

CYBERBULLYING AND INDIAN LEGAL REGIME: AN OVERVIEW

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Introduction:

The word cyberbullying did not even exist a decade ago, yet the problem has become a pervasive one today.¹ Kids have been bullying each other for generations. The latest generation, however, has been able to utilize technology to expand their reach and the extent of their harm. This phenomenon is being called cyberbullying defined as: "willful and repeated harm inflicted through the use of computers, cell phones, and other electronic devices." Basically we are referring to incidents where adolescents use technology to harass, threaten, humiliate, or otherwise hassle their peers. For example, youth can send hurtful texts to others or spread rumours using smartphones or tablets. Teens have also created web pages, videos, and profiles on social media platforms making fun of others. With mobile devices, adolescents have taken pictures in a bedroom, a bathroom, or another location where privacy is expected, and posted or distributed them online. Others have recorded unauthorised videos of their peers and uploaded them for the world to see, rate, tag, and discuss. Still others are embracing anonymous apps or the interactive capabilities on gaming networks to tear down or humiliate others.² Bullying and hostility among children is a longstanding and pervasive social issue (Jones, Manstead, & Livingstone, 2011). Cyberbullying is the unfortunate by-product of the union of adolescent aggression and electronic communication and its growth is giving cause for concern (Hinduja & Patchin, 2008).³

¹ Charles E. Notar, Sharon Padgett, Jessica Roden, Cyberbullying: A Review of the Literature, *Universal Journal of Educational Research* 1 (1) : 1-9, 2013, available of <https://files.eric.ed.gov/full text/EJ 1053975.pdf> accessed on 5.5.2018.

² Sameer Hinduja & Justin W. Patchin, Cyberbullying: Identification, Prevention, & Response, available of [https://cyberbullying.org/Cyberbullying- Identification- Response- 2018.pdf](https://cyberbullying.org/Cyberbullying-Identification-Response-2018.pdf), accessed on 5.5.2018.

³ Charles E. Notar, Sharon Padgett, Jessice Roden, Cyber- bullying: A Review of the Literature, *Universal Journal of Educational Research* 1 (1). 1-9, 2013, available of <https:// files. eric. ed.gov/full text/EJ 1053975. pdf>, accessed on 5.5.2018.

There are many detrimental outcomes associated with cyberbullying that reach into the real world. First, many targets report feeling depressed, sad, angry, and frustrated. Those who are victimized by cyberbullying also reveal that they are often afraid or embarrassed to go to school. In addition, research has revealed a link between cyberbullying and low self-esteem, family problems, academic difficulties, school violence, and various delinquent behaviours. Finally, cyberbullied youth also report having suicidal thoughts, and these have been a number of examples in the United State and abroad where youth who were victimized ended up taking their own lives.⁴

It is a recalcitrant problem in U.S. schools. However, in a recent global survey, a worrying number of Indian teenagers were found to bully classmates and others in their age group. The study reveals that the number of those who admit to bullying online is higher in India than in countries such as the US, Singapore and Australia. Internet interactivity among them is also highly pronounced here. Intel Security's "Teens, Tweens and Technology Study, 2015" showed that 81 per cent of Indian respondents aged between eight and 16 were active on social media networks- According to reports, as many as 52 per cent of Indian minors confirmed that they had bullied people over social media. "Cyberbullying is a fast-growing trend that Indian parents and educators can't afford to ignore", Melanie Duca, Marketing director, consumer- Asia Pacific at Intel Security, told reporters.⁵

The present study explores this universal and comparatively recent phenomenon of cyberbullying in all its hues including global practices, legislations and existing laws to curb this menace. It also encompasses the Indian scenario with special emphasis on Indian legal regime and its capability to exercise an effective control over cyberbullying. It also focuses on the preventive measures.

Cyberbullying: Definition

Cyberbullying has no single definition. The absence of a universal cyberbullying definition is due to a lack of conceptual clarity (Vandebosch & Van Cleemput, 2008 : Tokunaga, 2010)⁶ .

⁴ Sameer Hinduja & Justin W. Patchin, Cyberbullying: Identification, Prevention, & Response, <https://cyberbullying.org/cyberbullying-Identification-Prevention-Response-2018.Pdf>, accessed on 5.5.2018.

⁵ Ullekh NP, Cyber Bullies, The New Adolescent Terror In India And How to Stop IT, Open, 20 June, 2016,p. 27

⁶ Charles E.Notarr, Sharon Padget, Jessica Roden, Cyberbullying: A Review of the Literature p.2

However, every definition has one commonality. Cyberbullying is a category of bullying that occurs in the digital realm/ medium of electronic text (Wong-Lo & Bullock, 2011)⁷. According to Parry Aftab, the executive director of WiredSafety, a site where victims can receive one-on-one assistance when they have been bullied online, Cyberbullying is "any cyber-communication or publication posted or sent by a minor online, by instant message, e-mail, website, diarysite, online profile, interactive game, handheld device, cellophone, game device, digital camera or video, webcam or use of any interactive digital device that is intended to frighten, embarrass, hurt, set up, cause harm to extort, or otherwise target another minor" (WiredSafety). She further says that her short definition of "cyberbullying" is "when a minor uses technology as a weapon to intentionally target and hurt another minor, It's cyberbullying". (WiredSafety) "Cyberbullying" as WiredSafety defines it, needs to have minors on both sides, as target and as cyberbully. If there aren't minors on both sides of the communication, it is considered "cyber harassment", not cyberbullying.⁸

