

“Cyberbullying through misuse of Intellectual Property: A Human Rights Perspective”

**Priyanka Thakur*

Phd. Scholar

Rajiv Gandhi National University of Law,

Patiala

***Dr. Gurneet Dhaliwal*

Asst. Professor (Law)

Rajiv Gandhi National University of Law,

Patiala

ABSTRACT

The internet, which has made it easier to connect people worldwide and made knowledge accessible to a large number of people with only a mouse click, has affected every facet of human existence. Cyberbullying is a type of online communication that threatens or harasses someone, damages their reputation or privacy, and has long-term effects. In the digital era, there is increasing concern about cyberbullying through the misuse of intellectual property (IP). A major problem in the digital age, cyberbullying has emerged as a result of the widespread use of cell phones, instant messaging apps, and social media platforms over the past 20 years. This paper explores pertinent provisions of the Indian Penal Code, 1860, and the Information Technology Act, 2000, in order to analyse the legal foundation for dealing with cyberbullying in India. It emphasizes the necessity of more robust legal provisions to address this expanding problem. One of the core ideas of human rights is the right to privacy, which protects people from unjustified intrusions into their private lives. Although the Indian Constitution does not define it specifically, the Supreme Court has maintained that it is a derivative right derived from Article 21 and other constitutional requirements. In order to damage their reputation and finances, criminals take advantage of intellectual property (IP)-protected items, such as photos, films, creative work, or brand names, by modifying them maliciously, making fraudulent claims to ownership, or sharing them without permission. It highlights the difficulties in enforcing current legal protections under international IP frameworks, trademark laws, and copyright laws in the digital age. This study examines the relationship between copyright infringement and cyberbullying, examining the ways in which harassment is facilitated by the theft of digital information.

Keywords: Cyberbullying, Information technology Act 2000, Human rights, cybercrime.

INTRODUCTION

Technology has advanced to unimaginable heights in cyberspace in recent years. The emergence of a global information market is undoubtedly greatly aided by the new technology, but it also opens the door to a variety of new illegal operations. The same technology that makes it easier for multinational corporations to conduct business more effectively also presents certain opportunities for international organized crime networks. Human rights in cyberspace are a new area of international concern. As the internet has grown in popularity, it's

crucial to monitor and defend people's human rights while using it. The internet has created a new type of criminal: cybercriminals. Cybercriminals violate internet users' human rights by intruding on their private lives. The internet is a powerful platform for expressing views and should be free of constraints. It allows us to exercise our right to freedom of expression and knowledge.

The convergence of intellectual property law and digital harassment has become a key issue of concern in today's digital landscape. While intellectual property rights were intended to safeguard inventors and innovators, they are increasingly being used as instruments for cyberbullying and online harassment. This misuse is a serious progression in digital abuse strategies, utilizing legitimate legal frameworks to quiet, intimidate, and damage individuals online. In recent years, there has been a troubling trend of using copyright claims, trademark violations, and other IP-related legal threats to enable cyberbullying rather than to safeguard intellectual property. Digital platforms' content moderation systems, particularly its copyright strike procedures, are being abused to remove content, silence voices, and harass people. This practice raises serious concerns regarding the relationship between intellectual property protection and fundamental human rights, such as freedom of expression, privacy, and the right to engage in digital environments without fear of harassment or intimidation. This study looks at the growing topic of IP law misuse as a cyberbullying tactic through a human rights lens. It examines how current intellectual property regimes may inadvertently promote such misuse, discusses the ramifications for both individual rights and broader social discourse, and considers alternative legal and policy solutions to assist solve this rising dilemma.

CONCEPT AND MEANING OF CYBERBULLYING:

The term "cyber bullying" was coined and originally defined by Canadian educator Bill Belsey at the beginning of the new millennium. It is "the use of information and communication technologies to support deliberate, repeated, and hostile behaviour by an individual or group that is intended to harm others," according to "Belsey." It is a type of online communication when an individual or group of individuals damages a person's privacy and reputation, which leaves the victim with long-lasting psychological effects. If someone uses the internet improperly, it might have an impact on their life.

