

ROLE OF JUDICIARY IN CURBING CYBERCRIMES AGAINST WOMEN AND CHILDREN IN INDIA

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ABSTRACT

In India, the judicial system serves as a watchdog over the administration of justice and plays a critical part in reducing the number of cybercrimes committed against women. This is accomplished through offering legal remedies, establishing precedents, and ensuring that laws are carried out in an efficient manner. In order to combat online violence against women, the Supreme Court offers its authoritative interpretation of constitutional requirements and the legislation that are now on the books. It provides an interpretation of applicable laws, explains their scope and application, and ensures that such laws are effectively implemented in order to safeguard women's legal rights. The Supreme Court is responsible for establishing precedents in the legal system through its decisions, which are then used as a basis for other courts' and other government bodies' decisions. These precedents set legal criteria, definitions, and remedies for cybercrimes committed against women, thereby establishing consistency in the manner in which these offences are addressed. It takes an active role in the analysis and development of legal frameworks, working to ensure that these frameworks are both comprehensive and able to adapt to the ever-changing nature of cybercrime.

Keywords: Cybercrime against Women, Cyber Bullying, Child Pornography, Right to Privacy

INTRODUCTION

The advent of the digital age has given rise to the emergence of cybercrime, which poses a significant threat to multiple facets of our existence. The escalation of cybercrime directed towards women and children in India has emerged as a significant cause for apprehension in recent times. The proliferation of technology and the internet has provided perpetrators with novel opportunities to exploit, harass, and victimise susceptible individuals. Within this particular context, the significance of the judiciary's involvement in mitigating instances of cybercrime perpetrated against women and children is of utmost importance. The judiciary assumes a crucial function in the interpretation and implementation of legal statutes, guaranteeing equity, and protecting the interests and welfare of persons. The present study delves into the function of the Indian judiciary in tackling cybercrime perpetrated against women and children, with a focus on significant judicial pronouncements and guidelines that have contributed to the development of the legal framework and safeguarded the interests of the affected parties.

In **Mrs. X v. Union of India and ors.**ⁱ(2023) The High Court of Delhi, issued an order to the police to eliminate content that was unlawfully published on a pornographic website. Additionally, search engines were directed to de-index the content from their search results. The court also instructed all parties to take necessary measures to prevent any future publication of similar or identical content. Further, the Court emphasised the necessity of prompt and effective solutions for individuals affected by similar cases, while also highlighting the importance of reconciling the responsibilities of internet intermediaries with the entitlements of users. Additionally, the Court delineated the specific types of directives that a court can mandate in such instances.

The Indian courts have addressed several cases related to cyber stalking, which pertains to the persistent and unwanted online harassment or stalking of an individual.

The case of **Ritesh Sinha v. State of Uttar Pradesh**ⁱⁱ(2019) pertained to a sextortion incident wherein the accused had procured explicit photographs of the victim and subsequently resorted to blackmailing her. The matter was addressed by the Allahabad High Court. The court underscored that such conduct breaches an individual's entitlement to privacy and respect and found the defendant accountable for multiple charges, such as extortion and criminal coercion.

The case of **State of Kerala v. Rahul Pasupalan and Another** ⁱⁱⁱ(2019) pertains to a sextortion incident where the accused shared explicit videos of a woman without her consent. The Kerala High Court presided over the matter. The court acknowledged the gravity of the offence and found the accused culpable under multiple provisions of the Indian Penal Code, encompassing voyeurism and defamation.

The case of **Sabu Mathew George v. Union of India** ^{iv}(2018) pertained to the matter of online advertisements that promote sex determination tests and female foeticide. The Supreme Court has issued a directive to the government to implement measures for the regulation and monitoring of advertisements, as well as to ensure the strict enforcement of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, with the aim of preventing gender-based discrimination.

The case of **Shafhi Mohammad v. State of Himachal Pradesh** ^v(2018) pertained to the matter of privacy and the admissibility of electronic evidence, specifically sexually explicit videos. The Supreme Court conducted an examination of this issue. The court ruled that it is imperative to uphold privacy rights, and any unauthorised encroachment into an individual's private space, which includes the dissemination of explicit material without consent, constitutes a breach of privacy.

