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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can

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Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



methodology and teaching and learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research

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STALKING: A THREAT TO WOMEN'S PRIVACY

Authored By - Aditi Bhardwaj

ABSTRACT

Stalking is an evil which is still rampant in the society and it should be dealt in a stringent way because stalking causes depression, anxiety, and mental distress as predators usually approach with the intent of pedophile towards victim. Due to lack of interest victim initially try to avoid but there are instances where victims are under the veil of ignorance that they are being stalked online, or being followed by an individual who is keeping an eye on their day-to-day activities. There are occurrences, where victim does not even disclose that they are being stalked by someone, because the stalker has already collected the private information which he threats to use against victim if she approaches for help from public authorities. In this paper offline stalking as well as cyber stalking both are discussed. This paper further discusses about the behaviors of stalkers and how victims become prey to their obsessive and possessive behavior along with legal framework and judicial precedent related to stalking.

Keywords: Stalking, attachment, obsession, cyberstalking, harassment.

1. INTRODUCTION:

Women are dignity of a nation and it is heart- rending to state that reports suggest that “one stalking case happens in every 55 Minutes and still cases are unreported”¹There are many crimes which are often committed against women, and stalking is one of them. Stalking is “*the crime of illegally following and watching someone over a period of time*”². In other words, stalking can be defined, as approaching a person repeatedly with malicious intent, knowing the fact that the other person has lack of interest in interacting with them. Stalking can be of two types cyber stalking and physical stalking and both are the rampant evils which are still

¹ Shreya Raman, One Stalking Case Every 55 Minutes, Cases Still Underreported , INDIASPEND (Feb. 12, 2020), <https://www.indiaspend.com/one-stalking-case-every-55-minutes-cases-still-underreported/>.

² Cambridge Dictionary.

prevalent in the society. There are many reasons behind stalking some of them are hatred, jealousy, rejection, revenge and many more.

1.1 KINDS OF STALKING

There are two kinds of stalking online and offline stalking. Online and offline stalking both are totally different from each other but have similar psychological impact on victim which results into depression, anxiety and other psychological disorders.

1.1.1 Offline Stalking

Offline stalking take place when “any man 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”³.

Offline stalking is so threatening that victims usually suffer from insomnia and mental exhaustion; victims are always in a state of fear that they are under the eyes of an individual who is noticing each activity and that makes them uncomfortable. Women usually feel unsafe while walking alone at the street. Studies prove that stalkers involve, ex- lovers, ex-husband, admirer and even include possessive lovers who cannot see the women they admire with anyone else they contact.

1.1.2 Online Stalking/ Cyber Stalking

Online stalking occurs when “any man monitors the use by a woman of the internet, email or any other form of electronic communication”⁴.

Online stalking can be termed as “*cyber stalking*.” Cyber stalking is often used to repeatedly annoy, coerce, control the victim. Young women often become the easiest prey of stalkers as teenagers do not hesitate in communicating with unknown people online. They usually have an intellectual of growing network and making new friends. And after communicating with unknown people online women’s privacy gets infringed easily, they share information with unknown person which slowly and gradually develop a seed in the mind of their admirer of sexual attraction towards them and after they reject the admirer, the same admirer turns into stalker and as a result women suffer from emotional trauma.

Cyber Stalking often takes place through:

³ Indian Penal Code, 1860, S.354-D, No.45, Act of Parliament, 1860 (India)

⁴ *Id.* at 3.

- i. Emails
- ii. Online meetings
- iii. Group chats
- iv. Discussion forums

Online meetings as well as discussion forum both are the places where stalkers electronically harass the victim by sabotaging her. Group chats, are easy for stalkers to share the obscene content about the victim and discuss with other stalkers, which further acts as a catalyst in defaming the victim.

