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FROM HARM TO HEALING: RESTORATIVE JUSTICE IN CYBERBULLYING

~ KRITIKA PAPNOI

With the advancement in technologies, we have seen a high surge in the case of cyberbullying all over the world mostly targeting youths. According to the reports of the UNICEF [one in three young people in 30 countries](#) said they have been a victim of online bullying. Cyberbullying leads to mental disparity among individuals who face problems to face the world outside and eventually leading to suicide. With countries trying to be more tech savvy and augmentation of more social media platforms they are also creating a breeding ground for cyberbullying. The number of cyberbullying cases is increasing with the passage of time and so do cases which are pending before the judicial system. The Indian government has taken steps to tackle this problem, however those have not been proved as efficient for solving the problem of cyberbullying. Moreover, most of the cases are not filled within the courts due to the lengthy procedures. In this article I will discuss how restorative justice can replace normal criminal procedures in India which are time consuming and which make it problematic for the victim to live a normal life and face the world outside. How effective it had been in other countries in comparison to the normal judicial proceedings.

CYBERBULLYING

Cyberbullying is defined as intentionally inflicting emotional distress to someone through various online platforms. A corresponding definition of cyberbullying is: ‘An aggressive, intentional act carried out by a group or individual, using electronic forms of contact, repeatedly and over time against a victim who cannot easily defend him or herself’¹Cyberbullying is derived from the word bullying. It does not have an internationally

¹ <https://acamh.onlinelibrary.wiley.com/doi/epdf/10.1111/j.1469-7610.2007.01846.x>

accepted definition but is usually derived by breaking the word “cyberbullying”. Cyber is defined as any activity carried through the internet and bullying is defined as intentionally inflicting physical harm by use of words or action to someone. Usually, it is observed that a person who is weak or is at the lower position is usually dominated or bullied. Bullying is the traditional way which could be tracked from ages but cyberbullying has emerged in recent ages. With advancement in technology, we saw an increase in the number of cases reported under cyberbullying. The first case of cyberbullying tracked in India was *Vishaka v. State of Rajasthan*, (1997)6 SCC 2412.

Cybercrime have been a serious problem all over the world and according to the survey of 2022 nearly 70% of internet users across the world faced cyberbullying and India stands at the top of chart with 68% internet user who faced cybercrime 3and out of those 37% of those were cyberbullying. According to a UNICEF poll, more than 33% of youngsters are reported as victims of online bullying in 30 countries worldwide and looking at the list India was at the top position with almost 37% youths who reported cyberbullying⁴. In all these lists India was at the top position which is concerning for the country. After covid 19 the rate of cyberbullying grew due to dependency on technology. Youth is totally dependent on technology from conducting online classes to their source of entertainment. Most of the youths are connected to various online platforms such as Instagram, snapchat and thus are more prone to cyberbullying. Most of the time victims face serious consequences such as anxiety, depression and other psychological problems which affect their life. As mentioned above most of the youths are under the ambit of cyberbullying which affects their mental health in growing age and thus their career could be affected too. Moreover, they are also prone to consumption of alcohol and drug use which affect them physically. In most of the cases they disassociate from the society because of fear of shame and judgements and could be prone to loneliness which eventually leads to suicidal thoughts or suicide. Cyberbullying is also common in Romantic relationships as the victim truly believes in their partner and tends to share private information or photos which are later misused. Cyber dating abuse (CDA) has emerged as a new form of abuse. CDA is defined as the use of technology and digital media to perpetrate any abusive behaviour deliberately and repeatedly towards the partner or ex-partner in the context of a dating or courtship relationship. It encompasses a

² <https://www-sconline-com.eu1.proxy.openathens.net/Members/NoteView.aspx?enc=KDE5OTcpIDYgU0NDIDI0MSYmJiYmNDAmJiYmJlNlYXJjaFBhZ2U=>

³ <https://www.statista.com/statistics/194133/cybercrime-rate-in-selected-countries/>

⁴ https://www.researchgate.net/publication/372724976_The_Growing_Threat_of_Cyberbullying_in_India#:~:text=Abstract,highest%20prevalence%20of%20online%20harassment

wide range of behaviours grouped into five dimensions: direct psychological aggression, control, public harassment, cyber sexual aggression and social exclusion⁵. Cyberbullying affects not only the victim but people around them. For example, a youngster is cyberbullied so it will affect not only the victim but their parents too.