The definition of cyberbullying was broadened from an Indian perspective by eminent criminologist, Dr. K. Jaishankar (2009) as:

“Abuse/harassment by teasing or insulting victim’s body shape, intellect, family background, dress sense, mother tongue, place of origin, attitude, race, caste, class, name calling, using modern telecommunication networks such as mobile phones (SMS/MMS) and Internet (chat rooms, emails, notice boards and groups)⁹.”

Electronic bullying, online bullying, and/ or cyberbullying are new methods of bullying involving forms of bullying defined as harassment using technology such as social websites (MySpace, Facebook etc.), email, chat rooms, mobile phone texting and cameras, picture messages

⁷ *Ibid*

⁸ Bonnie Bracey Sutton, Cyberbullying: An Interview with Parry Aftab, Posted on February, 17, 2011, available of <https://etc.journal.com/2011/02/7299/>, accessed on 5.5.2018.

⁹ Devarati Halder, K. Jaishankar, Cyber Crimes Against Women In India, SAGE Publications, New Delhi, 2017, p.49.

(including sexting), IM (instant messages), and/or blogs (Miller & Hufstedler, 2009; Beale & Hall, 2007).¹⁰

Cyberbullying : Different Forms¹¹

- Flaming.
 - Online "flights" using electronic messages with angry and vulgar language.
- Harassment
 - Repeatedly sending offensive, rude, and insulting messages.
- Denigration.
 - "Dissing" someone online. Sending or posting cruel gossip or rumours about a person to damage his or her reputation or friendships.
- Impersonation
 - Breaking into someone's account, posing as that person and sending messages to make the person look bad, get that person in trouble or danger, or damage that person's reputation or friendships.
- Outing and Trickery.
 - Sharing someone's secrets or embarrassing information or images online.
 - Tricking someone into revealing secrets or embarrassing information, which is then shared online.
- Exclusion.
 - Intentionally excluding someone from an online group, like a "buddy list".
- Cyberstalking.
 - Repeatedly sending messages that include threats of harm or are highly intimidating.
 - Engaging in other online activities that make a person afraid for her or her safety.

Cyberbullying: Reasons

¹⁰ Charles E. Notar, Sharon Padgett, Jessica Roden, Cyberbullying: A Review of the Literature , Universal Journal of Education Research 1(1) : 1-9, 2013, p.2

¹¹ Nancy Willard, Cyberbullying and Cyberthreats- Effectively Managing Internet Use Risks in Schools, available at <https://dl.acm.org/citation.cfm?id=1396222>, accessed on 5.5.2018.

According to Calvete, et al (2010) Cyberbullying was significantly associated with the use of proactive aggression, justification of violence, exposure to violence, and less perceived social support of friends. Other reasons for cyberbullying are: envy, prejudice and intolerance for disability, religion, gender, shame, pride, guilt, and anger. (Hoff & Mitchell, 2009; Jones, Manstead, & Livingstone, 2011).¹²

Besides, there may be additional reasons for cyberbullying, such as (i) Anonymity Approval, (ii) Boredom feel Better, (iii) Instigate Jealousy, (iv) No perceived consequences Projection of feelings, (v) Protection Reinvention of self, (vi) Revenge. These particular reasons can explain the use of cyberbullying by those who would not confront their victim face-to face.¹³

According to Mesch (2009) Cyberbullying emerges most commonly from relationship problems (break-ups, envy, intolerance, and ganging up); victims experience powerfully negative effects (especially on their social well-being); and the reactive behaviour from schools and students is generally inappropriate, absent, or ineffective (Hoff & Mitchell, 2009). There is a significant correlation between becoming a cybervictim and loneliness among adolescents according to Sahin (2012). Studies show that electronic bullying peaks in middle school.¹⁴

Cyberbullying is a growing problem because increasing number of kids are using and have completely embraced online interactivity. Bullying has spread to the computer because it provides a greater advantage for the bully. The bully can make anonymous attacks, inflict greater psychological harm, harass a victim at home, and rest easy knowing that most authority figures will be unable to trace or stop the harassment. A victim, on the other hand, feels more vulnerable and alone. The victim also experiences emotional effects that generally last longer than a black eye (Anderson & Strums, 2007). Online aggression is not just traditional bullying with new tools. It is widespread, devastating, and knows no down time (Hinduja & Patchin, 2011)¹⁵

Undoubtedly, cyberspace is a minefield and teenagers- despite the great expectations of their parents - are not always able to draw the line. In recent years, most youths have been drawn

¹² Charles E. Notar, Sharon Padget, Jessica Roden, Cyberbullying: A Review of Literature, p.3.

¹³ *Ibid.*

¹⁴ *Ibid*, p.4.