Women and teenage girls often face online harassment. Online harassment becomes cyberstalking when repeated unwanted communications, whether direct or indirect, takes place over a period, via one or more mediums of Internet or electronic communications. The messages themselves must be unwanted, and the content can be-but is not limited to-threatening, sexually harassing, emotionally harassing or bullying, or general misinformation⁵. There are instances when lovers after being rejected by the girl, send obscene content on her social media accounts and constantly check her profiles despite the fact that she isn't interested in communicating with him. Ex- lover often under the flame of ego and possessive behaviour continuously stalk girl and even threaten her to misuse her picture in case she lodged report against him. Girls of tender age often commit themselves with a lover and send their private pictures to the lover and when the relationship ends the same lover threaten her to use her private photos against her.

With increase in the technology cyber stalking is becoming a major threat to women's privacy in India as well as in the world. Sophisticated cyber stalkers remain anonymous and often change their IP addresses which makes difficult to trace them. They make fake accounts and post obscene content on the same.

⁵ Dr. Sapna Sukrut Deo, "Cyberstalking and Online Harassment: A new challenge for law enforcement", Bharati Law Review, 86, 88 (2013).

2. PSYCHOLOGICAL THEORIES AND FACTORS ASSOCIATED WITH STALKING

Psychological behaviour of stalkers could be better understood with the help of theory of attachment.

2.1 THEORY OF ATTACHMENT

According to Turner⁶ psychoanalytic theory that tries to understand basic human interpersonal interactions from birth to adulthood, attachment theory has been used to explain dysfunctional relationships in cases of intimate partner violence, which has been linked to stalking behaviour⁷. Attachment theory states that the parental attachment style towards child in his childhood affects his adult behaviour. Attachment theory studies about the behaviour between the child and the caregiver. Ainsworth has a significant role in understanding the interactions between the child and caregiver. By observing the interaction between both child and caregiver three different attachment styles was found present in this relationship between caregiver and child that is:

- I. Secure
- II. Insecure avoidant
- III. Insecure ambivalent.

The research showed that the children having secure attachment style with their caregiver are likely to develop into psychologically healthy adults. On the other hand, children who were insecurely attached see the world as rejecting and cold place and behave accordingly.⁸ According to author stalkers have insecure type of attachment.

2.2 PSYCHOLOGICAL REASONS OF STALKING

There are various psychological reasons behind stalking like severe hatred, anger, revenge, narcissism, envy, obsession, power, psychiatric dysfunction and control, sexual fantasies, internet addiction, sexual deviance. Some of them are discussed below:

⁶ Zoe Turner “*Stalking and Attachment Theory: Causes and Management*” CUNY Academic Works, 12- 13 (2020).

⁷ *Id.* at 6.

⁸ *Id.* at 6.

i. Erotomania: It is also known as “*de Clérambault syndrome*” erotomania happens when a stalker believes that a particular person is in love with him but in reality, they aren't. Sometimes, it may be a person he has never met. It always involves sexual inclination towards someone⁹.

ii. Revenge: There are instances where stalkers, stalk the victim and collect information about their personal dealings in order to satisfy their ego and get revenge from victim. Stalkers most of the time use internet as a source to get revenge by posting obscene content relating to victim.

iii. Obsession: Another major factor is that stalkers have obsession of victim. Stalkers think about the victim all the time and gradually obsession leads to the desire of stalking.

iv. Extended Admiration: There are instances when individuals admire one another for their physical beauty and personality etc. but there is an extremely thin line between admiring someone and stalking.

v. Sexual Harassment: Among all the psychological reasons behind stalking one is sexual harassment. This is the major reason behind online as well as offline stalking.

vi. Jealousy: There are instances where ex- partner or ex-lover start to stalk their partners due to jealousy. Jealousy seeks its root from the situation when the victim begin to ignore stalker for someone else.

3. TYPES OF STALKERS

In 1999 a study was conducted by an Australian psychiatrist Paul Mullen in that study he discussed about five different types of stalkers: Intimacy seeking stalker, rejected stalker, resentful stalker, incompetent stalker, predatory stalker¹⁰.

i. Intimacy Seeking Stalkers:

These types of stalkers, stalk the victim to seek an intimate relationship with them. Stalkers

⁹ Ms. Heena Keswani “*Cyber Stalking: A Critical Study*,” Bharati Law Review, April – June, 2017.