In the notable ruling of India **Justice K.S. Puttaswamy (Retd.) v. Union of India** ^{vi}(2017), the Supreme Court acknowledged the fundamental right to privacy as an inherent component of the right to life and personal liberty that is ensured by Article 21 of the Constitution of India. The aforementioned interpretation carries substantial ramifications in safeguarding the privacy rights of women in the digital realm.

While the focus of this case was primarily centred on the right to privacy, the verdict also addressed the matter of revenge pornography.

The Supreme Court has acknowledged the right to privacy as a fundamental right under the Indian Constitution in a significant ruling. During the discussion on the concept of privacy, the court recognised that the act of non-consensual dissemination of intimate images or videos, also referred to as revenge porn, is a severe infringement of an individual's privacy rights.

The court underscored that individuals possess a valid anticipation of privacy concerning their personal and intimate images. It is acknowledged that the dissemination of confidential

information without authorization can result in significant harm, such as emotional distress, damage to one's reputation, and infringement upon their dignity. The ruling emphasised the necessity of implementing legal measures to combat the issue of revenge pornography and safeguard individuals from violations of their privacy.

The ruling did not offer precise instructions or parameters regarding revenge pornography, but it established a basis for acknowledging the significance of privacy in addressing revenge pornography and raising awareness about the matter. This has facilitated subsequent legal advancements and discussions regarding the resolution of revenge porn and the provision of redressal measures for the affected individuals.

The Supreme Court of India, in its ruling on **Shreya Singhal v. Union of India** ^{vii}(2015), declared Section 66A as unconstitutional, highlighting the significance of safeguarding freedom of speech and expression on the internet. This case primarily addressed the constitutionality of Section 66A of the Information Technology Act. The ruling also emphasised the significance of safeguarding individuals from online harassment and abuse, which encompasses unsolicited explicit content.

The case of **Prajwala v. Union of India** ^{viii}(2015) is centred on the matter of child pornography and the dissemination of explicit material through the internet. The Supreme Court has issued directives to the government to implement appropriate measures, in collaboration with internet service providers and social media platforms, to block, remove, and prevent the dissemination of such material through various technological means. In this case, the Supreme Court of India issued a number of directives to the government aimed at tackling the problem of child pornography and the dissemination of explicit material over the internet.

In this case, an NGO named Prajwala filed a case requesting measures to address the issue of child sexual abuse material (CSAM) on the internet. The request was aptly addressed by the Supreme Court as it mandated that the government establish a centralised web portal for lodging complaints regarding CSAM. The portal will facilitate the transmission of relevant information to internet service providers (ISPs) for the purpose of blocking access to such websites. The court underscored the significance of implementing proactive monitoring and blocking measures to avert the spread of Child Sexual Abuse Material (CSAM). The court instructed the government to create a specialised reporting mechanism for individuals to report cases of child sexual abuse material (CSAM).

This mechanism would facilitate swift action and collaboration among the government, law enforcement agencies, and ISPs in removing objectionable content.

The Supreme Court also mandated the creation of specialised cybercrime cells in all states and union territories to address complaints pertaining to CSAM and to take appropriate measures against perpetrators.

The statement highlights the importance of providing specialised training to law enforcement officials to enable them to effectively address cyber crimes related to child sexual abuse.

The court acknowledged the cross-border nature of child sexual abuse material (CSAM) and emphasised the significance of global collaboration in effectively addressing this problem. The directive was for the government to engage in mutual legal assistance treaties (MLATs) and other agreements with foreign nations to facilitate the exchange of information and evidence concerning offences related to child sexual abuse material (CSAM).

The Supreme Court also emphasised the significance of public awareness and education in preventing and addressing CSAM. The directive mandates the government to organise campaigns and programmes aimed at educating the public about the potential dangers and repercussions of CSAM, as well as promoting responsible internet usage.

The objective of these instructions is to enhance the legal framework and enforcement mechanisms to address the dissemination of explicit content and safeguard minors against online sexual exploitation. The approach highlights the importance of cooperation among diverse stakeholders, such as governmental bodies, law enforcement agencies, internet service providers, and the general public, to effectively tackle this matter.

These cases demonstrate the judiciary's dedication to addressing hate speech directed towards women and safeguarding their dignity and rights. Speech that is discriminatory towards women can have a negative impact on their overall well-being and contribute to the perpetuation of gender-based discrimination and violence.

