



Cyber crimes against women & children in India with special reference to state of Rajasthan

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Abstract

The internet, one of the most important inventions of the twenty-first century, is posing a significant threat to the modern world. There is little question that the development of the internet has increased human opportunity to innovate, but it has also increased human threat. Almost all of us use computers, mobile phones, and other types of communication tools, networks, and the internet. It goes without saying that the most difficult and important issue is the one related to children who commit cybercrime. It is well known that many wealthy nations struggle to deal with young people who commit cybercrimes. Numerous cybercrimes involving children are documented in India as well. Consequently, this study is a critical review of the variables and data relating to high online propensity, cyber deviance, and the role of courts in protecting women and children from cybercrimes in India.

Keywords: Cyberspace, cybercrimes, privacy, dignity, women, children

Introduction

The concept of cybercrime is relatively a new one. Even a cursory search in recent literature reveals that there are around 25 000 different cybercrimes. Each of these crimes has a unique definition and different legal jurisdictions depending upon the laws and provisions of the nation concerned ^[1]. A country like India, being a multicultural country, possesses a rich blend of different cultures, dialects, laws, traditions, etc. that need to be taken into consideration while defining a particular crime. In fact, it is difficult to define cybercrime unless a uniform definition is accepted throughout the world ^[2]. While some of these crimes may have a unique cultural definition, the Cyber Crimes Act, 2010 of the Government of India has defined these crimes as follows.

The word “cyber” is a term which generally describes all modes of communication (including electronic mail, electronic messaging systems, etc.) over the internet, which includes e-commerce, the Internet and the World Wide Web ^[3].

Cyber Crime: Nature and Meaning

A computer system crime committed using a computer system, which has resulted in injury, loss, damage or any other loss to any other person or loss to any of the right, power or authority to own or use a computer system or to use, access, view, read, modify, send, receive or communicate the contents of information of any person or any right related to computer use (including, but not limited to, the right to privacy, right to property, privacy of personal communications, right to free speech, right to intellectual property, right to free movement, right to access or information, right to due process or the right to be secure) are said to be cyber crime ^[4].

Cyber Crimes Against Women and Children

A crime committed against any woman by means of a computer system is a cyber crime if the intent is to

intimidate her or harass her or threaten her or force her to do something against her will. A crime in which a male takes advantage of a computer system to send unsolicited obscene or indecent messages to a woman is not a cyber crime ^[5].

A child pornography is the graphic images, videos, written materials, sound recordings, etc., prepared, stored or distributed for the purpose of sexual gratification or abuse of a child. If a computer system is used to collect, store, receive, transmit or send these materials, the crime would be a cybercrime ^[6]. These materials are not only pornographic in nature, they may contain a child's signature on them or other identifying information, such as name, address, etc ^[7].

Position of Law

Women are a major part of our country's population. According to census, India has around 17.5 crore women population, accounting for 47 per cent of the country's population and thus making women as the largest segment of the country's population. The number of women aged between 20 to 50 years in India has been projected to be around 100 crore by 2025, making women India's largest age group. India is the second most populous country in the world, a position it continues to hold in spite of rapid economic growth over the past four decades. At 8.4 percent of India's population, women constitute a majority in all of India's states and territories. This has given rise to the belief that, due to their large numbers, the women of India, and even the female population of India, are often treated as a commodity rather than a person. Although it is true that India's current laws deal with sex trafficking, they largely do not take account of female vulnerability. Since women are a huge part of our country's population, there is also a huge need for legal provisions to safeguard their rights and protect them from sexual violence and sexual exploitation. The recent rise of women in the political world has provided hope for all the downtrodden ^[8].

Women in India have already made their mark by fighting against injustice and for the rights of the poor and needy.

More and more women are taking on leadership roles in our countries' politics. Yet, much remains to be done for women in India in terms of laws and policies to effectively protect their rights and empower them. The Indian Penal Code (IPC) is the body of law that regulates the conduct of crime in India. It does not include any specific crime against women. However, the Indian Penal Code has been amended several times since 1961 to include a few important crimes like rape. It also has other provisions like section 377 of the IPC that criminalize adultery, Section 354 that punishes rape, Section 363 that forbids false accusations of rape, Section 363B that forbids dowry, and Section 375 that makes it a criminal offense to compel a woman to marry against her will. In fact, even section 377 of the IPC, originally referred to 'homosexuality', is now a criminal offense as per the Supreme Court judgment in section 377 judgement.

