

Chapter-02

AN ANALYSIS OF CYBER STALKING AGAINST WOMEN IN INDIA

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ABSTRACT:

As we know this world is completely transformed into virtual world by the uses of internet and mobile phones. Pandemic 2020 presents a new perspective on human life, in this virtual environment. IT has evolved into a vital organ for survival. Information technology has not only broadened the field of development however, becomes an axis for global development. The virtual world supplies people with a wealth of information in a very short amount of time. But, just as every coin has two sides, everything has two sides the advancement of information technology has hastened the spread of cybercrime in all directions.

Cyber Stalking means to follow someone through the computer and anything which is associated with the computer which can create the fear in the mind of victim. Cyber stalking is a relatively recent type of cybercrime. The purpose of this article is to investigate the definition and reported cases of cyber stalking against women from 2017-2020 as per the data of NCRB. In addition, this study will explore reason of cyber stalking. The Indian legal system, judicial decision as well as complaint mechanism will also be explored in this study.

Key words: *Computer, Technology, Stalking, Cyber Stalking, It Act 2000*

INTRODUCTION:

As we know we are all transitioning from the physical to the virtual realm in the cyber world. We use technology for employment, recreation, and other purposes. Since we are now completely reliant on technology, its use has become a social need. On a daily basis, we use the internet. While the internet is a beneficial tool for humans, it has also resulted in some unlawful technological use. Criminals are employing technology to commit such crimes. One of these is cyber stalking, which is following someone through communication technologies. When a stalker repeatedly attempts to contact another individual for the purpose of controlling the victim's life or instilling fear in him, this is known as cyber stalking. A cyber-stalker has replaced the classic stalker. Furthermore, stalkers can now conceal their identities with the help of information technology, which allows criminals to remain silently indoors and continue their crimes anonymously and at a cheap cost. While cyber stalking follows the same harassment principles as conventional stalking, the victims are primarily online. Emails, internet, chat rooms, and the expanding social networks such as Facebook are the most common techniques of attempting cyber stalking. According to many studies, cyber stalking victims are of gender neutral.

At the early phase there was no formal law that addressed the issue of cyber stalking previously the impression cyber stalking was covered under the provisions of defamation, harassment, and outrage to women's modesty etc. The IT Act, 2000 was the sole law that addressed cyber stalking under section 66(Computer related offences), 66A (Punishment for sending offensive messages through communication service, etc.), 67(Punishment for publishing or transmitting obscene material in electronic form) 67A (Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form).Although IT Act of 2000 has some provisions, there was no explicit law dealing to cyber stalking. However The Criminal Act was revised in 2013 which include section 354D, which dealt with stalking. This section includes stalking as a physical act as well as stalking via electronic means. This area includes cyber stalking.

Meaning of Cyber stalking:

Cyber refers to anything related to a computer or computer network, such as the internet, and stalking refers to an illegal act of constantly following someone with the intent of instilling fear in the victim's mind or inciting violence against the victim. As a result, cyber stalking can be characterised as the practice of following someone via a computer or computer network in order to generate a sense of threat or terror in the victim's mind.

Cyber stalking is a crime in which an individual or a group of individuals uses a digital device such as the internet or other communication tools to harass another person. It involves engaging in a course of conduct, to communicate or causes to be communicated words, images, or language with the help of Email or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

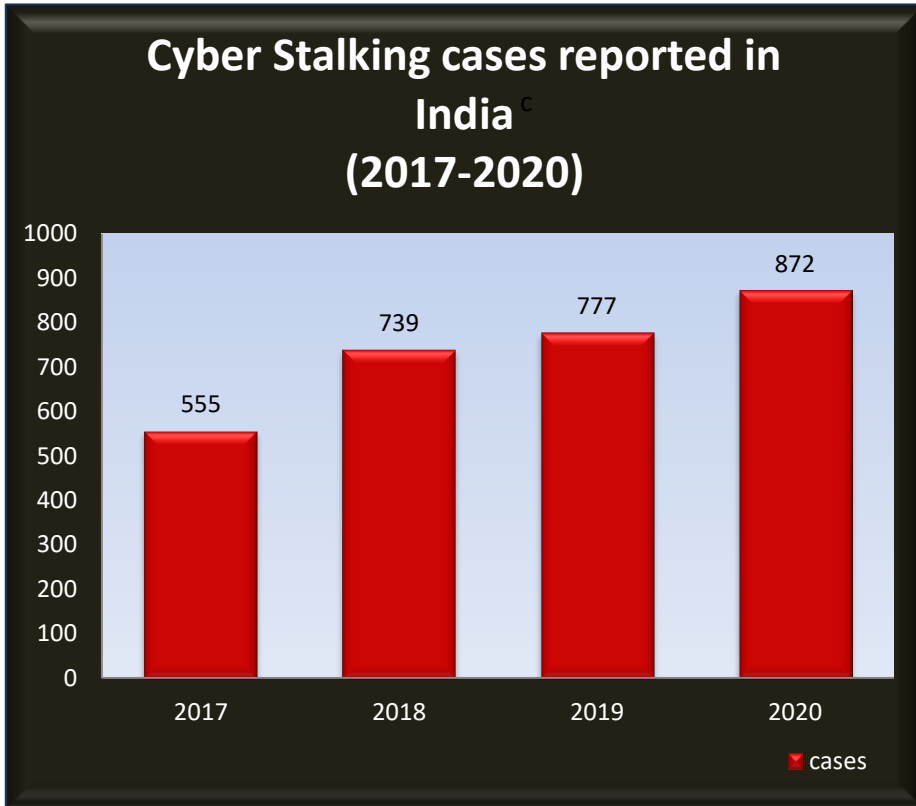
ACADEMIC DEFINITION OF CYBER STALKING:

