

Cyber bullying: A Need for Separate Provision in Indian Law

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Abstract

The Internet has become an essential component of our daily lives. It has opened the door to many opportunities and new social media culture. The Internet has made connecting and communicating with people more accessible than ever. The use of the Internet cannot be overemphasized as much as its inherent peril could not be underestimated. A few relevant ones are (but are not limited to) online harassment, voyeurism, identity theft, phishing, internet fraud, etc. The Internet has also become a medium for character assassination. Online abuse is severe and pervasive. It is severe because it causes the victim to suffer from mental distress, insecurity, and depression, especially in children. It is pervasive because it has become common, and the facility of publicity is detrimental to the dignity and reputation of people.³ Cybercrimes have unique features and raise special evidentiary issues that might not be adequately addressed by simply stretching old laws to fit new crimes.⁴ Most countries have taken measures to prevent cyberbullying. However, Indian law did not take cyberbullying into its cognizance. In this paper, we are dealing with cyberbullying and its effects, how foreign law deals with cyberbullying, how cyberbullying is dealt with in India, and most importantly, the need for separate provisions in Indian law to deal with it.

Keywords: Cyberbullying, Online Abuse, Cyber Harassment, Psychological Effect, Adolescent.

Introduction

The term cyberbullying and cyber harassment has been used synonymously. Cyber harassment is a broader term that includes cyberbullying. Cyberbullying is any harassment that occurs via the internet, cell phones, or other devices. Communication technology is used to harm others through hostile behaviour, such as sending text messages and posting ugly comments on the internet. The bullies harass people publicly on social media. And to worsen, it is seen by many people and leaves a digital footprint, which severely affects the victim mentally. Social media has reached a point where anyone can abuse anyone, using mean-spirited words by post or comments. The unavailability of fair law has left the victims of cyberbullying more vulnerable and the bullies to continue their online abuse.

Concept of Cyber Bullying

The term cyberbullying was coined by Bill Belsey, Canadian educator. Cyberbullying is defined as, using both information technology and communication technology beyond the limit in order

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³ Online Harassment Field Manual. 2022. *Defining "Online Abuse": A Glossary of Terms*. [online] Available at: <<https://onlineharassmentfieldmanual.pen.org/defining-online-harassment-a-glossary-of-terms/>> [Accessed 15 July 2022].

⁴ Jonathan B. Wolf, War Games Meets The Internet: Chasing 21st Century Cybercriminals With Old Laws And Little Money, 28 Am.J. CRIM. L. 95, 107-08 (2000)

to harm a person's reputation, state of mind, or to humiliate a person. It is an act by which the person being bullied suffers an adverse effect.⁵

The Webster dictionary defines cyberbullying as an electronic posting of mean-spirited messages about a person (such as a student), often done anonymously.⁶ Cyberbullying is any harassment that occurs via the internet, cell phones, or other devices. Communication technology is used to harm others through hostile behavior, such as sending text messages and posting ugly comments on the internet. The National Crime Prevention Council defines cyber-bullying as "the process of using the Internet, cell phones or other devices to send or post text or images intended to hurt or embarrass another person".⁷

UNICEF: Cyberbullying is bullying with the use of digital technologies. It can take place on social media, messaging platforms, gaming platforms, and mobile phones. It is repeated behavior aimed at scaring, angering, or shaming targeted people.

Examples include:

- i. Spreading lies about or posting embarrassing photos or videos of someone on social media.
- ii. Sending hurtful, abusive or threatening messages, images or videos via messaging platforms.
- iii. Impersonating someone and sending mean messages to others on their behalf or through fake accounts.
- iv. Face-to-face bullying and cyber bullying can often happen alongside each other. But cyber bullying leaves a digital footprint – a record that can prove useful and provide evidence to help the abuse.⁸

The state of Louisiana (US) defines the term cyber bullying as follows : cyber bullying is the transmission any electronic textual ,visual, written, or oral communication with malicious and willful intent to coerce, abuse, torment , or intimidate a person under age of 18.⁹ Cyberbullying is not defined in Indian law.