Now it is no longer just consensual sex between adults in private. It also applies to adult persons having sexual contact with minors. The judgment is still being debated in the Supreme Court, but the government had already introduced a Bill (Criminal Law (Amendment) Bill) to amend section 377 of the IPC, which was passed in the last session of the 16th Lok Sabha. This was followed by another Bill introduced in the 17th Lok Sabha, Criminal Law (Amendment) Bill, 2015. However, both these bills are now pending before the law minister. The Bill of the 18th Lok Sabha contains more radical provisions that include penalizing consenting adults having sex even in private. The government is pushing these measures as part of its 'Safe City, India' programme. But such provisions could have a wide impact and are against the spirit of the Constitution of India, which emphasizes gender equality. With increasing population, growing aspirations and better health facilities, the age of marriage of girls has been declining. While the early marriage of girls in rural areas has gone down, urban slum girls are being married off even before the age of 18, which is a disturbing trend. These girls do not receive any sort of education. They are sold by their parents to middlemen who in turn sell them to brothel owners who then sell them to local sex trafficker who in turn sell them to clients from faraway cities.

The law should protect the rights of women and children. It is the responsibility of the judiciary to ensure that this law does. In its implementation, no human being should be subjected to any form of indignity, humiliation, intimidation or injustice. It is the responsibility of the Law Enforcement Agencies to take up cases where a victim, a complainant, a witness or a suspect is being subjected to any form of indignity, humiliation or intimidation, it is their responsibility to ensure that justice is done. The failure of the Law Enforcement Agencies to uphold the law is a failure of the Judiciary. When a complainant or a victim is subjected to indignity, humiliation or intimidation then, the law should give the police a mandate to ensure that the complainant/victim is not subjected to such indignity, humiliation or intimidation. The law should also clearly state that the humiliation or intimidation by the Law Enforcement Agency is to be dealt with as a crime and any officer guilty of such humiliation or intimidation should be punished. The law should also clearly state that any officer guilty of causing indignity or humiliation to a victim/complainant should be removed from service for life [9].

The law should be made equally applicable to both men and women. Women, too, should be treated with dignity. A child's father is in a better position to bring his child back. For this reason, the law should also provide that the complaint/statement of a minor/woman against her father should be deemed sufficient by the Law Enforcement Agency and that no investigation should be initiated. The law should also specify that a minor/woman shall be presumed to be a witness of age when the father himself is a minor/woman. The law should ensure that no man's honour is involved in any accusation against him. A man should be presumed innocent till proved guilty. A complaint against a man or a woman is a personal matter. In the name of protecting the 'honour' of a man/woman, the law should not be used to interfere in private affairs. If a woman makes an allegation against her husband, a father, a brother, a son, a friend, a lover, a neighbor, a colleague, a boss, a teacher, a minister, a doctor, or a politician, it is her choice. The law should neither take away her right nor the man's right to defend himself [10].

The law should not be used to deprive any person of his rights. If there is sufficient evidence against a person, the law should provide a mechanism to take that person into custody. But the law should not take away a man's fundamental right to walk on the roads or in the parks or in the local market with his wife/daughter. The law should not be used to deprive any person of his fundamental right.

The law should not be used to deprive any person of his fundamental right to marry. The law should not be used to deprive any man of the fundamental right to marry a woman of his choice and to marry a minor woman of age to a man of his choice.

The law should not be used to deprive any person of his right to property. The law should provide for an appropriate level of compensation for the loss of property in case of wrongful death or theft. The compensation should not be so high that it is unreasonable. In case of theft or kidnapping, a woman or a girl's property should be considered as lost, unless the value of the property is high. In case of sexual violence or rape, the loss of property, too, should be considered. In case of wrongful death, the law should provide for an appropriate level of compensation. The value of the lost property should be considered in determining the amount of compensation. In case of a theft, the value of the lost property should be considered in determining the amount of compensation. If it is a wrongful death, the compensation should be equal to the value of the lost property. The compensation in the case of loss of a child should be equal to half of the value of the lost property. The law should not be used to deprive any person of his fundamental right to property. If he loses it in an accident or if it is destroyed in a natural disaster, compensation should be paid by the state as a duty towards the public at large. If the thief is caught, then the police or the Law Enforcement Agency should ensure that the law is implemented and the thief is punished.

