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# Technology-Facilitated Sexual Violence (TFSV): Analysis of Remedial Provisions Under Criminal Laws in India

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## ABSTRACT

*Cyber crimes related to sexual abuse is a global issue which is spreading very fast with the advancement of communication technology. These offences do not have any particular jurisdiction to control in an area as these crimes are committed in a virtual space called cyber space. These crimes consist of production, creation, storage or transmitting of obscene material or sexually explicit or intimate images or pornographic videos with the uses of any digital or electronic media. Hence these crimes are also termed as technology facilitated sexual violence. Cyberstalking, cyberbullying, voyeurism, revenge porn, child pornography etc. are few examples of online sexual harassment. Laws are enacted to criminalize cyber sexual crimes under various acts but growth rate of cyber sexual crimes are increasing day by day. This study aims to review existing laws on cyber sexual crimes in India and to analyses its effectiveness to control these crimes. For the purpose of this study various literatures including research articles, reports, legislative provisions and news article has been deeply reviewed to find the research gap and possible solution to the problem. Disposal rate of these crimes by police and court has been studied to correlate with the growth rate of cyber sexual crimes. Results of the study shows a strong association of the conviction rate and chargesheet rate with the growth rate of online sexual crimes in India.*

**Keywords:** *Cyber Sexual Crimes, Technology Facilitated Sexual Violence (TFSV), Online Harassment, Cyberbullying, Cyberstalking.*

## I. INTRODUCTION

We have been experiencing a rapid growth in communication technology for last two decades of this era. All of us want to work in the faster environment to gain competitive advantage from others. This tendency of being faster and competitive, we have made a mess of network and digital gadgets that provides us faster communication and networking. Data and information are now transmitted in faster pace than ever. Technology advancement has proved a boon for the

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society to connect globally via internet network popularly termed as social networking. Science and technology have always proved to be fruitful if used for the benefit of humanity but it become disastrous if misused. Online harassments, frauds, defamation and other cyber-crimes are also facilitated using technology are few examples of its misuse which is growing day by day.

There has been a noticeable growth in illegal activities or crimes facilitated through computer, computer networking, any computing device, networking device, electronic device or any communication technology which is commonly termed as cyber-crimes or Technology-Facilitated crimes. Today, sexual violence is the most occurred online harassment followed by cyber fraud using communication technology. Anyone could be the victim of online sexual harassment but women and children are very common targets for such violence.

There are various motives behind online sexual crimes like jealousy, erotomania, obsession, revenge and hatred. According to the data compiled by NCRB, in year 2021 a total of 4555 cases of cyber crimes has been reported with the motive of sexual exploitation which was only 1460 in 2017. This growth of cases indicates the fearless and frequent use of cyber space by offenders to exploit their target. Students of school and colleges are well connected with the internet and are technical savvy as they use electronic devices very frequently for studies and entertainment. They are used to the custom of making ID and personal profiles for their social media chat rooms where they share their personal details. Many of the students make fake profiles to decorate their social profile with impressive information. Regular updating with personal events in social group is now a fashion among the youth. These personal information in cyber space are easily accessible by strangers who start stalking and bullying online with the motive of extortion, blackmailing, sexual abuse or fulfilling sexual desire of pleasure.

Women working in any organization have to regular interact with many people using internet and networking. This may be the part of their regular work but digital interactions also give opportunity to the people with bad intention to interact with them easily. Cyberstalking is the common crime against youth over cyber space.

Like physical sexual crimes, online sexual offence has similar effect on the physical and mental stability of the victims. They undergo psychological trauma, depression, mental stress, anxiety, feeling of loneliness, feeling of low, sadness, disbelief, nightmare, loss of confidence, hypertension and sometimes attempts suicide. Cyber sexual crime has the potential to instill terror in the victim's mind. In most cases, the perpetrator's purpose is to annoy, threaten, or profit economically, like in traditional crime by using social media platform to carry out this

type of crime.

Many countries, including India, have legislation dealing with cybercrime. Cyber sexual crime is a relatively new form of criminal activity that has recently attracted the attention of our legislators and judiciary. The IT Act, 2000, and the I.P.C deal with this form of crime. Provisions of these laws are not very effective in controlling online harassment and sexual violence. Offenders do not have fear to get charged by the police as the procedure to catch culprits is very complex. Collection of evidence in electronic mode has always the problem of being genuine. The hardware and software require to investigate cybercrime is not very much available and installed everywhere. It also requires expert level of knowledge. This has slowed down the investigation of online crimes by police. Disposal of cases by courts is also not satisfactory in India.

Many experts have views to control the online sexual crime by preventive measures. The first step towards prevention is to educate and spread awareness about the use and misuse of technology. Secondly, professional assistance must be available at working places, schools and colleges to help victims in its initial stage. Thirdly, law enforcement officers must be equipped with latest technology to identify suspected crime through monitoring activities of internet users. Prevention, however, cannot be left solely in the hands of law enforcement personnel and there are specific steps members of the community can take to reduce their risk of victimization.

#### **(A) Literature Review**

As of now, many qualitative and quantitative studied has been conducted on online harassment including cyber sexual violence.

According to the research done by Henry & Powell (2015)<sup>3</sup> the term cyber-sexual violence or technology-facilitated sexual violence can be used to collectively describe the range of harmful sexually aggressive behaviors perpetrated against women with the assistance or use of new technologies. Also, according to their other studies (2016)<sup>4</sup> technology-facilitated sexual violence may be a multifaceted concept that consists of six distinct but related categories.

