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Cyber-Stalking: Threat to People or Bane to Technology

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ABSTRACT

A day without the use of technology in our lives seems like an impossible mission. We have become entirely dependent on it in divergent ways. Technology has helped us in creating great ideas that we can communicate with people present anywhere on this earth. Apart from the fact that technology has made our lives easy, it also bought in a lot of difficulties. With the massive advancement of technology along with the evolution of time, the crime rate of cyber offences keeps increasing every day. One such cyber assault that requires immediate attention is cyber stalking. Cyber stalking involves continuous or persistent following of a person through electronic media with or without the person's consent. Cyber stalking, unlike the offline stalking, is severe as the identity of the perpetrator is unknown and geographical proximity is no barrier. The severity of cyber talking has increased in the recent times as the current generation is found all the time surfing on their phones or laptops and being busy with social networking media like Facebook, Instagram, Whatsapp and many more. The reason why one may become a cyber-stalker can be because of revenge, obsession, sadism, denial, insult and many more. The post effects of cyber stalking to a victim can be psychologically overwhelming that there are cases where the victims have committed suicide being incapable of coping with the psychological and emotional stress. Cyber stalking can be used to blackmail victims as well. It can also include morphing of the victim's image with nude pictures and posting it on public and social websites thus destroying the reputation and dignity of the victim. One of the highly disadvantageous facts in cyber offences is that once such obscene picture of the victim is posted, the post gets shared to more and more people. Therefore even if the perpetrator is found and the origin where the obscene pictures were posted is deleted, it is difficult to find all places where the post has been shared. Thus it's high time that more emphasis is laid on introducing effective and efficient laws in field of newly formed cyber offences such as cyber stalking.

KEYWORDS: Cyber-Stalking

INTRODUCTION

"BEGINNING OF SOMETHING COULD BE ENDING OF ANOTHER THING".

Technology makes communication, interaction, bonding in a lon invading his or her privacy as his or her every movement is more rapid way than the way our ancestors used to interact with each other. Everything has twin effects. High technology has its own cons. One of the advanced crimes currently is cyber stalking. Cyber stalking is a type of stalking which is through any form of electronic media, and the stalker may or may not be anonymous. It is the anonymity of the stalker that complexes the situation and threatens the victim to a greater extent thus making them more vulnerable. The beginning of growth of technology caused end to protection of people from cyberspace offences.

In this article we will know the following; cyber stalking is, the means through which it is done, the mental and psychological tortures faced by the victims, the need as to why it should be emphasized more, the steps that have to be taken by the government and the condition of this crime in future if not nipped at the bud. Definition of cyber stalking in British Crime Survey¹ is as follows: "Stalking is two or more incidents causing distress or fear or alarm of obscene or threatening unwanted letters or phone calls, waiting or loitering around home or workplace, following or watching or interfering or damaging personal property carried out by any person."

Cyber stalking is one of the advanced forms of computerrelated crimes that are prevalent in society. Cyber stalking The current generation is connected by technology. arc means when a person is followed and pursued online, being watched. It can also be taken as a form of harassment that can disrupt the life of the victim and leave him or her feeling very afraid and threatened. In most of the scenarios, the victims are the woman who are stalked and harass by men or children who are hunted by adult predators. One of the main advantages that a cyber-stalker has is that they need not leave their home to find or harass their targets, in other words, they have no fear of physical violence since they believe they cannot be touched in cyberspace. The primary means through which cyber stalking can take place is internet, email, electronic communications and social networking sites like Facebook, Instagram etc.

> Cyber stalking may involve threats, identity theft and damage to data or equipment, solicitation of minors for sexual purposes or other forms of repeated offensive behavior whereas online harassment can involve unwelcome physical, verbal or non -verbal conduct. Online bullying is broadly classified into two forms direct and indirect means. The former is mainly is through use of pagers, cell phones, email or messages that consists of hate obscenities and threats, intimate victim whereas the latter is through use of the internet to display the message of risks or spreading false rumors about the victim out of spite, hatred or jealousy. Such pieces information's can be posted on web pages within chat groups or in a separate blog itself.

