

CYBER SEXUAL HARASSMENT IN HIGHER EDUCATION: CHALLENGES AND LEGAL PERSPECTIVES IN THE POST-PANDEMIC ERA

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ABSTRACT

The shift to online education during the COVID-19 pandemic has brought about significant challenges, including a rise in cybersexual harassment (CSH) in academic settings. The anonymity of the internet makes it difficult to identify harassers, posing unique challenges compared to in-person harassment. While CSH was a concern prior to the pandemic, the transition to predominantly virtual learning environments has exacerbated the issue, with online spaces offering new opportunities for harassment. This study explores the impact of CSH on higher education, particularly in the post-pandemic context, and examines the limitations of existing legal frameworks in addressing harassment in virtual environments. Although online education has improved accessibility, it has also introduced risks, such as cyber abuse. Existing sexual harassment laws offer some recourse for victims, but explicit regulatory measures for online spaces remain limited. Despite considerable research on CSH, its prevalence and impact within higher education have received insufficient attention, raising concerns as online education continues to grow. Addressing CSH is essential for fostering a safe and supportive online learning environment in the post-pandemic world.

Keywords: Sexual Harassment, Online Education, Cyberspace, Higher Education, COVID-19

1. INTRODUCTION

The COVID-19 pandemic has had a tremendous impact upon several aspects of our lives. The new "normal" now relies more on digital platforms. The functioning of the world now mostly relies on digital technologies from shopping to groceries to work from home. It has also led to upsurge in usage of digital platforms for education for example zoom, google meet, google classrooms etc. But due to classes going entirely virtual, the negative aspect of cyber space that is cyber sexual harassment has also increased. Cyber sexual harassment is unique as compared to face to face sexual harassment. This is because Lexico, powered by Oxford's online English and Spanish dictionaries, defines "Sexual Harassment" as "unwelcome and unwanted sexual remarks or physical advances in a workplace or other professional or social environment". Whereas in cybersexual harassment offenders can more easily target victims across geographical boundaries, can reach several victims at once, are more difficult to monitor, and may be able to maintain their anonymity

(Henry & Powell, 2015 as cited in Reed et al., 2019). This paper specifically deals with cyber sexual harassment in university space. The scholars highlighted that there is a need for cybersexual harassment prevention university students (Moafa et al., 2018 as cited in Kuklytė, 2018). According to (Kiguwa et al., 2015), "it is widely assumed that members of institutions of higher learning are better informed and aware of sexual rights and their responsibility in relation to these rights because of their role as educators." However, the prevalence of reports of sexual harassment in educational institutions shows a different picture.

This present paper aims to answer three research questions. These are: What is the current state and profile of higher education in relation to cyber sexual harassment research? What are the gaps and limitations in the prior literature that must be addressed? What are the potential future research directions for advancing existing research and literature on cyber sexual harassment in university space?

The current study involves a review and summarization of previous research to answer these specific questions. Insights gained from this review paper were also used to identify gaps in current knowledge and to propose future initiatives for the advancement of cyber sexual harassment research in university space. The paper is structured in four sections. After the brief introduction, section two presents primary research themes derived from this review followed by section three which discusses the gaps identified, as well as emerging research directions for the future. Section four consists of discussion and concluding remarks.

2. DEFINING CYBERSEXUAL HARASSMENT AND ITS LEGAL IMPLICATIONS

Cybersexual harassment refers to actions taken by a person or persons in cyberspace against a victim that cause emotional distress, mental harassment, gender harassment, invasion of privacy, and so on. (van Laer, 2013). Prior to 1997, there were no formal laws or guidelines governing how an employer should handle an incident of sexual harassment in the workplace. Instead, they had to file a complaint under Section 354 of the Indian Penal Code, which deals with the 'criminal assault of women to outrage women's modesty,' or Section 509, which penalizes an individual or individuals for using a 'word, gesture, or act intended to insult the modesty of a woman.' However, following the Bhanwari Devi case, the Supreme Court of India defined sexual harassment and established guidelines for employers (Indian Supreme Court, 1997). Then, after the guidelines were issued, workplace sexual harassment became a national issue, and following the Vishakha judgement, many cases involving the issue came before Supreme Court, but it wasn't until 16 years later that the first legalisation specifically addressing the issue of sexual harassment was enacted.

