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# Judicial Outlook of Cyberbullying in India

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## ABSTRACT

*India is not only the most populated country right now after recently overtaking China, but it also finds the topmost position in the global stats for the highest percentage of cyberbullying cases in the world. Indian youths are highly exposed to social networking sites and often fall prey to unwanted harassment, making them prone to incidents of online bullying. Online harassment and cyberbullying is quite a neglected issue in India which is getting worse with every passing day, but still there are no special laws in India to tackle this menace. Incidents of online bullying in India are presently addressed by applying provisions of the IT Act 2000, which has not even felt the need to define 'Cyberbullying' as an offence and also by applying provisions of the IPC 1860 which are primarily meant for offline offences. Even the provisions of POCSO Act 2012 may apply in cases of cyber-sexual harassment of minors and also provisions of JJ Act 2016 may apply in case the perpetrator turns out to be a minor. Thus, in this present scenario, it becomes really important for us to find out by analyzing several Indian cases how the Indian Judiciary is responding to different types of cyberbullying incidents in order to tackle this ever-increasing menace in the absence of any specific legislation.*

**Keywords:** *Judicial Response, Cyberbullying, Cyberspace, Bullying, Online harassment, Anti-Bullying Laws.*

## I. INTRODUCTION

In India these days' children and teenagers who use social networking sites frequently become the target of uninvited and unexpected harassment from other users. On highly prominent social networking sites, a target's privacy may occasionally be violated to the degree where the victim experiences such humiliation and disgrace that they consider taking their own life. The social media sites that make this whole process possible do not accept liability for privacy infringements or injury resulting from cyberbullying. It is to be noted that while "Freedom of Speech and Expression" is guaranteed by Article 19(1)(a) of the Indian Constitution, Article 19(2) also lists eight justifications for reasonable restrictions on free speech, three of which forbid speech that is offensive to someone's morality, decency, or modesty in addition to

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speeches or expressions that could be interpreted as defamatory or that could incite an offence<sup>2</sup>. This essentially indicates that bullying someone in the name of freedom of speech is prohibited by our constitution as well.

## **II. CYBER-BULLYING TRENDS IN INDIA**

Most cyberbullying incidents in India go unreported for a variety of reasons. A victim of online bullying is usually clueless about what to do, and in most instances the victims choose not to act out of fear of potential consequences. Additionally, victims may be reluctant to involve others due to a sense of shame as they fear what other people will think of them if they ask for assistance since they believe they should be able to handle the matter on their own. It must be understood that they are victims in the first place since their attitudes are passive. In spite of all these problems, many serious cyberbullying cases are reported nationwide. Cyberbullying incidents are known to increase suicidal tendency among the victim.<sup>3</sup> We need to look at a few incidents to understand how fatal this phenomenon of cyberbullying can be.

In June 2014, there was an incident where cyberbullying claimed the life of a young person who was a Class XI student at a prestigious south Kolkata school. The night after one of her friends posted a manipulated photo of the 17-year-old teenager on social media, she took her own life. The six-page suicide note that the victim left behind serves as the foundation for the police investigation. She claimed in her suicide note that she was compelled to take her own life because of the online defamation she endured. According to police sources, a few months ago, the girl made friendship with a person named Faisal on a social networking site, and the two became close quite quickly. The girl eventually started to avoid Faisal, who then decided to seek revenge by publicly defaming the girl. With this intention in mind he contacted Deepak and Satish, and together they not only created a fake profile of the girl but also morphed her pictures and shared them online with the girl's phone number, claiming that she was 'open to relationships' and 'seeking friends'. The girl knew she was in trouble when she began receiving offensive calls on her phone, and she killed herself after realizing there was no way out. Faisal Imam Khan, a 23-year-old college student from Kolkata who was her online friend, was taken

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<sup>2</sup> Kumar Amrit, RIGHT TO FREEDOM OF SPEECH AND EXPRESSION ARTICLE 19(1) (A), [https://patnalawcollege.ac.in/notice/88274-e\\_content-\\_art\\_19.pdf](https://patnalawcollege.ac.in/notice/88274-e_content-_art_19.pdf) (last visited Oct 28, 2023).