Teich, Frankel, Kling, & Lee, (1999)<sup>5</sup> identified several types of online abuse, such as impersonation, fraud, spam, hate mail, and other criminal activities, and recommended policy, regulation, and punishment. In fact, anonymous communication prevents detection of harmful

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<sup>3</sup> Henry, N., & Powell, A. (2015). Embodied harms: Gender, shame, and technology facilitated sexual violence. *Violence Against Women*, 21(6), 758–779.

<sup>4</sup> Henry, N., & Powell, A. (2016). Technology-facilitated sexual violence: A literature review of empirical research. *Trauma, Violence, & Abuse*, 17, 1–14.

<sup>5</sup> Teich, A., Frankel, M. S., Kling, R., & Lee, Y. (1999). Anonymous communication policies for the internet: Results and recommendations of the AAAS Conference. *The Information Society*, 15(2), 71-77.

behavior, may encourage users to engage in risky behaviors, and may also avert their embarrassment and responsibility.

Juvonen & Graham (2001)<sup>6</sup> opined that harassment in school typically involves humiliating and threatening actions exerted by a more dominant and aggressive peer against a weaker, submissive peer. According to Espelage & Swearer (2003)<sup>7</sup>, harassment has been viewed as a face-to-face encounter between a bully and a victim in view of an audience of peers.

Boulton & Underwood, (1992)<sup>8</sup> investigated and found that girls tend to report less bullying than do boys and Cullingford & Morrison, (1995)<sup>9</sup> found that bullying has been shown to increase from primary to secondary school and then decrease.

Beran. T. and Li Qing (2005)<sup>10</sup> investigated on 432 students from grades 7-9 in Canadian schools who reported their experiences of cyber-harassment, which is a form of harassment that occurs through the use of electronic communications such as e-mail and cell phones. More than two thirds of students (69%) have heard of incidents of cyber-harassment, about one quarter (21%) have been harassed several times, and a few students (3%) admitted engaging in this form of harassment.

Whitney & Smith (1993)<sup>11</sup> estimated that a substantial percentage of students those experiences bullying at least sometimes, ranging from 14% to 27%. The results are similar in the investigation made by Fekkes, Pijpers, & Verloove-Vanhorick, (2005)<sup>12</sup>.

According to the studies by Reyns, Henson, & Fisher, (2011)<sup>13</sup>, Cyberstalking occurs when an individual is harassed through computer technology and the use of local area networks connected to the internet. Stambaugh, Beaupre, Baker, Cassaday, and Williams (2000)<sup>14</sup> define cyberstalking as an electronic crime involving a perpetrator using the internet or other high tech

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<sup>6</sup> Juvonen, J., & Graham, S. (2001). (Eds.). *Peer harassment in school: The plight of the vulnerable and victimized*. NY: Guilford.

<sup>7</sup> Espelage, D. L., & Swearer, S. M. (2003). Research on school bullying and victimization: What have we learned and where do we go from here? *School Psychology Review*, 32(3), 365-383.

<sup>8</sup> Boulton, M. J., & Underwood, K. (1992). Bully/victim problems among middle school children. *British Journal of Educational Psychology*, 62, 73-87.

<sup>9</sup> Cullingford, C., & Morrison, J. (1995). Bullying as a formative influence: The relationship between the experience of school and criminality. *British Educational Research Journal*, 21, 547-560.

<sup>10</sup> Beran, N. Tanya and Li Qing (2005). *Cyber-Harassment: A Study of a New Method for an Old Behavior*. *Journal of Educational Computing Research*. DOI: 10.2190/8YQM-B04H-PG4D-BLLH

<sup>11</sup> Whitney, I., & Smith, P. K. (1993). A survey of the nature and extent of bullying in junior/middle and secondary schools. *Educational Research*, 35, 3-25.

<sup>12</sup> Fekkes, M., Pijpers, F. I. M., Verloove-Vanhorick, S.P. (2005). Bullying: Who does what, when and where? Involvement of children, teachers and parents in bullying behavior. *Health Education Research*, 20(1), 81-91.

<sup>13</sup> Reyns, B. W., Henson, B., & Fisher, B. S. (2011). Being pursued online: Applying cyberlifestyle – routine activities theory to cyberstalking victimization. *Criminal Justice and Behavior*, 38(11), 1149-1169

<sup>14</sup> Stambaugh, H., Beaupre, D., Icove, D., Baker, R., Cassaday, W., & Williams, W. (2000). State and local law enforcement needs to combat electronic crime. U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. Retrieved from U.S. Government website: <https://www.ncjrs.gov/pdffiles1/nij/183451.pdf>.

communication devices to take advantage of systematic weaknesses, or to exploit a person's vulnerability, including stalking a person online.

Several studies identified characteristics related to the age, gender, and ethnicity of stalking offenders. According to Bjorklund et al, (2010)<sup>15</sup>, offenders are mainly (59.7%) between the ages of 19 and 30. The study varied in determining the gender of most stalkers and estimates 91.8% of offenders are men.

