

STALKING VICTIMIZATION IN INDIA: LEGAL PERSPECTIVES

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Abstract

Stalking is a felony which has been made punishable under the Indian Penal Code 1860 via the Criminal Law Amendment (Amendment) Act, 2013 also known as the “Nirbhaya Act”. The Provision which was inserted namely, Section 354 D, to deal exclusively with Stalking as an offence and provides for stringent punishment at the first instance and enhanced punishment for subsequent offence as well. But does this provision provide justice to all victims of stalking? Does this provision provide for punishment to all the offenders who commit the offence of Stalking? The answer is clearly NO, as the provision is not gender neutral and is prejudiced in favour of females, in such a way that the law assumes that only females are victims of Stalking and people belonging to other genders cannot be victims. Similarly the Law also assumes that only males commit the offence of Stalking. Though there are different kinds of Stalking, one which stands out among the rest is Cyberstalking which can be easily committed in this Digital Era. The Author in this Article attempts to look at the offence of Stalking from a victimology perspective, taking into account the data collected via empirical research, using quantitative technique of Data Collection, through the online circulation of questionnaire containing closed-ended questions. The Author in this Article will also look into other alternate Legislations in India, which provides for remedies to victims of Stalking. The Author also attempts to do a Comparative Study taking into account legislations dealing with Stalking in other Countries. Based on the overall analysis, the author proposes several suggestions and recommendations to make the provision more inclusive and to ensure that proper justice is served to Victims of Stalking.

INTRODUCTION

Although there is enough anecdotal evidence to suggest that the term stalking was used to refer to actions such as prowling and poaching from the 16th century itself, it was mainly in the 20th century that the term stalking mainly came into limelight to describe “pestering and harassing

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initially with specific reference to the harassment of celebrities by strangers who were described as being obsessed.”² Though this definition considers only celebrities as victims of Stalking, this has undergone changes to include common people as well to be victims as well as perpetrators of the offence of Stalking. According to Pathé and Mullen, Stalking is defined as “a constellation of behaviours in which an individual inflicts upon another repeated unwanted intrusions and communications”.³

According to Oxford Dictionary, Stalking is defined as “the crime of following and watching somebody over a long period of time in a way that is annoying or frightening”. The United States Department of Justice Office for Victims of Crime (OVC) provides a more elaborate definition of Stalking by defining the term as “repeated harassing or threatening behavior by an individual, such as following a person, appearing at a person’s home or place of business, making harassing phone calls, leaving written messages or objects, or vandalizing a person’s property”.

The offence of Stalking thus instils a sense of fear on the person who is stalked and leads to uncertainty, and may even lead to the complete disruption of lives. Stalking may result in severe and lethal violence. The offence of Stalking includes within its ambit apparent criminal or innocent behaviour which would lead to the victim to fear for himself/herself and also those surrounding them. Stalking may repeat victimization of a person, as the offence in itself is rarely a single incident and usually includes recurrent acts. Stalking is also to a certain extent or degree defined by the impact it has on the victims.

Before 2013, the offence of Stalking as such was not explicitly defined and punished under the Penal Law in India, rather it came within the wider ambit of Sexual Harassment under Section 354 of The Indian Penal Code. But later after the vicious Delhi Gang Rape, amendments were introduced to include various new provisions under the Penal Code, so that such an incident is not repeated in the future. The amendments were introduced keeping in mind, the suggestions given by the Committee headed by former Chief Justice of India, Justice JS Verma. Thus an entirely new provision, i.e., Section 354 D was introduced which defined and made punishable the offence of Stalking.

² Pathé, Michele; Mullen, Paul E.; Purcell, Rosemary (2000). *Stalkers and Their Victims*. Cambridge, England: Cambridge University Press. ISBN 978-0-521-66950-4.

³ Pathe, M.; Mullen, P. E. (1997). "The impact of stalkers on their victims". *The British Journal of Psychiatry*. London, England: *Royal College of Psychiatrists*. **170**: 12–17. doi:10.1192/bjp.170.1.12. PMID 9068768

Though this provision is now explicitly present in the Indian Penal Code, the general public is not really aware of this provision, and even if they are aware, they do not take the effort to bring the perpetrator of the offence in front of the law. This Project would cover the offence of Stalking and its provisions and punishments provided under the Indian Penal Code and other Statutes. The Project will also look into whether the Offence of Stalking in India is a Gender Biased Offence, and if it is then there is also the need to examine whether it should continue to be a Gender Biased Offence or whether it has to be a Gender Neutral Offence. This Project will also look into as to how the offence of Stalking is seen in the International Regime and the remedies that are available to the victims of Stalking and the punishments prescribed for the perpetrators of the offence of Stalking.

A survey has been conducted as part of this research paper, wherein a total of 123 random people were provided with questionnaires containing various questions relating to the offence of Stalking, and the questions, the responses and opinions of the people who took part in answering the questions would be covered in the relevant sections of this project.

MAJOR REASONS BEHIND STALKING

There are umpteen number of reasons as to why a person may indulge in the Stalking of another person. Some of the reasons as to why the offender may involve in the offence of stalking his/her victims are discussed below.

- i. Jealousy- Jealousy according to Cambridge Dictionary is defined as, “a feeling of unhappiness and anger because someone has something or someone that you want”. Jealousy is one of the major reasons behind the offence of stalking, especially when it is towards ex-partners and current partners. Most of the perpetrators committing the offence of Stalking are really close to the victims or is somebody the victim personally knows.
- ii. Obsession and Attraction- Obsession and Attraction towards the victims is one of the major reasons behind the commission of the offence of Stalking. The Attraction towards the victim may be of a sexual nature or it may be mental attraction towards the victim. This is especially in the case of celebrities, wherein the victim may not at all know the perpetrator in person, but is a victim of Stalking. There are many celebrities who are stalked by people who call themselves their fans.

