

Introspecting the Gaps between Cyber Crimes against Women and Laws: A Study of West Bengal

Introduction

Cyber violence is undoubtedly the new emerging form of violence in the 21st century and cyber crimes the most challenging crimes of recent times. Emerging in the 21st century, cyber violence has fast become the most severe issue challenging our security and privacy. It is serious in case of states like India where information technology facilities are widespread but legal awareness in general is low. The legal structure of India and the law enforcement agencies are not yet well-equipped to deal with cyber violence or cyber crimes. Crimes against women form a crucial part of cyber crimes in India and the online platform is now the new platform where women's dignity, privacy and security are increasingly being challenged every moment. Trolling, abusing, threatening, stalking, voyeurism, body-shaming, defaming, surveillance, revenge porn and other forms of indecent representation of women are rampant in the cyber world. In cyber crimes against women the effect is more mental than physical while the focus of the laws ensuring women's security is more on physical than mental harm. It is now a global problem also. Recently The U.S. Department of Justice statistics suggested that 850,000 American adults—mostly women—are targets of cyber-stalking each year, and 40 percent of women have experienced dating violence delivered electronically. A recent study by the Pew Research Center found 40 percent of adult Internet users have experienced harassment online, with young women enduring particularly severe forms of it. Thirty-eight percent of women who had been harassed online reported the experience could be described as extremely or very upsetting to them.¹ The same is true in case of India also as cyber violence against women is increasing and taking diverse forms as evident from different online platforms and media reports. But the official crime database in India, the National Crime Records Bureau (NCRB), gives us some figures which do not reflect the fact properly and it also focuses on the issue that there are some gaps in the available laws dealing with cyber crimes and the acts of cyber violence and it is more evident in cases of cyber crimes against women. To be recognized as crime any act must be a violation of either the Indian Penal Code (IPC) or the Special and Local laws (SLL). All forms of such violence are not crimes as to be recognized as crimes the existence of adequate laws are necessary. The present paper is focused on studying the gaps with special emphasis to West Bengal.

Cyber Crimes: India and West Bengal

The NCRB report 2016 states that in 2016 there has been 48,31,515 incidences of crime in India under IPC as well as SLLs, which is 2.9% more than the crime incidences of 2015. Of these total crimes the number of cyber crimes is 12317 which form 0.25% of the total crimes. This is inclusive of cyber crimes against women. The cyber crime incidences have increased at a rate of 6.3% during 2015-16 and 20.5% during 2014-15. The number of cyber crimes in India in 2014 and 2015 have been 9622 and 11592 respectively. There is no parity in the

percentage variation of crime rate in general and cyber crime rate with cyber crimes increasing at a much faster rate and still forming a meagre percentage of total crimes in India. The following table will show the respective rates at national level.

Table :1

Year	Total Crime Incidences	Cyber Crime Incidences (incuding IPC,SLL and IT Act)	Crimes Under IT Act,2000	Percentage of Cyber Crimes
2016	4831515	12317	8613	0.25
2015	4710676	11592	8045	0.24
2014	4571663	9622	7201	0.21

Source : NCRB Report Crime in India 2016ⁱⁱ

Table 1 shows cyber crimes form a negligible percentage of total crimes in India though the cases registered have increased fast. It shows either there are not adequate laws to cover all incidences or there is lack of awareness of what constitutes cyber crime and seeking the help of law. The position becomes more critical when it comes to cyber crimes against women. The meagre figures of cyber crimes as reflected in Table 1 are inclusive of cyber crimes against women. They are also inclusive of crimes registered under IPC, SLL and IT Act. The figures of cyber crimes against women are not clearly available and we have to assume it from relevant IPC and SLL crimes and crimes booked under relevant sections of the Information and Technology Act 2000. Most of the cyber crimes against women are included in crimes under IT Act. The status of cyber crimes at the national level is reflected in Table No. 1. Table no. 2 will give us an idea of the status in West Bengal.

Table 2

Year	Total Crimes in West Bengal(including IPC and SLL)	Total Cyber Crimes in West Bengal(including IPC and SLL)	Percentage of Cyber Crimes in West Bengal
2014	206380	355	0.17
2015	206278	398	0.19
2016	204400	478	0.2

Source: NCRB Report Crime in India 2016

The number of cyber crimes reported in West Bengal in 2016 is 478 which is too low as compared to other crimes under IPC and SLL . This figure is inclusive of cyber crimes against women .The percentage of cyber crimes per year is lower or same to that we have

found at the national level. At the national level this percentage has been mostly 0.2% since last three years. Till 2011 the cyber crimes reported in West Bengal were much lower than what we witness today. In 2011, there were only 43 reported instances of cyber crimesⁱⁱⁱ, which increased to 196 in 2012^{iv}, a jump of 355%. Again in 2014, there has been an increase of 101% from that of in 2012. From 2014 onwards it has not increased in that rate. Increase in reporting of crimes and awareness about what constitutes crime are reasons behind this enormous rate of increase. But in spite of this increase the percentage of cyber crimes is still remarkably low as compared to other crimes in West Bengal also.