¹⁵ *Ibid.*

to social media (such as Instagram, Snapchat, Musical.ly, Twitter, Tumblr etc.) and video-sharing sites (such as You Tube). This trend has led to increased reports of cyberbullying occurring in those environments.¹⁶ Among unpoliced sites, one that earned global notoriety was Ask.fm, a Latvian entity that has a user base of millions and is available in more than 50 languages. If a teen has a profile on the site, anonymous people can ask questions and even harass the person with the account. It continues to be hugely popular in the west as well as in India. It was blamed for the suicides of seven teenagers in mid-July. There is no doubt that the site enables cyberbullying especially because it lets people ask nasty questions anonymously.¹⁷

Roles in Cyberbullying:

Adolescents who socialize online have probably been involved in cyberbullying in some form (Trolley et al., 2006; Willard, 2005) as cited in Mason, 2008)¹⁸ There are six different roles identified throughout the literature:¹⁹

- (i) Entitlement bullies: are individuals who believe they are superior and have the right to harass or demean others, especially if the person is different.
- (ii) Targets of entitlement bullies: are individuals who are picked on because bullies believe that they are different or inferior.
- (iii) Retaliators: are individuals who have been bullied by others and are using the internet to retaliate.
- (iv) Victims of retaliators: are individuals who have been bullying others but are now receiving the cruelty of being cyberbullied.
- (v) Furthermore, bystanders who are part of the problem: are individuals who encourage and support the bully or who watch the bullying from the sidelines but do nothing to help the victim.

¹⁶ Sameer Hinduja & Justin W. Patchin, *Cyberbullying: Identification, Prevention, & Response*.

¹⁷ Ullekh NP, *Open*, 20 June 2016, p. 30.

¹⁸ Charles E. Notar, Sharon Padgett, Jessica Roden, *Cyberbullying: A Review of the Literature*, p.4.

¹⁹ *Ibid.*

- (vi) Finally, bystanders who are part of the solution: are individuals who seek to stop the bullying, protest it, and provide support to the victim. (Trolley et al., 2006, Willard, 2005 as cited in Mason, 2008).

An alternative explanation is that historically less powerful groups may be more powerful (or at least not disadvantaged) when on-line. Minority groups (irrespective of race or ethnicity), although potentially unpopular on the schoolyard, may not be exposed as marginal on the Internet. Moreover, youth who may not stand up for themselves on the playground may be more likely to do so via computer communication if the perceived likelihood of retaliation is minimized. Targets may be "turning the table" on bullies because of the equalizing characteristics of the Internet and its ability to preempt the relevance of physical intimidation. That is, victims of traditional bullying may seek retribution through technological means (e-mail, instant message, or cellular phone text message) by contacting those aggressors who have harassed them.²⁰

Humphrey and Symes (2010) stated students with exceptionalities are bullied of all grade levels, as well as in and away from school. Students with exceptionalities may be bullied directly or indirectly.²¹

In a recent survey of fifth-grade students, Estell et al. (2009) found that academically gifted students and general education students were less likely than students with mild disabilities to be viewed as bullies by their peers. Teachers also rated academically gifted students as less likely to bully or be bullied than both general education students and students with mild disabilities. Social isolates were the most likely to be bullied. Whereas gifted students are less likely to bully or be bullied.²²

Gender Difference in Cyberbullying:

As far as gender differences in response to cyberbullying is concerned there is no uniform finding. Gender research differences in cyberbullying present inconsistent findings (Tokunaga, 2010). Gender has been studied from 2007-2010 and some of the studies show that females are

²⁰ *Ibid*, p.5

²¹ *Ibid*.

²² *Ibid*, p.5

more likely to be victims of cyber-bullying.²³ Adams (2010) found adolescent girls are more likely to have experienced cyberbullying than boys - 25.8% versus 16%, respectively. Erdur-Baker (2010) concluded that when compared to female students, male students were more likely to be bullies and victims in both physical and cyber environments.²⁴ Cyberbullying is the main risk for females. Physical threats and aggression are more directed at males (Bosworth, Espelage & Simon, 1999)²⁵

Cyberbullying in Global Perspective:

1. U.S.A.

A watershed study, titled " An examination of Cyber-bullying and Social Media Use in Teens: Prevalence, Attitudes and Behaviors" led by professor Martha Mendez-Baldwin, a psychologist at Manhattan College, U.S. has revealed that the participants (359 adolescents) spend an average of 3 hours a day on their computer, tablet, smartphone for things other than schoolwork; and that most use 2 or more social media sites. Results also revealed a significant relationship between the number of social networks used and the amount of cyberbullying they have experienced or been exposed to. Furthermore, results demonstrate that parents are key factors in their teens' experience and exposure to cyber-bullying.²⁶ There are atleast four examples in the United States in which cyberbullying has been linked to the suicide of a teenager. These include the suicide of Ryan Halligan and the suicide of Megan Meier, the latter of which resulted in United States Vs. Lori Drew. Incidents like these are popping up all around the country, prompting States to add online harassment protocols to their school safety policies. To address the problem, at least 18 states have passed criminal laws on cyberbullying, according to Justin W. Patchin, co-director of the Cyberbullying Research Centre and a criminal justice professor at the University of Wisconsin.²⁷

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Martha Mendez-Baldwin, Krista Cirillo, Matthew Ferrigno, Victoria Argento, *Journal of Bullying and Social Aggression*, Volume 1, Number 1, 2015, available at sites.tamuc.edu/bullyingjournal/article/cyber-bullying-among-teens/, accessed on 5.5.2018.