- iii. Erotomania- Erotomania is defined as a condition in which a person thinks that someone is in love with them, but in reality that is not the case. The Perpetrator of the offence thus frequently engages in the offence of stalking their victim, and is a result of the sexual inclination of the perpetrator on the victim.
- iv. Sexual Harassment- Sexual Harassment is considered as one of the major motives behind the offence of Cyber Stalking which is the most common form of Stalking.
- v. Revenge and Hate- Revenge and Hate especially towards former friends, lovers, partners etc are one of the major reasons for the commission of the offence of Stalking. The Revenge or Hate that is being talked about in this context may sometimes not be caused as a result of the attitude of the victim towards the perpetrator, yet the victim may become a target for Stalking by the perpetrator.

In addition to the above mentioned reasons, there are various other reasons such as envy, sexual deviance, addiction to the internet, rage, narcissism, fanaticism towards religion, psychiatric and mental problems, sadomasochistic imagination etc.

TYPES OF STALKERS

According to Leroy McFarlane and Paul Bocij, “There are mainly three types of stalkers who dealt in the commission of the offence of Stalking. They are:

- i. Obsessional Stalkers- Obsessional Stalkers are those types of stalkers whose main motive behind the commission of the offence is love and the satisfaction of sexual desires.
- ii. Delusional Stalkers- Delusional Stalkers are mainly stalkers with psychiatric and mental health issues who primarily feel that there is a need to showcase their strength and power.
- iii. Vengeful Stalkers- Vengeful Stalkers are those stalkers who primarily engage in the commission of the offence of Stalking for the purpose of revenge”.⁴

⁴ Leroy McFarlane & Paul Bocij, *Cyberstalking: The Technology of Hate*, 76 POLICE JOURNAL 204 (2003).

According to Paul Mullen, Michell E Pathé, Rosemary Purcell and Geoffrey W Stuart, there are five categories of Stalkers. They are:

- “Rejected stalkers follow their victims in order to reverse, correct, or avenge a rejection (e.g. divorce, separation, termination).
- Resentful stalkers make a vendetta because of a sense of grievance against the victims – motivated mainly by the desire to frighten and distress the victim.
- Intimacy seekers seek to establish an intimate, loving relationship with their victim. Such stalkers often believe that the victim is a long-sought-after soul mate, and they were 'meant' to be together.
- Incompetent suitors, despite poor social or courting skills, have a fixation, or in some cases, a sense of entitlement to an intimate relationship with those who have attracted their amorous interest. Their victims are most often already in a dating relationship with someone else.
- Predatory stalkers spy on the victim in order to prepare and plan an attack – often sexual – on the victim.”⁵

TYPES OF VICTIMS

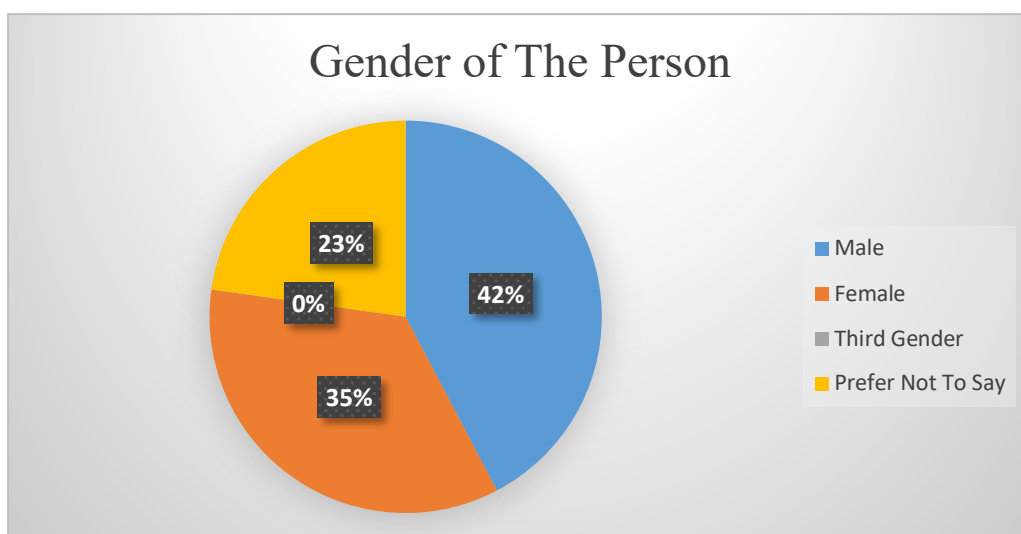
According to Pathé and Mullen, there are six types of victims. They are:

- “Prior intimates: Victims who had been in a previous intimate relationship with their stalker. In the article, Mullen and Pathé describe this as being "the largest category, the most common victim profile being a woman who has previously shared an intimate relationship with her (usually) male stalker." These victims are more likely to be exposed to violence being enacted by their stalker especially if the stalker had a criminal past. In addition, victims who have "date stalkers" are less likely to experience violence by their stalkers. A "date stalker" is considered an individual who had an intimate relationship with the victim but it was short-lived.

⁵ Mullen, Paul E.; Pathé, Michele; Purcell, Rosemary; Stuart, Geoffrey W. (August 1999). "A Study of Stalkers". *American Journal of Psychiatry*. Philadelphia, Pennsylvania: American Psychiatric Association. **156** (156): 1244–1249.

- Casual acquaintances and friends: Among male stalking victims, most are part of this category. This category of victims also includes neighbour stalking. This may result in the victims' change of residence.
- Professional contacts: These are victims who have been stalked by patients, clients, or students who they have had a professional relationship with. Certain professions such as health care providers, teachers, and lawyers are at a higher risk for stalking.
- Workplace contacts: The stalkers of these victims tend to visit them in their workplace which means that they are either an employer, employee, or a customer. When victims have stalkers coming to their workplace, this poses a threat not only to the victims' safety but to the safety of other individuals as well.
- Strangers: These victims are typically unaware of how their stalkers began stalking because typically these stalkers form a sense of admiration for their victims from a distance.
- The famous: Most of these victims are individuals who are portrayed heavily on media outlets but can also include individuals such as politicians and athletes.”