The Sexual Harassment at Workplace Bill was passed by the Lok Sabha on 2 September 2012. Which has led to a statutory enactment i.e., Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (Bothra, 2014). It defines sexual harassment as laid down by the Supreme Court in the Vishaka and others V. State of Rajasthan and others (1997) case. Further the University Grants Commission (Prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015. According to the regulations sexual harassment is defined as "An unwanted conduct with sexual undertones if it occurs or which is persistent and which demeans, humiliates or creates a hostile and intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and includes any one or more or all of the following unwelcome acts or behaviors' (whether directly or by implication), namely any unwelcome physical, verbal or non-verbal conduct of sexual abuse, demand or request for sexual favour, making sexually colored remarks, physical contact and advances; or showing pornography" (UGC, 2016). It also defines HEIs, students, and employees, and outlines the responsibilities of ICCs.

Cyberspace harassment is currently at its peak in this updated world. However, policymakers have largely failed to address this growing issue, leading to a lack of adequate penalties for cybersexual harassment. While existing sexual harassment laws are valuable, they fall short when it comes to addressing harassment in the online realm. Firstly, these laws are primarily focused on physical spaces, such as workplaces and educational institutions, leaving digital spaces unprotected. Secondly, they overlook the fact that harassment in virtual environments can be just as harmful and dangerous as in-person harassment, if not more so. This oversight creates a significant gap in the legal framework, leaving victims of cybersexual harassment without adequate recourse.

Although there is no specific regulatory framework for cyberspace, certain legal provisions are in place that can help victims of cybersexual harassment. The 2013 Criminal Amendment Act to the Indian Penal Code, 1860 by way of Section 354A "a demand or request for sexual favours; or showing pornography against the will", 354 B " 'Voyeurism' as including

the act of capturing the image of an individual engaging in a private act, and/or disseminating said image, without his/her consent” to Section 354D “a provision for stalking which also covers cyber stalking” (Women - cyber laws in India). Information Technology (Amendment) Act 2018. The cyber crimes were being punishable. Information Technology Act 2000 as amended by the Information Technology Act, 2008 which consists of the chapter “Offences” which punishes not only the computer-related offences but also cyberspace harassment, invasion of privacy, breach of confidentiality, cheating by impersonation, publishing obscene material in electronic form, publishing of sexually explicit act in electronic form, publishing of sexually explicit act depicting children in it, in electronic form, punishes for misrepresentation using digital media etc. (Tejavath, 2020). However, to cover an act of cybersexual harassment of any kind, laws must be collaborated with each other, i.e., the laws of information technology act with the Indian penal code.

This theme, along with the surrounding legalities of cybersexual harassment, plays a crucial role in this paper as it examines the safety and effectiveness of online learning. It also explores the relationship between these factors and the recent rise in cybersexual harassment incidents.

3. PANDEMIC AND ONLINE EDUCATION

Online learning is the use of the internet and other significant technologies to create materials for academic purposes, instructional practices, and programme management (Fry, 2001 as cited in Adedoyin & Soykan, 2020). Although online platforms were used for teaching and learning before the pandemic, traditional methods were predominantly preferred in India. However, in the post-pandemic period, the entire educational landscape has changed, with educational activities shifting to digital modes to ensure continuity of learning. The sudden forced closure of face-to-face teaching led academics and students into “unfamiliar terrain” due to the need to adapt swiftly to total e-learning settings (Carolan et al., 2020 as cited in García-Morales et al., 2021). According to Mishra et al. (2020), the digital transformation of higher education began years ago, but the pandemic accelerated this process significantly. This resulted in major changes in a matter of weeks. During this pandemic, e-learning tools played a key role in assisting schools and universities in facilitating student learning while universities and schools were closed (Subedi et al., 2020 as cited in Pokhrel & Chhetri, 2021).