TYPES OF CYBERBULLYING

1. Impersonation

It is defined as pretending to be someone else by creating fake accounts in the name of that person and then posting inappropriate content from that account which could lead to serious harm to that person. this is termed as fraping

2. Cyberstalking

Cyberstalking is when someone uses an online platform to repeatedly harass or threaten someone. Cyberstalks may keep tabs on their victims and make attempts to meet them in person. Extreme cases of cyberstalking can also involve adults grooming teenagers to have sexual relationships with them or in some cases for the purpose of human trafficking.

3. Flaming

Flaming is posting derogatory comments or insults on someone's web or social media page which is usually offensive in nature. This is done to degrade someone or to spread hate against that person

4. Doxing

In this type of cyberbullying someone's private information is shared in order to publicly humiliate them

Doxing can include posting photos, emails, text messages or videos online or forwarding them to other people via instant messaging apps such as WhatsApp or to share secrets.

5. Trickery

Like outing, trickery involves revealing private information about another person. When someone engages in this type of cyberbullying, the person befriends someone and gains his or her trust with the specific intention of sharing that person's private information online.

⁵<https://www.sciencedirect.com/science/article/pii/S0747563223003527?via%3Dihub>

6. Harassment

Harassment involves the constant sending of malicious, abusive or threatening messages to an individual or group online. This can be done to the victims publicly on their social media feed or via private / direct messaging.

7. Trolling

Trolling is the most common of cyberbullying techniques. It is the deliberate act of provoking a response through the use of some type of inflammatory statements — such as using insults or inappropriate language or images online. The goal of a troll is generally to incite someone to anger hoping that the person reacts in an equally inappropriate or embarrassing way.

8. Catfishing

Catfishing is when someone pretends to be someone they are not and sometimes assumes another person's identity online, sometimes including the identity of the victim. This is often done to post inappropriate content or manipulate and hurt other relationships the victim has online. A catfish uses fake photos, and sometimes a false persona, to find friends or romantic partners on the internet. This can also lead to wanting to meet face-to-face often associated with unwanted outcomes.

9. Gossiping

This occurs when someone posts rumours and gossip about someone online. Cyberbullies use denigration in order to ruin the victim's relationships and reputation.

10. Exclusion

Exclusion is creating groups or events and intentionally excluding someone. This can also happen by not tagging someone in a photo or inviting them to a chat group or blocking them from private social media accounts. Exclusion is often carried out in similar fashion, simultaneously, in the real world⁶.

In India cyberbullying is neither defined anywhere nor is punishable under any section. but some of the provision of Indian penal code 1860 and Information technology act 2008 does

⁶ <https://cybersafett.com/10-types-of-cyberbullying/>

penalise cyberbullying. For example, section 354 A (Sexual harassment and punishment for sexual harassment), 354C (Voyeurism), 354D(Stalking) 509(Word, gesture or act intended to insult the modesty of a woman) 66E (Punishment for violation of privacy) 67A (Punishment for publishing or transmitting material containing sexually explicit act, etc., in electronic form) 67B (Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form). Many of the time the victim restrains from reporting cases as the process is very lengthy and most of the time the result is not satisfactory. Moreover, in cases of romantic relationships, victims usually do not report because of the love and affection they have for their partner and don't want them to be in trouble. This has also been seen in many cases where cases are not reported because people are scared from the reaction of society and the judgments. This has also been seen in cases of cyberbullying where sextortion (sexual information or images used to obtain benefit) is used where the offender does not have any such image or information but just to obtain benefit, they scare or blackmail the victim. In these types of cases, the victim is affected mentally and wants the offender to be punished but does not want to be involved in the long judicial process. In these circumstances the victim may not opt for a traditional method where punishment is given for the offences but rather opt for restorative justice.

RESTORATIVE JUSTICE

Restorative justice as the name suggests is the process to restore justice by counselling of victim and offender and to address the harm which might have affected relationships or community as a whole. In these types of settings victims, offender and people who might have been affected by cyberbullying are brought together and the crime is discussed so that the victim has the power to question the offender and get desirable answers for such conduct. Moreover, in such cases where the victim and offender have some kind of relation, confession is necessary as the victim would have never expected such behaviour and for their satisfaction, they will want to know the reason and force that drove him to commit such offence. Restorative justice brings those harmed by crime or conflict and those responsible for the harm into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward⁷. When a crime is committed it is committed against the whole society and when punishment is given it is given with the purview of the good of the society. The victim feels excluded from its own

⁷ <https://restorativejustice.org.uk/what-restorative-justice>

case as the court decides according to the structure of the particular law. In restorative justice the offender tries to restore the harm he has done to the victim and subsequently engages in a range of rehabilitative activities, which aim to reintegrate the individual into the community⁸.