- **According to Brenner:** "In a sense, cyber stalking and cyber harassment are lineal descendants of the obscene or annoying telephone call offenses that were created roughly a century ago, to address harms resulting from the misuse of a nineteenth century technology".
- **According to Baer:** "Cyber stalking in particular is composed of words alone and therefore stands more distinctly apart as a crime of accumulation".

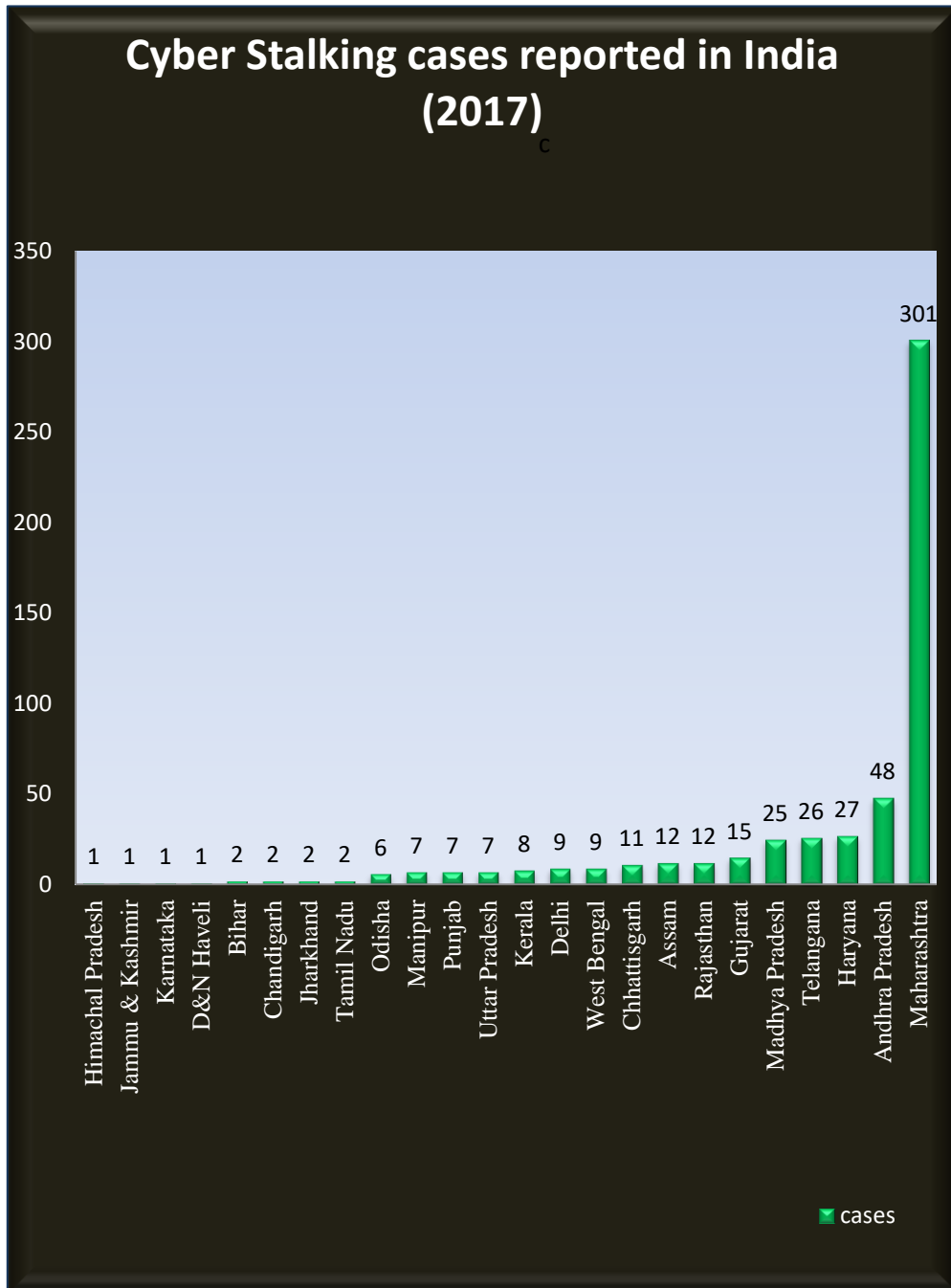
- **According to Ellison and Akdeniz:** “the term cyber stalking as online harassment, which may include various digitally harassing behaviors, including sending junk mails, computer viruses, impersonating the victim, etc.”.
- **According to Fisher, B.S., F.T. Cullen, and M.G.Turner:** “*Cyber stalking* involves the use of technology (most often, the Internet!) to make someone else afraid or concerned about their safety.”

