

## STALKING LAWS - FAR FROM PERFECT

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### ABSTRACT

*The shortcomings and restrictions of India's stalking laws are examined in this article. It draws attention to the gender bias in these regulations, which only protect female victims and leave out male victims. This article makes the case that stalking regulations should not be based on a person's gender because research has proven that both men and women are capable of stalking and causing harm. The existing legal framework is extremely constrained and does not cover other types of stalking that don't entail physical contact. This gives hitmen who follow their target's room to engage in risky behaviour without being held accountable. In India, stalking is also not regarded as a serious offence because it is a crime that is subject to bail after a first conviction. In India, stalking is also not regarded as a serious offence because it is a crime that is subject to bail after a first conviction. The essay details instances when stalking turned into rape and murder, highlighting the necessity for more stringent regulations. The regulations continue to be mainly directed at male criminals stalking women, notwithstanding the rise in recorded stalking occurrences in recent years. The essay recommends conducting studies to determine how frequently women are stalked in India and make the appropriate legal adjustments. Furthermore, the low conviction rates and the necessity for justice to triumph refute the claim that expanding the reach of stalking statutes would burden the legal system. The article continues by stating that in order to improve the administration of justice and protect everyone's safety, stalking laws need to be amended and strengthened.*

### INTRODUCTION

Stalking is an act that has been declared a crime in many countries across the world. Stalking has many definitions which vary across platforms. Oxford Dictionary defines stalking as “the crime of following and watching somebody over a long period of time in a way that is annoying or frightening”<sup>1</sup>. This definition is different from the definition of stalking as per

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<sup>1</sup>‘Stalking’ (stalking noun - Definition, pictures, pronunciation and usage notes | Oxford Advanced Learner’s Dictionary at OxfordLearnersDictionaries.com)

<https://www.oxfordlearnersdictionaries.com/definition/english/stalking#:~:text=%2F%CB%88st%C9%94%C>

Indian laws. The stalking definition in India does not include male victims; its scope is also very limited. This is mainly because India has a patriarchal society in which men are usually considered perpetrators and women are considered innocent victims. These laws are also biased due to the reason for their creation as the law was formulated for the protection of women. Also, stalking is a bailable offence in the first instance and is not considered to be a serious offence. Hence, the stalking laws in India are inadequate. The law of stalking is biased towards women and is also not viewed as a serious crime. Though a change in the law might cause an increase in the number of cases, a change in the law of stalking is necessary for better discharge of justice.

## BACKGROUND AND LAW

The Nirbhaya case shook India and the world. A female student was gang-raped on a bus by 6 people in December 2012. She died 13 days later due to injuries. This incident led to mass protests all over India that led to the Criminal Law Amendment Act of 2013. The Act amended certain provisions of the Indian Penal Code, Indian Evidence Act, and Criminal Procedure Code to provide better safety to women. The amendments included the addition of Section 354 D to the Indian Penal Code, which defines stalking and provides a remedy for it. The section includes cyberstalking also, but it is gender specific. The section considers stalking as a crime only when it is committed towards women by men. It completely rules out the possibility of men being stalked or women stalking. The punishment for stalking is imprisonment extending to 3 years along with a fine on the first conviction and imprisonment extending to 5 years along with a fine on the second conviction. This section provides three exceptions to stalking. The first exception is that the man has been entrusted by the state to stalk the woman to prevent or detect any crime. The second exception is that the stalking was a requirement from the person due to any law or it was carried out under any law. The third exception is that stalking was done under reasonable circumstances. Stalking, as per Schedule 1 of CrPC, is a bailable offence on the first conviction and a non-bailable offence on the second or subsequent conviction.<sup>2</sup> This means that the accused on the first conviction is entitled to get bail from the police station or magistrate court. Stalking on first conviction is

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[B%90k%C9%AA%C5%8B%2F-.%2F%CB%88st%C9%94%CB%90k%C9%AA%C5%8B%2F,that%20is%20annoying%20or%20frightening>](#)  
accessed 16 June 2023

<sup>2</sup>IPC Section 354D - Stalking' (A Lawyers Reference) <<https://devgan.in/ipc/section/354D/>> accessed 14 June 2023

not considered a serious offence. This may lead the accused to commit a more serious offence because of the anger that the complainant complained against them.