As a result of the pandemic, necessary changes had to be made in a short period of time. The University Grants Commission (UGC), the statutory body responsible for the coordination, determination, and maintenance of standards of higher education in India, immediately constituted two committees—one tasked with promoting online education and the other with issues related to examinations and academic calendar. Several initiatives to support online education were launched, including a national digital library to serve as a repository of online resources, massive open online courses (MOOCs), direct-to-home (DTH) television channels, and a YouTube channel (Roy & Brown, 2022). According to García-Morales et al., (2021) the authors of a empirical study conducted in a university context, observed that the technologies most used to support teaching-learning practices during the lockdown period were the university web platform; instant messaging tools (WhatsApp, Telegram); video-conferencing tools (Zoom, Skype, Google Meet); and educational apps (Google Classroom); along with email and telephone conversations to maintain individualized contact with students.

Moreover, in the midst of the pandemic, the new National Education Policy (NEP) 2020 was unveiled. It talked about transforming the Indian education system and stressed on equity and accessibility. It addresses some important discussions about advancing digital learning, teaching, and infrastructure. Also, the document stressed upon promoting digital teaching-learning practices. But with positive aspects of digital learning the abrupt shift to digital platforms have brought substantial challenges for educational activities. The most commonly identified e-learning challenges are accessibility, affordability, flexibility, learning pedagogical practices, life-long learning, and educational policy. (Murgatrotd, 2020 as cited in Pokhrel & Chhetri, 2021).

In countries like India the key challenges of online education would be digital competence, socio-economic factors and accessibility in terms of access to digital devices or internet. As rightly stated by Heng & Sol (2020) because online learning is entirely dependent on technological devices and the internet, it is undeniable that technology is the most pressing challenge to online learning if those involved in the teaching and learning process are not digitally competent due to inexperience or inadequate training. Furthermore, we cannot ignore the additional threat of cyberspace violence, which increased during the pandemic. This theme is important in this paper because, while cyber sexual harassment was prevalent prior to the pandemic, incidents of CSH doubled after educational institutions switched to online mode.

4. CYBER SEXUAL HARASSMENT IN HIGHER EDUCATION

According to Rogers (2000), technological changes have altered how education is delivered, the manner and method by which students engage with one another, and the interaction between students and teachers. The pandemic's aftermath has resulted in a huge shift of educational activities in terms of training and digital infrastructure. However, as a result of this radical transformation, cases of online crime have increased. Only when we thought digital classrooms and studying from home would be safe were we proved wrong. Predators can also be found during zoom sessions. The Covid-19 pandemic has added an extra layer to the long-standing issue of sexual harassment faced by students in schools and colleges. A study conducted at a large, private, not-for-profit university discovered that 12 percent of students and 39 percent of faculty had been victims of cyber-harassment (Vance, 2010 as cited in Schaefer-Ramirez, 2017). According to the 2020 edition of EDUCAUSE's annual technology survey, 13% of college students who report harassment say it occurs in online platforms used for coursework (Gierdowski et al., 2020). Furthermore, 19 percent of college and university students surveyed reported being victims of cyber-harassment, with 38 percent specifically reporting harassment based on sexuality or gender (Zalaquett and Chatters, 2014 as cited in Schaefer-Ramirez, 2017).

"CSH can be defined as the use of the internet to make uninvited advances, communications or interactions with another person or entity. This can be in various forms like unsolicited posts and comments on social media sites, emails, texts, graphic images and posts directed at the victim, instant messaging etc. This has been identified to be of the following types such as Gender Harassment which can be of verbal and graphic types" (Sethi & Ghatak, 2018, p. 34). Students had developed a habit of creating memes about their classmates, especially females, and publicly harassing them; some even went so far as to create fake Instagram accounts of their female classmates. Several students had reportedly taken screenshots of online classes specifically targeting female students (Halder, 2020). Many faculty members, along with undergraduate and postgraduate students, reported experiences of online harassment, including incidents of cyber flashing (sending unsolicited pictures of private parts) (Beaty, 2019) and instances of strangers entering Zoom meetings to make lewd remarks, particularly towards women (Farrer, 2020). Female teachers were not exempt, as many faced harassment from students in groups primarily formed to discuss online class schedules (Halder, 2020). As noted by Jhamtani (2021), online classes had become a nightmare for teachers in that context. Sexual harassment and cyberbullying became extremely common in online classes, with teachers frequently targeted. Uninvited individuals entered the online classrooms, causing disruptions by muting teachers, abusing them, removing them from meetings, and displaying obscene content. As Halder (2020) points out, it is assumed that adult women, unlike children, participate in online meetings, classes, and discussions with consent, implying that their presence may be recorded without their knowledge while they are online. It is expected that they will be dressed appropriately so that their screen presence will not be offensive if captured. Furthermore, the article raises some important questions, such as who guarantees that such images will not be captured by anyone else who may be a participant but is not authorized to record their presence? How will the woman know that such an image (even if captured by an authorised individual) will not be used for unethical purposes, including sexual gratification?