Reported cases of Cyber Stalking against Women from 2017-2020:

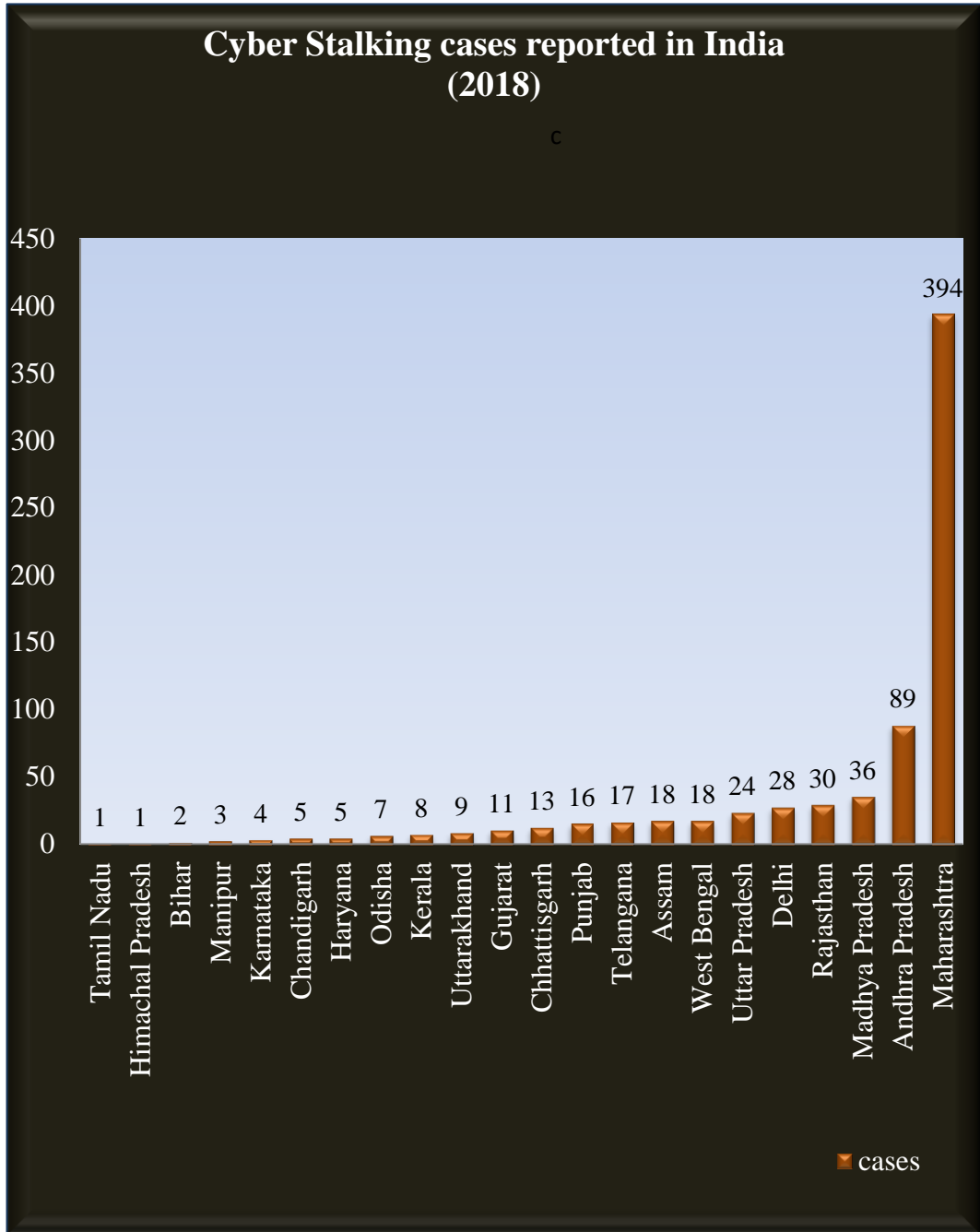
In India, the National Crime Records Bureau (NCRB) included statistics on cyber stalking/cyber bullying against women/children for the first time in its 2017 report, finding a total of 542 incidents reported under this heading in that year. Additionally, India is third on the list of nations where more than half of children (53 percent) have been harassed online, according to a Microsoft report on "Global Youth Online Behaviour" performed in 2018. Behind China (70%) and Singapore(58 percent) Maharashtra reported to police more than 388 instances of cyberbullying and stalking against women and children in 2020, more than any other state in India. Andhra Pradesh came in second with 145 cases. In the same year, 872 instances of these offences were reported nationwide. This kind of offence was covered by Indian Penal Code Section 354D. India's aforementioned instances are listed in detail under figures 1, 2, 3, 4, and 5.