Through engaging in restorative activities, it is suggested that the individual comes to re-define themselves as a law-abider and subsequently no longer engages in criminal activity⁹. Now in cases of romantic relationships or other relationships the victim will never want to harm the offender but rather will be wanting an apology. In criminal proceedings the court gives the punishment to the offender and the case is closed and nothing is done to make the victim move on from that past experience. The victim will still suffer from post-traumatic stress disorder and various other mental health issues. But in restorative justice the victim will get the chance to question the offender to confess what the victim holds within and will get to know the motives of the offender. This offender will also get the chance to improve or to restore harm and thus is prevented from committing the same crime in future and the victim will also have the satisfaction of taking an active step to punish the offender or making him change his negative behaviour. In a report it was found that 83% of victims of crime believe that they should have the right to meet their offender, 77% of the public believe that victims should have the right to meet their offender, 69% of the public think that offenders need to see the real impact of their crimes and face their victims¹⁰.

There are many countries which have already adopted restorative justice in their judicial system which includes Canada, England, Australia, Scotland, New Zealand, Norway, the United States, Japan and several European countries and have received impressive results¹¹. From the U.S.-wide study on restorative justice programs¹² It was found out that the victim satisfaction rate for criminal justice was 57% and that for restorative justice was 79%.

⁸ <https://link.springer.com/article/10.1007/s12207-019-09363-9#ref-CR59>

⁹ <https://link.springer.com/article/10.1007/s12207-019-09363-9#ref-CR51>

¹⁰ <https://why-me.org/the-facts/#:~:text=Restorative%20Justice%20works&text=85%25%20of%20victims%20who%20took,would%20recommend%20it%20to%20others>

¹¹ https://www.iustice.gc.ca/eng/rp-pr/csi-sjc/isp-sjp/rp01_1-dr01_1/p1.html

¹² <https://www.c4rj.org/what-is-restorative-justice/success-data>

Restorative justice has been a great success in other countries but is still not applied in India.

RESTORATIVE JUSTICE AND INDIA

Though India still has not adopted restorative justice in its judicial system, it has entailed its feature through various judicial processes. Processes like panchayat system and look Adalat lay emphasis on mediation between victim and offender. Restorative justice has been in the roots of India since ancient times as the king used to address issues in his Sabha with the method of restorative justice. He used to have a council with learned members and victims and offenders were brought together and compensation was made accordingly. But after colonisation India lost all these customs and traditions and were forced to abide by the new rules and courts set by the Britishers. In India, there has been an attempt to implement restorative justice in matrimonial cases and family disputes through mandated mediation as the first recourse after *Deepa v. Srinivas Rao* in 2013¹³. However, the 164th Parliamentary Standing Committee Report on The Juvenile Justice Act revealed that boards lack services such as counselling, mediation, treatment, and other reformatory measures required for the restorative justice process¹⁴. In the year 2022 India recorded 158 cases of cyberbullying in which Maharashtra alone holds the record of 5215. Now many of the parents wouldn't have reported the case in the first place or there are many young victims who might not have informed anyone about their situation merely because of adverse effects.

CONCLUSION

Restorative justice adoption in the judicial system is now progressing all over the world. There are many countries which have already adopted this system and more are changing their policies for its adoption. Restorative justice promises a better and satisfactory solution to the victims and reports show that victims who opted for restorative justice were more satisfied than the one who opted normal criminal proceedings. The Indian judicial system has few provisions which tackle cyberbullying but it needs more laws which could be effective. Restorative justice provides a better way to tackle this problem, which has youth in its ambit. Most of the parents do not report the complaint of cyberbullying because of the

¹³ <https://www.linkedin.com/pulse/restorative-justice-india-issues-perspectives-juristsglobal-xrlqc/>

¹⁴ <https://www.linkedin.com/pulse/restorative-justice-india-issues-perspectives-juristsglobal-xrlqc/>

¹⁵ <https://www.statista.com/statistics/1097724/india-cyber-stalking-bullying-cases-against-women-children-by-leading-state/>

long judicial process which could hamper the mental health of the victim. Moreover, the rate of youth who are victims is more than adults so if they are involved in the proceedings their study will be

hampered making them bear great loss in respect to their career. Thus, restorative justice provides a solution which satisfies the victim, is less time consuming and court cost is much less than the traditional judicial proceeding. The methodology of bringing victim and offender together giving victim to take active part in proceeding and not to be bind by the provision which were made according to general public and not for each case and to give a chance to offender so that the root of the cause is finished. In light of these benefits, it is important that Indian policymakers, educators, and legal professionals consider restorative justice in the fight against cyberbullying. By integrating the principles and practices of restorative justice into their work, they can help respond more effectively and compassionately to this growing problem.