Nature and Effect of Cyberbullying:

UNICEF:

When bullying happens online it can feel as if you're being attacked everywhere, even inside your own home. It can seem like there's no escape. The effects can last a long time and affect a person in many ways:

Mentally – feeling upset, embarrassed, stupid, even afraid or angry

Emotionally – feeling ashamed or losing interest in the things you love

Physically – tired (loss of sleep), or experiencing symptoms like stomach aches and headaches

The feeling of being laughed at or harassed by others, can prevent people from speaking up or trying to deal with the problem. In extreme cases, cyberbullying can even lead to people taking

⁵ Online Harassment Field Manual. 2022. *Defining "Online Abuse": A Glossary of Terms*. Available at: <<https://onlineharassmentfieldmanual.pen.org/defining-online-harassment-a-glossary-of-terms/>> [Accessed 15 July 2022].

⁶ Merriam Webster. 2022. *Definition of cyberbullying*. Available at: <<https://www.merriam-webster.com/dictionary/cyberbullying>> [Accessed 15 July 2022].

⁷What is Cyberbullying, 2022. Available at: <<https://files.eric.ed.gov/fulltext/ED538551.pdf>> [Accessed 15 July 2022].

⁸Unicef.org. 2022. *Cyberbullying: What is it and how to stop it*. Available at: <<https://www.unicef.org/end-violence/how-to-stop-cyberbullying>> [Accessed 15 July 2022].

⁹2011 Louisiana Laws :: Revised Statutes :: TITLE 14 — Criminal law :: RS 14:40.7 — Cyberbullying. Universal citation : <La.rev.stat.ann.§14:40.7(a)>.

their own lives. Cyber bullying can affect us in many ways. But these can be overcome and people can regain their confidence and health.¹⁰ According to a study published in the journal of clinical psychiatry, cyberbullying exacerbated symptoms of depression and post-traumatic stress disorder in predisposed adolescents. Cyberbullying is causing students to experience the feeling of anger, powerlessness, fear, and sadness. The students feel helpless because they don't know how to react. Students are ill-equipped to handle cyberbullying. They will not seek help because of fear of reprisal or embarrassment, or they assume that the adults will not act since there is no proper governance to protect them from further victimization.¹¹

Cyberbullying strongly impacts suicidal behaviors: it increases suicidal thoughts by 14.5 percentage points and suicide attempts by 8.7 percentage points. Even if the focus is on statewide fatal suicide rates, cyberbullying still leads to significant increases in suicide mortality, with these effects being more robust for men than women.¹²

Foreign Laws on Cyberbullying:

United Kingdom- in United Kingdom bullying and cyber bullying are not specifically criminal offences. There are criminal and civil laws that can be used to prosecute the perpetrators of cyber bullying. This includes:-

- Protection from harassment Act 1997: this act provides provisions for prohibition of harassment (under §1). The preamble of this act is to make provision for protecting persons from harassment and similar conduct.¹³
- The Malicious Communications Act 1988; it is an offence to send a communication with intention of causing distress and anxiety.¹⁴
- It is an offence to send an electronic message that is grossly offensive or of an indecent, obscene or menacing character.¹⁵

Hawaii- Under the SB2094 law, a student who engages in cyber bullying is fined \$100 per offence.

Louisiana- Under H.B.1259, Act 989, a student who engages in cyber bullying is fined \$500 or imprisonment for up to six months.

Tennessee- Under S.B.113, a student engaged in cyber bullying and online threats is punished with a misdemeanor, with up to a year imprisonment. The cyber bully also faces a \$2,500 fine. Areas with medium-level cyber bullying laws:

United States- The following states have implemented cyber bullying laws that punish the cyber bully with suspension or expulsion: California, Connecticut, Colorado, and Illinois. Nearly all states have amended and passed law to address it. The federal law Megan Meier Cyber bullying prevention Act imposes penalty on anyone who communicates with intention to coerce,

¹⁰ Unicef.org. n.d. *Cyberbullying: What is it and how to stop it*. Available at: <<https://www.unicef.org/end-violence/how-to-stop-cyberbullying>> [Accessed 15 July 2022].