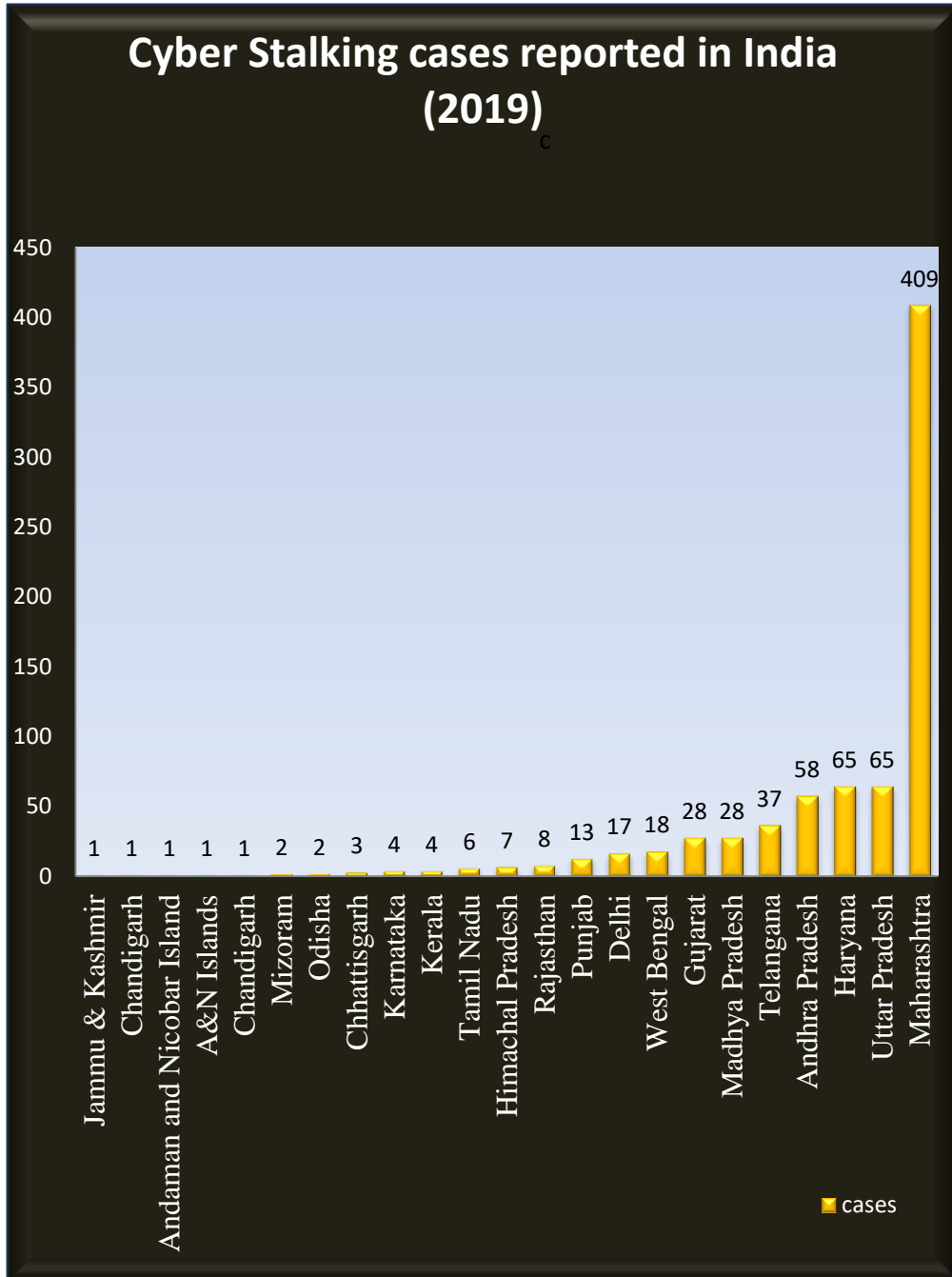
(Figure 1: NCRB Report of cyber stalking/bullying cases against women/ children from 2017-2020.)