¹ Dr. Sapna Sukrut Deo, Cyber stalking and online harassment : A New Challenge For Law Enforcement, BHARATI LAW (July Sept http://docs.manupatra.in/newsline/articles/Upload/FDF5E B3E-2BB1-44BB-8F1D-9CA06D965AA9.pdf

FORMS OF CYBERSTALKING

Cyber stalking cases differ from regular stalking in the sense that it is technologically based though some cyber stalkers escalate their harassment to include physical stalking as well.

The reason why cyber stalking takes place could be because of out of anger or a need to control or gain revenge over another person through threats, fear and intimidation, spite, jealousy, infatuation etc. Some of the forms are as follows: Firstly, through harassing the victim. Secondly, embarrassing and humiliating the victim. Thirdly, controlling victim financially. This can be done by clearing the victim's bank account or by disrupting his credit. Fourthly, frightening or blackmailing the victim by using scare tactics or threats.

IDENTIFICATION OF CYBERSTALKER

As discussed above due to high advancement in the technology, it's easy for the cyber stalker to camouflage behind the computer screen as his identity completely unknown unlike stalking. Henceforth it is difficult to identify the stalker and also to analyses the situation whether it is genuinely stalking only. Stalking activities are often a repetitive, obsession based vendetta directed personally at the victim. It continues even when the victim has privately warned the perpetrators to stop.

WAYS THROUGH VICTIMS ARE STALKED

FALSE ACCUSATIONS: this is done by damaging one's reputation or dignity by posting false information on social websites or blogs. It can also be done by creating fictitious websites or other accounts for the purpose of spreading false rumors or allegations about the victim.

GATHERING INFORMATION ABOUT THE VICTIM: under this, one may attempt to trace his victim's social media account or email to learn about his online activities. Later on, through his observations, the stalker may use threat tactics or blackmail.

ENCOURAGEMENT OF THIRD PERSON: this mainly consists of inducing the third person to cause trouble or threat to the victim. One significant example of this is image morphing.

STATISTICS

In 2013 according to Internet World State Report 137, 000, 00 people used internet and 56,698,300 people use in India. This Lays emphasizes as why cyber stalking is one of the major concern.

America is mostly affected by cyber stalking. 2, 00,000 people are real stalkers in America, roughly 1 in 1250 persons. [4]90% of the victims are women, and 95% of stalkers are men. Mostly the teenagers are victimized.²

Age group	Percentage
20 or under	23.40
21-30	14.40
31-40	22.80
41-50	26.90
51-60	9.00
61-70	1.80
71-80	1.20
81-90	0.60

In the recent internet statistics 2014- 2015, among the population of 1,256 million 243 million are internet users, 106 are active social media users. 7 out of 10 are adult victims.³

There are mainly three types of cyber stalking. Firstly, it can through email stalking. Under this type, stalking can be done by sending undesired, random, spam emails that contain obscenity in any form May it be pictures, words are spiteful or is of such nature that creates an apprehension of fear in the mind of a victim by the perpetrator. The forms mentioned earlier are harassment that is done with feeling or emotion. Harassment can be done through disturbance or disruption in the programming of the computer through sending viruses or electronic junk mail that is of sufficient Scie volume. However, it must be repetitive for it to become stalking. The Second way is through internet stalking. The primary motive of perpetrator under this type is to target the public and not only an individual. Disturbance can be caused by pop up messages which if accidentally clicked will lead to another site thus creating a virus in the victim's computer. The third way is through computer stalking. Under this type of stalking, the perpetrator wants to gain control of the victim's communication over the internet. That is, in other words, the cyber stalker can keep victim under surveillance and directly able to connect with the victim as soon as the computer of the victim is connected to the internet in any possible way.