The case of **Vishakha v. State of Rajasthan**^{ix}(1997) holds significance in addressing the issue of sexual harassment of women in the workplace, including incidents that may transpire in the online realm, despite not being exclusively related to cyber crimes. The Vishakha Guidelines, established by the Supreme Court, provide a framework for the prevention and resolution of

sexual harassment. These guidelines have had an impact on subsequent legal developments in dealing with online harassment.

In the case of **Rajagopal v. State of Tamil Nadu**^x(1994), the Supreme Court acknowledged the inclusion of the right to privacy within the right to personal liberty as outlined in Article 21 of the Constitution. The ruling underscored the significance of safeguarding an individual's privacy, particularly in regards to personal relationships and intimacy.

In the case of **Rupan Deol Bajaj v. Kanwar Pal Singh Gill**^{xi}(1996), the Supreme Court acknowledged that stalking, whether conducted in person or through online means, constitutes a grave offence that infringes upon an individual's privacy and results in psychological distress. The court emphasised the importance of implementing rigorous measures to address the matter and safeguard the rights of individuals.

The aforementioned examples illustrate instances in which the Indian courts have demonstrated judicial activism and employed innovative interpretation in their handling of the IT Act. The objective of this action by the courts is to maintain the relevance and efficacy of the law in tackling the issues presented by cyber crimes and safeguarding fundamental rights in the digital sphere.

Likewise, Indian courts have rendered numerous verdicts pertaining to indecent messages transmitted through the internet. The case of *State of Maharashtra v. Ramdas Nayak* (1982) was addressed by the Supreme Court of India, wherein the matter of obscenity was discussed. The court ruled that the assessment of obscenity should be based on the perspective of an ordinary individual, taking into account the prevailing standards of the community. The court acknowledged that materials deemed obscene, which cater to lascivious interests or do not possess any artistic, literary, or scientific merit, are not safeguarded under the constitutional right to free speech and expression.

In the case of **Ajay Goswami v. Union of India**^{xiii}(2007), the Supreme Court analysed the matter of transmitting indecent messages through electronic communication. As per the Indian Penal Code (IPC), the act of transmitting lewd or indecent messages via email, SMS, or any other means is subject to legal consequences, as determined by the court. The court emphasised that the right to freedom of speech and expression is not applicable to speech that is considered obscene or offensive.

In **Yogesh Prabhu v. State of Maharashtra**^{xiii} case the defendant was penalised for the act of cyber-stalking based on the report filed by the cyber cell. The case presents a distinct instance of stalking, wherein a woman, who previously engaged in amicable conversations with the defendant, declined his advances, subsequently resulting in persistent stalking. The victim reported the matter to the cyber cell, leading to the defendant's conviction under Section 509 of the Indian Penal Code in conjunction with Section 66E of the Information Technology Act.

In **State of Tamil Nadu v. Suhas Katti**^{xiv}, the defendant disseminated derogatory and indecent messages pertaining to the aforementioned complainant through Yahoo messenger groups, thereby causing harm to her reputation and impugning her sense of propriety. The defendant allegedly transmitted electronic mail messages that were obtained through a fabricated electronic mail account registered under the identity of the complainant. The act of disseminating messages led to the receipt of vexatious phone calls by the target. The phone calls were made under the assumption that the individual in question was engaged in solicitation for sex work. The individual who was subjected to harassment reached a point of dissatisfaction and proceeded to take action by lodging a formal complaint against the perpetrator. The defendant was apprehended and maintained his denial of culpability, but the court found accused guilty of offences under Section 469, Section 509 IPC and Section 67 of Information Technology Act, 2000.

In **Shamsher Singh Verma Vs State of Haryana**^{xv} the High Court denied to exhibit the Compact Disc that was placed before the court for defence and to get the same proved by the Forensic Science Laboratory, the accused brought an appeal to the Supreme Court (SC). The Supreme Court came to the conclusion that a Compact Disc is also a document and is therefore admissible. Furthermore, the accused, complainant, or witness are not required to personally acknowledge or reject a document in order to comply with the requirements of Section 294 (1) of the Criminal Procedure Code.