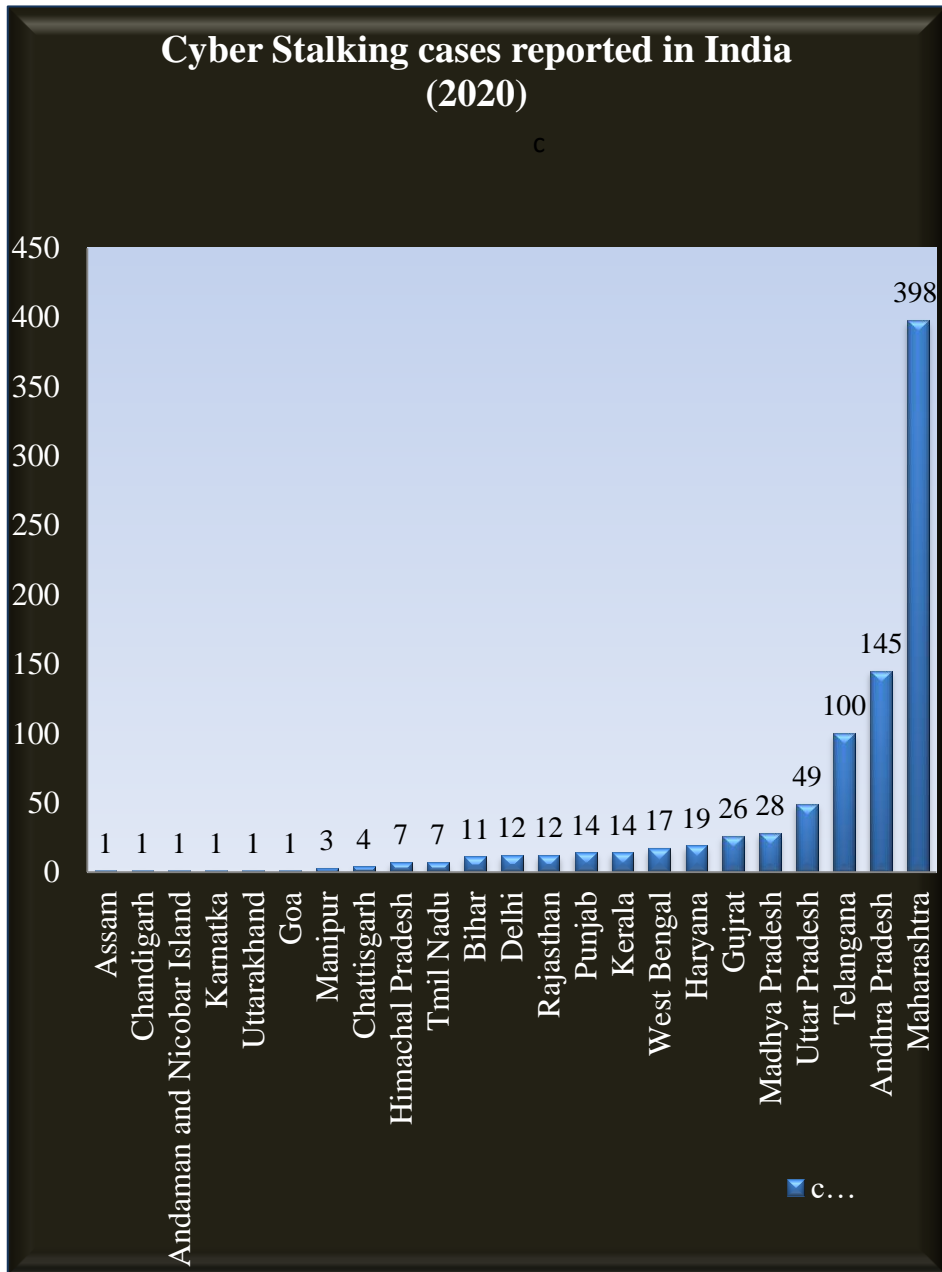
(Figure 2: NCRB Report of cyber stalking/bullying cases against women/children in India in the year 2017)



