threaten or pester any individual through interchanges on web by utilizing any PC asset or some other electronic gadget.
b) It is a punishable offense to utilize any obscene or indecent words, or taking any obscene pictures of such other individual or prompting anybody to submit any such indecent act.
c) It is a punishable offense to repeatedly speaking with such other individual by covering the character.
d) There ought to be rigorous detainment for the guilty party of the violations referenced previously.
e) There ought to be explanation with respect to utilization of PC asset and some other electronic gadget to incorporate correspondence utilizing every single electronic mode, for example, radio, optical link, and so forth.

[21] State Of Uttarakhand vs Ajam MANU/UC/0175/2017
[22] (2016) 3 SCC 669

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