The law should not be used to deprive a woman of her fundamental right to freedom of expression, speech, thought and religion. Women, too, should be given the right to freedom of speech, speech, thought and religion. No man has the right to deprive any woman or any girl of their fundamental right to freedom of expression, speech, thought and religion. It is a fundamental right of a woman to not be forced to marry against her will and it is a fundamental right

of a woman to be safe at home, to go about in an unattended vehicle and it is a fundamental right of a woman to wear clothes that cover the body and give protection.

The law should not be used to deprive any person of his fundamental right to freedom of movement. The law should ensure that all the members of the public are free to move about in public or in their own abode and that they are safe in their privacy. No one has the right to enter the residence of another person without consent and no one has the right to deprive any woman or girl of her right to privacy in her residence. In case of sexual violence and rape, the person concerned should be brought before the magistrate within 72 hours. In the case of theft, a complaint should be lodged in the police station within 48 hours.

Position of Cyber law in Rajasthan

The law in India has not recognized or protected women or children from cybercrime. Victims of crimes, including those involving sexual abuse, are forced to struggle in isolation to identify, report and seek redress for their injuries. The Cyber Crime Act, 2013^[11] does not provide special provisions for the protection of women or children. It only provides for protection to citizens as a class or category under its provisions. A victim, though may be a woman, is not covered as a gender under this Act, and therefore no special provisions have been provided for women in this Act.

There are no mechanisms or institutions that are directed to protect or rehabilitate women, victims of crimes and children who may be victims of crime. There are laws against rape, abduction, stalking, online harassment, indecent images, child pornography, child sexual abuse and child pornography but none of them is specifically and uniquely designed for the protection of women and children. Since law enforcement agencies have not taken any proactive measures to deal with crimes of violence against women and children, women and children are even more prone to such crimes in this era of the Information and Communication Technology. There are a variety of reasons for women and children being targeted in cyberspace. At least some of them are: Child victims are the most vulnerable to being sexually abused or exploited. It has been reported that as many as 70 percent of children on the Internet are victims of sexual exploitation or abuse, or are at risk of being abused. According to the Internet Crimes Against Children (ICAC) annual report, which is based on U.S. law enforcement reports, an estimated 4.8 million people have been sexually victimized in the United States in 2013.

Children as young as two years old are being sexually abused by their parents, coaches, guardians, babysitters, family friends and other adults in their communities. In 2014, according to data released by the National Center for Missing and Exploited Children (NCMEC)^[12], there were over 6,900 reports of child sexual exploitation – cases involving the sexual abuse or commercial sexual exploitation of a child victim. This is an increase from 4,500 reports in 2013. According to the NCMEC, there were 1,821 cases involving the sexual abuse of a minor in U.S. federal and state court in 2014. Most of the crimes were perpetrated by adults. The NCMEC reported 1,521 federal cases were prosecuted by prosecutors in 2014. In addition, states such as Florida, Illinois and Louisiana have reported more than 1,000 alleged child pornography cases since 2011,

according to the National Center for Missing and Exploited Children.

The U.S. Department of Justice indicated that federal prosecutors prosecuted 17,946 cases in which the crime was sexual exploitation of children. The NCMEC indicated that children living in rural and suburban areas in the United States are more likely to be the victims of the crime than their counterparts in urban areas. In India, the data on child sex abuse and online exploitation is unknown. India has made very little progress in dealing with child sex exploitation despite the fact that it is a national priority. This is primarily due to the fact that there are very few trained, experienced and sensitive law enforcement officers on the ground to gather evidence, identify victims and investigate crimes. India has even less capacity to monitor child sex crimes on the internet.

Most of the existing laws are either in draft form or need to be drafted. According to experts, there is no single agency in India that deals with sex crimes, child pornography or other crimes related to sex crimes against women and children. It is also not clear what laws exist to deal with crimes on the internet. For example, in 2013, the Government passed the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Regulations, 2013 which, among other things, regulates security practices of organizations that handle sensitive personal information, such as banking information, health records and others, on computer and electronic devices. However, no provisions for the regulation of practices relating to cyber-crime or cyber-security were contained in this law. In India, a few other laws exist to deal with cases of rape and sexual abuse such as the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “the 2012 Act”)^[13], and the Indian Penal Code, 1860 (hereinafter referred to as “the IPC”).