Another survey by Baum et al, (2009)<sup>16</sup>, however, reported more complicated scenarios: When a victim was male, the offender was also male 41.3% of the time, female 42.5% of the time, and unknown 16.1% of the time; when a victim was a female; the offender was male 66.9% of the time, female 23.5% of the time, and unknown 9.3% of the time. The researchers also found most offenders stalked victims of the same ethnicity and that nearly 83% of Caucasian victims were stalked by Caucasians, while 66% of African Americans identified their perpetrator as being of the same ethnicity.

One of research by Ybarra et al. (2007)<sup>17</sup> explained that online sexual harassment and coercion have been associated with higher levels of anger, alcohol and other drug use, as well as a poor relationship with parents.

Walia (2013)<sup>18</sup> points out that cases of cyber sexual abuse are increasing all the more because people are aware that there is no clear law against such crime as compared to law against rape or physical violence.

In fact, cyber-sexual assault victims are assaulted each time their material is viewed or shared (Franks, 2013)<sup>19</sup>. Citron (2014)<sup>20</sup> also observed the lack of training of law enforcement which can cause further damage for a victim.

Kolberg (1977)<sup>21</sup> has highlighted the basic principle of justice as a basic and universal standard for all humans. Though Kolberg (1977) cited justice as the principal for teaching morality, in

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<sup>15</sup> Bjorklund, K., Hakkanen-Nyholm, H., Sheridan, L., & Roberts, K. (2010). The prevalence of stalking among Finnish university students. *Journal of Interpersonal Violence*, 25(4), 684-698.

<sup>16</sup> Baum, K., Catalano, S., Rand, M., & Rose, K. (2009). Stalking victimization in the United States. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. (NCJ 224527). Retrieved from U.S. Government website: <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1211>

<sup>17</sup> Ybarra, M. L., Espelage, D. L., & Mitchell, K. J. (2007). The co-occurrence of internet harassment and unwanted sexual solicitation victimization and perpetration: Associations with psychosocial indicators. *Journal of Adolescent Health*, 41, S31-S41.

<sup>18</sup> Walia, P. (2013). Facebook abuse tops cyber-crime chart in Punjab. *Hindustan Times*, June 30, 2013.

<sup>19</sup> Franks, M. A. (2013). Concurring opinions. Why we need a federal criminal law response to revenge porn. Retrieved from <http://concurringopinions.com/archives/2013/02/why-we-need-a-federal-criminal-law-response-to-revenge-porn.html>

<sup>20</sup> Citron, D. K. (2014). *Hate crimes in cyberspace*. Cambridge, MA: Harvard University Press.

<sup>21</sup> Kohlberg, L., & Hersh, R. H., 1977. Moral development: A review of the theory. *Theory into Practice*, 16(2), 53-59. Erlbaum.

this case it appears the most just solution regarding the research question is to provide victims of cyber-sexual assault fair access to treatment, given that the increase in use of technology leads to an increase in cyber sexual assault. Justice, in essence, begins with understanding the consequences of being sexually assaulted online.

### **(B) Problem Identification**

Many researchers worked on cyber sexual assaults to define different forms of online sexual harassments and their modes to commit sexual crimes in cyber space. Most of the studies focuses on psychological impact of the crime on victims. Limited work has been done to understand the effectiveness of legal provisions to curb online sexual harassments.

This study intends to find proper answers of the following research questions:

RQ1: What are the legal remedies available for the victims of cyber sexual crimes in India?

RQ2: Are the current legal provisions sufficient and effective to control online sexual assaults?

RQ3: Is there any correlation exists between disposal of cases and growth of online sexual crimes?

### **(C) Aim & Objective of the Research**

1. To understand the meaning of Technology-Facilitated Sexual Violence.
2. To analyze the growth of Cyber Sexual Crimes (CSC) in India.
3. To examine the effectiveness of police and courts in India to minimize online harassment.
4. To study legal provisions available in Indian Criminal Laws against crimes related to technology facilitated sexual violence.
5. To understand the relationship between disposal of cases and growth of the cyber sexual crimes.

### **(D) Hypothesis**

- i. First Null Hypothesis, Ho: Criminal Laws related to cyber sexual crimes are sufficient to cover all kinds of online sexual harassments and hence does not require any change or inclusion in law.
- ii. Second Null Hypothesis, Ho: Court and Police disposal of Cyber Sexual Crimes are not significant related to the growth of online sexual crimes in India.

## **II. TECHNOLOGY FACILITATED SEXUAL VIOLENCE (TFSV)**

### **a) Meaning**

The word “Technology Facilitated” refers to the use of digital media technology like electronic gadgets, communicable devices, networking, computers, internet and others machineries to facilitate any activity to reduce human efforts and work precisely. When these scientific tools are used to commit any crime then these crimes are termed as Technology Facilitated Crimes and if the nature of crime is to abuse any person targeting its gender and sexuality to do any unwanted sexual act like online sexual harassments, online stalking, revenge porn etc. are termed as Technology Facilitated Sexual Violence.

As these crimes are conducted using devices like mobile phones, personal computers, any networking device commonly used in offices, schools and at homes, anyone can be victim or offender of these crimes who are using such gadgets. One can get easy access of personal details using social media profiles to harass someone, can create false ID to stalk someone, can upload objectionable images of someone to disrespect or defame and can spread personal intimate images of someone to blackmail. All these incidents are examples of online sexual harassment.