Bullying that takes place on electronic devices, including computers, tablets, and cell phones, is known as cyberbullying. Cyberbullying can happen online via text, SMS, and applications, as well as social media, forums, and gaming platforms where users can access, interact with, and share material. Cyberbullying is when someone sends, posts, or shares something hurtful, untrue, or cruel information about another person. Cyberbullying is most frequently found on social media platforms like Facebook, Snapchat, texting and messaging apps on smartphones and tablets, instant messaging, direct messaging, online chat, online forums, chat rooms, and message boards like Reddit. India is ranked third in the world for cyberbullying. There are several ways that cyberbullying can occur. Flaming, exclusion, outing, impersonating, cyberstalking, trickery, and trolling are the most prevalent and widespread forms of cyberbullying.

OBJECTIVES OF THIS STUDY:

- This study's purview includes a comparative examination of the legal issues pertaining to online harassment and cyberbullying in several jurisdictions. It will explore the laws and legal frameworks now in place to address these problems worldwide, looking at differences in definitions, methods of enforcement, and sanctions
- It will also assess the efficacy of technological treatments and support networks while offering suggestions for bolstering legislative remedies to lessen these difficulties.
- By using this comparative analysis, the study hopes to advance knowledge of the difficulties in preventing online harassment and cyberbullying and to suggest methods for creating safer online spaces.

RESEARCH METHODOLOGY:

This comparative study of the legal issues of cyberbullying and online harassment uses a multifaceted research methodology. First, in order to build a fundamental grasp of the topic and find pertinent legal frameworks and case studies, a thorough assessment of the body of current literature, including scholarly research, legal documents, and case law, will be carried out. Additionally, legal professionals, legislators, and others engaged in combating cyberbullying and online harassment may be consulted using qualitative techniques like surveys or interviews. In addition to producing findings that might guide efforts at legal reform and policymaking, this research technique seeks to offer a comprehensive grasp of the legal issues surrounding cyberbullying and online harassment.

CAUSES OF CYBERBULLYING:

1. The main factor contributing to cyberbullying is when the perpetrator is totally unknown, making it simple for the bully to attack anyone online by concealing their true identity. A person may become a cyberbully due to a number of additional causes, including personality qualities that contribute to antisocial or cyberbullying conduct.
2. The second is egotism, in which people prioritize authority and social standing over interpersonal relationships.
3. Another major contributing factor is online shyness or hindering, where someone bullies others for amusement, dominance, retaliation, or other reasons.
4. The final one is aggression, which is defined as using force to overcome setbacks and negativities, which leads to them engaging in cyberbullying as a kind of gratification.

FORMS OF CYBERBULLYING:

- **Exclusion:**
Exclusion occurs when someone is purposefully left out. When a victim is singled out in both physical and online bullying situations, exclusion plays a role. For example,

your child might not be included in conversations or message threads with others they both know, while other friends are invited to participate in events or groups.

○ **Trolling:**

When a bully posts offensive remarks online with the goal of upsetting others, this is known as trolling. Even though trolling isn't usually a type of cyberbullying, it can be a tool for cyberbullying when done maliciously and harmfully. These bullies typically don't have a close relationship with their victims and are more aloof from them.¹

○ **Frapping:**

When a bully uses your child's name to publish offensive content on social media, it's known as framing. It can be harmless but very risky when pals post humorous content to one another's pages. For example, a bully using someone else's profile to write racist or homophobic comments in an attempt to harm that the reputation of an individual.

○ **Outing/Doxing:**

In essence, doxing is the act of publicly disclosing private or sensitive information about someone without that person's consent in an effort to disgrace or degrade them. This can also include sharing a person's saved files or private photos or documents of well-known people. private communications in a private online group. The victim's lack of permission is crucial.