<sup>3</sup> Chanda Maurya et al., THE EFFECTS OF CYBERBULLYING VICTIMIZATION ON DEPRESSION AND SUICIDAL IDEATION AMONG ADOLESCENTS AND YOUNG ADULTS: A THREE YEAR COHORT STUDY FROM INDIA - BMC PSYCHIATRY BIOMED CENTRAL (2022), <https://bmcp psychiatry.biomedcentral.com/articles/10.1186/s12888-022-04238-x> (last visited Oct 29, 2023).

into custody. Even Deepak Gupta and Satish Shah, two of his associates, were detained for their role in abetting the crime.<sup>4</sup>

News reports state that in November of 2016, Ooshmal Ullas, an MBBS student at KMCT Medical College in Mukkam, Kerala, aged 23, committed suicide by jumping from the fourth floor of her college building because she was apparently being cyber bullied over a Facebook post. She suffered injuries to her head, legs, and spine and eventually died in the hospital.<sup>5</sup>

In January 2018, there was another incident that was published, in which a twenty-year-old Hindu woman committed suicide due to harassment she received on WhatsApp regarding her acquaintance with a Muslim man in Karnataka. She was questioned about her acquaintance with the man, so she told a friend on WhatsApp that she liked Muslims. According to the police, social media users shared screenshots of this conversation. After news regarding social media's possible involvement in her death began to surface, the police expanded their investigation from the initial suicide case they had filed.<sup>6</sup>

A comparatively recent report which was published on August 8, 2022 by a global computer security company-McAfee Corp, with the title "Cyber-bullying in Plain Sight," which is the outcome of a global survey where more than eleven thousand parents and their kids from ten different countries like the US, UK, India, Australia, France, Germany, Canada, Brazil, Mexico, and Japan participated, showed that India is the country with the highest percentage of cyberbullying cases in the world and approximately 85% of children and teenagers in India reported that they have been victims of some form of cyberbullying. It also brought to light an alarming fact that, compared to the worldwide average, twice as many Indian children have cyberbullied someone. The report indicates that youngsters in India are most likely to experience severe kinds of cyberbullying, such as threats of physical harm, sexual harassment, and racist events.<sup>7</sup>

### III. RESPONSE OF INDIAN JUDICIARY IN CASES ON CYBERBULLYING

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<sup>4</sup>2014 TNN / Updated: Jun 26, GIRL KILLS SELF OVER FACEBOOK HARASSMENT: KOLKATA NEWS - TIMES OF INDIA THE TIMES OF INDIA, [https://timesofindia.indiatimes.com/city/kolkata/girl-kills-self-over-facebook-harassment/articleshow/37211521.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://timesofindia.indiatimes.com/city/kolkata/girl-kills-self-over-facebook-harassment/articleshow/37211521.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (last visited Oct 29, 2023).

<sup>5</sup> MBBS student commits suicide in Kerala, Facebook post hints at Cyber Bullying, INDIA.COM (2017), <https://www.india.com/news/india/mbbs-student-commits-suicide-in-kerala-facebook-post-hints-at-cyber-bullying-2639753/> (last visited Oct 29, 2023).

<sup>6</sup> India woman Kills Self "over WhatsApp bullying," BBC NEWS (2018), <https://www.bbc.com/news/world-asia-india-42617237> (last visited Oct 29, 2023).

<sup>7</sup> 85% of Indian children have been cyberbullied, highest globally: McAfee, THE ECONOMIC TIMES, <https://economictimes.indiatimes.com/tech/technology/85-of-indian-children-have-been-cyberbullied-highest-globally-mcafee/articleshow/93438743.cms> (last visited Oct 29, 2023).

**(A) State of Maharashtra v. Manish Kathuria<sup>8</sup>**

When discussing cyberbullying and cyberstalking, it is crucial to bring up Ritu Kohli's case. A young woman named Ritu Kohli claimed in 2001 that she had been purposely receiving calls from various sources, including overseas ones, and that someone had used her identity to post fake stuff on social media. Manish Kathuria was identified as the culprit who used filthy language to harass Ms Kohli while stalking her on a chat service and then disclosing her contact details to multiple people.