REASONS FOR CYBERSTALKING

The reason why one is cyber stalked is many. But one factor is common to all such purposes, and that is the fact that perpetrator is infatuated towards the victim. Firstly, infatuation is so high that it turns into bitter possessiveness. It creates intention in the minds of the perpetrator to harass the victims. It can be done through morphing of victim's pictures and blackmailing to have sex and if failed to do so, threatening that it will be leaked on websites or the internet. Secondly, where there is a presence of one-sided love, the fact that the victim is rejecting the perpetrator is unacceptable to the victim, and henceforth he wants to take revenge on the victim by making him or her to accept her by coercion or through force by means of persistent torture, disturbance, blackmailing, restlessness and lack of peace. Thirdly, it can be because the perpetrator was insulted by the victim in front of the public that made the perpetrator feel humiliated, undignified in the eyes of the people. Henceforth, the perpetrator begins to stalk for the sake of revenge. Fourthly, the perpetrator is a psycho and is highly

² Aravinth Balakrishnan, *Challenges in regulating cyber stalking at cyber space*, LEGAL SERVICE INDIA (Aug. 19, 2018, 6:30 PM),

http://www.legalserviceindia.com/legal/article-214-cyber-stalking-challenges-in-regulating-cyberstalking-at-the-cyber-space.html.

³ Nitish Chandan, *Internet statistics in India*, THE CYBER BLOG INDIA (Dec. 28, 2014, 7:00 AM), https://cyberblogindia.in/internet-statistics-india-2014-100-82-increase-users-cyber-space-needs/

obsessed with the victim and creates a lot of problems. The perpetrator under such situation is incapable of thinking of what nature of act they are doing.

TYPES OF STALKERS

Firstly, where the perpetrator's primary motive is to coerce and compel the victim by force to restart their relationship that was broken. Such stalkers are obsessional stalkers. Secondly, some stalkers to take revenge alone for being rejected or insulted. Such stalkers are vengeful stalkers. Thirdly, some stalkers under delusion that the victim is also in love with the perpetrator. Such are erotomaniac stalkers.

PROBLEMS FACED BY THE VICTIM

Through cyber stalking is one form of stalking it is to be noted that problems faced by a victim in offline stalking are quite different from that of cyber stalking. One of the significant reasons is the perpetrator in cyber stalking can stalk, harass or sent unsolicited emails to the victim from any corner in the world through the medium of the internet and various other social media. In other words, there is no barrier of geographical proximity and identity of the perpetrator is very anonymous. The victim may face physical, psychological, social and behavioural problems. Physical problems are those where an abnormality is found in the normal functioning of the body. For instance, it can be heart palpitations, shortness of breath, dizziness, sweating, and hypertension. It can cause the problem of insomnia (sleeplessness), sexual dysfunction, breathing problems like asthma due to the constant fear that is created in the minds of the victim. Psychological problems may be noticed by changing the behavioral pattern and many effects caused on the mental health of the victim. Some of the changing behavioral patterns are having the feeling of being lonely helpless, depressed self-doubt whether the victim only is overreacting leading to guilt and embarrassment. Under more severe circumstances, it can lead to post-traumatic stress disorder, eg hyper vigilance, (always in the lookout), flashbacks of frightening incidents, agoraphobia (frightened to leave the house, never feeling safe), insecurity and inability to trust people. Nature of the person may turn more suspicious and may even become introvert due to lack of understanding, intimacy or may feel phobic in the presence of people. Social problems faced by the victims can be through two ways, firstly where the society alleviates the victim from the society. Secondly, where the victim alleviates himself or herself from the society. In the former case, the society begins to notice the person being stalked through direct and indirect sources. People begin to become judgmental, and they start to alleviate the victim from society under the fear that they will be targeted next. Also, they blame only the victim who is being stalked and not the perpetrator who is committing the offence. The best example for this could be when the stalker leaks obscene image or video of the victim on the internet thereby disrupting the reputation, the dignity of the victim. After such leakage, it is the victim who looked down by the society. Instead of supporting the victim, they begin to blame the victim for no mistake of his or her. In the latter case, the victim himself or herself alienates himself or herself from social interaction, communication or any other form of social interference. Due to continuous and persistent harassment, disturbance and the fear of being under surveillance always creates a sense of trust issues and builds insecurity and if the stalking is further continued the victim will reach a stage where he or she will become a sociopath. They become emotionally very