Online sexual harassment was prevalent before the pandemic, but virtual classes led to a significant rise in incidents. Some examples include: The issue of harassment by the invigilator during examination. On its Twitter page 'The National Student Union of India' (NSUI) exposed an invigilator's inappropriate behavior with a girl student during online examinations administered by Christ University, Bengaluru, where he reportedly called the student "baby" when asked a question about the exam. Following this incident, numerous similar incidents began to surface on Twitter. The issue of inappropriate texting in which seven first-year students of Delhi University's Aryabhata College were suspended for behaving inappropriately with female students over text messages and objectifying women by making groups where cases like 'bois locker room' came out. No one is safe from sexual harassment in virtual classrooms, whether they are students or teachers.

Incidents of students harassing teachers also came into light where male students made obscene gestures at teachers, leaving teachers with no choice but to ask them to log out. A professor at a college on Delhi University's south campus reported a student using cuss words during online class. There have also been instances where a teacher at an all-women's college in West Delhi described how an outsider logged into her class using the username of an "adult movie" actress and began abusing her. Apart from a clear privacy violation and an attempt to offend the victim's modesty, cyber sexual harassment can cause distress and serious psychological issues (Vats, 2021).

5. DISCUSSION AND CONCLUSION

In conclusion, it can be said that the sudden shift to digital teaching and learning practices had both positive and negative impacts. Although education can be delivered online and made available to a broader audience. It does, however, have a negative aspect attached to it as no platform is immune to abuse. The rise in cybersexual harassment is evidence of this.

This review aimed to conceptualize the meaning of sexual harassment in cyberspace, particularly within higher education in India. The critical review of literature offers a deeper insight into policies surrounding cybersexual harassment. While there are laws that specifically address sexual harassment, there is no explicit regulatory framework for cybersexual harassment (CSH) in virtual spaces. Nevertheless, certain legal provisions exist that can support victims of CSH. For instance, Halder (2020) states that clicking screenshots of female faculty and students in the name of record keeping is an invasion of privacy. However, in the Indian context, capturing screen shots does not fall under the category of voyeurism or privacy violation as addressed by Sections 354C of the Indian Penal Code and Section 66E of the Information Technology Act, both of which address voyeurism. The former addresses voyeurism specifically against women, while the latter applies to all individuals, regardless of gender..

Many a times the incidents of sexual harassment in digital space are ignored because of infrastructural issues and lack of understanding of the nature of grievances and the woman concerned may face additional harassment for raising such issues. There is a need for a legal framework specifically addressing CSH as institutions face potential legal risk and unknown levels of vulnerability due to insufficient regulatory guidance addressing online codes of conduct (Fisher, 1995 as cited in Schaefer-Ramirez, 2017).

Another research gap which was found was lack of availability of literature on the issue. Despite the fact that there is a ton of research on CSH in general. The issue of CSH in academia remains understudied. This is because there is a need to examine incidents of CSH in academia through a multidisciplinary lens in order to develop more precise research. Another gap in the literature that needs to be highlighted here is the indepth research missing from the academia space is on the steps and measures taken by the institute to raise awareness on the users' rights and what falls under the category of violence in cyberspace. Laws and legal structures alone are not enough to address the concerns till they are not advertised and included in the practice of everyday life. This becomes problematic because online education has become the new normal. And, in order to make the online learning platform safe and effective, the issue of CSH must be prioritized. Earlier it was not considered important to advocate the formation of law regarding this issue. This review paper is one step towards this direction.

CONFLICT OF INTERESTS

None.

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