

Cyber-bullying – Horrors, Analysis & Remedies in India

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Abstract:

Some trouble is faced for a term like “**Cyber-bullying**” wrapping short and snappy, to the point descriptive words around it. It is known or being understood when it happens. Cyber-bullying is defined as willful and repeated harm caused through the use of computers, cell phones, and other electronic devices. This definition is developed, because it is simple, concise, and reasonably comprehensive and it captures the most important elements. Yet again it can be elaborated as hurting harshly, being rude, insulting the modesty of the person, teasing remarks online through social sites by corrupted photos, cartoons & messages online targeting one's body, face, shape, anatomy, complexion, educational or professional qualifications, family, gender orientation, personal habits and outlook etc. According to Microsoft's 'Global Youth Online Behaviour Survey' of 25 countries, India ranked third with 53% of respondents (children aged between 8-17) saying they have been bullied online, behind China (70%) and Singapore (58%). **According to this survey 1 in 5 children in India have experienced what can be termed as online bullying.** The suicide of victims of cyber-bullying has raised alarms worldwide. There is no law clearly defined that deals with cyber-bullying and online abuse/insult specifically directed at teens and children. The criminalisation of speech is only acceptable in a very narrow set of cases, as the Apex Court has again stressed in its recent judgment striking down section 66A of the IT Act. Cyber-bullying victimization is one such offense that has newly spread a fair amount of attention. This paper is an analysis of cyber-bullying in India in view of the exponential expansion of this hazard in India and the rest of the world. The Information Technology Act and the Indian Penal Code are looked into to examine cyber-bullying. How liability should be imposed on minors committing cyber-bullying is also investigated.

Keywords: *Cyber-bullying, Information Technology Act, Online harassment, Social implications, Demography, Liability of minors, Internet Law, Criminal Liability, Mens rea*

I. Introduction:

Cyber bullying is an emerging threat which is apparent through disgust speeches, harassment, cyber-stalking and forms of ridicule online and text messages. Studies show India ranks third in the countries exaggarated by this problem. As the main targets of

cyber-bullying are children & teens, there is a threat of feeling unsafe, scared, being subjected to mental upset, defamation and the possibility of being driven to suicide. Legal issues relating to cyber bullying can be defamation on cyberspace, abetment of suicide, violation of privacy, cyber-stalking and obscenity. Cyber-bullying is a recent fact and there is very limited literature about the Indian stance on it. Cyber-bullying unlike other forms of bullying can happen 24X7 online through internet using computers and smart phones & there is no escape from it. As it happens mostly to children and teens, parents are usually the last ones to know about it. Also kids are distrustful of telling parents in fear of losing their internet access and freedom. Unlike other forms of bullying where parents can intervene to an extent, in cyber-bullying once a hate post or a malicious image is on the internet, it is difficult even for the parents to take it down or curb its existence. This way cyber-bullying can cause low self-esteem, depression, skipping school and worse, suicide.

II. Analysing the fact:

One case of mistreatment cannot exactly be equated to bullying, as it must involve harmful behavior of a repetitive nature. Most of the related white papers make a clear distinction between bullying and harassment, that bullying is recursive activity. It is also not correct that harassment or some other form of hurtful behavior done once is not harmful to the victim and it is not bullying. In fact, it is debated and considered that bullying is actually harassment taken to the next level. Cyber-bullying may damage the victim emotionally or psychologically because it is repetitive. Victims actually have a relationship with the bully, though not functional. For example, targets of bullying often frightened going to school/college because of what the bully might do that day. If the incident occurs/occurred one time, there is no such dynamic.

Online bullying becomes recursive: Someone may post a particularly embarrassing picture of another person online. It can be sent in such a way that others can see it, link to it, and even leave public comments in reference to it. While the action of uploading the picture is a one-time behavior, others can view it or otherwise refer to it repeatedly making it viral on *youtube, facebook, whatsapp or other social media*, thereby resulting in recurring humiliation and shame to the target. One person might see it, or millions of people might see it. More than 55% of youth in India and more than 95% of youths in the United States are connected to the Internet in some way. An unintended outcome of the Internet's pervasive reach is the growing rate of harmful offenses against children and teens.

Power & Law: Evidence suggests that victimization is associated with serious psychosocial, affective, and academic problems. Though not explicit in definitions given, there is usually an imbalance of power in cyber-bullying situations. Type of power being exerted in cyberspace is somewhat vague and often shifting.