TFSV is defined by unwanted sexual behaviors communicated and transmitted through digital means, which can include online/digital harassment, coercive sex-based communications, and sexuality-based harassment.<sup>22</sup> Technology-facilitated sexual violence (TFSV) is a comprehensive term used to encompass all sexually aggressive and harassing behaviors involving technology.<sup>23</sup>

TFSV includes various malicious acts of abuse, violence and sexual crimes such as online sexual harassments, sexualized blackmailing, digital flashing, rape threats, morphed images, cyber bullying, cyber stalking, voyeurism including explicit comments and messages. Social media and messaging platforms, like WhatsApp, Instagram, Facebook, and twitter have become hotspots for these crimes, significantly affecting college students and working women across India.

### **b) Types of TFSV**

#### **i. Online Sexual Harassment:**

It refers to the unwanted or unsolicited communication of sexual attention and interest that

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<sup>22</sup> Snaychuk, L. A., & O'Neill, M. L. (2020). Technology-facilitated sexual violence: Prevalence, risk, and resiliency in undergraduate students. *Journal of Aggression, Maltreatment & Trauma*, 29(8), 984–999. <https://doi.org/10.1080/10926771.2019.1710636>

<sup>23</sup> Champion, Amanda & Oswald, Flora & Pedersen, Cory. (2021). Technology-Facilitated Sexual Violence and Suicide Risk: A Serial Mediation Model Investigating Bullying, Depression, Perceived Burdensomeness, and Thwarted Belongingness. *The Canadian journal of human sexuality*. 30. 10.3138/cjhs.2020-0044.



occurs in online spaces like chat rooms, online forums, private messaging, e-mails and text messages through mobile phones etc.<sup>24</sup> In other words, it is a cyber sexual harassment includes the activity of digitalizing sexual content such as intimate images, videos, or posts to harass, exploit, distress, humiliate, coerce, or threaten. There are variety of unwanted sexual behaviors that occur on any digital platform, among apps and platforms that contain unmonitored livestreams, shared content, and direct messaging.

ii. Gender Based Cyber Sexual Violence:

It refers to any unpleasant comment, remark and speech targeting to insult any person due to their gender, colour or sexuality using online media or electronic messaging. This kind of violence mostly occurred for the members of LGBTQ community, transgenders and also for women.<sup>25</sup>

iii. Image Based Cyber Sexual Abuse:

This is the kind of abuse that include intentionally spreading or sharing of anyone's unwanted or unsolicited personal intimate images related to sexual activities, nudity, intimate body part or any other pornographic material using any digital media. Some offenders use artificial intelligence (AI) technology to superimpose images of another person for creating pornographic material with the intention to make monetary profits.

iv. Cyberstalking:

It is a kind of cyber-offence where stalking is done using digital media in the form of text messages, e-mails, social media posts and other digital form of communications. Stalking is a crime defined in sec. 354D of Indian Penal Code, 1860 which refers to such activity in which a man follows a woman and tries to contact repeatedly despite of her clear indication of disinterest or monitors the use of internet, emails and other electronic communications by such woman. Cyberstalking is much more than activities covered in IPC.

v. Cyberbullying:

It's a form of stalking of a child, preteen, or teen in which they are harassed, tortured, humiliated, embarrassed, threatened, or targeted through the internet, and digital technologies, or with any electronic device by another person of the same age range irrespective of gender. Cyberbullying occurs in a repeated, deliberate, and hostile manner that can be facilitated as

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<sup>24</sup> Henry, N., & Powell, A. (2018). Technology-Facilitated Sexual Violence: A Literature Review of Empirical Research. *Trauma, Violence, & Abuse*, 19(2), 195–208. <https://doi.org/10.1177/1524838016650189>.

<sup>25</sup> Blackwell, L., Dimond, J., Schoenebeck, S., & Lampe, C. (2017). Classification and its consequences for online harassment: Design insights from heartmob. *Proceedings of the ACM on Human-Computer Interaction*, 1(CSCW), 1(24), 1–19. <https://doi.org/10.1145/3134659>

simple as repeatedly sending text messages, emails, or harassing someone using digital mode of communication.

vi. Cyber Pornography:

This is a crime which involves publishing, distributing or designing pornography by using digital media like internet or any other mode of electronic communication. With the easy availability of the Internet, people can now view thousands of porn on their mobile or laptops, they even have access to upload pornographic content online.

vii. Virtual Rape:

It is a form of TFSV where AI generated digital avatar of any person is sexually abused by other digital avatars.<sup>26</sup> The concept of virtual rape is extremely new and hence not explored much. This was first observed in online gaming platform where virtual character of one person is forcibly sexually exploited by another virtual character in virtual environment.

viii. Voyeurism

It is the practice of watching sexual activities of other people without their permission or consent. This includes the unauthorized observation by installing camera or other means of recording private activities of a person. This is a criminal offence described in sec. 354C of Indian Penal Code, 1860.

ix. Sexual Grooming

This is a type of online child sexual abuse in which offenders first establish a friendly and emotional connection with the target victim and try to earn their trust by flattering and offering gifts to gain attention. After getting attached emotionally, provokes children to share explicit images, nude photos, sexual videos etc.

x. Child Pornography

This is defined as the creation, possession or distribution of videos of children engaged in sexual activities. This is one of the most serious online crimes against children.

**c) Effects of TFSV or Cyber Sexual Abuse on victims**

Effect of online sexual harassment on victim is similar to the physical sexual abuse. These crimes make victims feel shamed, guilty and blamed. Online harassment is a serious and a potentially life-threatening issue with real repercussions to the victims and their personal and

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<sup>26</sup> Henry N, Powell A. Embodied harms: gender, shame, and technology-facilitated sexual violence. *Violence Against Women*. 2015;21(6):758–779. doi: 10.1177/1077801215576581.

private life when sense of emotional safety is compromised.

