



Ayana Legal

THE BUZZ

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The Law Before

Prior to Section 354-D, Stalking would often be prosecuted under Section 509 of the IPC which punishes any word, gesture or act intended to insult the modesty of a woman.

Statistics

As per the National Crime Record Bureau's 2021 report, there were 9285 reported cases of stalking in the country. This is an approximate 97% increase compared to the 4699 cases reported in 2014.

In 2019, the National Cyber Crime Reporting Portal was activated in India. As per official reports between 2020 to 2022 more than 16 lakh cyber crimes were reported out of which approximately only 2% had been converted into FIRs.

STALKING

Indian Penal Code

Section 354-D, which defines "stalking" was introduced in the Indian Penal Code (IPC) by way of the Criminal Law Amendment Act, 2013.

It states that "Any man who follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking." The proviso to the Section provides certain exceptions, these being when: (i) it was pursued for the purpose of preventing or detecting crime (ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or (iii) in the particular circumstances such conduct was reasonable and justified.

For the offence of stalking, the punishment imposed is imprisonment and fine. The first conviction is punished by imprisonment of either description for a term which may extend to three years, and for second or subsequent conviction the term may extend to five years.

Section 507, which deals with criminal intimidation by anonymous communication, may also include stalking.

Metaverse and Beyond

With countries across the globe already grappling to address cyber-crime, incidents of online sexual harassment have emerged in the Metaverse. Reports of incidents of groping, stalking and rape on online avatars paint a bleak picture when implementation in the real world is still a struggle.

Thank You

We at Ayana Legal thank you for your continued support and patronage to our newsletter and capsules. We look forward to being back with our next edition soon.

Disclaimer

This newsletter is solely for the purpose of providing information and the content provided is not and should not be construed as legal advice.

Information Technology Act, 2000

The digital age has enabled the commission of electronic/ cyber crimes. While Section 354-D does bring under its purview electronic communications, certain provisions of the Information Technology Act may also aid in regulating stalking.

Section 67 punishes publishing and transmitting obscene material in “electronic form”. Section 67A punishes publishing and transmitting sexually explicit material.

Section 66A, prior to being held unconstitutional, punished sending offensive messages through communication service. This included the sending of any information that was grossly offensive or had menacing character and any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages. Via the *Shreya Singhal v. Union of India* judgement, the Hon’ble Supreme Court of India held that Section 66A was violative of Article 19(1)(a) and Article 19(2) as it was worded so widely “that virtually any opinion on any subject would be covered by it.”

Judgements on Stalking

In the case of **Singaraju Somasekhar vs. State of Telangana, [MANU/TL/1808/2022]**, the Telangana High Court has held that - “...In order to attract Section 354D IPC, the contacting and attempt to contact shall be in respect of outraging the modesty of the woman. The intention here is to continue the relation with the de- facto complainant in spite of clear indication of her disinterest...”

Jayaprakash P.P v. Sheeba Revi, 2023 SCC OnLine Ker 4904, the Kerala High Court held that the vital ingredient for the offence of stalking is “to foster personal interaction despite a clear indication of disinterest” by the woman.