²⁷ David L. Hudson Jr., *Is Cyberbullying free speech?* *ABA Journal*, available at www.abajournal.com/In-Depth/Reporting , accessed on 19.1.2018.

But free-speech advocates say the breadth and vagueness of the statutory language in many of these laws puts them in jeopardy.²⁸ In 2009, North Carolina legislators passed a criminal cyberbullying statute. The law makes it illegal for any person to use a computer or computer network to "post or encourage others to post on the internet private, personal or sexual information pertaining to minors" with the intent to intimidate or torment a minor. Robert Bishop faced misdemeanor charges under North Carolina's cyberbullying law for posting negative comments under a sexually themed photo of a high school classmate in Alamance County. Bishop allegedly called his classmate "homophobic" and "homosexual", and used vulgarity toward the classmate in other posts. Bishop was convicted in state district court and state superior court. The North Carolina Court of Appeals affirmed the superior Court conviction and rejected Bishop's First Amendment challenge to the law. According to the appeals court, the law regulated conduct, not speech. Even if the law reached speech, its impact was only incidental. On further appeal, the North Carolina Supreme Court recognized that the law directly criminalizes speech. "Posting information on the internet- whatever the subject matter- can constitute speech as surely as stapling flyers to bulletin boards or distributing pamphlets to passersby activities long protected by the First Amendment", the high Court wrote. The Court also determined in *State Vs. Bishop* that this criminal law that targets speech has to pass strict scrutiny, the highest form of judicial review. The North Carolina high Court reasoned that states have a compelling interest in protecting minors" from physical and psychological harm". However, the Court determined that the law had many problems. The court noted that the law did not require that the subject of an online post suffer an injury as a result of the post. Thus, the law" sweeps far beyond the state's legitimate interest in protecting the psychological health of minors." The Court also noted that the law failed to define the key terms "intimidate" or "torment", which the state contended should be defined as "to make timid, fill with fear" and "to annoy, pester or harass, respectively" "The protection of minors' mental well-being may be a compelling governmental interest, but it is hardly clear that teenagers require protection via the criminal law from online annoyance", the court wrote. "However laudable the State's interest in protecting minors from the dangers of online bullying may be, North Carolina's cyberbullying statute 'creates a criminal prohibition of alarming breadth.'" According to James C. Hanks, author of *School Bullying: How Long Is the Arm of the Law?*, it is not the first time a

²⁸ *Ibid.*

court has invalidated a cyberbullying law. The New York Court Of Appeal invalidated Albany Country's cyberbullying law in 2014 in People Vs Marquan M. The Court wrote that "the text of Albany County's law envelops far more than acts of cyberbullying against children by criminalizing a variety of constitutionally protected modes of expression." According to Patchin," Eventually, the U.S. Supreme Court will have to address the constitutionality of a criminal cyberbullying law."²⁹

In the meanwhile, to address the problem, H.R. 1966 was introduced in the 111th Congress. This bill would amend title 18 of the United States Code by making cyberbullying a federal crime with a punishment of up to two years of imprisonment and/or a fine."³⁰

2. European Union:

As per the EU kids Online Survey of 9 to 16 year-olds and their parents in 25 European Countries of 2011,³¹ Across Europe, 6% of 9-to-16 year-olds who use the internet report having been bullied online while only half as many (3%) confess to having done bullied others. Since 19% have been bullied either online and/or offline, and 12% have bullied someone else either online and/or offline, it seems more bullying occurs offline than online.³²

It appears that there is no direct law to deal with cyberbullying, yet Convention on Cybercrime, 2001, European Treaty Series No. 185,³³ deals with many facets of cyberbullying. Article 2 of the Convention restrains a person to have illegal access to the whole or any part of a computer system without right. Article 3 prohibits intentional interception not rightfully, made by technical means, of non-public transmission of computer data to, from or within a computer system. Article 4 speaks of Data interference when intentionally committed, including damaging, deletion, determination, deterioration, alteration, or suppression of computer data without right.

²⁹ *Ibid*

³⁰ Alison M. Smith, Protection of Children Online: Federal and State Laws Addressing Cyber harassment and Cyberbullying, Report Number CRS Report for Congress, available at <https://www.hsdl.org/? abstract & did=735549>, R.L 34651, accessed on 5.5.2018.

³¹ Pattern of risk and safety online, August 2011, LSE Research Online, available at <http://eprints.lse.ac.uk/39356/>, accessed on 17.5.2018

³² *Ibid*, p. 42.

³³ Convention on Cybercrime, 2001, European Treaty Series, Budapest, 23.XI.2001, available at www.europarl.europa.eu/meetdocs/2014_2019/...../dv/...../7_conv_budapest_en.pdf, accessed on 17.5.2018.