## ADEQUATE LAWS?

### Gender bias-

Stalking, by definition, can be committed by people of all genders. In India patriarchal values are deeply ingrained. Patriarchy is a system of society in which men are in a better and more dominating position than women. This system has negative consequences for both men and women. Along with portraying women as weak, it also portrays men as strong and vile. Hence, people might still have a belief that only men stalk women or that the consequences faced by women are more severe. Both these statements have been proven to be wrong by experts. Paul E. Mullen, Michele Pathé, and Rosemary Purcell are mental health experts who find those female stalkers prefer electronic stalking acts over physical stalking acts, have the same tendency for threats, physical violence, and property damage as male offenders, have a greater desire to establish a love relationship with their victims, and are more inclined to target men and women alike with their stalking behaviours.<sup>3</sup> This proves that women also stalk people, both men and women, and that they are also capable of causing as much damage as men. This clearly shows how the belief that women don't stalk people is incorrect. Studies have shown that being stalked had equal negative health outcomes for men and women; individuals who were stalked were much more likely to report poor present health, depression, injury, and drug use.<sup>4</sup> According to the Journal of Consulting and Clinical Psychology, once lifetime exposure to aggressive episodes was fully accounted for, the data indicated no major interaction effects of gender on outcomes.<sup>5</sup> These studies evidently prove that the effects of stalking on men are not different from men. Hence, gender has no effect on the behaviour of the stalker or the effects on the victim. Another reason for stalking laws being so gender centric is also the reason for its formulation. Since it was formed as a result of the Nirbhaya case, it focuses on the protection of women only. This resulted in laws made for a gender-neutral crime being entirely gender specific.

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<sup>3</sup>Cook PW and Hodo TL, 'Stalking', *When women sexually abuse men: The hidden side of rape, stalking, harassment, and sexual assault* (Praeger 2013) 76

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<sup>5</sup>Cook PW and Hodo TL, 'Stalking', *When women sexually abuse men: The hidden side of rape, stalking, harassment, and sexual assault* (Praeger 2013) 95

According to newly released National Crime Records Bureau (NCRB) data, the number of cases registered for stalking has been increasing in recent years. According to NCRB data, 9,285 cases of stalking were reported in India in 2021. This is an increase from 8,512 cases in 2020 and 8,810 cases in 2019.<sup>6</sup> These numbers show that the number of stalking incidents has been increasing over the years. But an important thing to remember is that this number only represents men stalking women, the incidents of women stalking have not been recorded since it is not a crime in India. Since it has been proven that women also stalk and have the same effects, a study or survey needs to be made to evaluate the cases of women stalking in India and then changes need to be made accordingly.

### **Limited scope**

Section 354D of the Indian Penal Code provides for very few incidents to fall under stalking. Apart from being gender biased, it also does not include stalking methods which are not usually intended for contacting a person. If a hitman is hired to kill someone, they are likely to follow the victim to get information but not likely to try contacting them. This action comes under the stalking definition of the Oxford Dictionary, but it is not an offence under section 354 of the Indian Penal Code. In the same way, there are other actions like staring at someone continuously which usually does scare a person but does not come under stalking due to little scope of the section. In the same way, lurking around some person's home or office, monitoring the daily activities of a person, etc also is not a crime. This has led to many acts being committed which are technically stalking as per the Oxford Dictionary definition are allowed to happen freely. Apart from allowing hitmen to follow people, which is inherently dangerous, this section also allows professional private investigators to follow people to gather information. This is not inherently dangerous, but these investigators usually do not have any link to the government, and hence they do not have the accountability to people that government officers have. There are no proper rules they have to follow except the general laws for all people.<sup>7</sup> This questions the safety of the people they investigate as they are neither accountable to anyone. This shows the limited scope of the section and its effects on people.

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<sup>6</sup>'Dumka Case Isn't Isolated. Stalking Has Been Growing in India' (*India Today*, 1 September 2022) <<https://www.indiatoday.in/india/story/jharkhand-dumka-case-stalking-growing-india-ncrb-data-1994417-2022-08-30>> accessed 17 June 2023

<sup>7</sup>Vidyarthi A, 'Legality of Private Detective Agencies in India' (*iPleaders*, 3 February 2018) <<https://blog.iplayers.in/legality-of-private-detective-agencies-in-india/>> accessed 15 June 2023