In **State Vs Jayanta Das**^{xvi}(2017) (Odisha) the convict was the first-time offender but he has been convicted by the court and opined that it is important to acknowledge that criminal intent should not be underestimated. The offender has perpetrated an act that is alarmingly frequent in its manifestation of reckless behaviour. Further court was of the opinion that the issue of women's vulnerability and safety is a significant concern within the realm of criminal law. In

instances where women are rendered defenceless in the realm of cyberspace, it is incumbent upon the court to intervene and provide necessary assistance.

CONCLUSION

In conclusion, the Supreme Court has consistently emphasised the significance of safeguarding the dignity and reputation of women in online environments. It acknowledges that cyber offences, including but not limited to revenge pornography, cyberbullying, and internet defamation, have the potential to significantly affect a woman's mental health and reputation.

The court has emphasised the significance of obtaining consent in online interactions and the necessity of preventing cyber harassment. It is established that unsolicited sexual advances, offensive messages, or any other form of unwanted communication online can constitute harassment and may have legal consequences.

The Supreme Court has articulated concerns regarding cyberbullying and its potential adverse effects on the mental health and overall wellness of minors and young adults. The protection of children from online harassment, abuse, and exploitation has been underscored as a responsibility of the government, internet service providers, and other relevant stakeholders.

The Supreme Court has emphasised the obligation of intermediaries, such as social media platforms and internet service providers, to prevent and address cybercrimes against women. It is established that these intermediaries are obligated to expeditiously remove or obstruct objectionable content and collaborate with law enforcement agencies to prevent the dissemination of offensive or harmful material.

The Supreme Court has mandated the adoption of efficacious measures to guarantee the security of women in the digital realm. The directive mandates that the government and law enforcement agencies establish cybercrime cells, dedicated helplines, and reporting mechanisms to facilitate the reporting of cybercrimes and to take prompt action against the offenders.

The guidelines and principles established by the Supreme Court are crucial in safeguarding the cyber rights of women in India. The statement emphasises the importance of implementing

strong legal frameworks, conducting awareness campaigns, and fostering collaborative efforts to establish a secure and protected digital space for women.

The significance of the judiciary in mitigating cybercrime perpetrated against women and children in India is of utmost importance. The judiciary has significantly influenced the legal framework and safeguarded the welfare of victims through its adjudications, construals, and mandates. The judiciary's proactive stance in acknowledging the severity of cybercrime and its effects on the well-being of women and children has played a crucial role in tackling this dynamic hazard.

The judiciary's dedication to preserving justice, protecting rights, and advancing a more secure digital environment has resulted in notable progress in the fight against cybercrime. The judiciary has played a pivotal role in fortifying the legal framework and facilitating the efficacious execution of laws pertaining to cyber offences by means of construing extant legislation in a manner that encompasses such offences and by providing guidance to governmental and law enforcement entities.

Notwithstanding the affirmative measures implemented by the judiciary, obstacles endure. The dynamic and adaptive nature of cybercrime necessitates a continuously evolving approach. Sustained endeavours are required to augment consciousness, skill development, and cooperation among diverse actors, encompassing the judiciary, law enforcement entities, governmental institutions, and non-governmental organisations.

ENDNOTES

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- ⁱ 2023 DHC 2806 W.P. (CRL) 1505/2021
ⁱⁱ (2019) 8 SCC 1, AIR 2019 SC 3592
ⁱⁱⁱ Crime No.2242 of 2020 of Kadakkavoor Police Station
^{iv} (2018), 3 SCC 229
- ^v 2018 Latest Caselaw 51 SC, SLP (CRL.) No.2302 of 2017
^{vi} Writ Petition (Civil) No. 494 of 2012, (2017) 10 SCC 1
^{vii} AIR 2015 SC 1523
^{viii} 2009 Latest Caselaw 231 SC
^{ix} (1997) 6 SCC 241
10 1994 SCC (6) 632
- ^{xi} 1996 AIR 309, 1995 SCC (6) 194
^{xii} Writ Petition (civil) 384 of 2005
^{xiii} C.C. No. 3700686/PS/2009.
^{xiv} C No. 4680 of 2004
^{xv} 2015 SCC online SC 1242
^{xvi} G.R. Case No.1739/2012