¹⁰ Christy Carraway, *The 5 Types of Stalkers (and How to Stay Safe)*, THE MENTAL HEALTH BLOG (Sep.2,2021, 21:02), <https://www.thementalhealthblog.com/the-5-types-of-stalkers/>.

assume that there is a mutual interest from both the side, which in real sense does not exist and which ultimately leads to delusional disorder. Intimacy seeking stalkers gets encouraged to stalk by the negative response and negative action of their victim towards them¹¹. Behavior of this stalker includes sending gifts, love letters, and making phone calls to their victim. The moment intimacy seeking stalker realize the fear of negative response from the victim he uses his last resort of threatening victim or even using violence¹².

ii. Rejected Stalkers:

Rejected stalkers are the most dangerous stalkers. These perpetrators have obsessive nature. The rejected stalkers begin his stalking afterwards the end of the relationship. Their main motive behind stalking is to either get revenge against the victim or to reconcile with them. According to Mullen's research rejected stalkers are larger in number as compared to other types of stalkers. They are personality disorders and some of them also suffer from delusional disorder. They are most likely to use violence and intimidation among all the other stalkers.

iii. Resentful Stalkers:

Resentful stalkers make direct verbal threats to their victim. The motive of these stalker is to frighten their victim and cause them distress. A stalker turns into resentful stalker as a result of their slightest insult, done by their victim. They usually try to set things straight with their victim. They are least likely to engage in physical violence. They have a thinking that they are justified for their actions as according to their notion things were unjust in relationship and due to this reason, they are the long suffering in their stalking.

iv. Incompetent Stalkers:

These types of stalkers lack social skills. These types of stalkers only pursue their victim for short term sexual pleasures or a brief date and not for the long-term relationship¹³. Incompetent stalkers include constantly asking for dates, attempting to hold hand, repetitive phone calls. These stalkers usually stop after threat of legal action.

¹¹ Legal Dictionary, <https://legaldictionary.net/stalking/> (last visited Sep. 5, 2021, 22:34 pm).

¹² *Id.* at 11.

¹³ *Id.* at 11.

v. Predatory Stalkers:

They are the most dangerous among all the other stalkers as they are in preparation of sexually attacking their victim. The predatory stalkers are most likely to be men and their victims are females. They seek for sexual gratification. These stalkers keep tabs on the daily activity of their victims, they practice surveillance of their victim. Predatory stalkers rarely harass the victim openly, instead of doing this he engages in the activity of voyeurism, fetishism and exhibitionism. Predatory stalkers are most likely to become violent with their victim as compared to other stalkers. In Mullen's research predator stalkers were less in number.

4. LEGAL FRAMEWORK

While discussing the legal framework the major focus will be on the legal provisions relating to stalking which are mentioned under Indian laws with special focus on Indian Penal Code, 1860 and Information Technology Act, 2000. Legal provisions relating to offline stalking as well as cyber stalking both will be discussed and a co-relation of both will be established for better understanding. There is no exhaustive definition of cyberstalking in India Penal Code, 1860, however, author tried to link some different section which have connection with stalking and the explanation has been given related to the connection of the following sections with stalking.

4.1 EVOLMENT OF "STALKING" AS A CRIME IN INDIA

A three-member Committee headed by Justice J.S. Verma, former Chief Justice of the Supreme Court, was constituted on December 23, 2012 to recommend amendments to the Criminal Law to provide for enhanced punishment and speedy trial for criminals accused of committing sexual assault against women¹⁴. J.S. Verma committee presented Criminal Amendment Act, 2013. Section 354D of the Ordinance of 2013, which was very inspired from the meaning of 'Stalking' in Sec 2A of the Protection from Harassment Act, 1997 passed by British Parliament on 25th November 2012¹⁵. According to Sec 354D the offence was gender-neutral offence, which further made the stalking as a crime punishable for both the gender male as well as female. Astonishingly, the Amendment Act of 2013 changed 'Whosoever' to 'Any Man' which

¹⁴ PRS Legislative Research, <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary> (last visited Jul.28, 2021, 23:25).