The Legal Provisions and the Gaps

The cyber crimes against women are gender-specific crimes that affects only women. Cyber crimes against women are cyber crimes to which women are subjected to. These are under IPC and SLLs. There are certain IPCs that have been amended to deal with cyber crimes against women and there are also SLLs to deal with cyber crimes. The SLLs that cover cyber crimes against women are Indecent Representation of Women (Prohibition) Act, 1986 and the Information Technology Act, 2000. Of these the IT Act is not a gender-specific act but certain specific sections of the act deal with gender-specific crimes. The Indecent Representation of Women (Prohibition) Act, 1986 was enacted to prohibit indecent representation of women through advertisements or in publications, writing, painting, figures. Though it doesn't mention use of computers but as it applies to slide, film and photograph also, it may ensure prohibition of indecent representation using internet. But this SLL has not been a widely used legal provisions by victims of indecent representation as this law doesn't provide for victims seeking justice; rather it empowers the state to take initiative to prohibit indecent representation of women's body in print or visual media and take penal action if required. 'Indecent Representation of Women' is defined as 'the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or is likely to deprave, corrupt or injure the public morality, or morals'^v. In this context, the use of the words morality and morals is noteworthy. The dignity of woman is not important, rather the focus of the law is to ensure that public morality should not be corrupted or injured. Women are being indecently represented and the state is found here in its paternalistic role protecting decency of women's body as exposed female body is indecent. The state is also empowered to play a surveillance role to oversee that public morality should not be corrupted. The idea of indecent representation is entirely body-based with utmost importance being given to women's body. Woman is indecently represented only when the figure of a woman, her form or body is presented. Without the involvement of female body a woman cannot be indecently represented. Stalking voyeurism, online abuse cannot be covered under this law.

The inadequacy of this law is more evident if we look at the number of cases registered under this law. The number of cases registered under the law has shown a decline of 46.1% over

the average of five years (2008-12) and an increase of 156.7% over the year 2012. Again a decline of 14.9% was registered in the same crime head during 2015 as compared to 2014 when it was 47. In 2015 ,40 cases were registered and it became 38 in 2016. In West Bengal no cases were registered under this act in 2016. The all India conviction rate of the Indecent Representation of Women's (Prohibition) Act,1986 is 37.3% in 2016 . This law is presently not in much use either in India or in West Bengal and neither it has powers to cover the different dimensions of cyber crimes that women face.

Cyber crimes against women are mostly registered under IT Act ,2000. This is not a SLL that deals exclusively with crimes against women but certain sections within it covers such crimes. Specifically Section 66 A,66E,67 and 67 A deal with crimes that affect women more. Section 66A provides for punishment for sending offensive messages through communication service. It covers any electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or mislead the addressee or recipient about the origin of such messages. Online threats of rape, abuses, derogatory messages, hacking someone's mail or social media page to defame her can be booked under this law. This provision deals more with mental violence. It is easy for Police to arrest a person under this act but chargesheeting often becomes difficult as the Police is often found not well-equipped enough to track the authentic source of these sort of messages. We find the news of arrest through news media but the updated data on chargesheeting or conviction are not easily available. People arrested are often not chargesheeted or acquitted by court later. Section 66E provides punishment for violation of privacy. Privacy here means image of private area of body and publishing that without anyone's consent is a punishable offence. For women it is specifically mentioned 'buttock or female breast'. Any part of private area should not be visible to public regardless of that person is in public or private place. This section deals exclusively with privacy of body and the provision of consent makes it critical as it later becomes difficult to prove consent was not there in the activity. Registering a crime is not important and unless we consider chargesheeting ,conviction and acquittal ,it is not possible to understand the situation. Often cyber crimes against women take place within marital relations when an estranged partner uploads obscene images of his wife. In these cases also proving the consent becomes a complex activity. Even if consent was there whether it was an informed consent also becomes important. Cases registered under Section 66E is abnormally low, The conviction rate of IT Act is not at all impressive .In West Bengal, the number of cases registered under this section in 2016 were only 6^{vi} and the metropolitan city of Kolkata has no registered cases. Lack of awareness of existence of laws protecting privacy of body or physical acts is an important reason behind so low number of registered cases. If the task of the law enforcement agencies is limited to registering cases and making investigations then this scenario is going to continue. Police and local administration must take measures to sensitize people on the purview of laws and civil society needs to be involved.