Cyber Sexual Harassment causes psychological health problems that includes depression, anxiety and mental stress. Victims may feel anxious and stressed while doing their routine activities and are being prevented from sharing their opinions, thoughts, and sometimes even accessing relevant information, or expressing their views. This can cause serious distress to the victims like feeling low self-esteem, depression, suicidal thoughts, suicidal attempt, poor performance at work place. It has silencing effect on the victims and sometimes on their families & friends, majorly to women and younger girls. The victims are forced to abandon their social media profiles.

For young adults, cyber-bullying can lead to self-harm, isolation and suicidal thoughts and ideation. It also makes a person fearful of their lives, if received persistent harassment. The effects of cyber-bullying are higher in adolescents and adults due to their age period of mental & physical growth. Victims of cyberbullying are likely to experience anxiety, depression, loneliness, unhappiness & have poor sleep patterns.

### III. GROWTH OF CYBER SEXUAL CRIMES IN INDIA

As the use of internet has grown, crimes related to online sexual violence has also increased. According to the data crimes published by NCRB, total of 52974 cases of cybercrimes has been reported in 2021 in which 7774 are the cases of cyber sexual crimes only. There is growth of 143% in total cybercrimes and 236% growth in cyber sexual crimes from 2017 to 2021.

Table 1.1

Year	Cases of Total Cyber Crimes	Cases of Cyber Sexual Crimes including Cyber Stalking, bullying, publication or transmission of sexually explicit material electronically			Percentage
		Sec. 67 of Information Technology Act, 2000	Sec 354D of Indian Penal Code, 1860	Total	
2021	52974	6598	1176	7774	15%
2020	50035	6308	872	7180	14%
2019	44735	4187	777	4964	11%
2018	27248	3076	739	3815	14%

2017	21796	1768	542	2310	11%
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Source: NCRB, Ministry of Home Affairs, Govt. of India

Growth percentage are shocking and indicating seriousness of the issue. Cases of cyber sexual crimes comprises of digital transmission of sexually explicit material are reported under section 67 of IT Act, 2000 which is more in numbers than the cases of cyber stalking or cyber bullying reported as per section 354D of Indian Penal Code, 1860.

#### **IV. CRIMINALIZATION OF CYBER SEXUAL CRIMES**

Victims of online cybercrime have recourse to multiple laws but due to lack of knowledge they are not aware about the rights available for them. Indian Criminal Law that deals with the crimes related to online sexual harassment or cyber-crimes majorly consists of Indian Penal Code, 1860, Information Technology Act, 2000 and some provisions of other special laws.

The Criminal Law (Amendment) Act, 2013 brought several changes in the laws related to sexual offences and relevant provisions are added which were genuinely required from the long time. This amendment has added some new terms like 'stalking' and 'voyeurism' under the ambit of Indian Penal Code, 1860 and provided punishments for such crimes under the act.

##### **1. Provisions of Indian Penal Code, 1860 (IPC):**

###### **i. Section 228A:**

This section of IPC deals with the vengeful posting, printing or publishing of images or videos of a rape victim or court proceedings related to sexually abused victims. Offender under this provision shall be punished with the imprisonment of either description of the term which may extend to two years and also liable to pay fine.

###### **ii. Section 298:**

This section criminalizes hate speech, uttering of word, making any gesture or making any sound aimed to damage the religious sentiments of any individual. Offenders shall be punished with one year of imprisonment or fine or both.

###### **iii. Section 354A:**

This section deals with many forms of sexual harassment like forcefully showing pornography, making unwelcome physical contact, sexual advances, demanding or requesting sexual favours and making sexually coloured remarks. Offenders under this section shall be punishable with rigorous imprisonment up to three years and fine. But if a man commits the offence of making sexually coloured remark, he shall be punished with imprisonment for a term that may extend

up to one year, or with a fine, or both.

iv. Section 354C:

This section deals with ‘Voyeurism’ which is an act committed when a man watches or takes photos of a woman engaged in a private act without her knowledge.

If a man commits such an offence, he shall be imprisoned for a minimum period of one year, which may extend up to three years, and shall also be liable to a fine in case of a first conviction.

In case of a second or subsequent conviction, he shall be imprisoned for a minimum period of three years, which may extend up to seven years, and also be liable to a fine. An offence under Section 354C is cognizable and bailable at the first conviction but cognizable and non-bailable at the second or subsequent conviction.

v. Section 354D

This section deals with the protection of women against stalking which refers to a form of harassment that involves repeated and persistent intent to cause fear or harm to the person who is being followed. It can be in any form, be it physical or online. Section 354 is not a gender-neutral offence. Only a woman can seek justice under this section. If a man commits such an offence, he shall be punished with imprisonment for a term that may extend up to three years and shall also be liable to a fine for his first conviction. For his second or subsequent conviction, he shall be punished with imprisonment for a term that may extend to five years and shall also be liable to a fine.

vi. Section 499:

This section of the IPC criminalizes defamation, or the act of tarnishing the reputation of an individual through words, signs, or visible representations. Offender under this provision shall be punished with the imprisonment up to the term of two years with or without fine.

vii. Section 507:

punishes criminal intimidation by anonymous communication with a term which may extend to two years of imprisonment.

viii. Section 509:

The section provides that any person who utters any word or makes any sound or gesture, intending that such word, sound or gesture be heard or seen by a woman and insult her modesty, shall be punished with one-year imprisonment and/or fine.