¹⁵ Editor, *The Criminal Law (Amendment) Bill, 2013- A Critical Analysis*, ROSTRUM'S LAW REVIEW, (Jul. 28, 2021, 23:34pm) <https://journal.rostrumlegal.com/the-criminal-law-amendment-bill-2013-a-critical-analysis/>.

made the offence of stalking gender- specific¹⁶.

4.2 LEGAL PROVISIONS:

Following are the legal provisions which are either directly or indirectly related with offline stalking as well as cyberstalking.

Section 354 D of IPC confers about “stalking” it reads as follows:

(1) Any man who--

(i) 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

(ii) 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-

(i) 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

(ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or

(iii) 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.]

Section 354 D comprehensively discusses about “stalking”. Following are some other legal provisions that can be highlighted in this context:

Section 509 of the Indian Penal Code (IPC) 1860 partially deals with the offence of cyberstalking¹⁷, according to which uttering of any word, making of any gesture or sound or object to be seen or heard by a woman, or intrusion upon the privacy of such woman shall be punishable with imprisonment up to three years and fine. Some are of the notion that cyber stalking can be punishable under **Section 67 of the Information Technology Act, 2000** (amended in 2008) only when the result is shown through transmission or publication of

¹⁶ *Id.* 15.

¹⁷ Archana Sarma, *Cyber Stalking and The Plight of Women in India — A Legal Perspective*, 9 RMLNLJ (2017) 175.

obscene material¹⁸. Cyber stalking as a crime can also attract **Section 499, IPC** which deals with the legal provisions related to defamation. Criminal intimidation under **Section 503, IPC** can also be highlighted in the legal provisions related to stalking.

Section 66 A of the Information and Technology Act, 2000 (amended in 2008) it deals with the punishment for sending offensive messages through communication service, etc.—it states that_

Any person who sends, by means of a computer resource or a communication device,

- (a) any information that is grossly offensive or has menacing character; or*
- (b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device;*
- (c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages,*

shall be punishable with imprisonment for a term which may extend to three years and with fine.

The IT Act, 2008 does not have any direct provision related to stalking. The provisions of IT Act, 2008 deal with stalking as “intrusion on the privacy of individual”¹⁹. Legal provisions in IT Act, 2008 was created in the shadow of the physical stalking laws²⁰.

5. JUDICIAL PRECEDENTS

In 2001 the first cyberstalking case was reported in India. In the case of **Ritu Kholi**, Manish Khaturia was stalking Ms. Ritu Kholi (an Indian lady). Manish Khaturia was using Ms. Kholi’s name and was doing illegal chatting on the web site *www.mirc.com* and used obnoxious and obscene language, further he distributed her contact number, and invited people to chat with her. Resulting into the situation where Ms. Ritu Kholi was getting obscene calls from different states of India and even from abroad. People who contacted her were talking with her in an indecent way. After being shaken she contacted Delhi Police and reported her matter. The Delhi Police registered the matter under Section 509 of the Indian Penal Code, 1860 for outraging the modesty of Ms. Kholi. Further it was observed that Section 509 only refers to a word, a

¹⁸ *Id.* at 17.

¹⁹ *Id.* at 5.

²⁰ Archana Sarma, *Cyber Stalking and The Plight of Women in India — A Legal Perspective*, 9 RMLNLUJ (2017) 175.

gesture or an act intended to insult the modesty of a woman, but there was no scenario mentioned when the same things are done on online platform. After this case, government realised the need for amending the laws in this sphere also. As a result, Section 66 A of the Information Technology (Amendment) Act, 2008 deals with the punishment for sending offensive messages through communication service, etc²¹.