unstable. Other parts of life like school or work life are also affected because of irregularity in attending classes or office, and changed behavior causes problems to the other students or co-workers who will finally lead to expulsion of a student from school and the victim working under a job which destroys career and can lead to financial instability. It is to be noted that the post effects of all the above-mentioned problems can be very severe. Firstly, the victim may start consuming alcohol and drugs without having any control. Victims do this to free their mind from the state of being under fear always. They use alcohol or drugs as a means for escapism from depression. Secondly, if the mental and physical condition of the victim turns very bad that the victim is no, more able to handle the situation and is still being stalked by the perpetrator. The victim has no other choice and under a hopeless, helpless and in a desperate situation of not being understood or loved commit suicide and ends their life, thinking that is the only solution to end their problem. Thirdly, the victims may turn vengeful or spiteful and may turn into criminals in order to take revenge of the cyber stalker who tried to disturb and interfere their life and caused a lot of problems to them physically, mentally, socially and psychologically apart from the problems faced by the victim there are certain factors why a victim prevents or restrains himself or herself from seeking help. Firstly, the victim is not clear whether what the perpetrator is doing to him or her is illegal or not. Secondly, the victim begins to blame themselves if the stalker was in a prior relationship with the victim. Thirdly, the victims fear that their dignity and reputation will be destroyed in the society if they approach court or police and presume that the stalker will understand their position and condition and if they approach their family they fear that they will not be able to understand their position or believe them and will stop loving them. Fourthly they restrain from seeking help fearing direct threat to their loved ones from the stalkers. Further, sometimes financial condition could also be the possible reason that may prevent the victim from seeking help.

RELEVANT LEGISLATIONS

Section 509 in The Indian Penal Code

509. Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.⁴

However after referring the section one can conclude that the above section of IPC talks only about word, gesture or act that intends to insult the modesty of women. But it fails to mention any action that is done on the internet like cyber stalking where the hearing or visual sense cannot be applied as specified in the above section.

The Information Technology Act, 2008 did not mention anything directly regarding stalking. However, it mainly dealt with the problem of stalking indirectly as 'intrusion of one's privacy.' Such indirect implication or interpretation whose scope does not entirely cover the offence of cyber stalking can be used as a means of escapism by the cyber

⁴ The Indian Penal Code, 1860, No. 45 of 1860, Acts of parliament, 1860(India).

stalkers. Because in cyber stalking it is not only privacy that is being intruded, modesty is being deterred, apprehension of fear caused is more than in stalking due to the anonymity of cyber stalkers. Some psychopathic or delusional cyber stalkers in the worst scenario can create obscene pictures of the victim by morphing them and posting them on various social websites and media that destroys the dignity of a woman.

However, the most used provision in IT act for regulating cyber stalking in India is section 72.5

Section 72 in The Information Technology Act, 2000

72. Penalty for breach of confidentiality and privacy.-Save as otherwise provided in this Act or any other law for the time being in force, if any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made there under, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

The above provision emphasizes on punishing that person who has secured access regarding electronic material such as electronic record, book, register, correspondence, information or document of another person who owns it and discloses any of such electronic equipment without the consent of the actual owner to any other person. However when we shift our focus on cyber stalking there is not only in Scienty law; or leakage of any electronic material but it also includes ... C. In the particular circumstances such conduct was continuous or persistent disturbance to the victim in the form of messages, or sending morphed obscene pictures and threatening to leak it on social media or surveillance of victim every time they are connected to computer or phone which is computer stalking, a form of cyber stalking.

Section 72A in The Information Technology Act, 2000

72A Punishment for disclosure of information in breach of lawful contract. -Save as otherwise provided in this Act or any other law for the time being in force, any person including an intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person, shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both.] Section 441 of IPC can be read along with above two provisions.