Further, Article 5 restrains interferences in the functioning of computer system intentionally by imputing, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.

Article 6 specifically deals with intentionally misusing of computer devices. Article 9 of this convention deals with offences related to child pornography. Article 9 (1) (C) deals with distributing or transmitting child pornography through a computer system and Article 9 (1) (d) is concerned with procuring child pornography through a computer system for oneself or for another person. Thus, this convention has put forward specific offences covering cyberbullying which can be incorporated into various laws of the countries within European Union specifically and by rest of the countries also.

3. Australia:

A nationwide study, known as, "The Australian Covert Bullying Prevalence Study,"³⁴ was conducted in 2009 in which cross-sectional quantitative national data was collected from 7418 students aged 8 to 14 years and 456 school staff. According to this study, the vast majority of year 4 through year 9 students had not experienced cyber bullying, with only 7-10% of student reporting they were bullied by means of technology over the school term. Slightly higher rates of cyber bullying were found among secondary students and students from non- Government Schools. Further, cyber bullying was not observed by or reported to as many staff members as other forms of bullying, but was not rare (20%). More internet- based bullying through social networking sites was reported than through mobile phones, especially as students get older. Cyber bullying appears to be related to age (or access to technology), with older students more likely to engage in cyber bullying than younger students.

4. China:

Cyberbullying has become a common occurrence among adolescents worldwide; however, it has yet to receive adequate scholarly attention in China, especially in the mainland. In an study, "Cyberbullying and its risk factors among Chinese high school students," by Zong Kui Zhou et al investigated the epidemiological characteristics and risk factors of cyber bullying, utilizing a

³⁴ Child Health Promotion Research Centre, Edith Cowan University, May 2009, available at Research Online: <http://ro.ecu.edu.au/ecuworks/6795>, accessed on 17.5.2018.

sample of 1,438 high school students from central China. Findings revealed that cyberbullying among high school students in the heartland of Central China is relatively common with 34.84% of participants report having bullied someone and 56.88% reported having been bullied by online. Significant gender differences were found, suggesting that boys are more likely to be involved in cyberbullying both as perpetrators and victims. Students with lower academic achievement were more likely to be perpetrators online than were students with better academic achievement.³⁵

5. Japan

For many Japanese children, a mobile phone is a social lifeline they can't imagine being without. In a recent survey by the Hyogo Prefectural Board of Education, Ten percent of high school students said they have been harassed through emails, websites or blogs. Most cyber bullying in Japan, where 96 percent of high school students have their own mobile phone, is conducted through mobile phones with internet and emailing capabilities.³⁶

6. Indian Scenario:

In December 2014, an interesting duel on social media was witnessed in Bombay between the great granddaughter of the late film director Ramanand Sagar and daughter of actress-socialite Pooja Bedi which was connected with cyberbullying. According to the Sagar scion, the problem started four years ago when Bedi's daughter enrolled in the same school as her daughter's. Her daughter's group of four girls broke away from her and joined Bedi's daughter and they started bullying her girl. These girls started abusing her on social networking sites which forced her to intervene. According to her the school management didn't react despite complaints, even as her daughter was slipping into depression. She tried to speak to Pooja Bedi but her daughter apologized. The harassment, however, started again after a few days. She shifted her daughter to another college but her character assassination went on. This time around, the daughter of another actor joined in the cyberbullying of her girl. She further alleged that Bedi's daughter and her friends

³⁵ Zong Kui Zhou, Hanying Tang, Yuan Tian, Hua Wei, Feng Zuan Zhang, Chelsey M. Morrison, Cyberbullying and its risk factors among Chinese high school students, available at <http://journals.sagepubs.com/doi/pdf/10.1177/0143034313479692>, accessed on 17.5.2018.

³⁶ Cyberbullying bedevils Japan, November 12, 2007, available on <https://www.smh.com.au/news/world/cyberbullying-dedevils-Japan/2007/11/12/1194766557213.html>, accessed on 14.5.2018.

used her girl's facebook pictures and wrote rubbish about her on social networking sites. Bedi's daughter and her friends uploaded the content on a website. On filing a complaint about the same, the websites managers promised to block the senders. In this matter, the mothers and other family member of both the sides joined the fray and complaint was lodged from both the sides to the police. According to press report³⁷, the police lodged the case under Sec.12 of the POCSO Act and Section 500 (defamation), 506 (criminal intimidation) and 509 (word, gesture or act intend to insult the modesty of women).The newspaper did not name the girls, both aged 17. The fight between the girls escalated into a slanging match between their mothers. Here it is pertinent to note that the police did not register the case under the corresponding sections of the Information Technology Act, 2000 as amended in the year 2008-like sec. 67, sec.72 and Sec. 66-A which could have been useful in dealing with cyberbullying related activities through Internet and the use of social media platform.