(Figure.3: NCRB Report of cyber stalking/bullying cases against women/children in India in the year 2018)



(Figure 4: NCRB Report of cyber stalking/bullying cases against women/children in India in the year 2019)



(Figure 5: NCRB Report of cyber stalking/bullying cases against women/children in India in the year 2020.)

Reason behind Cyber Stalking:

Some of the most important reasons are following:

1. **Jealousy:** One of the most typical motivations for online stalking is jealousy. A sense of retribution may readily develop, and the individual may turn criminal.
2. **Obsession and attraction:** One of the motivations for stalking is obsession and desire. When a stalker is sexually or mentally attracted to a victim, he may engage in this type of behavior.
3. **Erotomania:** It's also one of the causes why people stalk each other online. Erotomania is a condition in which a person believes that another person loves him. In the instance of erotomania, the stalker feels the victim has some form of romantic feelings for him. A stranger or a celebrity can be the victim. It always involves a sensual attraction to someone.
4. **Sexual harassment:** It's one of the main motivations for cyber stalking.. Unwanted sexual behavior that is forceful, embarrassing, or threatening is typically referred to as sexual harassment. When someone wants to sexually humiliate someone else, they can stalk the victim.
5. **Revenge and hate:** An innocent individual might be turned into a stalker by a feeling of hatred and vengeance.

Legal Provisions of Cyber Stalking in India:

The law that governs cyber stalking is as follows:

- Information Technology Act, 2000
- Indian Penal Code, 1860

Information Technology Act, 2000:

Section 66A of the IT ACT 2000 deals with "Punishment for sending offensive messages using communication services, etc." Under this clause, any individual, male or female, who transmits an insulting message through the communication medium that causes fear, annoyance, hurt, insult, or other harm can be sentenced to up to three years in prison. However, after the case of Shreya singhal vs. U.O.I., this section was removed.

When a stalker sends or posts any obscene content to the victim via electronic media, they are subject to a five-year prison sentence and a fine of Rs. one lakh under

Section 67 of the Act. If the incident occurs again, they will be sentenced to ten years in prison and a fine of Rs. 2 lakh.

A special category named "material containing a sexually explicit conduct" has been formed under Section 67A. The publication, transmission, or inducing the transmission of such material is punishable by up to five years in prison and a fine for the first offence, and up to seven years in prison and a fine for the second offence. Apart from this, section 67B and 67E also deals with this crime.

Indian Penal Code, 1860:

The provisions relating to cyber stalking are found in Section 354D of the IPC. There was no explicit provision relating to cyber stalking prior to the Criminal Amendment Act of 2013, but the Amendment Act has introduced the legal provisions of this offence.

The essential of 354D are following:

- That accused must be a man and victim must be a woman.
- Follow or contact a woman or attempt to contact; or
- Monitors the use by the woman of the internet, email or any other electronic communication.
- Despite disinterest of woman.

This section can be used to punish a male who continually follows a lady or tries to make contact with her, either physically or through the internet. For the first offence, stalking carries a sentence of up to 3 years in jail and a fine, while the second offence carries a sentence of up to 5 years in prison and a fine. Apart from this Cyber stalking can also be attracted by the rules under Section 499, 507, 503, 509, 292 of IPC

Judicial Approach:

- **State of Maharashtra v. Manish Kathuria:** "The Ritu Kohli case was the first to be reported as an instance of online stalking. In this case, Ritu Kohli was being followed by a man named Manish Kathuria. He made a bogus website and used it to connect with a number of individuals under the identity of Ritu Kohli. He also provided Ritu's phone number on the website. Consequently, Ritu was receiving anonymous phone calls from strangers. The incident was reported to the police by Ritu. The lawsuit was filed under section 509 of the I.P.C., but this section had

nothing to do with internet stalking, therefore the government was alarmed. Therefore, the IT Act was revised and section 66A was added”.

