

**VICTIMS AS SINNERS AND OFFENDERS AS CRUSADERS OF JUSTICE:AN
ANALYTICAL VIEW OF PERCEPTIVE CYBER CRIME AGAINST WOMEN.**

-Sree Vidya.V¹

“The way to right wrongs is to turn the light of truth upon them.”

Ida B. Wells-Barnett

“Human progress is neither automatic nor inevitable... Every step toward the goal of justice requires sacrifice, suffering, and struggle; the tireless exertions and passionate concern of dedicated individuals.”

Martin Luther King

INTRODUCTION

The more things a man is ashamed of, the more he is respectable said, Sir George Bernard Shaw.

The true spirit about one's self is, one had better die fighting against injustice than to die like a dog or a rat in a trap.

Perception is defined in various dictionaries as our recognition and interpretation of sensory information.¹ There can be no possible belief that these people have been inspired by any consuming zeal to vindicate God's law against miscegenationists of the most practical sort.

The woman is always a

1. Wikipedia – Online Dictionary.

willing partner in crime, the victim's guilt, and being of the “superior” race must naturally have been more guilty.

In India, under the Information Technology Act, 2000, this is a grey area of the law, where as a crime cyber crime against women is not prohibited but not legalized either.

¹Research Scholar, TamilNadu Dr. Ambedkar Law University, and Civil Judge, Junior Division

Robley Dunglison's Medical Lexicon which is a Dictionary of Medical Science coined the English term "pornography." Dunglison defined the word as "a description of prostitutes or of prostitution as a matter of public hygiene." ² The word gained widespread use as a general term for sexually explicit material within a decade. It was possibly inspired by the French term "pornographies", which had already taken on that meaning.

The reason behind the concept that law is dynamic is that, crimes are dynamic. Over the virtual space, criminal behaviour is spontaneous and is on the go multiplying. The alarming level of multiplication of this virus has affected almost every woman who has access to the internet. Intangible cultural heritage has been transmitted from generations to the next and it is this intangible cultural heritage which is a safeguard for the each treasure called woman. For every woman there is a threat or a menace, which has experienced virtual space crime. It is the walk of life when women have the right to access internet and communication and those who have had the freedom use the net have always been subjected to small threats and big -----

2. Robley Dunglison's Dictionary.

Menaces: A continuing threat is a menace. Be it trolling or even vandalising women on the internet or creating a high hate wave for the online statistical purposes.

Cyberspace has created a new trend of motivating physical violence which can be caused against the women, and any physical violence including rape, blackmailing, stalking, offending phone calls, or vandalising are all associated with the internet nowadays. Space has permitted offenders to post photographs of women, college going students, children, housewives, celebrities, tribals, school girls and women of all ages to have been vandalised. Are these offenders the crusaders of Justice? Are they "Devadooths"?

Volenti non fit injuria:

The legal Maxim which says that he who consents cannot receive an injury.

Reputation of every woman in this social structure is the reputation of the family. Where do these women cross the limit of obscenity. Obscenity is defined in the Law Lexicon as

indecent, indelicate, and immodest. Further, one can say that something indecent more than in delicate and less than in modest and that which is something unfit for the eye and the ear.

In *US versus Loftis*, 12 Fed 671,³ the federal court observed that the term of obscene means something offensive to the decency or delicacy, and expressing for presenting to the mind or view something that delicacy and

3. U.S. Versus Loftis, 12.Fed 671.

purity to be exposed. Indecency is an act against good behaviour and unjust delicacy. Obscenity, is such indecency as is calculated to promote the violation of the law and the general corruption of morals.

In *State versus Hazel*, 20 Ark 156 at 159, ⁴ by an obscene exhibition of the person is meant as any offensive disgusting and indelicate presenting to view show or display of the person.

Though in India obscenity as a crime, is only at the introductory level, research has found it to be a penetrating one which shocks the ordinary and common sense of the level of immoral degree of corrupt libidinous thoughts. The origin of the word 'obscenity' comes from Ancient Greek theatre, which excluded sexual and violent scenes from being performed on stage. Hence the Greek word *ob skein*, standing for obscene.