## **2. Provisions of Information Technology Act, 2000 (IT Act)**

### **i. Section 66C:**

This section deals with the offence of identity theft by tempering digital password or electronic signature or any other unique feature of any person. Punishment for this offence shall include imprisonment for the term which may be extended to three years or fine of rupees one lakh or both.

### **ii. Section 66E:**

This section of IT Act is applicable for violation of privacy by capturing or transferring or publishing any video, image, videotape, intimate pics or any other such explicit material without consent of a person in any form including electronic or digital media in public or private place. Offending of such provisions shall attract punishment of imprisonment which may extend to three years or fine of maximum of rupees two lakh or both.

### **iii. Section 67:**

This section of IT Act deals broadly with offence related to publication or transmitting or transferring obscene or lascivious material in electronic form. It includes sharing of pornographic pics, explicit material, nude photographs or any other illegal material using digital technology. Provisions of this section are such that for the first-time offender, punishment shall be of imprisonment for the term of three years or fine of rupees five lakh or both. Punishment for the second time offender has been increased with the imprisonment for the term which may extend to five years or fine of rupees ten lakh or both.

### **iv. Section 67A:**

This section bars the transmission of sexually explicit material electronically. First time offender shall be punished with the imprisonment of five years and fine of rupees ten lakh whereas second time offender shall be punished with imprisonment which may extend for the term of seven years and fine of rupees ten lakh.

### **v. Section 67B:**

This section of the Act deals specially with the sexual abuse of children by producing or transferring or storing sexually explicit materials of children. Provisions of this section bars any kind of technical facilitated sexual abuse of children including creation of digital images, texts, pornographic material etc. First time offender under these provisions shall be punished with the imprisonment which may extend for the term of five years and fine of rupees ten lakh which shall extend in case of subsequent offence for the term of seven years of imprisonment and fine of rupees ten lakh.

### **3. Indian Evidence Act, 1872**

There are many technical issues and obstacles in producing evidences related to cyberspace crimes due to its virtual nature. Such digital evidence has to be judged with the help of expert's opinion and cannot be relied on easily.<sup>27</sup> The digital evidence must be admissible and authentic. Section 65 of Indian Evidence Act, 1872 provides acceptability of electronic evidence. The evidence obtained must also be shown keeping in mind the privacy rights issues. This makes the collection of evidence difficult.<sup>28</sup> It is intangible and their collection may also be errored due to technical malfunction and lead to fabrication. Hence, the investigation is also tough, which may be another reason for non-conviction.

### **4. Criminal Procedure Code, 1973 (Cr.P.C.)**

Cybercrimes are committed in virtual place hence these crimes do not have any jurisdiction to go with. These crimes can be reported to any cyber cell established in any city. Cyber Cells have been established to provide redressal to the victims of cybercrime. These cells function as a part of the criminal investigation department and specifically deal with internet related criminal activity.

The Information Technology Act provides in its section 80 that notwithstanding anything contained in the Code of Criminal Procedure, 1973, any police officer, not below the rank of a Deputy Superintendent of Police, or any other officer of the Central Government or a State Government authorized by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected or having committed or of committing or of being about to commit any offence under this Act.

### **5. Protection of Children from Sexual Offences Act, 2012 (POCSO Act)**

#### **i. Section 11:**

This section of POCSO determine the offence by any person who commit sexual harassment to a child with sexual intent by uttering any word or sound or exhibiting body parts of children for pornographic purpose directly or through electronic, digital mode, 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 entices a child for pornographic purposes or gives gratification therefor.

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<sup>27</sup> Paul W Grimm, 'Authenticating Digital Evidence' (2014) 31(5) *Litigation* 46

<sup>28</sup> Erin E Kenneally, 'Confluence of Digital Evidence and the Law: On the Forensic Soundness of Live-Remote Digital Evidence Collection', (2005) 5 *UCLA J L & TECH* 1

ii. Section 12:

Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable for fine.

iii. Section 13:

Whoever, uses a child in any form of media, for the purposes of sexual gratification, which includes:

- a) representation of the sexual body parts of a child;
- b) usage of a child engaged in real or simulated sexual acts (with or without penetration);
- c) the indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes.

iv. Section 14:

Whoever, uses a child or children for pornographic purposes shall be punished with imprisonment of either description which may extend to five years and shall also be liable to fine and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also be liable to fine.

If the person using the child for pornographic purposes commits an offence by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

## **6. Indecent Representation of Women (Prohibition) Act, 1986**

Section 4 of this Act bars the production, distribution or circulation of any material containing indecent representation of women in any form.

## **7. The Sexual Harassment of Women at Workplace Act, 2013**

The entire Act is aimed at preventing sexual harassment of women. Section 2(n) defines “sexual harassment” but does not specify any medium. Besides, Section 2(o) defines “workplace” to include “a dwelling place or a house” as well. Workplace can be any physical or virtual space in which electronic and digital media is used to perform work.

## **V. POLICE DISPOSAL OF CYBER SEXUAL CASES**

Effectiveness of police in disposing sexual crimes can be analyzed in table 1.2 given below.