Manish Kathuria also assumed Ms Kohli's name and began conversing on the website "www.mirc.com". Ms Kohli received around forty offensive phone calls at odd hours of the night for over three days in a row. This situation forced her to report the event to the Delhi Police. In compliance with Section 509 of the Indian Penal Code, the Delhi Police located the IP addresses after receiving the complaint and took Mr Kathuria into custody. Since the IT Act was not in force at the time the complaint was filed, it could not be utilized in this particular situation.

This is the first reported case of cyberstalking in India and although there is no documentation of any further actions taken, this instance awakened Indian lawmakers to the necessity of passing legislation to combat cyberstalking, thus this case acted as the catalyst for the 2008 revision to the IT Act whereby section 66-A was added for providing punishment for sending abusive messages using communication services. However, this section's constitutionality was later contested, and the Supreme Court struck it down in 2015 after concluding that it violates the right to free speech and expression.

**(B) State of Tamil Nadu v. Suhas Katti<sup>9</sup>**

This was the first instance in India when someone was punished for sharing offensive content online under Section 67 of the Information Technology Act, 2000. The fact that this is the first case to electronically submit evidence in accordance with section 65B of the Evidence Act makes it noteworthy as well. The case was brought in February 2004 and the Chennai Cyber Crime Cell successfully prosecuted the criminal within seven months of the FIR being filed. In this case, the accused was the victim's friend. He even liked her and wanted to marry her, but she rejected him since she didn't feel the same way. Later on, the girl married another man, but their union didn't work out, and they were divorced. Suhas (the accused) approached her again after learning of this divorce, still wanting to marry her, but he was rejected once more. This

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<sup>8</sup> State of Maharashtra v. Manish Kathuria [2001](India)

<sup>9</sup> State of Tamil Nadu v. Suhas Katti, CC. No. 4680 of 2004 (India)

agitated Suhas, who then started stalking her online and also used the victim's name to send unsolicited emails to strangers in an attempt to seek revenge. Many of the people who received these emails mistook them for actual interaction from the victim, and many of them called the victim to find out her rates, thinking she was a prostitute who is contacting potential customers through email. The victim then filed a complaint, and on March 24, 2004, a charge-sheet was submitted to the metropolitan magistrate in Egmore, Chennai, under Section 67 of the IT Act 2000, Section 469 and Section 509 of IPC, 1860.

On November 5, 2004, the magistrate found the accused guilty of violating Section 469 IPC (forgery with the intent to harm reputation), Section 509 IPC (word, gesture, or act intended to insult the modesty of woman), and Section 67 of the IT Act 2000 (punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form). He was given three concurrent sentences, one year of simple imprisonment and a fine of Rs. 500 under section 509 IPC, two years of rigorous imprisonment and a fine of Rs. 500 under section 469 IPC, and two years of imprisonment and a fine of Rs. 4,000 under section 67 of the IT Act 2000.

**(C) State of Maharashtra v. Yogesh Prabhu**<sup>10</sup>

In 2009, the accused and the victim, who were formal acquaintances, had an online conversation in which the accused proposed marriage to the victim, who declined and the conversation came to an end. He was still using the internet to follow her. She ignored emails including obscene images and videos that she received from an unidentified account for a while before reporting them. After an investigation by the Cyber Crime Investigation Cell, he was found guilty by the magistrate court under S. 509 IPC (words, gestures, or acts intended to offend the modesty of a woman) and S. 66E of the Information Technology Act, 2008 (penalty for violation of privacy). The introduction of Sec- 354 D into the Indian Penal Code is the primarily the effect of this case.