Case Study on Obscenity:

The Hicklin test – *Regina v. Hicklin* (1868) ⁵

Cockburn, C.J., Blackburn, Mellor, and Lush, J.J. (Queen's Bench).

In the words of Cockburn, C.J., "it is found here as a fact that the work which is the subject-matter of the present proceeding was, to a considerable extent, an obscene publication, and, by reason of the obscene matter in it, calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it might come. The magistrates must have been of opinion that the work was indictable, and that the publication of it was a fit and proper subject for indictment.

**4. In State versus Hazel, 20 Ark 156 at 159,
5. The Hicklin test – Regina v. Hicklin (1868)**

I hold that, where a man publishes a work manifestly obscene, he must be taken to have had the intention which is implied from that act; and that, as soon as you have an illegal act thus established, quoad the intention and quoad the act, it does not lie in the mouth of the man who does it to say, "Well, I was breaking the law, but I was breaking it for some wholesome and salutary purpose." The law does not allow that; you must abide by the law, and if you would accomplish your object, you must do it in a legal manner, or let it alone; you must not do it in a manner which is illegal."

Rex v. Dixon,[29] ⁶

Lord Ellenborough in Rex v. Dixon,[29]in the shortest and clearest manner: "It is a universal principle that when a man is charged with doing an act" (that is a wrongful act, without any legal justification) "of which the probable consequence may be highly injurious, the intention is an inference of law resulting from the doing the act."

The line has to be drawn,a Lakshman Rekha for every woman as the obvious risk may occur when the limit of obscenity has reached. The right to privacy of every individual is the question which would define and curb the perception of women over virtual space.

It can also be substantiated that every modest women of a good character in a good family may have the character of molest woman on cyberspace.

6.Rex v. Dixon,[29]

Paci sunt maxime contraria, vis et injuric:

Is a legal Maxim which states: Violence and injury are especially contrary to peace.

Behaviour involving physical force intended to hurt, damage, or kill someone or something and strength of emotion or of a destructive natural force is violence.

Traumatic events can result in serious stress and detrimental consequences for survivors who are women and their families. Traumatic events include physical, psychological and

sexual abuse; terrorism and war; domestic violence; witnessing violence against others; and accidents and natural disasters.

Many survivors are currently living with trauma experience symptoms that are both chronic and severe. These include: nightmares, insomnia, somatic disturbances, difficulty with intimate relationships, fear, anxiety, anger, shame, aggression, suicidal behaviours, loss of trust and isolation.

There are numerous reasons that explain the rising number of sexual abuse reports. The first reason being the unwillingness to report and disclose such heinous crimes. Another is the age group of children , who are exposed to abuse appear to be younger victims who cannot even narrate their trauma. The last one is the heightened awareness from the general public and service professionals on the issue.

Mounting research techniques indicate that childhood sexual abuse seems to be a major risk factor in negative adulthood psychological functioning. In fact, research conducted over the last decade indicates a definite causal relationship between emotional difficulties and sexual abuse. Children who have been sexually abused are more likely to meet the criteria for a host of psychological difficulties such as: generalized anxiety disorder, phobias, panic disorder, post-traumatic stress disorder, and/or obsessive compulsive disorder.

Over the time, we are not only talking about exhibiting of women's photos on internet to be cyber crime. Whistleblowers have always also revealed confidential documents of cyber criminals and have always shown that these cyber criminals operate on the dark net. One may wonder the presence of the dark net. It is true that the Dark net exists just as the internet exists but in the ratio of that of a popping glacier. The Dark net is the Glacier underneath.

It is the ultimate truth that the exhibiting of unwanted photographs of a lady over the internet would cause emotional and mental trauma not only to the particular person but to the family as a whole. But for the girl, the whole family need not undergo the trauma, which had been the unethical conduct of one lady and some other miscreants and non abiding citizens,or cyber crime offenders.

Cyber crime offenders are misunderstood as activists and feel as if they are devoted to expose corruption and abuse of authoritative people through that device called freedom of speech and expression. This conundrum of cybercrime are proportionately variable directly to the conundrums of the dark net also.

