



NEED OF SPECIAL PROVISIONS FOR CYBERBULLYING IN INDIA

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Abstract-

"Unless and until our society recognizes cyber bullying for what it is, the suffering of thousands of silent victims will continue." – Anna Maria Chavez

We live in an era where cyberbullying has become a vital issue, yet not being addressed adequately by our laws and society. The internet, which was meant to be a peaceful place to connect and educate them. It has become a graveyard for many innocent souls. With the internet came social media which has become such a meaningful necessity in our lives, to which we are hopelessly addicted. Though having its benefits, there is a large chunk of people who hide behind a mask of anonymity online and do not need direct physical access to their victims to do unimaginable harm, both mentally and socially. Even after having provisions for cyberbullying (not specifically of cyberbullying but cyber-attacks) in the Information Technology Act, 2008 and Indian penal code, 1860. Cases for cyberbullying are increasing every day which has led India to be ranked 1st in the world. Due to the lack of the provisions as they do not cover the wider scope of cyberbullying victims are not served justice. Thus, India

requires new, special provisions against cyberbullying.

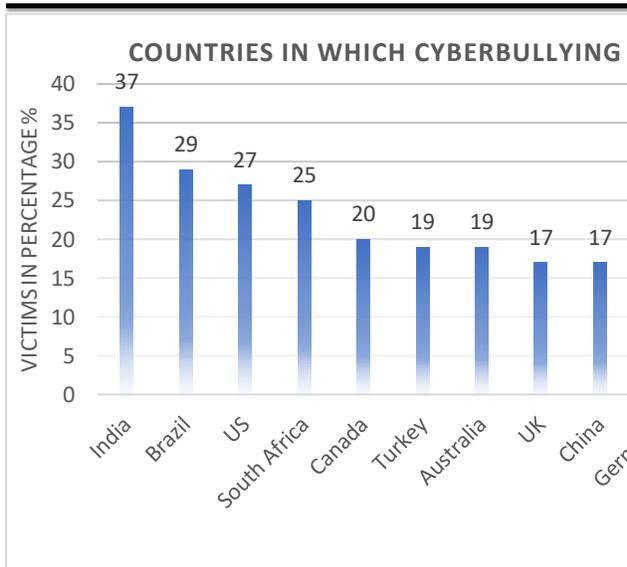
Introduction-

Term cyber is being defined as of, relating to, or involving computers or computer networks such as the internet.¹ It also includes electronic devices such as a computer, smartphone, laptop, tablet, and other devices that support the internet. Bullying can be defined as misusing the power as verbal, physical, or social by an individual or more on one or more person/s with the intention of harming them physically, mentally, socially or even psychologically.²

Cyberbullying, where any individual or group of individuals intentionally can harm some on verbally, mentally, physically, or even psychologically by using electronic devices such as smartphones, computers, or any other internet supporting devices. Through cyberbullying one can commit many crimes such as defamation, harassment, criminal stalking, etc., In India, we do not have any special provisions for cyberbullying. Looking into the graph below we can understand the need for special provisions of cyberbullying in India.

¹ Merriam-Webster, cyber meaning, <https://www.merriam-webster.com/dictionary/cyber> (21st May 2020, 11:50 P.M.).

² National center against bullying, <https://www.ncab.org.au/bullying-advice/bullying-for-parents/definition-of-bullying/> (22nd May 2020, 12:04 A.M.).



Ipsos conducted a survey in 2018 in around 28 countries. Out of 3 families one family's kids were the victim of cyberbullying in India, hence India was ranked 1st in "countries in which cyberbullying is more prevalent".³

Cyberbullying includes-

Cyberbullying needs some platforms such as Instagram, Facebook, Twitter, or even email, etc. On these platforms, one can commit certain types of cyberbullying by using the internet and any of the mentioned platforms or more than one platform. Cyberbullying is of certain types⁴-

- 1) **Texting-** When a person to harass or embarrass or threatening someone on social media i.e. (platforms of cyberbullying) via texting. Text wars i.e. when bullies gang up and attack the victim by texting together.
- 2) **Impersonating-** When a person takes

advantage of someone else identity by making others believe himself as the victim and commit wrong pieces of stuff such as texting offensive to friends, posting obscene material on the victim's profile, etc., which also knows in other words Fraping.

