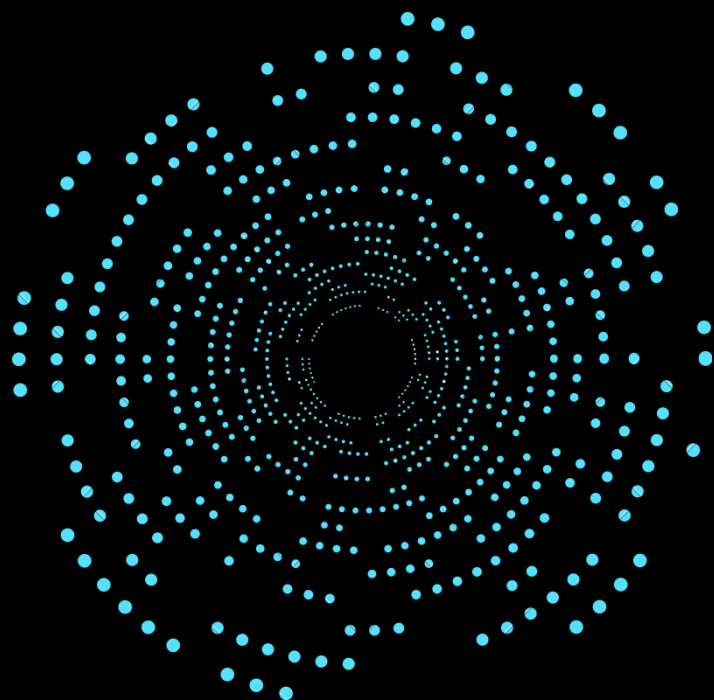




# INTERNATIONAL JOURNAL ON CYBERSPACE LAW AND POLICY



VOLUME 1 AND ISSUE 1 OF 2023



INSTITUTE OF LEGAL EDUCATION



## International Journal on Cyberspace Law and Policy

(Free Publication and Open Access Journal)

Journal's Home Page – <https://ijclp.iledu.in/>

Journal's Editorial Page – <https://ijclp.iledu.in/editorial-board/>

Volume 1 and Issue 1 (Access Full Issue on – <https://ijclp.iledu.in/category/volume-1-and-issue-1-of-2023/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

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## Cyberbullying and Cyberstalking in India: Legal Remedies and Challenges

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**Best Citation** - Aadit Saharya, Cyberbullying and Cyberstalking in India: Legal Remedies and Challenges, *International Journal on Cyberspace Law and Policy*, 1 (1) of 2023, Pg. 60-64, ISBN - 978-81-960677-4-8.

### Abstract

The widespread use of technology and the internet has brought about both positive and negative impacts on society. While social media platforms have revolutionized the way we communicate and interact with others, they have also given rise to new forms of harassment and abuse. Cyberbullying and cyberstalking have become serious issues in India, with victims often suffering from severe psychological and emotional distress. This paper will examine the legal framework in India for addressing cyberbullying and cyberstalking. It will analyze the various laws and regulations that are in place to protect victims and punish perpetrators. Additionally, the paper will explore the challenges faced in implementing these remedies, such as the difficulty in identifying perpetrators who may use anonymous accounts and the lack of awareness among law enforcement officials about these new forms of harassment. By shedding light on the legal remedies available for cyberbullying and cyberstalking in India, this paper aims to increase awareness about the issue and encourage further efforts to address and prevent these harmful behaviors.

**Keywords:** Cybercrime, bullying, stalking, harassment, abuse, etc.

### INTRODUCTION:

The increased availability of personal gadgets and Internet connectivity has led to a surge in digital literacy among Indians, particularly among the younger generation. This has resulted in a more informed and aware

population, who are able to access a vast amount of information at their fingertips.

Moreover, the use of personal gadgets has also transformed the way businesses operate in India. E-commerce has seen significant growth, and many small businesses have been able to expand their reach and customer base through online platforms. The use of digital payment methods has also increased, making transactions more convenient and secure.<sup>66</sup>

However, the rapid adoption of personal gadgets and the Internet has also brought about new challenges. Cybersecurity has become a major concern, as users are increasingly vulnerable to online fraud and scams. Privacy concerns have also been raised, as users often unknowingly share personal information with third-party applications and websites.