¹¹ Hoff, D.L. and Mitchell, S.N., 2009. Cyberbullying: Causes, effects, and remedies. *Journal of Educational Administration*.

¹² Nikolaou, D., 2017. Does cyberbullying impact youth suicidal behaviors? *Journal of health economics*, 56, pp.30-46.

¹³ Protection from harassment Act 1997, CHAPTER 40, Acts of Parliament, 1997 (UK).

¹⁴ The Malicious Communications Act 1988, CHAPTER 37, Acts of Parliament, 1988 (UK).

¹⁵ The Communication Act 2003, CHAPTER 21, Acts of Parliament, 2003 (UK).

intimidate ,harass, or cause substantial emotional distress to another person using electronic means.¹⁶

In most foreign country punishment of cyber bullying is limited to a fine.

International Perspective:

UNICEF , the Human Rights Commission and United Nation are calling for a coordinated approach from governments all around the globe. Most countries have noticed cyber bullying as a crime and made effort to prevent cyber bullying.¹⁷

How Cyberbullying is dealt in india:

Indian law has been silent on the problem and victimization of cyber bullying. The statute which addresses cybercrimes is the Information Technology Act 2000, it has not touched upon communication related threats and offences on cyberspace . Indian Penal Code and IT Act 2000 neither define cyber bullying nor punish cyber bullying. The following provision are used currently to fight against cyberbullying.

Provisions under IPC

Section 354A and section 354D of the IPC provides punishment for sexual harassment and stalking against women. Cyber-stalking of women was recognized as an offence, subsequent to the insertion of section 354D in the IPC through the Criminal Law (Amendment) Act, 2013. However, if a man is a victim of cyberstalking, Section 354D will not apply.

Section 509 IPC: punishes any person who utter any word , makes any gesture or sound with an intent to insult modesty of any women

Section 354A IPC deals with sexual harassment and punishment for Sexual harassment.

Section 354D IPC defines stalking as any man who follows a women, contacts her for personnel interaction repeatedly, ever after the clear intimation of disinterest of the women. The provision cover both physical as well as online stalking and punishes the stalker

Section 499 IPC deals with defamation : defamation makes or publishes a false information causing damage to the reputation of other person. But in most case of cyber bullying no actual damage is caused to reputation. In case of youth victims of cyber bullying ,proving reputational damage is problematic since they might not yet developed professional reputation in the community .¹⁸

Section 504 IPC : provides for punishment for intentional insult with intent to provoke breach of the peace. The objective of 504 IPC section is to prevent the intentional use of abusive language amounting to insult, giving rise to provocations causing the person against whom such words are used to commit breach of peace. In this section, it is showed how a person can provoke another to commit an offence that is criminal in nature and which can also harm the public peace at large. In order to establish an offence under this section, the following ingredients must be proved:

- That the accused insulted some person intentionally.

¹⁶ H.R.1966 - Megan Meier Cyberbullying Prevention Act 1966, Acts of Parliament, 1966 (US)

¹⁷ Baldry, A., Blaya, C. and Farrington, D., 2018. *International perspectives on cyberbullying*. Palgrave studies in cybercrime and cybersecurity. London: Palgrave MacMillan.

¹⁸ Erb. Todd D., 2008. Case for Strengthening School District Jurisdiction to Punish Off-campus Incidents of Cyberbullying, A. *Ariz. St. LJ*, 40, p.257.

- That the intention of the person is such which is likely to give provocation to the person insulted.
- The accused has the knowledge that such provocation would cause the person to break the public peace or under the influence of which, he can commit an offence.