In the questionnaire which was circulated, the gender of the person answering the question was asked. A total of four options were provided. The options were Male, Female, Third Gender and Prefer Not to Say. Out of the 123 responses, 52 responses identified themselves as male, 43 responses identified themselves as Female and 28 people answered that they prefer not to say.



A Question was asked whether the person answering knows about the offence of Stalking and whether it is punishable in India. Everybody, i.e. all 123 answered that they indeed know that the Offence of Stalking is punishable in India.



The question was asked whether the person answering has ever become or is currently a victim of Stalking. Out of the 123 responses, 22 people said that they have been or is currently a victim of Stalking. 80 people said that they have never been a victim of Stalking and 21 people preferred not to say.



CYBERSTALKING- THE LATEST FORM OF STALKING

According to Oxford University Press, “Cyberstalking is the use of the Internet or other electronic means to stalk or harass an individual, group, or organization. It may include false accusations, defamation, slander and libel. It may also include monitoring, identity theft, threats, vandalism, solicitation for sex, or gathering information that may be used to threaten, embarrass or harass.”⁶ Cyberstalking may either be a solitary event or may be accompanied with physical or offline stalking. One of the biggest advantages which the Cyber Stalker has over Physical or Offline Stalker is that the cyberspace provides anonymity to the perpetrator and so the victim cannot easily identify the perpetrator. Cyber Stalking includes within its ambit online abuse as well as online harassment.

BASIS OF DISTINCTION BETWEEN PHYSICAL STALKING AND CYBER STALKING

	Physical Stalking	Cyber Stalking
Geographical Proximity	Stalker and Victim are geographically near each other. There is necessitation of Physical Confrontation.	Physical Confrontation is not at all necessary. There is no limitation with respect to geographical boundaries.
Predictability	It is comparatively easier to track down the Stalker as there is physical confrontation.	It is very difficult to predict who the Stalker is, as there is no need of physical confrontation in the cyberspace
Familiarity with Victim	The Victim is generally known to the Stalker and this occurs mainly in interpersonal relationships.	The Stalker generally chooses the victim randomly and the information about the victim is generally limited to information present in social networking sites

⁶ Cyberstalking". *Oxford University Press*. Retrieved 17-03-2021

Anonymity	The Stalker would find it difficult to conceal his identity	There is a high level of anonymity available to the Stalker and he/she can quite easily conceal the identity
Nature	There is physical confrontation and so, certain people, for example, people who are shy would not engage in commission of the offence.	It is easy for the Stalker to choose how he/ she would behave.
Risk	There is higher level of risk as there is necessitation of physical confrontation	The risk factor is very low as the identity of the Stalker is generally not known
Intimacy	As there is no false sense of intimacy, it is easier for the victim to understand the motive of the stalker	There is generally a misunderstanding regarding the intention of the Stalker

In the questionnaire, the question was asked as to what type of Stalking was the person a victim of. The options given were Physical Stalking, Cyber Stalking, Both Physical as well as Cyber Stalking, Prefer Not to Say and Not Applicable. Out of the 123 responses, 94 people said that it is not applicable to them, 3 people said that they were victims of physical stalking, 4 people said that they were victims of Cyber Stalking, 2 people said that their Victims of both Physical as well as Cyber Stalking and 20 people preferred not to say.



LEGISLATIVE FRAMEWORK TO PROTECT AGAINST CYBERSTALKING IN INDIA

The Indian Penal Code was drafted according to the recommendations of the First Law Commission which was formed in the year 1834, with Lord Thomas Babington Macaulay as the Chairman. The Indian Penal Code thus came into force from the year 1860 onwards. The Indian Penal Code as a statute was enacted keeping in mind the situations that were prevailing during the time, i.e. it was a statute which was catering to the needs of the society in the 19th century. But with time, many amendments were introduced to make the Indian Penal Code compatible with the changes that occurred with time.

The Offence of Stalking was not prevalent during the time in which the Indian Penal Code was enacted, and so none of the provisions explicitly covered or mentioned the offence of Stalking. It was generally considered to come under the wide ambit of Section 354⁷, which dealt with assault or criminal force to woman with intent to outrage her modesty.

The Delhi Gang Rape of 2012 came as an entire shock to the Nation, and this necessitated the introduction of much more stringent provisions in the Indian Penal Code and other Criminal Law Statutes, and so a committee headed by Former Chief Justice of India J.S Verma submitted

⁷ Section 354 of The Indian Penal Code 1860

its recommendations, and on the basis of the Verma Committee Report, The Criminal Law Amendment Act 2013 was passed by the Parliament of India, and this brought in a new provision, Section 354 D of The Indian Penal Code which specifically covered the offence of Stalking and its punishments. Similarly various other statutes like the Information Technology Act, 2000 also contains certain provisions which the victim can make use of to bring the perpetrator before the law and ensure that proper punishment is imposed on him. The various provisions in the Indian Penal Code and the other Specific Statutes dealing with the offence of Stalking are discussed below.

INDIAN PENAL CODE 1860

The JS Verma Committee in its report which was submitted in 2013⁸ recommended that, “offences such as stalking, voyeurism and eve-teasing are perceived as minor offences, but if not checked, these lead to a growing culture towards serious offences like rape.” So a separate provision was added in the Indian Penal Code, i.e. Section 354 D and stalking included within its ambit not only following someone forcible and causing distress but rather the sending of derogatory messages via telephone or email “disturb the peace of mind of any individual” are liable to pay fines or undergo imprisonment.

Section 354 D of The Indian Penal Code reads, “(1)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;

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—
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; or
it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

⁸ Justice J.S. Verma Panel Report 2013

in the particular circumstances such conduct was reasonable and justified.

(2) 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.”⁹

Therefore this Sections defines the offence of Stalking, provides exceptions to the offence of Stalking and also provides the punishment for committing the offence of stalking, which is on the first instance, imprisonment up to three years and in the second instance, imprisonment up to five years and is also liable to pay fine. The offence is also non-compoundable under Section 320 of The Criminal Procedure Code, 1973¹⁰.