3) **Sexting-** When a person with malice intention uses his or her obscene pictures, videos, GIFs, etc. on social media, where it can go viral among thousands and lakhs of people within an hour.

4) **Creating phishing links-** When a person via using phishing links gets personal information of the victim and using that information to harass or threaten the victim is also cyberbullying.

5) **Video gaming-** By making videos and commenting on a person in that video which you believe that viewers will believe this person as a victim or you directly make a video on a victim to harass or embarrass that person.

6) **Trolling-** Troll is not always cyberbullying but such trolls are been made with the intention of harming the reputation of any person or any artificial person will also be cyberbullying.

Cases of cyberbullying in India-

As per the reports cyberbullying has risen by 36% of Indian women and teenagers. There are certain reported cases of cyberbullying in India such as-

1. **Ritika Sharma (name changed) case⁵-**
- 1.1. **Facts-** Ritika studies in the prominent school

³ Niall McCarthy, Where cyberbullying is more prevalent, <https://www.statista.com/chart/15926/the-share-of-parents-who-say-their-child-has-experienced-cyberbullying/> (22nd May 2020, 12:23 A.M.).

⁴ Sherri Gordan, 6 types of cyberbullying, <https://www.verywellfamily.com/types-of-cyberbullying-460549> (22nd May 2020, 11:10 P.M.)

⁵ Dev Goswami, Delhi schoolkids increasingly coming under attack from cyberbullies, <https://www.indiatoday.in/mail-today/story/delhi-schoolkids-increasingly-coming-under-attacks-by-cyber-bullies-976595-2017-05-12> (24th May 2020, 12:10 A.M.).



of Delhi, after being stalked on Facebook by the Facebook user whom she had befriended a month ago. As she had shared her contact details and other personal information to a man later who was caught using her fake id by using her picture and other details. As that man was forcing her to go on a date with him repeatedly so after being annoyed Ritika blocked him and stopped answering her calls. So later he found using her fake id and sharing her contact details with other unknown people and asked them to call on odd times.

1.2. The action was taken- Delhi police made an FIR (first information report) against that person under provisions of Information Technology Act⁶ and Indian Penal Code⁷

2. Bois locker room case⁸-

2.1. Facts- An Instagram group of boys in which 13 to 19 age group was involved where they used to share obscene, nude pictures of girls. Also, some of the boys discussed how to rape a minor girl in their school. Some of the screenshots of those chats gone viral and that created panic in the society.

2.2. The action was taken- while investigation this group was found to be of Noida school students, police have identified 27 students from the group. A student of class 12th aged 18 years has been arrested.

3. Chinmayi Sripada (famous south Indian Singer) case⁹ of Madras high court-

3.1. Facts- She is a well-known singer in south India and CEO of my entrepreneurial venture-blue elephant. To connect with her

fans she uses Twitter, Facebook, and Instagram. She suddenly started facing problems in twitter in which few individuals threaten to kill her, rape her, or assault her. Also, they have posted obscene pictures of her on different websites. Later she complained about this to cybercrime.

3.2. Held- In this petition it was requested to quash the complaint filed by the respondent i.e. Chinmayi Sripada was rejected and the petition was dismissed and High Court of Judicature of Madras directed the police to complete the investigation. This judgment was pronounced on 5th August 2019.

Social media's guidelines for cyberbullying-

1. Instagram guidelines-

1.1. Reporting harassment or bullying on Instagram¹⁰- If an account is made to harass or bully any person; or if a photo or comment is posted to harass or bully any person; or if you know someone is intending to be you or someone else on Instagram, kindly report it. Everything posted which would be against the community guideline of Instagram would be removed by Instagram.