Cyber criminals have always operated for gain only to bear to reveal private information and access data or to expose illegality which they might have seen at the very close pace. **But in the view of the cyber criminals, they are always just and legitimate and it is in their view that these victims are sinners and criminals and they are the crusaders of Justice.**

Vigilantibus non dormientibus jura sub veniunt:

The legal Maxim which means, Equity comes to the aid of the vigilant and not the slumbering.

In fact in the United States there was a time when wrongdoer who are teenagers were categorised as sex offenders. If age were the criteria to decide sexual offenders, then normal adolescent sexual behaviour in this age of internet is the age when he comes to know about his physic and the age when he comes to know about opposite sex and can also be considered as the age when he has become a person enough to handle the internet and to post photos of himself or of others on the internet.

The situation here is at one point of time the victims themselves become offenders. The transition of victims from victims to offenders is only a thin line. Victims have been the source of feeding to offenders always. A transitioned victimized offender is a very strong offender. Cyber criminals are of all ages the reason could be attributed to the easily available internet throughout the country and cheap cost of gadgets which are available very easily.

These victim turn into the cyber criminals, and try to find out every possible method to overcome the difficulty or the problem which they had faced when they had been such victims.

Empirical research done on this topic shows that, cyber criminals are white hat hackers, grey hackers, or black hackers. These hackers have always looked into the weaknesses not

only of a computer system or a security network but also of the weaknesses of women towards exposing themselves on net. This is the perspective of pornography and exhibiting of one's self over the internet.

Though it is the claim of law, that equity comes to the aid of the vigilant, and not of the slumbering, it can be seen that whether in slumber or vigilance, when a person has proposed to use the internet, perspective is that he is not further slumbering but has began to act ,as though he is in deep slumber.

" in this context we would need to analyse the general law in reference to the approach towards issues in India. In 2001 when the 16 year old student of air Force Bal Bharti School created up a website with the pictures of his female classmates and teachers, unlike the United States the accused was not arrested. The cases handled by the Juvenile justice board and even though the Indian Parliament had passed the Information Technology Bill 2000 then,, it can be seen it was heavily influenced by the model law on Electronic Commerce adopted by the United Nations commission on international trade law, through the resolution dated ,30 January 1997." ⁷ Treating the adolescent victim-turned-offender. Muster NJ. Adolescence. 1992. Au thors Muster NJ.⁸

7. Debarati Halder on Cyber Crime against women in India.

8. Citation Adolescence. 1992 Summer;27(106):441-50.

“Many juvenile sex offenders are also victims of sexual abuse. However, treatment primarily focuses on the juvenile's criminal acts in a confrontational, nonsympathetic manner. In the present paper, a survey of professionals in the sexual abuse treatment field assessed attitudes toward juvenile sex offender treatment. Those in the corrections field were the greatest supporters of confrontational and punitive therapy methods, while the majority favored flexibility in treatment.”

A prospective analysis of juvenile male sex offenders have characteristics and recidivism rates as adults.

Vandiver DM. J Interpers Violence. 2006. Authors Vandiver DM1.⁹

A research which assesses the recidivism rates of a sample of 300 registered male sex offenders who were juveniles at the time of their initial arrest for a sex offense. This sample is followed for 3 to 6 years after they reached adulthood; recidivism rates are assessed during their adulthood only. The typical juvenile is a 15-year-old Caucasian male who was arrested for sexual assault or indecency with a child. The majority of the victims are females with an average age of 8. Although only 13 are rearrested during the follow-up period for a sex offense, more than half of the sample is arrested at least once for a nonsexual offense. The results of a Cox regression indicate that victim age, offender age, and victim sex are significant predictors of recidivism during adulthood.

An evaluation of classification criteria for juvenile sex offenders.

Kemper TS, et al. Sex Abuse. 2010. Authors Kemper TS1, Kistner JA.

9. (Author information: Department of Criminal Justice Sciences, Illinois State University, Normal, 61790-5250, USA. dmvandi@ilstu.edu) Citation: J Interpers Violence. 2006 May;21(5):673-88.