The next section of The Indian Penal Code, 1860 which deals indirectly with the offence of Stalking is Section 292 which defines the term “obscenity”. “The offence of Cyberstalking includes within its purview, the act of sending obscene materials to the victim on a social networking site or through emails or messages etc. Where the stalker attempts to deprave the other person by sending any obscene material on internet with the intention that the other person would read, see or hear the content of such material, then he shall be guilty of the offense under Section 292 of Indian Penal Code. The punishment is for 1st conviction, imprisonment up to 2 years and fine up to 2000 Rs, and for 2nd and subsequent conviction, imprisonment up to 5 years and fine up to Rs 5000.”¹¹

If the Stalker tries to conceal or hide his identity, the Stalker can be held liable under Section 507 of The Indian Penal Code, 1860 which deals with “criminal intimidation by anonymous communication”. The Punishment is imprisonment up to 2 years.¹²

If the Stalker hinders the privacy of a women by way of any gestures or words shared through e-mails, messages or social networking sites, the Stalker can be held liable under Section 509

⁹ Section 354 D of The Indian Penal Code 1860

¹⁰ Section 320 of The Code of Criminal Procedure Code 1973

¹¹ Section 292 of The Indian Penal Code 1860

¹² Section 507 of The Indian Penal Code 1860.

of The Indian Penal Code, 1860 which states that, “Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment which may extend to three years and also with fine.”¹³

INFORMATION TECHNOLOGY ACT 2000

Section 67 of The Information Technology Act 2000 is said to be a replica of Section 292 of The Indian Penal Code and also deals with obscenity as it deals with publishing of obscene material in electronic format. Thus, this section covers the online stalking. “If the stalker tries to publish any obscene material about the victim on social media i.e., in electronic form so as to bully the victim, he shall be guilty of offence under Section 67 of IT Act. The punishment for 1st conviction is imprisonment up to 3 years and fine up to 5 Lakh Rupees and for 2nd or subsequent conviction, imprisonment up to 5 years and fine up to 10 lakh rupees.”¹⁴

If the Stalker tries to publish “sexually explicit” material in electronic form, the Stalker is liable under Section 67 A of The Information Technology Act 2000. “The punishment on 1st conviction is imprisonment up to 5 years and fine up to 10 lakhs and for subsequent offence- imprisonment up to 7 years and fine up to 10 lakhs.”¹⁵ This Section was added via the 2008 Amendment.

When the stalker targets children below the age of 18 years and publishes material in which children are engaged in sexual activities, the stalker is liable to be punished under Section 67 B of The Information Technology Act 2000, which was also added via the 2008 Amendment. “The punishment on 1st conviction is imprisonment up to 5 years and fine up to 10 lakhs, and for subsequent offence- imprisonment up to 7 years and fine up to 10 lakhs.”¹⁶

In the questionnaire, the question was asked as to whether the person knows the provisions under which he/she can approach if he/she becomes a victim of Stalking. Out of the 123

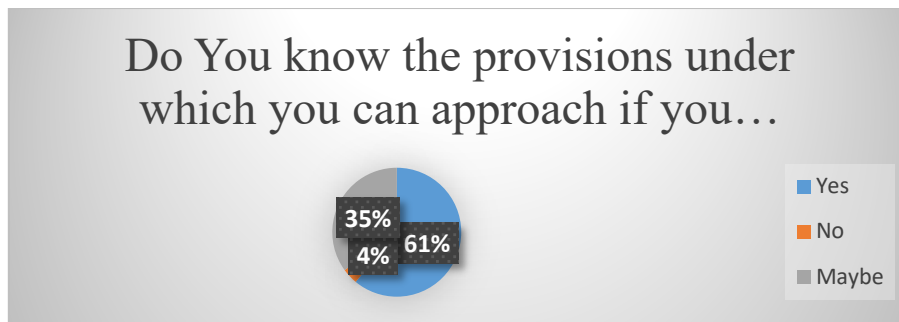
¹³ Section 509 of The Indian Penal Code 1860.

¹⁴ Section 67 of The Information Technology Act 2000.

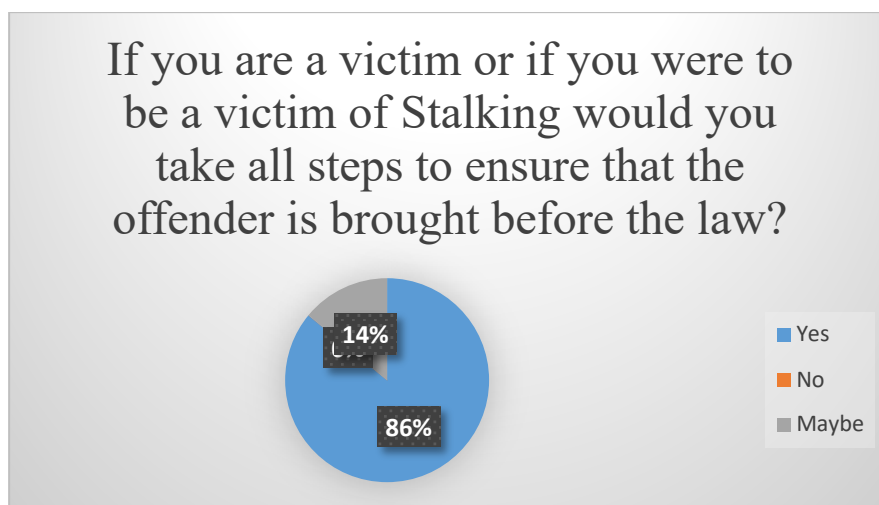
¹⁵ Section 67 A of The Information Technology Act 2000.

¹⁶ Section 67 B of The Information Technology Act 2000.

responses, 75 people said that they know the provisions, 5 people said they do not know and 43 people gave the answer as maybe.



In the questionnaire, a question was asked as to whether if the person were a victim of Stalking, or in the future, if the person were to be a victim of Stalking, whether steps will be taken to ensure that the stalker is brought before the law. The options were given as yes, no and maybe. Out of the 123 responses, 106 people said that would take steps to ensure that the offender is brought before the law. 17 answered maybe and no one answered no.