According to the data compiled by NCRB, pendency percentage of overall cybercrimes is improved to 56.4% which is comparatively lower in 2021.

Table 1.2

## Disposal of Cyber Crime Cases by Police in India

Year	Sl No.	Category of Cases	Total Cases Disposed Off by Police	Pending Invsngn.at end of the year	Charge sheeting Rate	Pendency Percentage
2021	1	Over all Cyber Crimes	55427	71868	33.8	56.4
	2	Cyber Stalking/Bullying of Women/Children	849	1396	82.7	62.2
	3	Publication/transmission of obscene / sexually explicit act in electronic form	5511	7453	51.0	57.5
2020	1	Over all Cyber Crimes	29820	74142	47.5	71.3
	2	Cyber Stalking/Bullying of Women/Children	553	1061	79.2	65.7
	3	Publication/transmission of obscene / sexually explicit act in electronic form	4077	6362	57.5	60.9
2019	1	Over all Cyber Crimes	23684	52917	39.1	69.0
	2	Cyber Stalking/Bullying of Women/Children	593	737	78.6	55.2
	3	Publication/transmission of obscene / sexually explicit	2709	4105	58.8	60.2

		act in electronic form				
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Source: NCRB, Ministry of Home Affairs, Govt. of India

But, looking into the pendency of cyberstalking and cyber bullying cases, it shows increasing trend. Rate of chargesheet is also not very impressive.

## VI. COURT'S DISPOSAL OF CYBER CASES

It is evident from the data compiled in table 1.3 that pendency percentage in court disposal of cyber cases are quite high and also rate of conviction is very low.

Table 1.3

Disposal of Cyber Crime Cases by Courts in India

Year	Sl No.	Category of Cases	Trials Completed	Disposed off by Courts	Pending Trial at Year End	Conviction Rate	Pendency %
2021	1	Over all Cyber Crimes	1155	7139	47840	42.5	87.0
	2	Cyber Stalking/Bullying of Women/Children	45	59	2151	33.3	97.3
	3	Publication/transmission of obscene / sexually explicit act in electronic form	258	290	8613	47.7	96.7
2020	1	Over all Cyber Crimes	1626	4420	36236	68.3	89.1
	2	Cyber Stalking/Bullying of Women/Children	29	40	1508	27.6	97.4
	3	Publication/transmission of obscene / sexually explicit act in electronic	140	150	6089	47.1	97.6

		form					
2019	1	Over all Cyber Crimes	1032	1420	26406	35.5	94.9
	2	Cyber Stalking/Bullying of Women/Children	40	56	1106	30.0	95.2
	3	Publication/transmission of obscene / sexually explicit act in electronic form	193	226	3892	43.5	94.5

Source: NCRB, Ministry of Home Affairs, Govt. of India

## VII. ANALYSIS AND DISCUSSION

Research questions drafted in the beginning of this study are answered based on the data collection, referring available laws and statutes pertaining to online sexual offences and review of literature during this study.

### **RQ1: What are the legal remedies available for the victims of cyber sexual crimes in India?**

Victims of cybercrime can report to any of the cyber cell established in any city of the country irrespective of the jurisdiction. Online crimes can be committed by any one from anywhere over a shared network or digital platform. Many helpline numbers are made available by government to assist the victims in case of online harassments. It is seen that most of the crime of sexual assault is committed against women and children studying at school, university or working in any organization having accessibility of internet and computing system. Government has realized the role of communication system used in spreading of unwanted electronic contents including sexually explicit and intimate images. Provisions content in sections 66E, 67, 67A, 67B, 67C, 67D of Information Technology Act, 2000 and its subsequent amendment in 2008, are made more stringent to include all possible type of cyber sexual offences. Punishments are harsher for repetitions of offence by the offender.

Indian Penal Code, 1860 is another legal resort for the victims of sexual crimes. Scope of IPC is very broad and covers all types of possible crimes in it. But, in the changing environment, nature and process of crime changes that gives the space for improvisation. Section 354D of

IPC is the result of such improvements. Victim of cyberstalking can take resort of this section 354D.

There are many other sections of IPC discussed in this study under which a victim of cyber sexual assault can be helped. POCSO Act, 2012 provides relief to child victims from sexual abuse. Working women have another special legislation 'The Sexual Harassment of Women at Workplace Act, 2013' that caters sexual harassment in any mode. In spite of various laws and provisions thereunder, crimes of online sexual harassments are growing day by day.

**RQ2: Are the current legal provisions sufficient and effective to control online sexual assaults?**

Data released on crimes by NCRB indicates towards the increasing trend of crimes related to online sexual violence. Table 1.1 referred in this study shows that cases of cyber sexual crimes are tripled in last five years. In 2017, only 2310 cases cyber sexual crimes were reported but in 2021 the figures have been increased to 7774. Provisions of IPC, 1860, IT Act, 2000, POCSO Act, 2012, and other special laws are meant to provide relief to the victims of online sexual crimes but data of NCRB as stated above indicates the failure to control such crimes. Pendency rate of these cases in courts are also too high as referred in table 1.3 in this study. This shows the ineffectiveness of legal provisions and slow trial system in India.

In light of above data and study, it is clear that provisions of current laws are not effective and are insufficient to control online sexual harassment. Therefore, this study rejects its first null hypothesis to accept that there are having sufficient gap in the laws to be fulfil in future to control such crimes efficiently.