Author information: Florida State University, Tallahassee, FL, USA.
kemper@psy.fsu.edu:¹⁰

“Victim age is commonly used in the classification of juvenile sexual offenders (JSOs). However, the results of studies comparing JSOs who offend peers (peer offenders) with those who offend children (child molesters) are variable and inconclusive. Reasons for this variability include the lack of attention to JSOs who offend both children and peers (mixed offenders) and the variability across studies in the classification criteria used to assign JSOs to subgroups. Some studies use victim age, others use offender-victim age discrepancies, and still others use a combination of victim age and age discrepancies to classify JSOs.

These variations may result in samples of JSOs that are not comparable across studies. The primary purpose of the present research was to examine the strength of the relationship between JSO subgroup membership (child, peer, and mixed offenders) and personal, criminal history, and offense history variables using several different classification methods commonly used in JSO research. Patterns of relationships between subgroup membership and the dependent variables were then compared across the classification methods to determine whether changes in classification criteria changed the pattern of results. The results indicated that the pattern of relationships between subgroups and the dependent

variables changed little when classification criteria varied. Consequently, variation in classification criteria is unlikely to be contributing to the inconsistencies of the findings when comparing victim age based subgroups of JSOs.”

10. Citation Sex Abuse. 2010 Jun;22(2):172-90. doi: 10. 1177/1079063210366270. Epub 2010 Apr 20.

Juvenile female and male sex offenders:

a comparison of offender, victim, and judicial processing characteristics. ¹¹

“This research examined 61 juvenile female sex offenders in terms of their offending patterns, demographics, and victim characteristics; these findings are compared to 122 juvenile male sex offenders. Relying on sex offender registration data and criminal history records, vicariate analyses are conducted to assess male-female differences. Logistic regression is also employed to further assess group membership (male and female). Females were typically younger than males at the time of their arrest for a sex offense. Female offenders also chose male and female victims proportionately, whereas males were more likely to choose female victims. Logistic regression analysis revealed two significant predictors of the offender's sex: victim's sex and length of sentence. This research, therefore, indicates different modalities of offense characteristics for males and females, which predicates different management strategies in terms of identification for these groups of offenders.

Non recusat ad minora dimmitere lex :

The legal Maxim meaning: Law does not refuse to descend into the smallest details.

“In India, The IT Act 2000 ¹² was mainly to ensure legal recognition of e commerce within India. Due to this most provisions are mainly concerned with establishing digital certification processes within the

11. Vandiver DM, et al. Int J Offender Ther Comp Criminol. 2006. Authors Vandiver DM1 Teske R Jr.

Author information; Illinois State University, Normal, IL 61790-550, USA. Citation Int J Offender Ther

Comp Criminol. 2006 Apr;50(2):148-65. :abstract.

12. In India, The Information Technology Act Act 2000.

country. Cyber crime as a term was not defined in the act. It only delved with few instances of computer related crime. These acts as defined in Chapter XI of the Act are:

Section 43- Illegal access, introduction of virus, denial of services, causing damage and manipulating computer accounts
Section 65- Tampering, destroying and concealing computer code
Section 66- Acts of hacking leading to wrongful loss or damage
Section 67- Acts related to publishing, transmission or causing Publication of obscene/ lascivious in nature.”¹³

“Cyber terrorism-The newly introduced section 66F talks about acts of cyber terror which threatens the unity, integrity or sovereignty of India or strike terror in the people or any section of the people include Denial of service of resources in use by nation Attempting to penetrate or access a computer resource without authorization or exceeding authorized access Introducing or causing to introduce any computer contaminant likely to cause death or injuries to person or damage to or destruction of property or disrupts or knowing that it is likely to cause damage or disruption of supplies or services essential to the life of the community or knowingly or intentionally penetrates or accesses a computer resource without authorisation or exceeding authorised access, and by means of such conduct obtains access to information, data or computer database that is restricted for reasons for the security of the State or foreign relations, or any restricted information, data or computer database, with reasons to believe that such information, data or computer database so obtained may be used to cause or likely to cause injury

13. Critical Appraisal of Information Technology Act - Academike - Lawctopus
<https://www.lawctopus.com> › academike

to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or to the advantage of any foreign nation, group of individuals or otherwise, commits the offence of cyber terrorism.¹⁴

The organisation that works on gender rights, sexual violence and the digital rights of women, has drawn attention to the indiscriminate and increasing use of Section 67 of the IT Act by the police across India. The first ever in-depth study of Section 67 finds that it is leaning suspiciously towards the draconian Section 66A.