In re Karumuri Venkatratnam. The court held that when the accused abused the complainant in such a manner which involves the chastity of his mother or sister, such an act falls under the ambit of IPC section 504

Offences affecting public decency and morality

IPC section 292- 294: apply to obscene books, object, acts and songs. Section 292 and 293 punishes sale of obscene books. section 294 punishes obscene acts in public as also singing of songs in or near public place

But any offence related to obscenity in electronic form can be tried only under the IT ACT and not under IPC, as section 81 of IT act clearly states its overriding effect (*Ranjit D Udeshi v State of Maharashtra AIR 1965 SC 881*)

The sexual harassment of women at workplace (prevention, prohibition and redressal) Act 2013 / (POSH Act) have been enacted to curtail sexual harassment of women at work place and thereby ensuring a safe environment for women.

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.

Provision under IT Act 2000

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.¹⁹

66A of IT Act made it a punishable offence to send grossly offensive or menacing information using a computer resource or communication device. The provision also made it punishable to persistently send information which the sender knows to be false for annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will. .but in *Shreya Singhal V UOI AIR 2015 SC 1523* the Supreme court of India repealed this section

¹⁹ Pib.gov.in. n.d. *Digital Exploitation of Children*. [online] Available at: <<https://pib.gov.in/pressreleaseshare.aspx?PRID=1579351>> [Accessed 15 July 2022].

because of the vagueness in the word offensive in the section and that it has been misused by the police.

66E of IT Act Punishment for violation of privacy.²⁰

67A of IT Act Provides punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.

Indian penal code provided remedies against defamatory act or an act outraging the modesty of women and the IT Act 2000 has provision to prevent publishing sexually explicit material, cyber stalking and violation of privacy. The law is silent on communication related threats and annoyance. Most of these are to protect woman from abuse. Mens right are not protected under most of these provisions

Constitutional Perspective:

Freedom of speech and expression is a basic human right. According to article 19 of the universal declaration of human rights, everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.²¹ Indian constitution under article 19 provides for the right to freedom of speech and certain other rights. A person who has become a victim of online assault or cyberbullying due to his expression of his opinion in social media had the right to freedom of expression of his idea without any interference, but due to the abuser's intolerance, they attack the person who posts his personal opinion. Whether this act of the abusers is also protected by the same constitutional right. No, freedom of speech and expression Does not confer the right to speak or publish without responsibility freedom of speech guaranteed under article 19 close does not give absolute immunity for every expression and prevent punishment for those who abuse this freedom article 19 close to emphasis restriction on try to speech and expression on the following grounds sovereignty and integrity of India, security of state, friendly relationship with the foreign state, public order, decency and morality contempt of court, defamation, incitement to commit in offence. The legislature is open to make law to regulate this kind of speech which attack other person's peace. A person's speech and expression must be decent and moral.it should not go against the contemporary of society . the restriction of freedom of speech and expression can found in section 292-section 294 of the Indian penal code ,they deal with content that deemed to be obscene. However some people will use bawdry and indecent language to bully a person.

Need for separate provision for cyberbullying:

Cyberbullying has become a growing concern today. It is common to see people getting bullied or harassed over social media. The increased users and social media have led to an increasing rate of cyberbullying, online harassment, and other related crimes. Cyberbullying is already too grave a problem to be ignored, and it is quickly escalating with the proliferation of Internet use

²⁰ -**66E of IT Act** Punishment for violation of privacy -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 with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.

²¹ Humanrights.com. 2022. *Article 19 of The Universal Declaration of Human Rights*. [online] Available at: <<https://www.humanrights.com/course/lesson/articles-19-25/read-article-19.html>> [Accessed 25 July 2022].

and the popularity of social networking websites.²² Most of the communication is unregulated to the level that any person can write anything, disregarding the decency and morality of the public watching this. People mindlessly comment or write mean-spirited words on social media. The Internet provides a veil of anonymity that encourages users to say things they might not otherwise say in person or even on the phone.²³ Although there are ways to investigate and ultimately discover the identities of cyberbullies, they can communicate harmful messages without identifying themselves, which makes it particularly difficult for victims to respond initially. Second, an Internet-created communication can be widely distributed at the click of a mouse and accessed by not only the bully and target but also endless other users, particularly if an e-mail is forwarded en masse or if comments are posted on a public website.²⁴

According to the National Crime Prevention Counsel, 43 percent of teens have been victims of cyber bullying, but many are too ashamed or embarrassed to report the incidents to their parents or other authorities.²⁵

India has rank no 3 for cyber bullying crime and it is rising day by day. According to a survey conducted by NGO,CRY it was found that approximately 9.2% of children are bullied online in Delhi.²⁶

Some of the common cyber bullying faced by people in India are

- People calling them offensive name on internet
- Spreading rumours that are false
- People giving physical threats
- People harassing or messaging them unnecessarily
- Commenting mean things on someone's pictures or post

However most of the cyber bullying acts does not cause serious damage to the persons even so it is annoying and inconvenient not only to that person but also to the netizens .