In another case of *Karan Girotra v. State*²² the conservative attitude of judiciary towards cases of cyber stalking is evident²³. In this case a woman named Shivani Saxena, whose marriage could not be consummated with her husband Ishan, filed a divorce with mutual consent. Both of them, started to live separately. In the meantime, Shivani came in contact with Karan Girotra while chatting on internet, he told her that he loves her and want to marry her, Shivani refused as at that point of time she was still married to her husband, Karan then insisted to marry her after her divorce. Karan invited her over to his house to introduce her to his family members where he intoxicated her and sexually abused her. He started to send obscene pictures of Shivani's sexual assault to her. He further started seeking sexual favour from her and threatened her that he will circulate the pictures if she refuses to marry him. As a result, an engagement ceremony was performed, later this engagement was called off by Karan and he again started to assault her. After being frustrated Shivani Saxena then filed a complaint under Section 66- A of the IT Act. Though the court rejected the plea of anticipatory bail but there was a lack of serious custodial interrogation²⁴.

Further in the case of *Amar Singh Sehria v. The State of Madhya Pradesh*²⁵, a 16-year-old – girl committed suicide because of being stalked by 18-year-old-boy. In the present case the accused used to like the girl and started to follow her wherever she went. After the constant stalking and following, the parents of the girl decided to send her to the house of her maternal grandparents. The stalker again followed her to the area where her grandparents lived. The boy became the source of embarrassment to the victim. After being frustrated, the girl committed suicide²⁶. Justice Anand Pathak made a strong observation about the aftermaths of stalking in

²¹ *Id.* at 20

²² 2012 SCC Online Del 2673

²³ *Id.* at 20

²⁴ Vartika Vasu, Krishnapriya.G, *Cyber Crime Against Women: A Cyber Exploitation*, 2 Lexi Forti Legal Journal.

²⁵ MISC. CRIMINAL CASE No. 50072 of 2022.

²⁶ Live Law, <https://www.livelaw.in/news-updates/madhya-pradesh-high-court-stalking-abetment-of-suicide-section-306-ipc-213782#> (last visited Dec, 17, 2022 12:01 pm).

the present case. He observed that:

“Stalking not only harms victim’s psyche but also sends a bad message to the society”

-Justice Anand Pathak.

In the case of *Rishi Jalori v. State of Madhya Pradesh*²⁷, the deceased was around 17–18-year-old-girl, who sustained around 70-80% burn injuries. The statements of witnesses and FIR revealed that Raju- Nayak used to stalk the deceased and pressurised her to withdraw her former complaint which she had lodged against the accused. The allegations revealed that the deceased was the victim of constant physical and mental pressure exerted by the accused, that the deceased committed suicide by burning herself²⁸.

From the above judicial precedents, it can be observed that most of the time the victim of stalking has committed suicide under the physical and mental pressure and has also faced embarrassment from the society. The perpetrators are usually charged with abetment of suicide, because the frustration the victim faces after being stalked by the accused often leads to suicide.

VI. CONCLUSION & SUGGESTIONS

Stalking as a crime has always been in existence from years, and there is a need for a better management of stalking. Stalking causes mental as well as physical harassment to woman. In most of the cases the women avoid to lodge a complaint against the perpetrator, in order to protect her reputation and status of her family in the society. Stalkers frustrate their victim and compel them to commit suicide. Different types of stalkers use different strategies to harass their victims, aftermath of which is always the embarrassment and abuse faced by the victim. Following are some suggestions to overcome stalking-

- i. Stringent laws should be made at a national level for the offence of cyberstalking because stalking as a crime has been clearly defined under Section 354 D of Indian Penal Code, 1860 but cyberstalking has only an indirect resort of Section 66 A of the IT act. Cyber- stalking should be dealt in a distinct legal provision which solely deals with it.
- ii. There must be a proper check on the Right to Freedom and Speech and Expression so that it does not infringe the privacy of any individual.
- iii. Amendments must be made in existing legal provisions from time to time with the evolvement

²⁷ Criminal Revision 2/2016.

²⁸ Case Mine, <https://www.casemine.com/judgement/in/5d919913714d587fe94b99e2> (last visited Dec. 17, 2022, 12:22 pm).

of the society.

- iv. Precautionary measures should be taken by woman at individual level such as opting for high security measures to ensure that the personal information is not disclosed on internet at an inappropriate forum. Passwords must be strong enough that the perpetrators are unable to crack the same.
- v. Vigilance regarding stalking must be promoted among women.