Overall, the increased use of personal gadgets and the Internet has had a significant impact on the way Indians communicate, learn, and conduct business. While there are challenges that need to be addressed, the benefits of this technological transformation are undeniable.

With the advent of technology, the internet has become an integral part of our lives, and social media platforms have made communication easier and more convenient. However, this has also given rise to new forms of harassment, such as cyberbullying and cyberstalking, which can have severe consequences for victims. This paper aims to analyze the legal remedies

<sup>66</sup> Leslie D'Monte, *What's it with Indians and Social Networks*, LIVEMINT, May 2, 2015 <http://www.livemint.com/Consumer/HmOwoRIDsGYs9DModr1QLP/Whats-it-with-Indians-and-social-networks.html>



available in India for cyberbullying and cyberstalking and the challenges in implementing these remedies.

❖ **Research methodology:**

The research is carried out using a doctrinal research approach, using data gathered from diverse sources such as case laws, online journal articles, books, research papers as well as online websites.

**Cyberbullying and Cyberstalking in India:**

Cyberbullying refers to the use of technology, particularly the internet and social media platforms, to harass or intimidate someone. This can take the form of sending threatening messages, posting embarrassing photos or videos, or spreading false rumors about someone. Cyberstalking, on the other hand, is a more severe form of cyberbullying and involves persistent and unwanted online attention that causes fear or distress to the victim.<sup>67</sup>

In India, cyberbullying and cyberstalking are criminal offenses under the Information Technology Act, 2000 (IT Act) and the Indian Penal Code, 1860 (IPC). Section 66A of the IT Act made sending offensive messages through a computer or any other communication device punishable by imprisonment for up to three years and a fine. However, this section was struck down by the Supreme Court in 2015 as it violated the right to freedom of speech and expression guaranteed under the Constitution of India.

**Legal Remedies for Cyberbullying and Cyberstalking in India:**

Victims of cyberbullying and cyberstalking can seek legal remedies under the IT Act and the IPC. They can file a complaint with the police, who can investigate the matter and file a charge sheet if they find sufficient evidence. The case will then be tried in a court of law.

Another legal remedy available to victims is the Civil Remedy. Victims can file a civil suit for

damages against the perpetrator of the cyberbullying or cyberstalking. They can also seek an injunction from the court to prevent the perpetrator from continuing the harassment.<sup>68</sup>

**Challenges in Implementing Legal Remedies:**

Despite the legal remedies available, there are several challenges in implementing them. One of the main challenges is the lack of awareness about cyberbullying and cyberstalking among law enforcement agencies and the general public. This often results in a delay in reporting the offense, and the evidence may be lost or destroyed.

Another challenge is the difficulty in identifying the perpetrator. Cyberbullying and cyberstalking can be done anonymously, and the IP addresses can be easily masked or changed. This makes it challenging for law enforcement agencies to track down the perpetrator and gather evidence.

Additionally, the slow pace of the legal system in India is a significant challenge. Cases related to cyberbullying and cyberstalking can take several years to resolve, and the victims may not get justice in a timely manner. The lack of specialized courts and trained judges in handling cybercrime cases is another issue that needs to be addressed.

**CASES OF CYBERSTALKING AND CYBERBULLYING IN INDIA:**

**Case of Manish Kathuria<sup>69</sup>:**

In 2003, the Delhi Police registered the first reported case of cyberstalking in India. The incident that led to the 2008 amendment to the IT Act was the Manish Kathuria case, where a woman named Ritu Kohli was stalked online. Ms.

<sup>67</sup> Pittaro, Michael. (2007). Cyber stalking: An Analysis of Online Harassment and Intimidation. 1. 10.5281/zenodo.18794.

<sup>68</sup> Rumon, Abdul & Khan, Fazle & Suma, Tamanna & promi, Shotorupa & Badhan, Pratim & Jubaer, Shah. (2021). Cyber Stalking is a Cybercrime or not: Hosting a new cybercrime. 10.13140/RG.2.2.28965.83681.