STATUTORY FRAMEWORK FOR CYBERBULLYING IN INDIA:

There are no specific laws addressing cyberbullying, despite the fact that its prevalence is rising daily in India. **The Information Technology Act²** has several provisions and **IPC, 1860**, which address the penalties associated with cyberbullying, as previously mentioned: Section 66 A, Section 66 C, Section 66 D, Section 66 E, Section 67, and Section 66 D of the Information Technology Act, 2000 Section 292 of the Bhartiya Nyaya Sanhita 2023, Section 77 of the Bhartiya Nyaya Sanhita 2023, Section 78 of the Bhartiya Nyaya Sanhita 2023³, Section 356 of the Bhartiya Nyaya Sanhita 2023, Section 351(4) of the Bhartiya Nyaya Sanhita 2023 , Section 79 of the Bhartiya Nyaya Sanhita 2023, Section 67 A of the Information Technology Act, 2000; Section 67 B of the Information Technology Act, 2000⁴.

Under Bhartiya Sakshya Adhinyam:

The rules and regulations pertaining to the admissibility of evidence in Indian courts are the main focus of the **Bhartiya Sakshya Adhinyam, 2023⁵** Even while it doesn't expressly address cyberbullying, several of its provisions—particularly those pertaining to the admissibility of electronic evidence—may be pertinent in cyberbullying situations.

¹ <https://link.springer.com/article/10.1007/s10639-022-11168-4>(Last used on 22 January ,2025)

² The Information Technology Act ,2000(Act 21 of 2000)

³ The Bhartiya Nyaya Sanhita (Act 45 of 2023) s, 77

⁴ The Information technology Act ,2000(Act 21 of 2000) s. 67B

⁵ The Bhartiya Sakshya Adhinyam (Act 47 of 2023)

- **Section 62 and Section 63⁶:** Electronic record admissibility is covered in these sections. The requirements for the admission of electronic records as evidence in court are outlined in Section 65B. This is important in cyberbullying instances because electronic texts, emails, and posts on social media must be shown as proof.
- **Section 67A :⁷** The proof of digital signatures is covered in Section 67A. This section can be used to demonstrate the legitimacy of digital signatures in situations when they are utilized in cyberbullying.
- **Section 73:** This section gives the court the ability to compare digital signatures with the claimed signer's specimen signature. In situations involving cyberbullying, this can be helpful in confirming the legitimacy of electronic correspondence.

These clauses make it possible to hold offenders accountable by ensuring that technological evidence pertaining to cyberbullying is admissible in court.

INTERNATIONAL PERSPECTIVE ON MISUSE OF INTELLECTUAL PROPERTY:

USA:⁸

In the United States, cyberbullying may be addressed through a variety of civil remedies. A victim may file a civil lawsuit against their cyberbully or bullies for civil defamation, breach of privacy, or intentional infliction of emotional distress, depending on the specifics of the case.⁹

Is it feasible to file a claim under invasion of privacy when there is: (a) an unreasonable interference with another person's private; (b) the use of another person's name or likeness; (c) unwarranted exposure about the other person's personal life; or (d) publicity that presents the other person in an unfavourable light in front of the public.

NEW ZEALAND:

Section 67 of the Act states that "any person may make a complaint to the Commissioner" regarding an interference with their privacy, including breaches of the privacy principles. There is no age requirement to file a complaint, and an adult may file a complaint on behalf of a child. The Privacy Act is based on a number of privacy principles that are outlined in Section 6 of the Act and relate to the collection, storage, security, access, retention, and disclosure of personal information by "agencies."¹⁰

⁶ Id at 5

⁷ Id at 5

⁸ United States of America

⁹[https://pmc.ncbi.nlm.nih.gov/articles/PMC4724486/#:~:text=Cyberbullying%20is%20an%20emerging%20public,physical%20and%20mental%20health%20problems.&text=Youth%20who%20experience%20cyberbullying%20are,abdominal%20pain%20and%20frequent%20headaches.\(Last used on 24 January,2025\)](https://pmc.ncbi.nlm.nih.gov/articles/PMC4724486/#:~:text=Cyberbullying%20is%20an%20emerging%20public,physical%20and%20mental%20health%20problems.&text=Youth%20who%20experience%20cyberbullying%20are,abdominal%20pain%20and%20frequent%20headaches.(Last%20used%20on%2024%20January,2025))

¹⁰ Privacy Act 1993, sec 2

CANADA:

Canada acknowledges the notion of a "privacy tort." The Ontario court recently awarded a victim of cyberbullying substantial damages in the well-known **Doe v. N.D.** case to make up for the severe emotional and reputational loss she endured at the hands of the defendant.