The report, *Guavas and Genitals*, that draws its title from an incident involving four Pune boys, analyses National Crime Records Bureau data as well as media reports on cases of obscenity. “Three of us had gone there [a garden in Pune] to eat guavas, but when we reached there, we started playing with each others genitals. We then stopped under a tamarind tree, where two of us had oral and anal sex while the third shot it on his phone. This was repeated on all three. After two hours, we returned home,” a 17-year-old boy told the police after a video displaying him and three other boys engaging in sexual acts was reported in November 2014. One of the boys had reportedly uploaded the video on a WhatsApp group and it spread like wildfire. An acquaintance who saw the video informed the police. The boys were booked for obscenity under Section 292 of the Indian Penal Code (IPC).

14. How the Information Technology Act Act's Section on Obscenity is Being Misused to Violate ...

<https://thewire.in/gender/victimisation> – Accessed on 03.09.2018.

“ Rape videos are booked under the anti-obscenity provision but not for violation of the victim’s consent. The primary harm when a nude picture of a woman gets taken and distributed without her knowledge is not of obscenity but of violation of her privacy. The Delhi Public School MMS case is a classic case of violation of consent, but there seems to be no legal resonance with consent”, Datta said.

She is humiliated, stripped naked, paraded, made to draw water from the well, within the circle of a hundred men. The exposure of breasts and genitalia to those men is intended by those who strip her to demean her.’The portrayal of the tragic story of dacoit Phoolan Devi in *Bandit Queen* fell in a legal battle when a criminal case of obscenity was filed against the makers. The petitioners objected to some scenes depicting nudity and violence in the movie and claimed that they were obscene, lascivious, and would corrupt and deprave the minds of the viewers and hence, a criminal act under Section 292 of the Indian Penal Code.¹⁵

"If there be an infraction ... Jury in what is known as the *Philanderers case*, *R. v. Martin Secker and Warburg*.

The fact that the test of obscenity was laid down in 1868, observed Stable, J., in the Warburg case, "does not mean that you have to consider whether this book is an obscene book by the standards of nearly a century ago."

In another passage, the learned judge inquires rhetorically: Are we to take our literary standards as being the level of something that is -----

15. Hicklin, (1868) 3 QB 360 .

suitable for a fourteen-year-old schoolgirl? Or do we go even further back than that, and are we to be reduced to the sort of books that one reads as a child in the nursery? The answer to that is: Of course not. A mass of literature, great literature, from many angles is wholly unsuitable for reading by the adolescent, but that does not mean that the publisher is guilty of a criminal offence for making those works available to the general public.

Hence, the community standards test as against the Hicklin test in the backdrop of the Supreme Court judgement in can be relied upon for determination of obscenity.¹⁶

Non debet alteri per alterum iniqua conditio inferri :

The legal maxim which means: No one ought to be put in an unfair position by the act of another.

Hence, it can be inferred from the research , empirical and non empirical that both offenders and victims are victims of cyber crime and the the transition of victims as offenders has made the appearance as though the victims are sinners and victim turned offenders are the offenders who are Godmen and mentoring themselves as Crusaders of Justice.

The glory of justice and the majesty of law are created not just by the Constitution - nor by the courts - nor by the officers of the law - nor by the lawyers - but by the men and women who constitute our society - who are the protectors of the law as they are themselves protected by the law.-Robert Kennedy.

16. Aveek Sarkar v. State of West Bengal (3rd February 2014) Criminal Appeal No 902 of 2004)