**(D) Shreya Singhal v. Union of India**<sup>11</sup>

In 2015, Shreya Singhal and Others v. Union of India was one of the Supreme Court's most important cases. In view of the fundamental right to "Freedom of Speech and Expression" protected by Article 19(1)(a) of the Indian Constitution, the constitutionality of section 66A of the Information Technology Act 2000 was questioned. Section 66A of the Information Technology Act, 2000 stated that using a computer resource or communication device to transmit "grossly offensive" or "menacing" information is illegal. The section also makes it unlawful to spread false information on a regular basis with the intent to cause offence, danger,

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<sup>10</sup> State of Maharashtra (cyber cell) v. Yogesh Pandurang Prabhu, C.C. NO. 3700686/PS/2009 (India)

<sup>11</sup> Shreya Singhal v. Union of India, AIR 2015 SC 1523 [Writ Petition (Criminal) No. 167 of 2012] (India)

annoyance, insult, damage, criminal intimidation, hatred, or ill will. Furthermore, sending an "electronic mail message" with the intention of disturbing the recipient or misleading them about the communication's origins is prohibited by Section 66A.

Unfortunately, a number of legitimate online expressions, such as political commentary and humour, have become the subject of criminal prosecution due to the Section's vague and arbitrary phrasing, which has led to widespread misuse of this section in both personal and political communication. Individuals, NGOs, and corporations filed a number of writ petitions in the Supreme Court contesting the provisions. A two-judge bench was assembled by Justices Chelameswar and Nariman to consider the several petitions collectively.

According to the Supreme Court, Section 66A of the Information Technology Act of 2000 was unconstitutional since it permitted the arrest of people for posting negative comments on social media sites. According to the court, the clause was ambiguous and interfered with the freedom of speech. As for the Section's being a "reasonable restriction" on the right to free speech under Article 19(2), the Supreme Court in this instance similarly ruled that this argument did not save the Section. Many hailed the court's ruling as an important win for free speech in the modern digital age.

#### **(E) Majeesh K Mathew v. State of Kerala & Anr<sup>12</sup>**

The lawsuit is about whether or not statements made on someone's Facebook photos can be construed as online sexual harassment directed towards them. The defendant was accused of posting offensive comments along with pictures of the complainant and her spouse on Facebook. The High Court of Kerala noted in this case that posting sexually suggestive remarks about a woman on social media is considered online sexual harassment. The court determined after looking through the Facebook posts that there were indications of indiscriminate sexual behavior and masturbating. The plaintiff claimed that the Facebook posts caused her to be the victim of online sexual abuse and harassment. The accused's offensive activities were also considered cyberbullying, cybermisogyny, and cybersexism by the court.

The defendant in this case was charged under both Section 67A of the Information Technology (IT) Act (publishing of material containing sexually explicit act/conduct) and Section 354A of the IPC (using violence or criminal force with the aim of insulting a woman's modesty). Section 354A prohibits "making sexually colored remarks." Section 67A of the IT Act states that it is unlawful to transmit or transfer electronic content that includes sexually explicit acts or behaviour. The court also mentioned that in instances of cyberstalking or online sexual

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<sup>12</sup> Majeesh K Mathew v. State of Kerala & Anr, 20 June 2018, HC (India)

harassment involving minor victims, Section 11 of the Protection of Minors from Sexual Offences Act, 2012 (POCSO) may be invoked. This section makes it illegal to engage in sexual harassment of minors through cyberstalking.

**(F) Hareesh v. State of Kerala<sup>13</sup>**

The bail applicant in this case was charged with creating a fake account in Facebook that obscenely impersonates the complainant and posting sexually explicit images of the complainant (victim) online. The complainant's phone number was allegedly posted online for others to contact, and the applicant is accused of altering the complainant's face over pictures of another lady in nude. The applicant submitted a request for anticipatory bail after learning that they would soon be arrested for crimes covered by Section 354(D) of the IPC and Section 67 of the IT Act. The Kerala High Court denied the request for anticipatory bail, stating that it would not be proper for the court to hamper the investigation and that the evidence in the file supported the applicant's involvement in the offences.