Section 67 provides for punishment for publishing or transmitting obscene material in electronic form. It says that 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 effects is such as to tend to deprave and corrupt persons who are likely to read or see the matter contained or embodied in the message ,then that act of the person will be a punishable offence. Section 67A deals with punishment for publishing or transmitting of material, containing sexually explicit act, in electronic form. Section 67 and 67 A are those sections of the IT Act which are mostly commonly used to register cyber crimes against women. The language of Section 67 is interesting to observe. Here also like the Indecent Representation of Women Act,1986 ,we find the state in a paternalistic role controlling sexual behaviour of the population.The perspective of the law is not protecting dignity or security of women;rather the focus of the law is to control propagation of images that may lead people to have an uncontrolled sexual life. The use of the words ‘lascivious’ and ‘prurient’ interest shows the negative approach of the state towards sexuality. Women’s body is regarded as a medium that has the power to deprave and corrupt people. Both these sections are aimed at controlling obscenity in internet. Most instances of cyber crimes against women are booked under these two provisions.In West Bengal in 2016,64 cases were registered under Section 67A of the IT Act of which 29 are from Kolkata.. Of the pending cases under the same section,there was conviction in 9 cases and acquittal in 45 cases^{vii},which shows that the rate of conviction is very poor. In West Bengal,the conviction rate is 16.7% . In West Bengal in 2016,416 arrests were made under all ITActs but only 154 were charge sheeted^{viii}. In India, 810 persons were arrested under 67A of IT Act but only 472 were charge heeted.There is a wide gap between arrests and charge sheet. Lower rate of charge sheeting may be an indicator of poor enquiry process. IT Act requires enquiry by a police officer of rank not lower than inspector which often results into insufficient investigation due to shortage of manpower.Investigation involving technology is very crucial in cases of cyber crimes and proper training of police personnel is also an important requirement. West Bengal has set up cyber crime police stations but their numbers are still low with one at every commissionerate level and one each at every district level. This is a recent development as many commissionerates and districts have introduced cyber crime cells in 2015.Cyber crime police stations need to work in close coordination with Criminal Investigation Department, Detective Department and Women’s Police stations but this coordination is still lacking.

Cyber crimes against women are also booked under IPC and relevant SLLs. Section 354 of IPC presently covers voyeurism, stalking and sexual harassment all of which are now punishable criminal offence. Stalking,Voyeurism and sexual harassment where computer is used as a medium are mostly registered under IPC. Guidelines of evidences are provided by the Indian Evidence Act 1872. Indian Evidence Act was amended to include evidences relating to electronic record. Presently,Section 65A and 65B provides for evidences related to electronic record and admissibility of electronic record. The judiciary also needs to be sensitized about the record-keeping of electronic records and dealing with them.The police

needs to be more well-equipped in dealing with electronic records. The Indian Evidence Act is very vital in dealing with electronic evidences. The act needs to be more explicit, updated and stronger to deal with the issue of electronic evidences. Without compatible evidence it is very difficult to improve conviction rate of cyber crimes. In cyber crimes, its evidences that matter and not witnesses. In cases of cyber crimes against women along with dealing electronic evidences, the question of privacy and security of the victim also becomes crucial. There is also a rural-urban disparity in IPC related as well as IT Act related cyber crimes against women. Most of the cyber crimes against women are reported from metropolitan cities. In West Bengal 64 cases were registered under 67A of IT Act in 2016 of which 29 were from Kolkata. Availability of well-equipped cyber cells at metropolitans and improved legal awareness level of the women may have brought this change.

Conclusion

Cyber crime reporting in India is still in its nascent stage though cyber violence is fast growing. We have found the abnormally low figure of reported cyber crimes in West Bengal which is again inclusive of cyber crimes against women. Cyber stalking is very common but unless some more severe violations like rape threat or revenge porn take place cyber stalking is not taken as a serious complaint and the complainant is often asked to block the stalker in different social media platforms. Our laws need to be changed to make them cyber-sensitive as well as gender-sensitive. Words like lascivious and prurient should be dropped from the concerned Act to make them better secure women's equality and dignity. The perspective of the laws should be to ensure dignity of women and not being in a paternalistic role. Laws are still inadequate and the IT Act needs to be amended to make it well coordinated with IPCs. More IPC provisions need to be amended to make them cyber-friendly. There should be a single comprehensive law covering all aspects of cyber crimes against women. The police, the judiciary and the local administration must be cyber-friendly and more well-equipped to handle evidences judiciously. Cyber crimes against women needs a holistic approach with change in laws, change in approach of officials and more intense sensitization campaigns involving different sections of society.

- i <https://www.theatlantic.com/technology/archive/2014/11/what-the-law-can-and-cant-do-about-online-harassment/382638/>
- ii Crime in India,2016
- iii Crime in India 2011
- iv Crime In India 2012
- v The Indecent Representation of Women (Prohibition) Act,1986. Act No.60 of 1986.www.nic.in retrieved on 17.01.2018
- vi Crime in India,2016 ;pg 417
- vii Crime in India,2016 ;pg 149
- viii Crime in India,2016 ;pg 434