A New Delhi girl, Sharanya, was a happy-go-lucky, cheerful girl until she read a few whatsApp messages on her best friend's phone. In between misspelt text and plenty of emoticons, there were some "disgusting things" written about her. She stopped talking and had hardly slept a wink. It took her several months of counselling to overcome the shock and humiliation. In another school in Central Mumbai, Amita, a 16-years old attempted suicide after a male classmate used a picture of hers at a party-taken while she was changing her clothes for a dance item- to blackmail her into having sex with him. This boy sent the girl her picture on Facebook Messenger and threatened to [make it] police. According to a senior member of the faculty of a school in Delhi, not only has bullying among students gone cyber, the incidence of victims' getting hospitalized or attempting suicide has gone up rapidly in India³⁸.

In India, the occurrence of online bullying is very high. A survey conducted by Microsoft Corporation in 2012, across 25 countries ranked India third in number of online bullying

³⁷ Nazia Sayed, Mumbai Mirror, Updated Dec. 19, 2014, available at <https://timesofindia.indiatimes.com> › ... › News › Pooja Bedi booked under POCSO Act, accessed on 32.5.2018

³⁸ Ullekh NP, Cyber Bullies , The New Adolescent Terror In India And How to Step It, OPEN, 20 June 2016, p.26-27.

cases reported.³⁹ According to the 2014 study conducted by the Internet security company. McAfee, "Half of the youth in India have had some experience with cyberbullying."⁴⁰ The 2016 Norton Cyber Security Insights Report states that 51% of parents around the world see online bullying as more likely than being bullied at school or work (49%).⁴¹ Such findings show the enormity of the situation caused by cyberbullying and it is clear that dealing with cyberbullying in India now is truly a challenge. According to a Union HRD Ministry Official, the sharing of MMS clips through cellphones and various phone related crimes had been in vogue as early as the 2000s. "However, things have gone cyber with the rapid increase in use of social networks among teenagers. Though most social networks have an age cap for registering, it is easy to beat such conditions. Whatsapp, Viber, Facebook and such platforms are being zealously used for the purpose of bullying," he says, emphasizing that while it was once easy to implement rules against 'physical ragging', cyber ragging can take place anytime and anywhere.⁴² In this regard it has been observed that many parents in urban India have no clue about what their children do online. Online relationship between teens could be meaningful and mutually fulfilling, but the risks of victimization are high as well. When it comes to relationships between teens, whatever their sexual orientation, there is a huge burden that comes from the need to respond quickly to messages, thanks to technology. Unlike in the past, there isn't much time to contemplate how to take a relationship forward. Breakups are far more common than what adults imagine. And the bitterness stays, which sometimes leads to cyberbullying and shaming attempts through the misuse of photos, past comments, and so on. From the internet to MMS to smartphones, we have come a long way. This is the world of Tumblr and Instagram and a bevy of other platforms online.⁴³ Recently, a new online game called Blue Whale challenge which has been linked to teenage deaths from Russia to America, has cast its vicious net over the teenagers in ominous proportions. The structure of this 'game' is that over 50 days the victim is given around 50 self-harm tasks, designed to culminate in suicide. The player interacts with someone in the virtual world who threatens with the challenges but in a thrilling way. This game has reportedly caused the death of a number of teenagers in Urban

³⁹ Gokul Chandrasekhar, Cyberbullying: Laws and Policies in India, available at <https://www.parentcircle.com/article/cyberbullying-laws-and-policies-in-India/>, accessed on 5.5.2018.

⁴⁰ *Ibid.*

⁴¹ *Ibid*

⁴² Ullekh NP, Cyber Bullies, The New Adolescent Terror In India and How To Stop It, Open, 20 June 2016, p.26.

⁴³ *Ibid*, p.30

India. India's IT ministry has now directed top internet platforms like Google and Facebook to remove all links to the online game.⁴⁴ Similarly, a new social media rage, Sarahah ('honesty' in Arabic), the 'honest app', is fast becoming a tool of cyberbullying. Though the app lets its users receive and send 'constructive feedback' to and about each other anonymously, Sarahah has been criticized for enabling cyberbullying.⁴⁵ College students in Haldwani (Uttarakhand), terming the app as a killjoy, said that they thought to be a platform for honest feedback is nothing but a pestering tool.⁴⁶ Psychologists have expressed their fear over the misuse of the app not just for cyber bullying but also for disturbing religious and social harmony.⁴⁷ It remains to be seen if this app can continue to keep its anonymous nature intact in the face of abuse and the harassment machine that its users may turn into.⁴⁸

In order to deal effectively with the challenge of cyberbullying in India, there is a lack of an appropriate and comprehensive legal mechanism. The IT Act, 2000 does not include any provisions relating to cyberbullying. It mentions only two kinds of offences in this regard. One, publishing of information which is obscene (Section67). And two, breach of confidentiality and privacy (Section72). Further, there are no universal guidelines or regulations for schools to prevent bullying or cyberbullying.⁴⁹

Here, Section 67⁵⁰ of the I.T. Act prescribes punishment for publishing or transmitting obscene material in electronic form. Anyone who does it, on first conviction, shall be punished

⁴⁴ Editorial, Times of India, dt. 17.8.2017

⁴⁵ Divya Rajagopal, Awkwardly Yours, Aap Ki Dost, Economic Times, dt. 18.8.2017.