**(G) State of West Bengal v. Animesh Boxi<sup>14</sup>**

The West Bengal session court issued a landmark decision regarding revenge pornography in 2018. The case of State of West Bengal v. Animesh Boxi is recognized as the first case wherein the accused was sentenced to five years in prison and fined rupees 9,000 by the Tamuk session court of West Bengal for sharing abusive and private images of the victim online without her consent. Prior to the crime, the accused and the victim had a close relationship. He obtained personal photos and films from her under the condition of marriage. The accused used the names of the victim and her father to post pictures and videos to pornographic websites after the victim and the accused became separated. The accused was found guilty in accordance with Sections 354, 354A, 354C, and 509 of the Indian Penal Code in addition to Sections 66E, 66C, 67, and 67A of the Information Technology Act. In an uncommon move, the court also mandated that the state government treat victims of "revenge porn" as rape survivors and provide the victim with the appropriate compensation. This was in addition to the previously mentioned fine and jail time.

**(H) Jitender Singh Grewal v. The State of West Bengal<sup>15</sup>**

In this instance, the accused (defendant) created a fake Facebook profile for the victim and uploaded sexually explicit images of her. The accused filed an application for bail after being charged under Sections 354A, 354D, 500, 509, and 507 of the IPC and Section 67A of the IT

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<sup>13</sup> *Hareesh v. State of Kerala*, Bail Application No. 4858 of 2018(India)

<sup>14</sup> *State of West Bengal v. Animesh Boxi*, C.R.M. No. 11806 of 2017, GR/1587/2017 (India)

<sup>15</sup> *Jitender Singh Grewal v. The State of West Bengal*, Criminal Miscellaneous Petition No. 7252 of 2018(India)



Act. The accused's application for bail was denied by the trial court, and the decision was affirmed by the Calcutta High Court.

**(I) Sazzadur Rahman v. The State of Assam and Ors.**<sup>16</sup>

The victim, who was just 15 years old, had a fake Facebook profile made by the accused. The victim became mentally unwell and experienced obstacles in her academic career as a result of the accused using her name in the fictitious profile, adding sexually explicit photographs, and posting derogatory comments. The request filed by the accused under Section 311 of the CrPC was turned down by the trial court. Following that, a petition under section 482 read with sections 401 and 397 of the CrPC was filed with the Gauhati High Court seeking the quashing of the trial court's ruling. The Gauhati High Court rejected the application on the grounds that the trial court's discretion had been properly exercised *ex facie*, taking into account all relevant material, and that neither the revisional jurisdiction nor Section 482 CrPC could be used to impede that decision.

**(J) Shibani Barik v. State of Odisha**<sup>17</sup>

The petitioner was charged with torturing the deceased, Late Padmalochan Barik, both directly and indirectly, causing his death, along with the other co-accused, Upendra Mahananda. Prior to the deceased's February 21, 2019, marriage to the accused, the co-accused had a romantic relationship with the accused that persisted throughout the marriage. The deceased received private Tik-Tok videos, from the co-accused which were also shared online. Watching the recordings caused the deceased to feel betrayed and embarrassed, which led to his mental suffering. As a result, he hanged himself in his bedroom from the ceiling fan. Even during the preliminary investigation, it was evident that the co-accused was responsible for aiding the suicide. The petitioner was charged with a crime under Sections 306 and 34 of the Indian Penal Code, 1860, but it was not evident from the evidence provided whether or not the petitioner was actually involved in the crime. Additional information and supporting documentation were needed in order to reach the conclusion. Therefore, the court granted the plea for bail submitted in this petition under Section 439 of the CrPC. The Court claims that the previously stated TikTok videos caused the tragic loss of an innocent life. The court also noted that it is becoming increasingly common for victims to be harassed by inappropriate TikTok videos.

#### **IV. CHALLENGES FACED BY THE INDIAN JUDICIARY IN CYBERSPACE**

The judiciary is an essential component of any legal system that recognizes democracy as the

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<sup>16</sup> *Sazzadur Rahman v. The State of Assam and Ors.*, Criminal Petition No. 654 of 2019(India)

<sup>17</sup> *Shibani Barik v. State of Odisha*, BLAPL No. 915 of 2020(India)

predominant form of government. In order to settle disputes between the parties, it is the most significant branch of the government. The advancement of civilization requires a strong and efficient adjudicating body. As society develops, the position of adjudicatory authority is developing and growing in importance. However the Indian Judiciary is facing lot of challenges while dealing with crimes in cyberspace.<sup>18</sup> A primary challenge with computer mediated crimes like cyberbullying is that virtually all of the evidence is digital. It's been extremely challenging for investigators to locate and retain digital evidence, and it's been challenging for judges and attorneys to present their cases in court.