The defendant had violated the tort of invasion of privacy, or more precisely, "public disclosure of private facts," according to Justice Stinson's ruling. His discovery basically increased the scope of the limited tort of invasion of privacy to include circumstances in which the defendant discloses information about the plaintiff in a way that is "extremely offensive to a reasonable person." Although such a claim already exists in the United States, this is the first documented instance in which it was granted in Canada.

WHAT IS COPYRIGHT?

The terms "copy" and "right" are combined to form the word "copyright." More specifically, copyright refers to the "right to copy," which states that only the author or someone authorized by them may reproduce a work. In simple words, a legal right which is possessed by the owner of Intellectual property is a copy right. Concepts such as discoveries, slogans brand names and titles are all excluded from the purview of copyright and falls under the category of trademarks and patents.

Copy right misuse and infringement:

When considering artistic and literary works, originality are invaluable. It is imperative to protect such work from exploitation, hence the copyright Act recognizes copyright infringement and provide remedies against them.

Section 51¹¹ of Copyright

According to Section 51 of Copyright Act,1957, copyright in a work is infringed when any person without licence from the owner or registered of copyright:

- Does anything for which only the owner has an exclusive right.
- Permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work.
- Sells or lets for hire or display or distribute or exhibits in public or imports to india any infringing copies.

INTERNATIONAL CONVENTIONS PROTECTING COPYRIGHT:

1. **Berne Convention:** This is one of the oldest and most significant international copyright treaties, having been adopted in 1886. The World Intellectual Property Organization (WIPO) is in charge of its administration.

¹¹ https://copyright.gov.in/Copyright_Act_1957/chapter_xi.html (Last used on 22 January 2025)

2. **Copyright Treaty of WIPO (WCT):** One of the international agreements that safeguards copyright was adopted in 1996.
3. **The Beijing Treaty:** Performers are granted economic rights for their performances under this treaty.
4. **The Treaty of Marrakech:** For those who are blind, visually handicapped, or otherwise print disabled, this treaty makes it easier for them to access published works.

CYBERBULLYING: A HUMAN RIGHTS PERSPECTIVE

Everyone is entitled to safety, respect, and freedom from bullying, harassment, and violence. A basic human right is the freedom from violence and cruel, inhuman, and humiliating treatment. A number of human rights may be violated as a result of cyberbullying, including:

- The best possible level of mental and physical well-being Bullying can have a detrimental effect on your emotional and physical well-being, leading to depression, stress-related illnesses, physical injuries, and other health problems.
- Work and equitable working conditions Bullying can result in poor or decreased performance, an unsafe working environment, and increased absenteeism from the job.
- Freedom of expression and unhindered opinion formation: Your ability to freely communicate your thoughts and feelings may be impacted by bullying since it makes you feel unsafe.
- It is explicitly stated in **Article 19 of the UNCRC 1989** that children and youth have the fundamental human right to dignity. This implies that, like everyone else, they have the right to be shielded from harm. According to the UN Committee on the Rights of the Child, Article 19 covers: "Psychological Cyberbullying is the term for bullying and hazing committed by adults or other kids, including using information and communication technologies (ICTs) like smartphones and the Internet.
- Everyone has the right to exercise all of their human rights, but they also have an obligation to respect others' rights. Every member of society is urged to uphold human rights and freedoms by the **1948 Universal Declaration of Human Rights**. This is due to the fact that bullying affects everyone. Important human rights accord also state that people have obligations to their communities and to each other, and that they have a obligation to work toward upholding and advancing human rights
- It is true that the "Right to Privacy" is regarded as a basic human right. **The 1948 Universal Declaration of Human Rights (UDHR)¹² and the 1966 International Covenant on Civil and Political Rights (ICCPR)¹³** are two examples of the international accords and legal frameworks that recognize and protect it. These records

¹² <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Last used on 23 January, 2024)

¹³ <https://nhrc.nic.in/sites/default/files/International%20Covenant%20on%20Civil%20and%20Political%20Rights.pdf> (Last used on 24 January, 2024)

confirm the significance of shielding people's privacy from unauthorized access. Thus, the human right to privacy is eventually impacted by cyberbullying.