⁴⁶ Vineet Upadhyay, 'Sarahah' turns harassment tool for U'Khand's teen girls, Times of India, dt. 22.8.2017.

⁴⁷ *Ibid.*

⁴⁸ Divya Rajagopal, Awkwardly Yours, Aap Ki Dost, Economic Times, dt. 18.8.2017

⁴⁹ Gokul Chandrasekhar, Cyberbullying: Laws and Policies in India, available of <https://www.parentcircle.com/article/cyberbullying-laws-and-policies-in-india/>, accessed on 5.5.2018.

⁵⁰ Sec. 67. [67. 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 five lakh rupees 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 five which may extend to ten lakh rupees.

Sec. 72. [72. Penalty for breach of confidentiality and privacy.- Save as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuance of any of the powers conferred under this Act rules or regulations made there under, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with

with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees. This punishment may extend further in cases of second or subsequent convictions.

Further, Section 72⁵¹ of the I.T. Act prescribes punishment for publishing or transmitting obscene material in electronic form. Anyone who does it, on first conviction, shall be punished with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees. . This punishment may extend further in cases of second or subsequent Conviction's.

Here, it is pertinent to note that the Protection of Children from Sexual Offences Act, 2012 or POCSO Act, 2012 broadened the scopes of the law when it comes to sexual offences against children. In cases of sexual offences targeting children in the internet, section 11 (ii) of the POCSO Act takes a serious step by prohibiting exhibiting of private body parts through digital communication devices, grooming or any attempt to groom the children for the purpose of creation or distribution of child porn materials sending sexually harassing comments to children. The POCSO Act also prohibits threatening of children of depicting any image which may show the child's own body part or his/her involvement in sexually explicit act with others through internet and digital communication technology. Section 13 of the POCSO Act further prohibits usage of children for creation of pornographic contents Section. 14 while prescribing punishment provides categories of sentences depending upon the process or modus operandi of usage of child towards creating the child porn materials.

imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

⁵¹ Section [11 (POCSO ACT). Sexual harassment.- A person is said to commit sexual harassment upon a child when such person with sexual intent,- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.- Any Question which involves "sexual intent" shall be a question of fact.

But neither POCSO Act, nor Section 67 B of the Information Technology Act particularly focuses on bullying. Section 66A of the I.T. Act prescribes punishment for sending offensive messages through ITC or DCT. Dr. Debarati Halder, in her paper titled " Children of internet era: A critical analysis of vulnerability of children in the darker sides of social media and whatsapp,"⁵² says that "it is unfortunate fact that Section 66A has been struck off in totality by the Supreme Court on 24.3.2015, but in my opinion if the provision was amended and each word of the provision was cleared, defined and explained by the Court, it may have provided a wonderful opportunity to regulate hate speech in the cyberspace as well as cyberbullying. But both POCSO and Information Technology Act must be taken together to cover the legal issues and creating positive policy guidelines for using social networking sites by children." ⁵³ Therefore, we need a strong and comprehensive cyber bullying law in Indian context where this problem is growing day-by-day.

Prevention of Cyberbullying:

Cyberbullying crosses all geographical boundaries. Online activity across a broad variety of devices has opened up the whole world to users. There are two primary challenges today that make it difficult to prevent cyber bullying. First, even though this problem has been around for almost two decades, some people still don't see the harm associated with it. The other challenge relates to who is willing to step up and take responsibility for responding to inappropriate use of technology. Parents often say that they don't have the knowledge or time to keep up with their kids' online behaviour, and that schools should be covering it in detail during class time and through other programming. Educators are often doing their part through policies, curricular, training, and assemblies, but sometimes don't know when and how to intervene in online behaviours that occur away from school but still involve their students. Finally, law enforcement is hesitant to get involved unless there is clear evidence of a crime or a significant threat to someone's physical safety. As a result, cyberbullying incidents either slip through the cracks, are dealt with too formally, are dealt with too informally, or are otherwise mismanaged. At that point, the problem behaviours can continue and even escalate because they aren't adequately or appropriately

⁵² available at <http://works.bepress.com/debarati-halder/3/download/> \accessed on 16.5.2018.

⁵³ *Ibid.*

addressed. Based on these challenges, we need to create an environment where all youth feel comfortable talking with adults about this problem and feel confident that meaningful steps will be taken to resolve the situation. We also need to get everyone involved- kids, parents, educators, counselors, youth leaders, law enforcement, social media companies, and the community at large. It will take a concerted and comprehensive effort from all stakeholders to make a meaningful difference in reducing cyberbullying.⁵⁴

(i) Role of Parents:

Parent involvement is key in preventing cyberbullying. For this reason, parents need to open the lines of communication with their children. Parents are encouraged to communicate with their children about Internet safety as well as monitor their child's social media use. It is critical that parents be aware of their teen's virtual worlds. Additionally, they are encouraged to monitor their child's activity through the various forms of technology, including cell phones and tablets. Furthermore, they must communicate with their children about the dangers of technology and cyberbullying.⁵⁵ Parents on the other hand, need sensitization too, regarding how and why to not let children use electronic communication devices as 'toys'.⁵⁶

