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Cyberstalking Law: Ill-equipped to protect women, non-existent for men

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In May, news reports about Mumbai-based entrepreneur Vijay Nair being cyber stalked by a woman had flooded social media. Nair recounted how an acquaintance stalked him online and harassed him through WhatsApp and text messages, often using multiple international numbers, for months at end. What drew public attention was Nair's assertion that despite evidence of the woman's involvement in cyberstalking him and harassing him online, the legal recourse available to him was negligible. Legal experts agree that even as cases of women cyberstalking men are on the rise, Indian law is still clueless about how to handle them. Victims of cyberstalking tell us that the only options available to them are an 'amicable settlement' with the perpetrator or waiting for their stalker to make a threat so that it becomes a 'crime'.

'WHEN A MAN DOES IT, IT'S STALKING; WHEN A WOMAN STALKS, IT'S 'PARESHAN KARNA''

Supreme Court lawyer Karnika Seth says that unless the law is amended, we will not be able to address the issue of cyberstalking. She says, "The IT Act has to be amended to include new provisions. We have so many acts to protect women but few provisions that specify what to do when the woman is the accused and the man a victim. One of the cases I was handling had the wife use her son to spy on her husband. The son hacked the father's mail ID and would be able to detect his father's location wherever he went. But for the victim to have a shot in the court, he would have to prove the hacking and show the electronic devices used by the accused, as per the Evidence Act. The absence of a clear provision makes it more difficult for male victims."

Nitin Sharma*, a 32-year-old businessman from west Delhi, sums it up, "I actually tracked down my stalker with the help of a tech-savvy friend and forced her to meet me at the police station. I wanted to file a complaint and end the three-month-long harassment. But, to my surprise, the cops talked to her gently and said, '*beta, ab aage se pareshaan mat karna*'. Just because she was a girl, it was '*pareshan karna*'. Had I done the same to her, I would still be behind bars."

50% of all cyberstalking cases now have male victims

Experts say that while cyberstalking is on the rise, incidents of men being the victim are growing at a faster rate. Cyber law expert and Supreme Court lawyer Karnika Seth tells us, "I get at least four-five cases of cyberstalking every day. Till now, I have seen women being victimized. However, now I see a trend where men are the victims. Till a few years ago, 75% cases of cyberstalking had women as the victim, but now the ratio is 50:50."

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Sushant Arora*, a Noida-based consultant, recounts his stalking experience and says, "Last year, I got a WhatsApp text from a woman claiming to have met me at a wedding. Even though I couldn't recall her, the description she gave of our meeting was quite vivid and I assumed I must have forgotten. But soon, she started getting really creepy and suggestive, after which I had to stop responding to her. The woman started texting my family members and all my female colleagues and friends, asking them to "stay away from her boyfriend". It was embarrassing to have to explain to everyone that I had nothing to do with this woman. She even created fake Facebook profiles to stalk me and keep a tab on who I hung out with and where. It was really scary."

While the IT Act is clearly under-equipped to deal with cyberstalking, when it comes to complaints by women, the police usually files a case under Sec 354D of the IPC. But the section deals with stalking and harassment by men *only*.

SECTION 67 IN THE INFORMATION TECHNOLOGY ACT, 2000

Punishment for publishing or transmitting obscene material in electronic form: Whoever publishes or transmits or causes to be published or transmitted in the electronic form,

any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to ₹5-10 lakh and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ₹10 lakh.

Law ill-equipped to deal with cases involving women cyberstalkers

This might come as a surprise, but there is no legal provision to tackle women cyberstalkers. In fact, there is no specific law to tackle cyberstalking in India. Usually, it is covered under Section 67 of the IT Act, but that is applicable only if there has been transmission or online publication of obscene material. For cyberstalking, police mostly file a case under Section 354D of the IPC (see box). However, the language of the section makes it clear that it only covers a male accused and a female victim.

Rizwan*, a 29-year-old from Gurgaon, says, "For three months, this acquaintance of mine stalked all my social media profiles and left random comments. People in my circle had assumed that we knew each other because she was so involved in all my

social media activities. The trouble began when she started asking my girlfriend to stay away. I took this woman to the cops. The police asked me what section I wanted them to book her under. I replied, 'yeh toh aapka kaam hai na'. That's when I realized that technically what she had done till now wasn't a crime!"

'Had to wait for her to threaten me before the cops could act'

Legal experts agree that there are no provisions to tackle cyberstalking by a woman in Indian law, but usually, police and lawyers use sections pertaining to other offences like criminal intimidation and extortion. Seth says, "If, for instance, the case involves a fake profile or it amounts to an identity theft or cheating by impersonation, then other provisions get attached along with stalking. Now, when it comes to cyberstalking per se, IPC provisions are still there. If there is cyberstalking coupled with extortion, we can invoke the relevant section, or if there is criminal intimidation where you send a threatening message online, then Section 506 comes into play."

SECTION 354D OF THE IPC

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
- in the particular circumstances such conduct was reasonable and justified.

But the victims say this leaves them open to a lot of abuse as they have to wait for their stalker to make a threat or try extortion for it to become a crime. Amit*, a 27-year-old marketing professional from Lajpat Nagar, says, "There was this crazy girl who would send me messages on FB from various fake accounts. It was annoying initially and became scary later. When I told her to leave me alone, she just increased the frequency of her messages, with all of them saying she loved me and wanted to meet me. When I approached the police, they said ki koi crime toh hua nahi abhi. If she threatens me or sends me an obscene text or picture, then they will file a case. So I had to wait for her to do something crazy before the police could act. Thankfully, she never did any of that and went away. I still wonder what I would do if she returns."

'You must have provoked her, cops tell us'

It's not just the law that handicaps male victims to take the legal route, societal biases do not help either. A senior police official from Noida says, "Existing prejudices make it tough for us to investigate. The girl's family counters by saying that she is being framed or it's just a lovers' quarrel that has gone out of hand. We try to be firm, but can't be too hard on the girl."

South Delhi-based MBA student Aakash* says he got the shock of his life when he went to report his cyberstalker and the police turned on him. "This friend of a friend had been pestering me online, hacking my social media accounts and sending weird texts from them to my friends. I approached the police, but all they saw was this sweet-looking college girl and not the stalker I was describing. They said, 'tune hi kuch kiya hoga warna koi ladki bhala kyun itna pareshan karegi kisi ko?' I had no answer to that," he recalls.

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– Aakash*, MBA student

(*Names changed on request)