The aggrieved person have remedy to delete such comment or block or to report online itself .but this does not address the common problem ,such method do not deter other person from doing the same .This unregulated platform has become dumping site of some peoples frustration , insecurity and personal anguish .These acts cannot be levelled with crime, it can be considered as a malice or tort.

Provision under 66A of IT Act 2000 provided punishment for communication related offence, but this section has been repealed by Supreme Court in *Shreya Singhal v UOI*.²⁷ The Court held that this section was vague and over-broad and therefore fouled article 19(a) of the Indian constitution .this section provided for punishment for persistently sending information which the sender knows to be false for annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will. However, this section was misused by police to

²² 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.

²³ See Act 115, H.R. 1072, 86th Gen. Assem., 2007 Reg. Sess. (Ark. 2007) (recognizing that "cyber bullies feel protected by anonymity");

²⁴ Shariff, S., 2008. *Cyber-bullying: Issues and solutions for the school, the classroom and the home*. Routledge.

²⁵ Archive.ncpc.org. n.d. [online] Available at: <<http://archive.ncpc.org/resources/files/pdf/bullying/Teens%20and%20Cyberbullying%20Research%20Study.pdf>> [Accessed 16 July 2022].

²⁶ Cry.org. n.d. [online] Available at: <<https://www.cry.org/wp-content/uploads/2020/02/Online-Safety-and-Internet-Addiction-p.pdf>> [Accessed 16 July 2022].

²⁷ *Shreya Singhal V UOI AIR 2015 SC 1523*

restrict freedom of speech. The punishment under this section was exhaustive. The punishment should be in proportion to offence. Otherwise, it will lose its effect.

Cyberbullying is sometimes less offensive in nature because it does not cause actual injury, and most grievous forms of cyberbullying, such as publishing obscene material and defamation, are taken care of by IPC and Information Technology Act 2000. the object of the provision should be to preserve decency and morality in cyberspace; cyberbullying has civil nature, like a tort, rather than criminal nature. But individual civil remedies fail to provide a comprehensive solution to the current problem due to the high cost and long duration of proceedings associated with civil litigation. Cyberbullying is a low prevalence phenomenon, cyberbullying claims made on social media are greatly exaggerated and have little empirical scientific support.²⁸

The anonymity in cyberspace has given people more freedom and courage to do things that they will not do in normal circumstances.²⁹ Such actions are far-reaching; for example, an intentional insult in public may not attract much attention, but in cyberspace, it attracts many viewers, which will torment the victim.

The abusers are not necessarily criminals but unguided people born due to a lack of guidance and regulation in cyberspace. When online harassment goes unaddressed and unpunished, it will act as a license to others to do the same, thereby exacerbating the problem. The lack of adequate remedy for a common problem has forced the victims to resort to alternative legal remedies. The act usually does not fit into its scope, as its punishment will be excessive and ultimately acquits the perpetrator. It will cause headaches to the prosecution and cause mental agony to the victims. Therefore providing separate provision for cyberbullying will narrow down the vagueness in previously repealed provision. by taking into account how foreign law deals with cyberbullying. Cyberbullying should be fined appropriately.

²⁸ Olweus, D., 2012. Cyberbullying: An overrated phenomenon? *European journal of developmental psychology*, 9(5), pp.520-538.

²⁹ See Act 115, H.R. 1072, 86th Gen. Assem., 2007 Reg. Sess. (Ark. 2007) cyber bullies feel protected by anonymity.