However, the above provisions are regarding the misuse of powers by those on whom such authority has been conferred on by the provisions of the act that is through valid contract. There is no specific mention about stalking. It is well understood from the usage of the word "lawful contract" as stalking is not a contract but an act that is considered unlawful.

Section 441 in The Indian Penal Code

441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass".6

CRIMINAL AMENDMENT 2013:7

After the Nirbhaya case, certain amendments were made. One among them was 354D of IPC.

Section 354D reads as follows:

- 1. Any man who—
- A. 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;
- monitors the use by a woman of the internet, email or any other form of electronic communication, Commits the offence of stalking;

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

- A. it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- It was pursued under any law or to comply with any condition or requirement imposed by any person under
- reasonable and justified.
- Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Here there is a question of equality as the section talks about only women being stalked. In the developed era of technology, the identity of cyber stalker is quiet anonymous. It is difficult to find out firstly, whether it is a man or woman. Secondly one can even change their gender in social media for stalking. Under such complicated circumstances and situations, the application of such provision becomes difficult as

- A. A girl can stalk a girl
- A girl can stalk a boy
- A boy can stalk a boy

In the current situation after decriminalization of section 377 of IPC8, there is no distant pattern of stalking as the

⁵ The Information technology Act, 2000, Acts of Parliament, 2000(India).

⁶ The Indian Penal Code, 1860, No.45 of 1860, Acts of Parliament, 1860(India).

⁷ The Criminal Law (Amendment) Act, 2013, Acts of Parliament, 2013(India).

⁸ The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860(India).

presumption that only a boy or man stalks a girl or female is highly rebuttable.

Section 43 of IT⁹ act talks about the damage that is done to computer or computer system through access of computer, download or copying of database, the introduction of viruses and other forms through which the computer is damaged. However, it does not talk about the owner of the computer who may suffer losses other than those caused to the computer alone. For example, say suppose a virus is introduced into a person's computer to keep him under surveillance. Here the perpetrator according to this section is punishable for causing the damage to the laptop through a virus, but no provision is made to punish the perpetrator for interfering the private cyberspace of the victim.

Our country has no effective law on cyber stalking as in U.S.A, California or Florida. The U.S.A. has enacted laws at center and state level. Some of the acts adopted by the U.S.A. are interstate communication act, telephone harassment statute and interstate stalking punishment and prevention act. The first country to take action with respect to cyber stalking was California. California's current position regarding the prevention of stalking is that the law prohibits following or harassing another person, threatening the person with intent or placing him or her in fear of his or her safety of his or her immediate family. It consists of cyber stalking laws that allow schools to suspend or expel students who harass other students online. Section1708.7 of Californian civil code emphasizes those grounds that an individual can apply while suing their cyber stalker and provides information for general damages, special damages and punitive damages for cyber stalking.¹⁰ In Floridian statute 784.048 talks about the definition of cyber stalking and aggravated stalking. Under this law, cyber stalking a child under the age of 16 or a person of any period for which the offender has been ordered to contact is aggravated stalking which is a third-degree felony under Floridian law.11

There are many cases in India regarding cyber stalking that will draw the attention of the legislature to make more stringent laws regarding cybercrime which is the need of the hour.

The first ever cybersex crime in India was reported in Delhi against Manish Kathuria for harassing a woman named Ritu Kohli by chatting on the internet and was arrested by officials of crime branch of Delhi. Police found through interrogation that he had used her identity and gave her number to promote obscene communication and chatting. In another case, a 35-year old was convicted for sending obscene pictures to a woman on social media. He was

convicted and was sentenced with 3 months imprisonment. It was the first ever conviction regarding cyber stalking.¹³ In Vinu Priya's case, a 21-year-old victim from Salem committed suicide after her morphed image was leaked on Facebook.¹⁴ Anonymous persons had morphed her image on a scantily attired woman. Soon after the victim and her family had complained about it to the police, the victim found another obscene picture of her was posted on Facebook along with along with the contact information of her father. Unable to cope up with the insult, humiliation she suffered, the victim took the drastic step of committing suicide. As per the report, the police had failed to take action after the complaint was filed. The victim's family had stated that the reluctance of police to be one of the reasons for the victim's death. The above case creates a sense of threat to all those people who are on social media. When a thing like this can happen to anyone, anywhere and the perpetrator's identity is very anonymous justice is being eluded without proper and stringent laws to regulate the commission of such crimes.