### Not a serious offence

Stalking is not considered a serious offence as it is not as harmful as the rest of the crimes. Stalking is a bailable offence in India on first conviction. This means that it is not considered a serious offence in the eyes of the law. Though stalking in itself is not very harmful, it might lead to the commission of harmful crimes. There have been many cases of rape and murder which started from stalking. A clear example of this is the case *Santosh Kumar Singh v. State Through CBI (2010)*, in which a law student was stalked by her senior. When she lodged an FIR against him for molestation, he lodged a false complaint against her in their college. On 23<sup>rd</sup> January, he came into her home when she was alone and then raped and murdered her. Hence, stalking cannot be brushed off as a small offence as it might lead to the commission of very serious offences. Also, since it is bailable on the first conviction, the stalker might commit harsher crimes after that. A clear example of this is the case of Riya Gautam, who was stalked by Adil. When her family complained about him, he had to leave Delhi. But, he returned on July 6, 2017, just to kill her.<sup>8</sup> This clearly shows that when a complaint just results in a small punishment like leaving a place, it results in the commission of more serious crimes. Thus, stalking needs to be considered a more serious offence and needs to be made non-bailable.

Home Minister Sushil Kumar Shinde proposed the Criminal Law Amendment Ordinance in 2012 in which stalking was proposed as a non-bailable offence. But, opposition parties including the Samajwadi Party, Rashtriya Janata Dal, and JD(U) spoke out against it during an all-party meeting, claiming that it had been used unfairly against males.<sup>9</sup> The entire section is technically unfair to males since it has removed the possibility of male victims of stalking. But, making stalking a non-bailable offence is not unfair to anyone as the court will still have the discretion to grant bail and it will also prevent other crimes which are done with the help of stalking. Thus, stalking as a non-bailable offence would benefit victims and still give the accused a chance to get bail in court.

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<sup>8</sup>Updated: Aug 11 2017, 'Stalking: Five Cases That Shook Delhi's Conscience: Delhi News - Times of India' (*The Times of India*) <<https://timesofindia.indiatimes.com/city/delhi/stalking-five-cases-that-shook-delhis-conscience/articleshow/60018506.cms>> accessed 17 June 2023

<sup>9</sup>Verma A, 'Why We Need Stalking as a Non-Bailable Offence in the First Instance' (*iPleaders*, 30 September 2020) <[https://blog.ipleaders.in/why-need-stalking-non-bailable-offence-first-instance/#Is\\_stalking\\_a\\_bailable\\_or\\_non-bailable\\_offence](https://blog.ipleaders.in/why-need-stalking-non-bailable-offence-first-instance/#Is_stalking_a_bailable_or_non-bailable_offence)> accessed 15 June 2023

### Too many cases?

The most common argument made against making this section gender-neutral or increasing its scope is that it would bring in a huge number of cases. India has an overburdened judicial system that still has many cases pending. The percentage of stalking cases pending trial has increased by eight points, from 88% in 2017 to 96% in 2021. With already so many cases pending, the argument that broadening the scope would increase the number of cases and burden the judicial system more is valid. But another important fact is that the conviction rates are also low now. Convictions have decreased from 35% in 2020 to 22% in 2021.<sup>10</sup> Hence, it can be safely assumed that at least some of the cases might already belong to these categories. Also, the solution to the overburdening of the judicial system is not reducing the number of cases but a change in the existing judicial system. People cannot be denied justice just because it will increase the workload of the judiciary. Hence, though the argument that increasing the scope of the section might increase the workload of the judiciary is valid, the reason is not enough to not implement changes in the law that benefit justice.

### CONCLUSION

Stalking has been recognised as a crime in India only 11 years ago. So, it has many shortcomings. These laws for stalking were made with the vision of protecting women and hence, are biased towards them. Also, there is an inherent belief in India enforced by patriarchy which portrays men as perpetrators. The scope of section 354D is too less since the law does not include many types of stalking. Also, stalking is not considered a serious offence as it is a bailable offence on first conviction. These aspects of the stalking laws should be changed and the scope of the stalking law should be broadened. This would result in a better delivery of justice. An important aspect of development is improving the existing laws important for the safety of people and a change in stalking laws would be an important step in that way.

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<sup>10</sup>Hussain E, 'Harassment, Assault, Murder – but Stalking Is Still Not a “serious” Crime' (*BehanBox*, 21 November 2022) <<https://behanbox.com/2022/10/18/harassment-assault-murder-but-stalking-is-still-not-a-serious-crime/>> accessed 19 June 2023