- **Shreya Singhal v. Union of India:** “It is a judgment by a two-judge bench of the Supreme Court of India in 2015, on the issue of online speech and intermediary liability in India. Section 66A of the IT Act, 2000, relating to limits on online speech, was declared illegal by the Supreme Court on the grounds that it violated Article 19(1) (a) of the Indian Constitution. The Court went on to say that the Section was not saved because it was a "reasonable constraint" on freedom of speech under Article 19(2) of the Constitution”.
- **Nikhil Chacko Sam v. State of Kerala:** “In this matter, the Kerala High Court, in issuing a judgment on summonses issued to the accused, also referenced the charge sheet filed by the police against the accused. Section 66-A of the IT Act, 2000 was utilised to charge the defendant. The complainant and the accused (petitioner) were together in Chennai, according to the basic facts gleaned from the Court's ruling. The petitioner is accused of transmitting images of the de facto complainant and another person presenting them in a negative light over the internet on September 4, 2009, and consequently of committing the aforementioned offence”.
- **Seema Khanna Case:** “An embassy employee in New Delhi, Seema Khanna (name changed), was unaware that surfing the internet would result in a breach of her privacy. In an apparent case of cyberstalking, Khanna received a series of emails from a man asking that she either appear naked for him or pay him Rs 1 lakh. In her statement to Delhi Police, the lady said that she started receiving these emails in the third week of November 2020. Khanna was threatened by the accused, who said he would post her morphed photographs, as well as her phone number and address, on sex websites. He also allegedly threatened to display the photos in her neighbourhood. She initially disregarded the mails, but she soon began receiving letters by post repeating the same threat. According to an officer with the cybercrime unit, she was forced to report the incident to the police. Her struggle, however, was far from over. The accused sent the woman her photos via mail. The woman said that these were the exact photos she had saved in her inbox. The accused allegedly compromised her e-mail password, allowing him access to the photos, according to the police. According to preliminary investigation into the complaint, the emails were sent to the victim from a cyber cafe in south Delhi. We expect to find the suspects quickly, said Dendendra Pathak, deputy commissioner of police (crime). The offender appeared to know a lot

about the victim, which led the authorities to believe he knew her. The cyber stalker could be charged under Section 509 of the IPC for invading a woman's modesty, as well as the IT Act of 2000".

- **Karan Girotra V. State&Anr:** "In this case a lady, Shivani Saxena, who filed for divorce by mutual consent after her marriage could not be consummated. During this time, she met Karan Girotra on the internet and he told her he loved her and wanted to marry her. Girotra brought Saxena to his home under the pretense of meeting with his family, drugged her, and sexually assaulted her. He insisted on marrying her and began sending her obscene photos from the night she was assaulted. He allegedly threatened to make the photos public unless she married him. Therefore, the two had an engagement ceremony, after which he continued to beat her and eventually called off their engagement. As a result, Saxena filed a complaint under the IT Act's Section 66-A. Despite rejecting Girotra's request for anticipatory bail on the grounds that he shared naked and obscene photos of Saxena, an offence that merits significant custodial interrogation, the Court made some harsh remarks. According to the Court, Saxena failed to reveal her prior marriage to Girotra just because she agreed to execute the engagement ceremony, despite the fact that Girotra had mentioned it when he first proclaimed his love for Saxena. The Court also took notice of Saxena's tardiness in filing the FIR. What's more astonishing is that the Court determined that Saxena had consented to the sexual intercourse and only filed the complaint after Girotra refused to marry her. This case exemplifies the Indian judiciary's approach toward matters involving cyber-stalking. It's shocking that something as insignificant as a delay in submitting the FIR can have such a significant impact on the case's result. As a result, more strict legislation is required now more than ever".
- **Vinu Priya Case:** "The victim in this case was a 21-year-old woman who had recently completed her B.Sc. in chemistry. She informed her parents on June 23, when the first photos appeared, and they filed a complaint with the Cyber Crime Cell. Vinupriya's father was told by the police that the criminal would be apprehended in two weeks, either because the police lacked the investigative abilities or simply because they were uninterested. Is it really two weeks? Seriously? Do the officers in Tamil Nadu's Cyber Crime Cell have any idea how traumatised Vinupriya and her family must have been? But that's not all. If the parent wanted the inquiry to be completed, one of the officials in the Cyber Crime Cell allegedly asked for a mobile phone. Vinupriya's father claims he purchased the constable a cell phone for Rs 2,000 and bemoans the fact that the officer did not bring justice despite taking a bribe. Vinupriya was frightened when another

filthy photograph was uploaded on Facebook on June 26. The investigating officer had previously believed she had transmitted those photos to someone, and now they were being circulated, possibly by a betrayed lover. These were the lines of questions for Vinupriya. On June 27, she committed suicide while alone at home. The second photograph, which had published on June 26, vanished within hours of the public announcement of Vinupriya's death. Proof that the pervert was lurking nearby or was in Vinupriya's circle of friends”.