Lacunae in the Provisions dealing with the offence of Stalking

Equality before law is one of the fundamental rights guaranteed under the Constitution of India, under Article 14¹⁷. But when one looks into the provisions dealing with Stalking and other related offences, it is found that there is too much gender inequality and so it is a gross violation of Right to Equality and Equality before law, guaranteed under Article 14.

¹⁷ Article 14 of The Constitution of India.

Section 354 D of the Indian Penal Code 1860 begins with the word “Any Man who follows a woman or monitors the use by a woman”. Therefore the Law assumes and works on the pre-conceived presumption that only men commit the offence of stalking and that only women are victims of Stalking. This is untrue, as even women can commit the offence of Stalking and men maybe victims of Stalking. This provision is gender biased and clearly defies gender neutrality and the fundamental rights guaranteed under Article 14 of The Constitution of India. Therefore in India, a man cannot make use of Section 354 D to register a complaint, if he becomes a victim of the offence of Stalking, and Women can continue to commit the offence of stalking and escape punishment, as there is no provision to punish them for committing the offence of Stalking. This is a major Lacunae in the Law, and proper steps must be taken to ensure that the offence of Stalking is ultimately a gender neutral offence.

Countries like Canada, Germany, Australia, Singapore and states like Washington in the United States of America have gender neutral laws to deal with the offence of Stalking and thus both males and females are liable to be punished if they commit the offence of Stalking.

Section 509 of Indian Penal Code deals with the crime of “offending the modesty of a woman”. This section should also be reframed and instead of the term “woman”, it should be replaced by the term “any person”. A female stalker can also offend the modesty of a man by sending him obscene materials on internet or e-mails or messages, and thus woman is the stalker, but she cannot be held liable under Section 509 of The Indian Penal Code 1860. Thus the legislators should amend the law make sure that the law protects both man and woman and not just the woman from the consequences of cyber stalking.

According to the statistics which was released by *Working to Halt Online Abuse* (WHOA), an organisation which mainly deals with ill effects of Cyber Stalking on victims, there were a total of 4043 victims of Stalking between the period 2000-2013. According to the released statistics, the number of female victims of Stalking is 70% of the total, and the remaining 30% victims are men. It is indeed true that the number of female victims is more than the number of male victims, but still 30% of the total is a considerable number, which means that males also are subjected to traumatization as a result of stalking. Therefore, the law must be in such a way that all people irrespective of gender can get proper remedies, otherwise women can continuously stalk men with indemnity.

Clause (1) of Section 354D of the Indian Penal Code 1860 deals with the motive of the act of stalking, and this section states, “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;

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

1. 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; or
2. it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
3. in the particular circumstances such conduct was reasonable and justified.”

This provision reflects the causing of the fear factor. But, unfortunately, this law provides regulatory relief for only a part of the whole concept of cyber stalking, i.e. the invasion of privacy, and not the actual full concept, which includes the invasion of privacy as well as the communication of threat.

S.354D of the IPC suffers from another major drawback with respect to its sentencing policy as well. Section 354 D prescribes cyber stalking as a criminal act and therefore has prescribed criminal recourse for the same. But this provision as such, does not prescribe any civil remedy by way of restraining orders or no contact orders to restrain the stalker from again contacting the victim, which is prevalent in nations like the United States and the United Kingdom. Under Section 354 D, the accused can be imprisoned for a period of three years and for subsequent offence for five years and his devices that he may have used for the purpose of stalking may be ceased and thereby he would not be allowed any means to communicate with the victim, but still there is no Civil Remedy and this is a major drawback.

There is also problem with respect to jurisdiction if the stalker and victim are present in two different nation states, especially if there is no extradition agreement between the nation states.

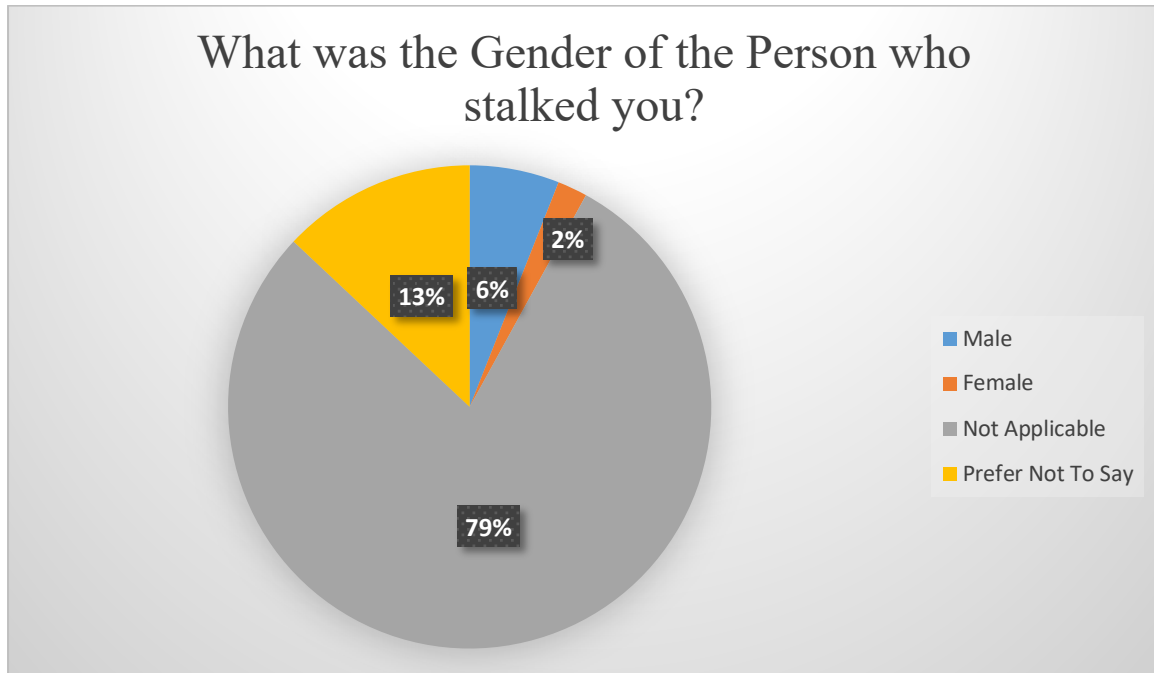
Cyberstalking can be committed by any person on any person anywhere in the world. If there is no extradition agreement and if there is conflict of laws between the two nation states then there arises Jurisdictional Issue. The conduct of the stalker maybe treated as crime in one nation state but it may not be the case is another nation state, and so there arises the problem of enforcement.