<sup>69</sup> SANDHYA SOMAN, CYBERSTALKING MAKES FIRST ENTRY INTO LEGAL DEBATE, available at <http://epaper.timesofindia.com/Repository/ml.asp?Ref=VE9JQ0gvMjAxMy8wMy8xOCNBcjAwNDAY>

Kohli filed a complaint alleging that someone was using her identity to chat on a website in an obscene manner, and the perpetrator had shared her phone numbers with other users, leading to her receiving unwanted phone calls from various locations. This caused significant inconvenience, trauma, and harassment in Ms. Kohli's personal life. The police investigation led to the arrest of Manish Kathuria, who admitted to the crime. He was charged under Section 509 of the Penal Code, which pertains to outraging the modesty of a victim. The IT Act was not used in this case as it was not in force at the time the complaint was filed. This incident highlighted the need for specific legislation to address cyberstalking, which led to the introduction of Section 66A in 2008. However, this provision was later struck down by the Supreme Court of India as unconstitutional. It should be noted that Section 509 does not explicitly refer to cyberstalking, which makes it challenging to prove such cases under the existing laws.

#### **Karan Girotra v. State<sup>70</sup>:**

Shivani Saxena reported to the Police that she had married Ishan but the marriage ended quickly as Ishan could not consummate it. They agreed to file for divorce after a year, and Shivani met Karan Girotra online but declined his marriage proposal as she was still married. Karan took Shivani to a house, made her unconscious, sexually abused her, and took obscene photographs of her. He then demanded sexual favors from her under the threat of publishing the photos. During the Roka ceremony, Karan received many valuables including a Santro Car from Shivani's family, but he later broke off the engagement. Shivani filed a complaint and a case was registered under Sections 328/376 IPC read with Section 66-A of the IT Act. Karan's plea for anticipatory bail was rejected by the court due to the circulation of nude and obscene photos of the complainant by the accused. However, the court also noted that Shivani did not disclose her previous

marriage to Karan despite it being mentioned earlier and there was a delay in lodging the FIR. The court also observed that the complainant had consented to sexual intercourse and decided to file the complaint only when Karan refused to marry her. This case highlights the judiciary's conservative attitude towards cyberstalking cases.

#### **Case of Yogesh Prabhu<sup>71</sup>:**

Despite the low conviction rate for cyberstalking since the amendments to the IT Act in 2008, the Mumbai cyber cell managed to obtain the first-ever conviction in Maharashtra under the IT Act in July 2015. This case involved online stalking and was investigated by the cell back in 2009. The accused, Yogesh Prabhu, was found guilty of stalking and sending obscene images to his colleague by a metropolitan magistrate court. As a result, he was sentenced to three years in prison and a fine of Rs. 10,000 and Rs. 5,000 under section 66-E and section 509 of the Information Technology Act, 2008 and the IPC, respectively. The conviction was based on crucial witness statements and evidence indicating that the crime was committed using a laptop provided by the office.

#### **Are Women a Soft Target for Cyber Crime?**

Women have been victims of various forms of crime, including cybercrime. Cybercriminals can target women through various forms of cybercrime, including hacking, online harassment, identity theft, and phishing attacks.

One reason why women may be a soft target for cybercrime is the pervasive gender-based violence that exists in many societies. Women may be targeted more frequently than men due to their gender, and cybercriminals may exploit this vulnerability to perpetrate crimes. Women may also be more likely to fall victim to cybercrime due to societal norms that place

<sup>70</sup> Karan Girotra v. State 2012 SCC OnLine Del 2673

<sup>71</sup> See Cyber cell's first conviction: Man gets 3 years for sending obscene messages, stalking colleague, Indian Express, Jul. 4, 2015 available at <http://indianexpress.com/article/cities/mumbai/cyber-cells-first-conviction-man-gets-3-years-for-sending-obscene-messages-stalking-colleague>.

them at a disadvantage in terms of technology use and online safety.