Complaint Mechanism:

Cybercrime has no jurisdiction since it is committed without regard for geographical boundaries. As a result, you can report a computer crime to the cybercrime department of any city, regardless of where it occurred.

- **Cyber Cells:** Cyber Cells have been established to offer redressal to the victims of cybercrime. These cells are part of the criminal investigation department and are tasked with investigating internet-related crimes. If your place of resident does not have a cyber-cell, you can submit an F.I.R. with a local police station. If you are unable to file an F.I.R. for any reason, you can still contact your city's commissioner or judicial magistrate. Any police station, regardless of jurisdiction, is required to file an F.I.R.
- **Online Grievance Redressal:** When it comes to dealing with female victims, the police are the most well-known law enforcement body in India. Even when they have easy access to a police station, women are hesitant to report an event for fear of being harassed and subjected to more suffering. As a result, crimes against women continue to go unpunished, and women continue to bear the burden of harassment. Women who do not wish to come forward can submit a stalking complaint with the National Commission for Women. The Commission contacts the police and requests that the investigation be expedited. In the case of major crimes, the commission can appoint an inquiry committee to look into the situation and conduct a spot investigation, gather evidence, question witnesses, call the accused, and get police records etc. to further investigation.
- **Report to the websites:** Most social networking websites that allow users to create accounts provide a reporting feature. Under the IT (Intermediary Guidelines) Rules, 2011, these websites must respond within 36 hours to remove information connected to infringing content. In order to conduct an investigation, the intermediary must keep such information and related records for at least ninety days. Any objectionable content that is housed, saved, or published on the

affected person's computer system can be brought to the intermediary's attention in writing or via email signed with an electronic signature.

- **Report to CERT:** The Indian Computer Emergency Response Team (CERT-IN) has been established as the national nodal organisation for dealing with concerns related to computer security threats under the IT Amendment Act of 2008. They give guidance on cyber incident protocol, prevention, reporting, and reaction, among other things.

You can report an event to CERT by sending an email, calling them, filling out a form on their website, or faxing it to them.

- **Through website:** You can also report the occurrence by filling out an incident-reporting form on the CERT-IN website. Fill in as much facts as possible, since this will aid CERT in understanding the intensity and nature of the incident and assisting you in the recovery process.
- **By e-mail:** The Email address of CERT is incident@cert-in.org.in for reporting incidences. Write to info@cert-in.org.in for any other questions or messages.
- **Through Telephone and Fax:** You can be reached by phone at +91-11-24368572. Fax the incident report to CERT-In at +91-11-24368546.
- **Postal Address:** Indian Computer Emergency Response Team (CERT-IN), Ministry of Electronics and Information Technology, Government of India, Electronics Niketan, 6, CGO Complex, Lodhi Road, New Delhi 110003, India.

CONCLUSION AND SUGGESTION:

It is accurate to say that for changing the society under the current circumstances, we must fight the old model and construct a new, efficient, and well-organized model. Cyberstalking is a relatively new form of crime that has recently attracted the attention of our legislative and judicial bodies. Cyber stalking, like other crimes that have physical and mental consequences, is a serious offence. Psychological stress, fear for one's safety, shock and disbelief, anxiety, and nightmares are all possible consequences of cyber stalking. Cyber stalking instills fear in the victim's mind. In most cases, the perpetrator's purpose is to annoy or threaten the victim, like in conventional stalking, but now the offender uses a social media platform to carry out this type of crime. Many countries have legislation regarding cyber stalking, and India is one of them. Previously, the I.P.C. and IT Act, 2000 dealt with this type of crime, but since the

Criminal Act was amended, we now have legislation that addresses this issue of stalking in general, but not specifically with cyber stalking..

The amendment is a step in the right direction, but it is insufficient to address the issue of cyber stalking. It places an undue responsibility on the judiciary to interpret and reinterpret the law to fit the facts of each case, and Section 354D alone will not ensure that the victim receives appropriate justice. This section includes addresses stalking of women; however men can also be victims of internet stalking, which is not addressed in this section. As the crime of cyber stalking becomes more prevalent, a special law, similar to that of the United States of America, should be enacted. It is true that prevention is always better than cure, we should use social media with prudence. Personal information should not be shared on social media. We should first understand how to use technology before sharing something on social media platforms. The government should also make an effort to educate people on how to use technologies, such as the internet, and what safeguards they should take while doing so. Apart from that, there are many individuals who are unaware of such unlawful conduct and do not report it if they encounter it, thus people should be aware of it and report it appropriately.