In India Section 75 of the Information Technology Act deals with “extraterritorial jurisdiction”. This section provides that “if an offence is committed within the boundaries of India, or even if it occurs within the boundaries of another territorial state, the person committing the offence is liable under the Information Technology Act, irrespective of the fact as to whether he is a citizen of India or he is not a citizen of India. But the law also states that offence relates to network or computer systems that is situated within India. The solution which is given by the law in India regarding enforcement is thus limited.”¹⁸

These are some of the lacunae present in the laws dealing with the offence of Stalking in India, which provides an opportunity to the stalker to escape punishment and to be brought before the law. The lacunae in the law also affects the victim as according to the provisions, he cannot even approach the legal system for seeking remedy. Therefore the provisions must be made more stringent without any lacunae and the provisions must be made gender neutral to ensure that the offenders are brought before the law, that they are not able to escape punishment and the victims are also properly compensated and restituted.

In the questionnaire, the question was asked about the gender of the person who stalked him/her. Out of the 123 responses, 97 people said that it is not applicable to them, 7 people said that they were stalked by Male Stalker. 2 people said that they were stalked by female stalkers and 17 people preferred not to say.

¹⁸ Section 75 of The Information Technology Act 2000.

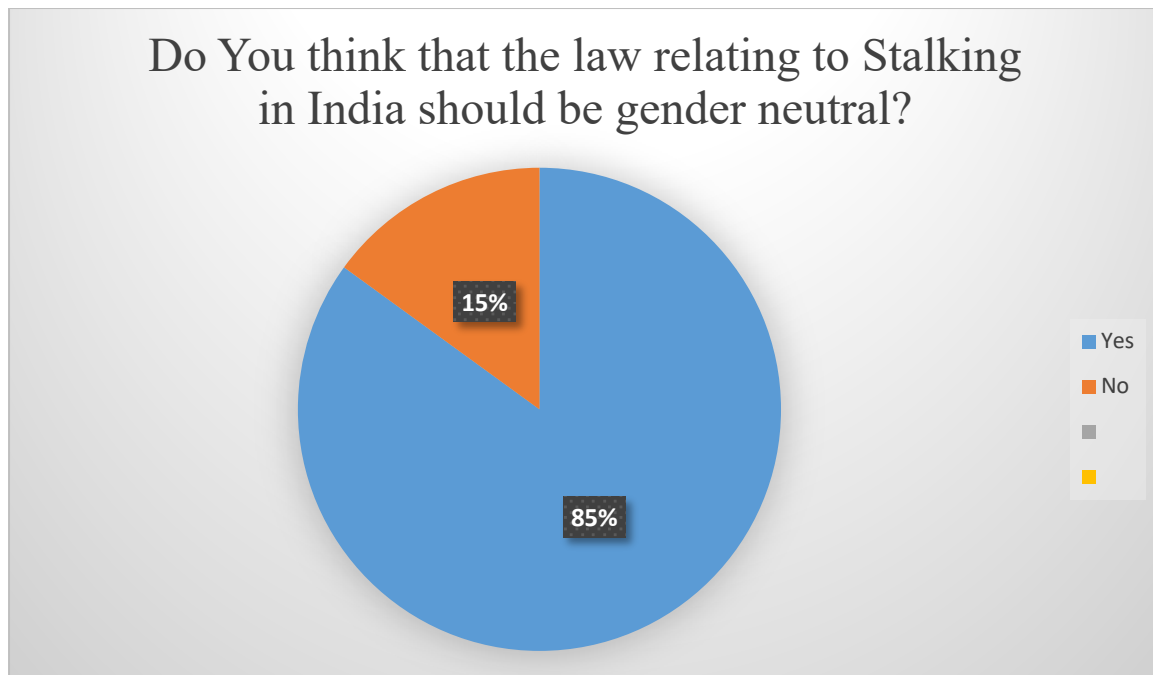


In the questionnaire, the question was asked whether the person thinks that the offence of Stalking in India is Gender- Biased. The options given were Yes, No and Maybe. Out of the 123 responses, 86 people said that it is gender biased, 14 people said that it is not gender biased and 23 people answered maybe.



In the questionnaire, the question was asked as to whether the law pertaining to Stalking in India should be gender neutral. The Options given were Yes and No. Out of the 123 responses,

104 people said Yes, indeed the laws relating to Stalking must be gender neutral and 19 people said No.



OFFENCE OF STALKING IN THE INTERNATIONAL REGIME

With progress and development in technology, cyber and computer related crimes are increasing and various nation states have also enacted laws, rules, bye laws and regulations to tackle computer related offences which involves Cyberstalking. Not only Cyberstalking, there are laws to ensure that physical stalking is also punishable in various nation states. Some of the Nation States and how they are tackling the offence of Stalking is going to be looked into in this section.

UNITED STATES

In the United States of America, the various States have enacted laws to tackle the offence of Stalking. The first State to criminalize the offence of Stalking was California in the year 1990. This was also the first anti striking law in the United States of America, and the offence was made punishable under the Californian Criminal Code under Section 646.9¹⁹. Section 646.9 states that, “any person who wilfully, maliciously, and repeatedly follows or wilfully and maliciously harasses another person and who makes a credible threat with the intent to place that

¹⁹ Section 646.9 of The California Penal Code 1872.

person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking...” The principle behind this section was developed by a Municipal Judge, Justice Watson of Orange County.