Cyber-Bullying Data:

According to a study by IPSOS, India reports the highest percentage of kids being bullied at 32%, compared to 15% in US and 13% in UK. In this paper a random sample of 357 students surveyed between the ages of 12 and 18 from +2 schools, colleges, & polytechnics of different capital towns of India. Data were collected in February of 2015 and shown here in chart 1.

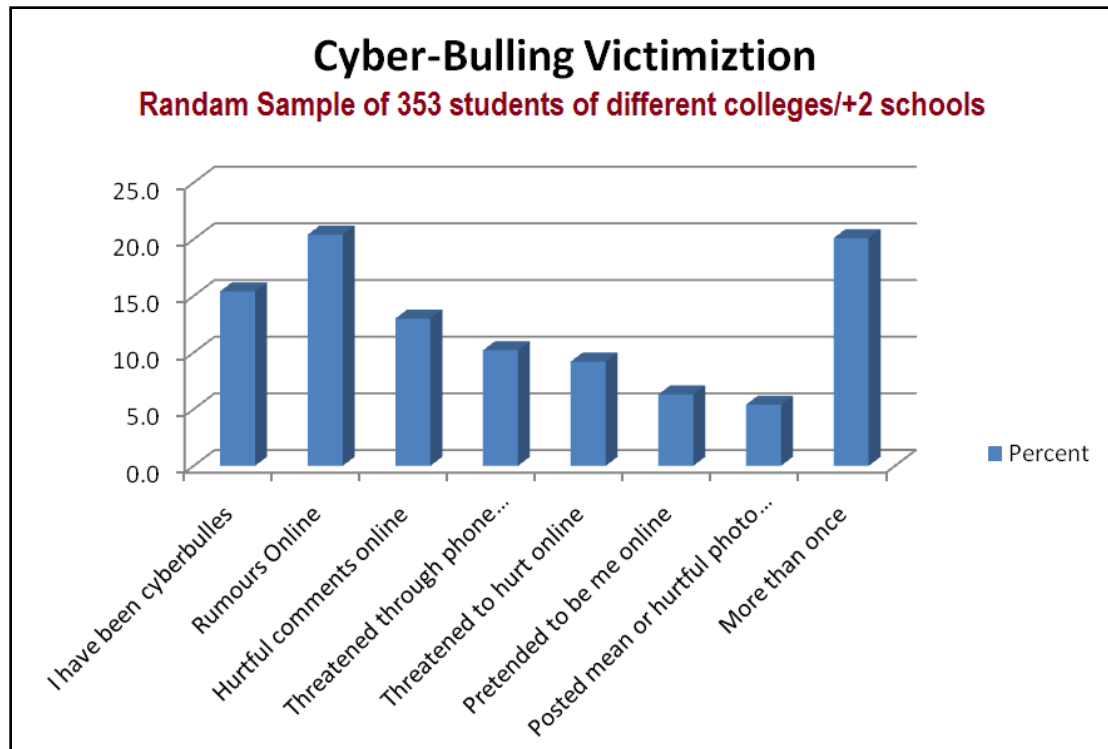


Chart 1

Effects & Dangers of cyber-bullying:

There was a website called www.g00ns.net (Now it shows **This domain may be for sale. Backorder this Domain**)and their objective were to do are Cyber-Bullying Online, Destroying and Hacking other Server Properties. Is there any rule that a citizen can understand and decide about?

- *rights to sue them and bring them to court*
- *whether their objective is to do a lot of online terrorism*
- *security measure of server and computer from these bullying by horrible comments and untrue stories*
- *to understand how someone could be so hurtful*
- *to treat vulgar chat as felony*
- *to ban child pornography*
- *to know location of person bullying(including relatives, & neighbours)*

Data from another set of survey is given below. It is done with different definitions among 452 sample of students from class 8th to class 12th of different schools of Muzaffarpur, Bihar I Table1:

Definition of survey	Percent
Awareness about cyber-bulling	70%
Worried about such bulling	79%
Being teased online by act of harmful act	60%
Parents awareness about their wards being bulled	39%
Girls being bullied by morphing or sexually marked colours that might insult her modesty	24%
Accepted Involvement to do cyber-bullying but not knowing about its harms & legal impacts	16%

Table:1

Thus Cyber-bullying can lead to:

- depression
- un-willingness to attend school
- self-esteem problems
- Can effect mental and physical health
- Cyber-bullying can make minors counterproductive
- can lead to harmful reactions such as substance abuse or suicide

III. Legal Issues Relating To Cyber-bullying

- Cyberspace is vast and is not associated with territorial jurisdictions.
- States have no physical control and may not always be able to trace the origin of the offending content.
- Cyber-bullies who are minors are harder still to control as minors have less legal burdens.
- Minors often enjoy the benefit of doubt and weaken criminal liability. Minor cyber-bullies are no different.
- A lot of minors who may commit offences are legally presumed not to have *Mens Rea* (criminal intent or a guilty mind) or the burden of proving their *Mens Rea* is very strict.
- Cyber-bullying, is not explicitly dealt with in Indian law.

The IPC classifies minors under 3 heads:

1. Children below seven are legally presumed not to be capable of committing crimes. This legal presumption is irrefutable.;
2. Children between seven and twelve are presumed not to be capable of committing crimes. However, proof that the child had knowledge of the consequences of the action can refute this and make them liable. The standard of proof is high and the law leans in favour of the minor.

Establishing that a minor of this age-group has committed any form of “cyber crime” in the form of cyber bullying is difficult.

3. Children above the age of 12 who are assumed to be capable of having *Mens Rea* and committing such crimes It is difficult to establish *Mens Rea* of anyone between the ages of 7 and 12.

About responsibility and liability of schools/colleges:

The Raghavan Committee Report has already recommended that teachers and the principal be held liable for acts of bullying. So has the Supreme Court in *University of Kerala vs. Council, Principal's colleges, Kerala & Ors.* It is now a matter of implementation.

Supreme Court in *Re Civil Appeal 887 OF 2009 on 8 Dec., 2011.* 13 It is important that schools or parents do not actively promote or fail to prevent the culture of cyber-bullying. Such indirect legal control will be more effective and less harmful than traditional criminalization.

The Department of School Education and Literacy and also the Department of Higher Education shall lay down strict rules relating to conduct and bullying. These rules are to have statutory force and to be altered from time to time.

IV. Prevention & Intervention by schools and guardians:

With different options and strategies to intervene and prevent cyber-bullying are suggested here:

- Effectively & healthy interaction with kids in school and home about how cyber-bullying is bad
- Monitoring & tracking kids when they use internet and cell-phones with advise to use their parent e-mail ids.
- Cyber bullies would not be allowed to use the computer at home and school. Any assignments for school that required using the library would have to be done at the library using books.
- Sending cyber bullies to an “alternative” school away from their regular school as punishment.
- Parents would take away a cyber bully’s cell phone and computer.
- One year delay in community college to join before a degree college
- Cyber bullies would not be allowed to use social networking sites such as Myspace.com
- Cyber bullies would have to attend netiquette classes on Saturdays for several weeks.
- Cyber bullies would have to do at least 40 hours (5 days x 8 Hours) of community service.
- Cyber bullies would have to create a presentation about the effects of cyber bullying. They would have to let others know why they should not do what they did.
- Telling/counselling teenagers in a class what to do if bullied online
- Having clear rules for preventing cyber bullying and enforcing penalties on cyber bullies like ragging
- The law should make it a legal duty for schools to have such policies and frame guidelines and mandate that bullying and cyber-bullying be punishable by schools.

- It shall then be the responsibility of the Principal to ensure that the policy is framed and implemented.

V. Conclusion:

Cyber-bullying is, arguably, a milder offence when compared to murder and organized crime. Thus, if convicted, a cyber-bully would be housed and disciplined with other juveniles in conflict with the law who may be habitual offenders or may have committed heinous crimes.

This may jeopardize the cyber-bully's safety or influence him to go deeper into crime and become a habitual offender. Thus, criminalizing minors for cyber-bullying can be counterproductive. It is over-criminalization.

One also finds that in dealing with cases of cyber bullying, there is not only cyber-harassment but also cyber-defamation. In the case of the victim, the action would be a suit for defamation of character of the parent's of the victim when the slander or libel directly affects the victim. This not only means that it is a protracted process but it also means that the relief is not directly granted to the minor. Though effectively, the victim's rights of reputation flow from that of his parents, the reputation that is sought to be restored is the parents' when in fact the minor is the sufferer. This could be another drawback of the statutory approach. One asks this question: In the light of the distress caused to the victim, though many of the rights of the victim are not distinct but flowing to him from his parents, would

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