1.2. Community guidelines of Instagram¹¹- One should never any such information on Instagram which is extremely personal or private. Any post or comment which spreads hate against any community, religion, sex, caste, or race is against the community guideline.

2. Facebook guidelines-

⁶The information technology Act, 2000

⁷Indian penal code, 1860

⁸ Mukesh Singh Sengar, Class 12 student was an admin of boislockerroom chat, arrested, <https://www.ndtv.com/delhi-news/bois-locker-room-some-members-of-schoolboys-instagram-chatroom-above-18-identified-2224026> (24th May 2020, 12:20 A.M.).

⁹ P.Saravanakumar vs State rep. by its and Chinmayi Sripada, CrI.O.P.No. 232 of 2013 (India).

¹⁰ Instagram, help centre, [https://help.instagram.com/377830165708421/?helpref=hc_fnav&bc\[0\]=Instagram%20Help&bc\[1\]=Privacy%20and%20Safety%20Center](https://help.instagram.com/377830165708421/?helpref=hc_fnav&bc[0]=Instagram%20Help&bc[1]=Privacy%20and%20Safety%20Center) (25th May 2020, 08:30 P.M.).

¹¹ Ibid.



2.1. Steps were taken when any person is getting bullied or harassed¹²- Always remember these 3 steps whenever you are getting bullied. Unfriend such person from your account; block that profile from your account; finally report that profile. There are some additional tips to prevent yourself from getting bullied. Never react to such a post or comment or message which is intended to harass or bully you; never keep it a secret, share with your family or teachers; always keep a screenshot of that post or comment or message. In case of imminent danger contact local authorities.

2.2. Special guidelines for parents and teachers- In case to keep an eye and keep your child or student from such harassment or cyberbullies kindly go to this website which provides you all guidelines which will help. [https://www.facebook.com/safety/bullying]

Provisions of cyberbullying in India-

There are several provisions related to anti-bullying in the Information technology Act, 2000 and 2008, and in the Indian Penal Code, 1860. Even after having provisions for cyberbullying India is facing many other problems in the Cyberbullying problem. It is because of a lack of enough provisions. Information technology Act, 2000 and 2008 have certain provisions related to anti-bullying are as follows-

Section	Explanation
66A ¹³	Sending offensive messages through communication services, etc.

66C	Punishment for identity theft.
66D	Cheating by impersonating someone's identity.
66E	Whoever intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person. "private area includes nudity or any obscene part of the body"
67	Publishing or transmitting obscene material in electronic form.
67A	Publishing or transmitting obscene material containing sexually explicit etc. in electronic form.
67B	Publishing or transmitting obscene material depicting children in sexually explicit etc. in electronic form.

Indian Penal Code, 1860 also includes provisions related to anti-bullying. All those provisions were not initially related to cyberbullying. These provisions are just related to the subject matter of the type of bully which is done on social media. Those provisions are as follow-

¹² Facebook, help center, https://www.facebook.com/help/116326365118751 (25th May 2020, 08:53 P.M.).

¹³ Section 66A has been struck down.zs3



Section	Explanation
499	Publishing defamatory material will attract the charges of defamation.
500	This section of IPC deals with Email abuse.
503	This section of IPC deals with sending threatening messages on Email.
509	This section of IPC deals with words, act, or gesture which is intended to insult the modesty of a woman.

1. Cyberbullying includes different crimes- It can include different crimes such as defamation, mental harassment, etc.
2. All juveniles are not of the same mindset- According to WebWise survey which was done in around 13 cities which included 2700 students and 83.5% were of 6-18 years.¹⁴ So it should be clarified in the special provisions about the age of majority in specific crimes committed through cyberbullying by juveniles. So that they do not have ‘juvenile card’ to get out of the legal proceedings.
3. India is the hub of cyber-attacks- Maximum cyber-attacks cases are been reported in India¹⁵, therefore our legislation should urgently insert the special provisions for cyberbullying in the Information technology Act.