The Pet and Women Safety Act (PAWS) 2019²⁰ gives the definition of stalking as “conduct that causes a person to experience a reasonable fear of death or serious bodily injury to his or her pet.”

In the year 2014, the Clery Act 1990 was amended and this provides reporting the offence of stalking.

The Violence against Women Act 2005 defines stalking as “engaging in a course of conduct directed at a specific person that would cause a reasonable person to—fear for his or her safety or the safety of others or suffer substantial emotional distress.”²¹

The punishment of the offence of Stalking under Californian Penal Code later gave way to the enactment of similar laws by other States and these laws also started punishing the offence of Stalking, often referring it by other words such as “criminal harassment” or “criminal menace”.

Article 120 A of The Uniform Code of Military Justice (UCMJ) also penalizes the offence of Stalking. Article 120 A states that, “Any person subject to this section:

- (1) who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family;
- (2) who has knowledge, or should have knowledge that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family; and
- (3) whose acts induce reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself or to a member of his or her immediate family; is guilty of stalking and shall be punished as a court-martial may direct.”²²

UNITED KINGDOM

The Protection from Harassment Act of 1997 criminalized harassment and made it punishable with imprisonment up to 6 months. Also unlike in India, in addition to criminal remedy, there is civil remedy as well by way of issuance of restraining orders, which if breached would lead

²⁰ Section 2a of The Pet and Women Safety Act 2019.

²¹ Section 113 of The Violence against Women Act 2005.

²² Article 120 A of The Uniform Code of Military Justice (UCMJ)

to imprisonment for a period of five years. The offence of stalking as such was explicitly covered by way of The Protection of Freedoms Act 2012 and the act of Stalking under the act “exemplified by contacting, or attempting to contact, a person by any means, publishing any statement or other material relating or purporting to relate to a person, monitoring the use by a person of the Internet, email or any other form of electronic communication, loitering in any place (whether public or private), interfering with any property in the possession of a person or watching or spying on a person.”²³

Section 4(a) was also added into the Protection from Harassment Act of 1997 and under this section, “Stalking involving fear of violence or serious alarm or distress”.²⁴

SCOTLAND

Under Section 39 of the Criminal Justice and Licensing (Scotland) Act 2010, “(1) A person (“A”) commits an offence, to be known as the offence of stalking, where A stalks another person (“B”).

(2) For the purposes of subsection (1), A stalks B where—

- (a) A engages in a course of conduct,
- (b) subsection (3) or (4) applies, and
- (c) A's course of conduct causes B to suffer fear or alarm.”²⁵

Section 39(7) of the Criminal Justice and Licensing (Scotland) Act 2010, provides for punishment for the offence of stalking. Section 39(7) states that, “A person convicted of the offence of stalking is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both,
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.”²⁶

There is also civil remedy by way of non-harassment order, and the breaching of the order would lead to imprisonment.

²³ Stalking and Harassment". *www.cps.gov.uk*. Retrieved 19th March 2021

²⁴ Section 4(a) of the Protection from Harassment Act of 1997

²⁵ Section 39 of the Criminal Justice and Licensing (Scotland) Act 2010.

²⁶ Section 39(7) of the Criminal Justice and Licensing (Scotland) Act 2010.

AUSTRALIA

All the constituent States in Australia have enacted laws punishing the offence of Stalking. In 1994, Queensland was the first State to enact law punishing offence of stalking and all other States followed suit. The punishment also varies from State to State, with the laws being the most stringent in the State of Queensland. There are some states which also have extraterritorial application of Stalking Laws.

CANADA

Section 264 of the Canadian Criminal Code deals with Criminal Harassment.²⁷ Section 264(1) states that, “No person shall, without lawful authority and knowing that another person is harassed or recklessly as to whether the other person is harassed, engage in conduct referred to in subsection (2) that causes that other person reasonably, in all the circumstances, to fear for their safety or the safety of anyone known to them.”²⁸ The prohibited conduct is prescribed under Section 264(2). Under Section 264(2), the prohibited conduct includes, “(a) repeatedly following from place to place the other person or anyone known to them;

(b) repeatedly communicating with, either directly or indirectly, the other person or anyone known to them;

(c) besetting or watching the dwelling-house, or place where the other person, or anyone known to them, resides, works, carries on business or happens to be; or

(d) engaging in threatening conduct directed at the other person or any member of their family.”²⁹

Thus the prohibited conduct involves the offence of Stalking and the punishment is imprisonment not exceeding ten years, as provided under Section 264(3) of The Canadian Criminal Code.³⁰

GERMANY

²⁷ Section 264 of the Canadian Criminal Code 1867.

²⁸ Section 264 (1) of the Canadian Criminal Code 1867.

²⁹ Section 264 (2) of the Canadian Criminal Code 1867.

³⁰ Section 264 (3) of the Canadian Criminal Code 1867.

Section 238 of The German Criminal Code deals with the offence of stalking and it states, “(1) Whoever, without being authorised to do so, stalks another person in a manner which is suitable for seriously restricting that person’s lifestyle by persistently

1. seeking the other person’s physical proximity,
2. trying to establish contact with the other person by means of telecommunications or other means of communication or through third parties,
3. improperly using the other person’s personal data for the purpose of
 - a) ordering goods or services for that person or
 - b) inducing third parties to make contact with that person,
4. threatening the other person, one of his or her relatives, or someone close to him or her with causing injury to life or physical integrity, health or liberty or
5. committing other comparable acts

incurs a penalty of imprisonment for a term not exceeding three years or a fine.

(2) The penalty is imprisonment for a term of between three months and five years if the offender places the victim, a relative of or another person close to the victim in danger of death or at risk of serious damage to health on account of the act.

(3) If the offender causes the death of the victim, a relative of or another person close to the victim, the penalty is imprisonment for a term of between one year and 10 years.

(4) In cases under subsection (1), the offence is prosecuted only upon request, unless the prosecuting authority deems there to be a special public interest in prosecution which calls for ex officio intervention.”³¹

NETHERLANDS

³¹ Section 238 of The German Criminal Code 1998.