Another factor that contributes to women being a soft target for cybercrime is the disproportionate representation of women in certain professions and industries. Women are more likely to work in industries such as healthcare, education, and social services, which are increasingly reliant on technology. As a result, they may be more vulnerable to cybercrime, as cybercriminals may target the systems and networks used by these industries to gain access to sensitive information.

Online harassment is a particularly prevalent form of cybercrime that disproportionately affects women. Women who engage in online activities such as social media, blogging, and gaming may be subjected to harassment and abuse from strangers, acquaintances, and even friends. This can lead to psychological harm, social isolation, and a loss of confidence in one's online identity.<sup>72</sup>

In conclusion, women are indeed a soft target for cybercrime. The reasons for this vulnerability are complex and multifaceted, ranging from gender-based violence to the disproportionate representation of women in certain industries. To address this issue, it is essential to develop gender-sensitive policies and strategies that prioritize the safety and security of women in online spaces. Additionally, education and awareness-raising initiatives should be targeted towards women to help them better understand the risks of cybercrime and how to protect themselves online.

### **Need for separate provision for cyberbullying and cyberstalking in India:**

There is a growing need for separate provisions for cyberbullying and cyberstalking in India. With the increasing use of digital technology and the internet, the incidence of cyberbullying

and cyberstalking has also increased in the country.<sup>73</sup>

Cyberbullying refers to the use of electronic communication to bully someone while cyberstalking refers to the use of electronic communication to harass or threaten someone. These acts can cause significant psychological harm to the victim and can even lead to physical harm in some cases.

Currently, the Indian Penal Code (IPC)<sup>74</sup> provides for certain provisions that can be used to address cyberbullying and cyberstalking, such as Section 354D<sup>75</sup> (stalking) and Section 509<sup>76</sup> (word, gesture, or act intended to insult the modesty of a woman). However, these provisions do not specifically address the nuances of cyberbullying and cyberstalking.<sup>77</sup>

There is a need for separate provisions that address the unique nature of cyberbullying and cyberstalking. These provisions should consider the use of electronic communication and should provide for the appropriate punishment for offenders. Additionally, there should be provisions for protecting the victim's identity and privacy, as well as provisions for compensation for any harm caused to the victim.

Several countries, including the United States, the United Kingdom, and Australia, have already enacted separate provisions for cyberbullying and cyberstalking. India should also consider enacting similar provisions to effectively address these issues and protect its citizens from harm in the digital space.

### **Conclusion and Opinions:**

while technology has transformed the way Indians communicate, learn, and conduct business, it has also given rise to new forms of

<sup>72</sup> Dar, Showkat & Nagrath, Dolly. (2022). Are Women a Soft Target for Cyber Crime in India. *Journal of Computing and Information Technology*. 3. 23-31. 10.48185/jitc.v3i1.503.

<sup>73</sup> King, A.V., 2010. Constitutionality of cyberbullying laws: Keeping the online playground safe for both teens and free speech. *Vand. L. Rev.*, 63, p. 845.

<sup>74</sup> the Indian Penal Code, 1860

<sup>75</sup> Section 354D of the Indian Penal Code, 1860

<sup>76</sup> Section 509 of the Indian Penal Code, 1860

<sup>77</sup> Olweus, D., 2012. Cyberbullying: An overrated phenomenon? *European journal of developmental psychology*, 9(5), pp. 520-538.



harassment, such as cyberbullying and cyberstalking. These offenses have severe consequences for victims, and it is essential to have legal remedies to combat them. In India, cyberbullying and cyberstalking are criminal offenses under the Information Technology Act, 2000 (IT Act) and the Indian Penal Code, 1860 (IPC). Victims can seek legal remedies under these acts, but there are several challenges in implementing them. Lack of awareness about cyberbullying and cyberstalking, difficulty in identifying the perpetrator, and the slow pace of the legal system are some of the significant challenges that need to be addressed. As technology continues to evolve, it is crucial to have robust legal frameworks to protect the vulnerable, and strict implementation of these laws is necessary to prevent these offenses.