**RQ3: Is there any correlation exists between disposal of cases and growth of online sexual crimes?**

This study aims to correlate the growth rate of cyber sexual crimes with disposal of such cases by police and court. Hence, crime growth rate (X) has been computed with the data available with NCRB, conviction rate of court (Y) and chargesheet rate of police (Z) has been directly taken from the reports of NCRB. Following table 1.4 has been drawn to calculate correlation in table 1.5 using IBM SPSS ver. 23 software under:

Table 1.4

Growth and Disposal Rate of Cyber Sexual Crimes

Cyber Sexual Crimes

Year	Crime Growth Rate (X)	Conviction Rate (Y)	Chargesheet Rate (Z)
2017	20.69	34.80	67.1
2018	65.15	27.10	66.4
2019	30.13	36.80	68.7
2020	44.64	37.35	68.4
2021	8.27	40.50	66.9
Avg. (5 Year)	33.78	35.31	67.5

Source: NCRB, Ministry of Home Affairs, Govt. of India

Table 1.5

Calculation of Correlation

**Correlations\***

	(X)	(Y)	(Z)
(X) Pearson Correlation	1	-.829	-.098
Sig. (2-tailed)		.083	.876
N	5	5	5
(Y) Pearson Correlation	-.829	1	.486
Sig. (2-tailed)	.083		.406
N	5	5	5
(Z) Pearson Correlation	-.098	.486	1
Sig. (2-tailed)	.876	.406	
N	5	5	5

Source: Computed by Researcher using Statistical Software, IBM SPSS ver. 23

## VIII. OBSERVATION

- 1) Correlation of Crime Growth Rate (X) with Court Disposal of Cases (Y) in terms of conviction rate:
  - a) Pearson Correlation,  $r(X)(Y) = -0.829$  which is  $< 1$ ,
  - b) This shows the strong association between the variables but with negative relationship.
  - c) Negative relationship means, if conviction rate improves or increases in future then there are strong chances of decrease in growth rate of cyber sexual crimes.
- 2) Correlation of Crime Growth Rate (X) with Police Disposal of Cases (Z) in terms of Chargesheet Rate:
  - a) Pearson Correlation,  $r(X)(Z) = -0.098$  which is  $< 1$ ,
  - b) This shows weak association between the variables with negative relationship
  - c) There will be less impact on the increase of chargesheet rate on decrease of crime growth rate. But somehow it will impact and help in lowering crime growth.
- 3) Correlation of Conviction Rate (Y) with Chargesheet Rate (Z):
  - a) Pearson Correlation,  $r(Y)(Z) = +0.486$  which is  $> 1$ ,
  - b) This shows moderate association between the variables with positive linear relationship.
  - c) This shows the positive relation which means conviction rate will increase with the increase in the chargesheet rate by the police which will ultimately decrease the growth rate of the crime.

### Result of the test:

The result shows strong negative relationship between crime growth rate and disposal of cases by court and police; hence this study rejects second null hypothesis to accept the strong association between the variables. Increase in conviction rate and chargesheet rate will help to decrease the growth rate of cyber sexual crime.

## IX. SUGGESTIONS

Although, our legislation, statutes and various Government initiatives have provided guidelines and relief for victims of online sexual offences, crimes related to such activities are growing

day by day. This is the time to understand the need for the change in the laws and accurate action plan to decrease the number of incidents. This study recommends following measures to mitigate the growth of online sexual violence:

- 1) A separate Act for online sexual crimes is required which may cover all possible ways of crime irrespective of the gender of offender or victim with penal provisions of fine not less than five lakh rupees and imprisonment for the minimum term of five years which may be extended to ten years.
- 2) Proper training of using electronic gadgets, handling electronic communications, using public platforms with security, spy detecting techniques, handling online data and use of antimalware software will be provided at school and college level education.
- 3) Legal provisions of misuse of technology must be taught at school, college, organizational training and at workplace.
- 4) Police procedure for handling cyber sexual crimes must be guided by standard operating procedure and should be hassle-free for victims.
- 5) A mandatory counselling program must be arranged for the victims and their close relatives of cyber sexual assaults.
- 6) Special courts with speedy trials should be arranged for online sexual crimes.
- 7) Centralized monitoring centers (CMC) has to be established to monitor reporting, investigation, trial and disposal of online sexual crimes.

## **X. CONCLUSION**

Sexual crimes are considered to the most heinous crimes which is growing day by day. Physical abuse can be identified easily and are taken care by numbers of provisions of rape laws in India. Online sexual crimes are only visible if victim of same bring it in the light of society. Modernization and technology upgradation has made electronic communication very fast and easy and this has been misused to commit cyber frauds. Indian legislation includes Information Technology Act, 2002, Indian Penal Code, 1860 and POCSO Act, 2012 for the protection of victims of cyber sexual crimes. The provisions contained in these laws are not very efficient to control the growth of these online harassments. Punishments under these provisions are not very harsh. This needs to get improvise in the future.

Disposal rate of these crimes are very less. Conviction rate of the cases related to cyber sexual crimes are comparatively low. Disposal of cases by police is also not very encouraging. This all results in failure to control such crimes. Guidelines and Helplines provided for the victims

cannot be the only solution. Reporting of such crimes can be encouraged by such guidelines but actual controlling the growth of such crimes are needed and this can be done by making trials in fast-track mode and enacting punishment harder for the culprits.

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