Critical analysis of why we need special provisions for cyberbullying-

In India, the age of the majority is 18 years, and the age of marriage for males is 21 and for females its 18 years. As for the crime of Rape age of majority is 16 years the same way we should have the age of majority for different types of crimes.

Cyberbullying can be done by different methods and all those methods include different crimes, such as when someone posts any picture of someone which is intended to harass or bully such person can include the crime of defamation. So, we can't just identify any specific punishment for cyberbullying. There are some following reasons why we need to have special provisions for cyberbullying-

In the case of *Shreya Singhal vs Union of India*¹⁶ section 66A of Information technology Act, 2000 was held as unconstitutional which was “*Punishment for sending offensive messages through communication service, etc.—Any person who sends, through 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 to cause 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 to cause annoyance or inconvenience or to deceive or to mislead the*

¹⁴ 83.5 percent of kids from 6-18 years active on social media, <https://www.newindianexpress.com/cities/hyderabad/2017/may/10/835-per-cent-kids-from-6-18-years->

[active-on-social-media-1603038.html](https://www.newindianexpress.com/cities/hyderabad/2017/may/10/835-per-cent-kids-from-6-18-years-active-on-social-media-1603038.html) (27th May 2020, 12:27 A.M.).

¹⁵ Supra footnote 3

¹⁶ *Shreya Singhal vs Union of India*, A.I.R. 2015 S.C. 1523 (India).



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. Explanation.—For this section, terms —electronic mail and —electronic mail message means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message”

The Supreme court stated that certain terms in section 66A of Information technology Act, 2000 were too ambiguous and uncertain so it was declared as unconstitutional.

Section 66A was the only section that dealt with offensive messages and due to no substitution of this section, there has been a lot of cases in which justice is not delivered to the victim.

One such case of Karnataka high court is *Sri. Tajinder Pal Singh Bagga vs State of Karnataka*¹⁷, in this case, the victim was mass trolled on social media and also got offensive messages in which the victim was abused based on her caste and religion. People quoted that as she belongs from a downtrodden society so she deserved to be humiliated. She charged under section 3(1)(x) of SC/ST Act¹⁸ which is-

Sec 3- punishment for offenses of atrocities-

- (1) *whoever, not being a member of a scheduled caste or a scheduled tribe-*
 (x) *intentionally insults or intimidates with intent to humiliate a member of a Scheduled*

Caste or a Scheduled Tribe in any place within public view.

and section 66A¹⁹ of information technology Act, 2008 but she was not able to exercise section 66A as it was struck down in the case of *Shreya Singhal vs Union of India*²⁰ and therefore it this petition was dismissed by Karnataka high court and justice was not delivered to her.

Special provisions of cyberbullying have to be inserted by the central legislation so that victims in India don't suffer and a guilty person gets appropriate punishment. As still, we lack the provisions when someone is getting trolled or someone is getting body shaming. People have the defense of truth but speaking such truth is harassing and bullying someone, so there should be appropriate provisions that cover all the context related to cyberbullying.

Conclusion-

Since the start of the research paper cyberbullying term is been used everywhere and there are so many sources that tell us why we need special provisions for cyberbullying. After understanding the concept of cyberbullying and statistics of cyberbullying done in India by the bullies is increasing rapidly and there are so many cases pending and courts are making decisions based on 'Justice, equity and good conscience' and sometimes due to the lack in the victim of the provisions do suffer a lot. Hence, all the findings and analysis of those findings indicate that we are in the phase where good laws related to cyberattacks and especially against cyberbullying is very essential.

¹⁷ Sri. Tajinder Pal Singh Bagga vs the State of Karnataka, Crl.P 1117 of 2016 (India).

¹⁸ The scheduled castes and scheduled tribes (Preventions of Atrocities) Act, 1989

¹⁹ Supra footnote 16

²⁰ Ibid.