In Netherlands, Article 285b of The Wetboek van Strafrecht deals with belaging or harrasment. Article 285 b of The Wetboek van Strafrecht states that, “One who unlawfully, systematically, and deliberately intrudes into someone's personal environment with the intention to force the other to act in a way, or to prevent one to act in a certain way or to induce fear, will be prosecuted for harassment, for which the maximal punishment is three years and a fine of the fourth monetary category.”³²

ROMANIA

Article 208 of The Criminal Code 2014 deals indirectly with Stalking. Article 208 states that, “The act of someone who repeatedly follows, without right or a legitimate interest, a person or his or her home, workplace or other place frequented, thus causing a state of fear. Making phone calls or communication by means of transmission, which by frequent or continuous use, causes fear to a person. This shall be punished with imprisonment from one to three months or a fine if the case is not a more serious offense.”³³

SUGGESTIONS

STEPS THAT CAN BE TAKEN TO AVOID BEING VICTIM OF STALKING

It is often the victim himself who plays a major role in becoming the victim of the offence of Stalking. It is always said that “Prevention is better than Cure”, therefore sufficient precautions and care should be taken by the Victim to ensure that he/she does not become a victim to the offence of Stalking. Some of the steps that can be undertaken to avoid being the victim of the offence of Stalking are:

- a) The Person can choose to use a gender neutral username with a combination of letters, numbers and signs that are devoid of meanings. If the person uses his or her own name, then it is easier for the Stalker to identify the person and hence the commit the offence of Stalking.
- b) The Person should not disclose all his/her private information in social networking and other online sites. The Person should keep his/her information including age, e-mail address, mobile number, house details, etc private. It should not be available in the

³² Article 285b of The Wetboek van Strafrecht.

³³ Article 208 of The Criminal Code 2014.

public domain as it would be very much easy for the Stalker to track the person and stalk him.

- c) The Person should not talk to strangers over the Cyberspace and in the process disclose any of his/her private information.
- d) The Person should not post his photos in the public domain. He should keep his account private, so that only his close friends and relatives be able to view what he posts in online media.
- e) Children are often the most vulnerable victims of Stalking, and so they have to be properly educated as to what should be and should not be done in the virtual universe of the Cyberspace. The Parents should also make use of certain software such as “Netanny” which can be used to restrict access of children to certain websites.
- f) The Respective Governments must also issue guidelines from time to time to ensure that the people are properly aware and educated about the offence of Stalking and the harms that may arise as a result of the detrimental use of the Cyberspace.

STEPS TO BE TAKEN TO CATCH THE OFFENDER COMMITTING THE OFFENCE OF STALKING

It is often very difficult to catch the offender committing the offence of Stalking, mainly due to the fact that the incidents of Stalking are underreported, the lack of motive by the enforcement agencies etc. Certain steps can be taken to bring the offender before law and ensure that the offender is punished. They are:

- a. The Person should always report if he feels that he is becoming or has become a victim of Stalking.
- b. The People should be educated about the provisions that are present in the penal statutes about the offence of Stalking and they should be aware that Stalking is a punishable offence.
- c. The People should be educated about the procedures that are to be followed for reporting the offence. Most Victims do not come forward to complaint, because they feel that the procedure is quite complex and time consuming. This presumption should vanish, and they must be properly made aware of the procedures
- d. The Law Enforcement Agencies often lack the enthusiasm to investigate cybercrimes, especially Stalking. This lack of enthusiasm is another reason why

victims are reluctant to approach them. This attitude should change and the Law Enforcement Agencies should understand the gravity of the offence of Stalking and should act accordingly.

- e. There should be proper cooperation between the Law Enforcement Agencies and the Internet Service Providers so that the stalker can be identified and brought before the law, in case of Cyberstalking.
- f. The mechanism adopted by the various stakeholders should be based on the principles of restorative justice. This can be achieved by making the Victim aware about the Victim Compensation Scheme that is available under Section 357 A the Code of Criminal Procedure under.³⁴ The Law Enforcement Agencies after tracking down the stalker may use mediation to solve the issues between the Stalker and the Victim, rather than delaying justice by bringing the matter before the courts. This also lets the stalker and the victim escape the fear of public eye and the various social taboos that are present in the society. This would encourage more and more victims to file complaints. The District Legal Services Authority (DLSA) in each district must encourage this type of Victim-Stalker Mediation to ensure that justice is secured in a limited amount of time. The Victim as well as the Stalker maybe provided proper counselling to make them aware and to prevent the happening of such offences in the future.

CONCLUSION

Stalking is definitely one of the most underreported and overlooked crimes in today's world. Earlier before the cyber age, there was only physical stalking, and it was easier to catch the culprit. But now with development in technology, Cyber Stalking has become one of the major cybercrimes being committed throughout the world. Cyberstalking is largely underreported with most victims hesitant to register complaints. Cyberstalking is also not limited by Geographical Boundaries and so it makes it really hard to catch the culprit as he/she may be in a different part of the world and he/she can even use a proxy server and hide the exact location. The Criminals are using technology for committing crimes and frauds, but the law enforcement is not fully using the potential of the cyber world. The Law enforcement agency should use the Cyberspace to tackle cybercrimes such as Cyber Stalking. Also, in India, only women can

³⁴ Section 357 A of The Code of Criminal Procedure 1973.

register complaints if they are stalked and the law assumes that only Men are capable of committing crimes like Cyber Stalking. This is major problem as there is no remedy available to a Man experiencing Stalking and there is no law to punish a female stalker. The responses from the questionnaire circulated also reveals that a majority of people think that provisions against stalking are gender biased and hence unjust and that changes must be introduced to make the laws gender neutral. Amendments must be introduced to make the offence of Stalking in India gender-neutral. Also the maxim “prevention is better than cure” must be kept in mind and the people should take extra care and precaution to ensure that they do not fall prey to the Stalkers who are present in large numbers throughout the world.