Jurisdiction poses a serious challenge to the implementation of cybercrime legislation. Keeping in mind the well-established concepts of territorial integrity, sovereignty, and state independence, every nation-state in the world has the power to enact laws that apply to everything and everyone living inside its borders, which is referred to as a country. Regulating jurisdiction is thus another primary issue in cybercrime proceedings as the courts need to follow jurisdictional guidelines in order to function properly. The fact that the internet is global and that there are no physical borders in relation to cyberspace presents the main obstacle in the jurisdiction debate. Although rules pertaining to territorial and extraterritorial jurisdiction are found in both procedural law, such as the Code of Criminal Procedure, and conventional law, such as the Indian Penal Code, but the essential character of cybercrime necessitates more than what is currently required by the laws in place.

Another fundamental problem is the demand for technical knowledge to comprehend the nature of the act in order to determine whether it is an offence or not. Investigations conducted traditionally have not succeeded in cybercrimes. The increased usage of ICT necessitates the need for fresh investigation tools. For this reason, holding a cybercrime trial and conducting an investigation and prosecution should involve specific technological expertise and skills. The way cybercrimes are structured is giving the legal system a lot of headaches. Not only do laws need to be improved, but operational processes and policies also require sufficient understanding. Modern criminals nowadays employ cutting-edge technologies to carry out their crimes, and the most recent addition to this technological challenge is Artificial Intelligence which has become a serious weapon for perpetrators, thus, a proper legal response to offences involving technology is necessary to discourage such crimes, which is presently lacking in

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<sup>18</sup> Neha K Bhatt & Pareshkumar D Dobariya, A CHALLENGING ROLE OF INDIAN JUDICIARY AT CYBER SPACE TO CURB CYBER CRIME AGAINST WOMEN SCRIBD, <https://www.scribd.com/document/635767697/41-49-A-CHALLENGING-ROLE-OF-INDIAN-JUDICIARY-AT-CYBER-SPACE-TO-CURB-CYBER-CRIME-AGAINST-WOMEN> (last visited Oct 30, 2023).

India.

Finally, there is also an operational challenge in cybercrimes, and that is only inspector-rank police officers are authorized to investigate cyber offences under Section 78 of the IT Act 2000. This part has posed significant practical challenges and has had an indirect impact on the legal system, which hinders swift trials and lengthens the backlog of court cases. In addition, the fact that the government has no control over the Internet is also a significant obstacle due to service providers' lack of collaboration.

## V. CONCLUSION

India's legal framework for cyberspace has not kept up with the swift evolution of technology, which has resulted in a rise in criminal activity and online harassment. From this research article, it was understood that in cyberbullying cases the Indian Courts primarily look into the provisions of the Information Technology Act, 2000 for punishing the wrongdoer, and when the IT Act, 2000 is silent on a particular issue then the court resort to the Indian Penal Code 1860, as Sec 81 of IT Act, 2000 has mentioned the Act's overriding effect on offences done in cyberspace. It was also observed from the various cases discussed in this paper that offenders of cyberbullying including cyberstalking and revenge porn are being punished by applying Sections 66A (till 2015), 66C, 66D, 66E, 67, 67A, 67B of the Information Technology Act, 2000 and Sections 306, 354, 354A, 354C, 354D, 469, 500, 507, 509 of the Indian Penal Code, 1860 however few other sections can also be made applicable as per the requirements of the case in hand. Additionally the Court in the case of *Majeesh K Mathew v. State of Kerala & Anr*<sup>19</sup> has clarified that Section 11 of the POCSO Act will be applicable if the nature of bullying resembles sexual harassment and involves a minor victim. We can sum up this paper by stating that although Indian Courts are punishing the wrongdoers by interpreting the existing laws, but in the long run, this lack of a particular law and the use of several pieces of legislation to manage the problem will surely have an impact on the evolution of cyber laws in India.

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<sup>19</sup> *Majeesh K Mathew v. State of Kerala & Anr*, 20 June 2018, HC (India)