SUGGESTIONS:

- It is the duty of parents to monitor their children's internet use in order to stop cyberbullying before it starts. Parents need to know what apps their kids are using. Their child should be encouraged to participate in offline activities. They have to observe alterations in a child's actions like reducing social interaction, deactivating social media accounts, concealing items, avoiding conversations, displaying signs of despair, etc.
- To better combat the abuse of intellectual property in cyberbullying, rules and regulations should be strengthened. Provide victims with all-encompassing support networks that include legal aid and counselling. To make the internet a safer place, governments, tech firms, and civil society should work together.
- Efforts and campaigns to stop cyberbullying by governments, digital firms, and non-governmental organizations. programs that teach respect for intellectual property and ethical internet conduct in schools and colleges. the part that community leaders, educators, and parents play in creating a secure online environment.

CYBERBULLYING: JUDICIAL RESPONSES

- **Megan Meier Case U.S vs. Lori dewy**

At the age of 13, Megan Meier had gone to Dardenne Prairie, Missouri's Immaculate Conception Middle School. She committed suicide just before turning 14 due to what was known as "cyber-bullying," or bullying that occurred online. Megan Meier's suicide is regarded as one of the first consequence of cyberbullying in the United States. In conclusion, Megan Meier's case emphasizes the need for a safer and more moral online environment by highlighting the relationship between online privacy, deceit, and cyberbullying. It serves as a reminder of the possible risks associated with online interactions and the necessity of resolving these concerns in order to safeguard people's privacy. mental health and general security in the internet era.

- **Shibani Barik vs The State of Odisha¹⁴**

The Court noted that Tik Tok was contributing to an increase in cyberbullying and underlined the need for stringent regulations to shield kids from bullying. Because cyberbullying can affect a victim's safety in the real world in addition to jeopardizing their online privacy.

- **Rittika Sharma's Case**

Rittika Sharma, who attended a reputable school in Delhi, was pursued by a Facebook friend she had unfriended months prior. She provided all of her personal information to the friend, including her home address, school address, and even her cell phone number. After she told

¹⁴ Shibani Barik vs. The State of Odisha, SCC 2020

her brother about it, her brother complained about it. Following this occurrence, Delhi All pupils were instructed not to give their personal information to strangers during awareness campaigns that the police arranged.¹⁵ In this instance, Rittika gave the stalker sensitive details such her home address, school address, and cell phone number. Since she most certainly supplied this information in good faith and the stalker utilized it maliciously, there has been a violation of her right to privacy.

CONCLUSION:

In conclusion, in the current digital era, cyberbullying is becoming a more serious problem. Due to the extensive use of online platforms and information technology, people are more susceptible to the negative consequences of cyberbullying. This problem has ramifications for human rights and the law in addition to personal well-being. In The Indian Penal Code, 1860, and the Information Technology Act, 2000, both contain legal provisions that address different facets of cyberbullying. However, more thorough and efficient laws are required to properly combat cyberbullying in the nation and safeguard victims' rights, such as the right to privacy. Conversely, the right to privacy is a fundamental human right that is acknowledged and safeguarded globally. The Supreme Court of India upheld this right in the seminal ruling of **K. S. Putt swamy (Retd.) v. Union of India**¹⁶, which covered a number of privacy-related topics. Privacy protection is essential in light of because it can affect a person's freedom of expression, access to education, emotional and physical health, and more, cyberbullying.

This would guarantee that people's core human rights are upheld while they are shielded from the negative consequences of cyberbullying. Furthermore, public awareness initiatives in public departments, schools, and universities through educational Initiatives can be extremely important in preventing cyberbullying and creating a more civil and secure online community.

¹⁵ <https://www.legalserviceindia.com/legal/article-2358-cyber-bullying-a-disregarded-issue-in-india.html> (last used on 23 January 2024)

¹⁶ K.S. Putt swamy (Retd.) v. Union of India, AIR 2017 SC 10