Parents may also be able to contact the father or mother of the offender, and/or work with the Internet Service Provider, Cell Phone Service Provider, or Content Provider to investigate the issue or remove the offending material.⁵⁷

(ii) Role of Schools:

The most important preventive step that schools can take is to educate the school community about responsible use of their devices at all times. Students need to know that all forms of bullying are wrong and that those who engage in harassing or threatening behaviours will be

⁵⁴ Sameer Hinduja & Justin W. Patchin, *Cyberbullying: Identification, Prevention, & Response*, available at <https://cyberbullying.org/cyberbullying- Identification- Prevention- Response-2018.pdf>, accessed on 5.5.2018.

⁵⁵ Martha Mendez- Baldwin et al, *Cyberbullying Among Teens*, *Journal of Bullying and Social Aggression*, Vol. 1, Number 1, 2015, available at sites.tamuc.edu/bullyingjournal/article/cyber-bullying-among-teens/, accessed on 5.5.2018.

⁵⁶ Dr. Debarati Halder, cited in Gokul Chandrasekhar, *Cyberbullying: Laws and Policies in India*, available at <https://www.parentcircle.com/article/cyberbullying-laws-and-policies-in-india/>, accessed on 5.5.2018.

⁵⁷ Sameer Hinduja & Justin W.P. Patchin, *Cyberbullying: Identification, Prevention, & Response*.

subject to discipline. It is therefore essential to discuss issues related to appropriate online communications in various areas of the general curriculum. To be same, these messages should be reinforced in classes that regularly utilize technology. Cyberbullying incidents that occur at school- or that originate off campus but ultimately result in a substantial disruption of the learning environment-are well within a school's legal authority to intervene. Moreover, schools should come up with creative response strategies, particularly relatively minor forms of harassment that do not result in significant form. Overall, it is critical for educators to develop and promote a safe and respectful school climate-one marked by shared feelings of connectedness, belongingness, peer respect, morale, safety and even school spirit. A positive on-campus environment will go a long way in reducing the frequency of many problematic behaviours of school, including bullying.⁵⁸

(iii) Role of Law Enforcement Officers:

Law enforcement officers also have a role in preventing and responding to cyberbullying. The first need to be aware of ever-evolving state and local laws concerning online behaviours, and equip themselves with the skills and knowledge to intervene as necessary. Even if the behaviour doesn't appear to rise to the level of a crime, officers, should use their discretion to handle the situations in a way that is appropriate for the circumstances. For example, a simple discussion of the legal issues involved in cyberbullying may be enough to deter some youth from future misbehavior. Officers might also talk to parents about their child's conduct and express to them the seriousness of online harassment. Relatedly, officers can play an essential role in preventing cyberbullying from occurring or getting out of hand in the first place.⁵⁹

In Indian context, Parry Aftab, a U.S. based lawyer and internet safety expert, and the founder of WiredSafety, an organisation that aims to protect people from online perils, has visited India sometimes ago. "Considering the gravity of the situation, we are in the process of setting up shop in India," said Aftab. Further, Trisha Prabhu, a 15 year-old Indian American studying in Illinois, U.S.A, has designed an app "ReThink" for teens to stay safe online. This app

⁵⁸ Sameer Hinduja & Justice W. Patchin, *Cyberbullying: Identification, Prevention, & Response*.

⁵⁹ *Ibid.*

stops cyber bullying at the source, before the bullying occurs, before the damage is done. According to her, with "ReThink", adolescents change their mind 93 percent of the time and decide not to post an offensive message.⁶⁰

Conclusion:

Cyberbullying is the modern form of bullying which is performed with the help of internet. Teenagers use different platforms like Facebook, Twitter, Sarahah etc. for the purpose of cyberbullying. This vicious practice of cyber bullying is growing day-by-day and has encompassed the whole world. India is not untouched from this menace. The aftereffects of cyberbullying are more dangerous than that of traditional bullying in which teenagers are committing suicides also. The harsh reality in this regard is related to absence of effective and appropriate laws. Though worldwide, the laws against cyberbullying are in embryonic stage, yet in India there is almost complete absence of such laws. The Information Technology Act, 2000 had Sec. 66A which could be applicable to some extent in cases of cyberbullying. But the Supreme Court has declared that Section as unconstitutional. On the other hand, the problem of cyberbullying is growing very rapidly in India. Therefore, the first priority of the Govt. of India is undoubtedly to make laws to curb this vicious practice. However, the view is expressed by many experts in this field, simultaneously, that law alone is not sufficient to tackle this problem. In the words of Parry Aftab, Educators work independently from law enforcement, who work independently from social workers, mental health professionals and health professionals, who work independently from risk managers, instructional designers and technology providers. Unless and until we all work together and share what we know and our own unique perspectives, we will continue to fail. We need to share resources and expertise. The message is simple, unless all the stakeholders connected with this problem of cyberbullying unitedly work in tandem, the solution will not be within our reach.

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