It is high time that legislators concentrate a bit more towards emerging cybercrime offences especially like cyber stalking, cyberbullying, cyber pornography before they go out of control. The current position is so dilute that there is no direct punishment for such offences. Apart from that if cyber stalking is just persistent interference and does not lead to grave offences like defamation, identity theft or crimes concerning sexual harassment or any other form of sex crimes, it is only a bailable offence. One of the critical reason why such offences are dangerous is that once any obscene picture, video or any other form of electronic material is leaked on websites or social websites, it keeps multiplying as people keep forwarding it to their friends and their friends send them to their friends and the process goes on. So even if the experts remove the original sites it is difficult to find the sites that were forwarded from the original sites. Therefore victim's dignity gets destroyed if action is not taken within a reasonable time. And if the victim is very affected by it mentally and is not able to handle it take drastic steps by committing suicide as in the Vinu Priya's case. Also, not many cases are reported in the police due to fear of losing dignity, reputation and reluctance of police. One of the possible reason why the police are reluctant can be there is no specific provision or guidelines regarding cybercrimes like cyber stalking or how to handle such situations. A change must be bought for a better tomorrow.

If the current scenario of cyber stalking is neglected, a drastic consequence is to be faced in the coming future. There are simple ways where an individual can prevent himself or herself from being stalked like not posting personal pictures on social media, not sharing the password

⁹ The Information Technology Act, 2000, Acts of parliament, 2000(India).

¹⁰ California Civil Code, Cal.Civ.Code §1708.7(2014).

¹¹ The Floridian Statute, §784.048 (2014).

¹² First Cyber Sex crime in Delhi, THE HINDU, (Jun. 18, 2000)

https://www.thehindu.com/2000/06/18/stories/14182186.htm.

¹³ Vijay Kumar Yadhav and Charul Shah, *35-yr-old first* convict in a cyber-stalking case in state, HINDUSTAN TIMES (Dec. 18, 2018)

https://www.hindustantimes.com/mumbai/35-yr-old-first-convict-in-a-cyber-stalking-case-in-state/story-sjliVKJOGxwwUdr4UYyz60.html.

¹⁴ Pramod Madhav, *Salem:morphed facebook images drive* woman to suicide, INDIA TODAY (Jun. 28, 2016, 11:44 AM) https://www.indiatoday.in/india/story/morphed-imageson-facebook-drive-salem-woman-to-suicide-16741-2016-06-28

with anyone. Apart from this, unknown requests on Facebook and Instagram are not to be accepted. Though prevention can be done at an individual level, it is quite minimal. A massive and substantial step is to be taken by effective and efficient cyber laws that will protect more people from becoming a victim and also ensures justice to the who is affected.

CONCLUSION:

"PAUSE, THINK THEN ACT IF YOU GET ANONYMOUS MESSAGES".

If on one hand we say that technology helps people and makes their lives easy, on the other hand it is also a tool that

criminals use to keep their identity anonymous. This makes common people vulnerable and victimized. Henceforth, a question arises as to what will be solution to this problem. Though one can provide suggestions as to how one can be more careful and cautious on social media, it will be a short term solution. Creation of more stringent laws on other hand will be a long term solution. This is because it will lessen the cybercrime rate, cause apprehension of fear in the mind of criminals that they will be subjected to severe punishment. These crimes if are left unobserved, it will develop into more complicated problem in the coming years. Therefore, it has to be nipped at the bud.