But none of these laws specifically and uniquely deal with crimes against women or children and all of them deal with crimes against women and children as one group. The 2012 Act does not contain any specific provisions for the protection of women. The IPC deals with rape, molestation and other crimes against women, but it is primarily aimed at punishing the act itself rather than dealing with the victim of the crime. There is no criminal law in India to punish a person for using force, threatening or intimidating another person online or through any other form of communication. There are laws to deal with crimes of stalking, voyeurism, voyeurism, defamation, harassment and misuse of personal information. But there are no specific provisions to deal with crimes of stalking, voyeurism or stalking or defamation or harassment or misuse of personal information.

There are also no laws that specifically deal with online harassment or cybercrime in general. The IPC, the 2012 Act, the Protection of Children from Sexual Offences (POCSO) Act, 2012 and the Protection of Children from Sexual Exploitation Act, 2012 deal with the crimes against children. It is unclear what the situation is in India regarding a legal mechanism to deal with crimes committed against women or children online. It is unclear as to whether crimes against women or children or crimes committed online should be dealt with by the police, other law enforcement agencies or courts. As more and more women move to the internet for education, work and other purposes, the likelihood of being victimized by crimes on the internet is

increasing. The incidence of crimes against women and children in the online environment is also increasing.

Women may also be victims of crimes committed against women on the internet. In many cases, perpetrators may also be male and female and crimes may be committed against both men and women. There is a need to make a law that specifically deals with crimes against women and children online. Such a law would be based on international best practices, expert input and knowledge of the Indian situation. Since the crimes against women and children on the internet are increasing and this is also a growing problem in India, there is a need to draft such a law. The Draft of the cybercrime position of law against women & children in state of Rajasthan is the first step in this direction. This Draft could be used as a tool to sensitize and create awareness to the crimes of women and children. It is hoped that after this Draft is accepted by the State Legal Services Authority, a strong position can be taken to prevent these crimes from taking place. The Draft provides a way to make a stronger position in the courts to deal with women and children as victims of crime in the future.

Conclusion

In the matter of Cybercrime, it has been found that the cybercrime against women and children are being indulged by men in the guise of e-commerce which has resulted in making it as the only mode of transaction.

As per existing cybercrime laws, it has been observed that the cybercrime has assumed such a height, that only the most heinous offences have been found to be committed through the use of Internet, even kidnapping, rape, acid attack, murder have been committed over Internet. It was further observed that the use of Internet for committing cybercrimes was being exploited by a section of male population, which has given rise to the term of "Nithari case" in the cybercrime scenario ^[14].

As per available survey, the number of cybercrimes in India against women has been estimated to be around 6.5 million. It was further observed that due to lack of awareness, women are largely victimised, because they do not know how to protect themselves online, which has led to a situation where they are not able to protect themselves from sexual predators and other threats. It was further observed that the women children's cybercrime in India stands at more than 6 lakhs. It was further observed that because of lack of awareness amongst the women, the cybercrime of them are found more often and the women children's cybercrime on the rise. It was further observed that it was the men are committing more cybercrimes of a far more dangerous nature. It has been observed that the men also are indulged in indulging in such cybercrimes, wherein they either force or molest or humiliate women or children. It is therefore requested that the Home Ministry take the matter of women and children's cybercrime seriously.

It is therefore suggested that the Home Ministry and the government of India as a whole ensure that the matter of women and children's cyber crime is taken seriously. In order to take up this matter, the law-and-order machinery of the state should be put in place to protect the women and children. The law-and-order machinery of the state should provide women and children's protective shield and the protection provided should not be limited to the state only, but should be available for the state to be extended to every nook and corner of the country. In addition to this, it should

be ensured that every nook and corner of the country become women and children's friendly.

It has been recommended that to ensure safety and security of women and children, the law-and-order machinery of the state should be geared up to protect them. It is proposed that this protection should cover all states of the country and every citizen.

It is further recommended that women should be educated as to the dangers and threats posed by the use of the internet and that the existing laws should be amended and extended to cover these threats. It is proposed that appropriate measures should be taken to educate women in the safety and security of the internet and that the existing laws should be amended and extended to cover such threats.

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