

A REVISIT TO THE CONCEPT OF CONSENT IN RELATION TO THE CYBERSPACE

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ABSTRACT

Consent is one of the most important, yet one of the most misunderstood concepts in law. It is the basis of many legal principles, and the want of consent is the basis of many, avoidable, legal disputes. The main thrust of this paper shall be to compare the existing meaning of consent as understood in the offline world with the consent in the online world. Specifically, this paper would try to address whether the scope of consent, as we know it, needs to be widened for online interactions or not. Finally, the paper would also try to comprehend the phenomenon of cyberrape in terms of consent and physicality. For the purpose of such deduction the paper will proceed in parts dealing with the topics in the order as mentioned.

Keywords : *Catfishing, Consent, Cyberrape, Identity Theft, Misrepresentation*

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I. Introduction

CONSENT IS often one of the most essential elements when it comes to the imposition or escaping of liability. George Fletcher puts it beautifully when he states that *‘No idea testifies more powerfully to individuals as a source of value than the principle of consent.’*¹ It has been argued by Jessica Christine Elliot that the determination of a valid and binding consent is not

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¹ GP Fletcher, *Basic Concepts of Legal Thought* 109 (Oxford University Press, New York, 1st edn., 1996).

only innately tricky, but also consent procured in contentious, such as sexual or financial issues, are open to being questioned on whether the consent herein is free consent or not.²

This problem sustains even in cases where written consent is sought and given. Consent implies full involvement of an individual, either active or passive, in the activity for which consent is granted. Vanessa E. Munro argues that the origin of law itself is rooted in consent. She says that going by the command theory of law, people have consented to be ruled over by an individual, identified as the sovereign, over them and thereby they have consensually placed themselves to a subservient position as compared to the sovereign³. Thus, the very foundation of law is based on the concept and principle of consent.

In terms of sexual actions, consent from all the parties involved in the sexual action is a *sine qua non*. Absence of consent from any one of the parties is enough to term the action sexually abusive of a degree depending upon the nature of sexual action. Since, consent is so important to save a person from potential legal action, it makes sense for us to ask, what is the best possible form of legally acceptable consent. For this research, the following research questions will be relevant:

1. What is consent and how is it deduced?
2. Are the rules of consent in the offline world applicable to consent in the cyberworld?
3. Whether the concept of consent needs to be widened to include online interactions in that concept?
4. What is cyberrape and how can the same be affected?

II. Conceptualizing ‘Consent’

Consent, in its usual and literary sense, implies permission to do something or to be a part of something.⁴ Thus, for consent to be meaningful, there must be first a proposal to which such consent is being provided, this vicariously leads to the conclusion that consent as a requisite assumes significance only when two or people are involved in a transaction, meaning that consent is always a right that is needed for others and not for oneself. In terms of criminal

² Jessica Christine Elliott, *The Role of Consent in The Trafficking of Women For Sexual Exploitation: Establishing Who The Victims Are, And How They Should Be Treated* (2011) (Unpublished PhD Thesis, The University of Birmingham).

³ Vanessa E. Munro, “Constructing Consent: Legislating Freedom and Legitimizing Constraint in the Expression of Sexual Autonomy” 41 *Akron Law Review* 927 (2008).

⁴ Vera Bergelson, “The Meaning of Consent” 12 *Ohio State J. Crim. Law* 171 (2018).

law, consent is almost of a similar connotation as in when a person intentionally allows oneself to be subjected to some course of action which in the absence of such consent would be criminally reprehensible.

Of course, there are certain actions that are criminally liable irrespective of the presence of consent, but those are beyond the scope of this paper. While in civil law, the question is specifically not of consent but of rights, in terms of criminal law, the question is specifically that of consent. In civil law, consent is given for a course of action independently, in criminal law, specifically in case of matters concerning the human body, consent is given for actions directed toward the body. Consent to be meaningful must be free and informed irrespective of the physicality of the actions. Even though physicality is irrelevant in the cyber-realm, the concept of consent for online sexual actions is by no means dispensable.

As a concept, consent is intimately associated with almost all legal knowledge.⁵ Consent has always been a concomitant factor in the development of the law and legal doctrines, demarcating the line between what is acceptable and what is not. No wonder it is given such primacy by law and is a very dynamic concept. Consent as we understand today, stands influenced by the considerations of gender equality, the understanding of self and of course political thoughts such as Marxism or communism.

Another area that has massively influenced the concept of consent is the area of power politics.⁶ Power and consent are directly related since the ability to provide or withhold consent is a direct correlation of how much power an individual wields.⁷ Recent criticism of the capitalist model of the society has brought into direct attention the connection between privilege and consent.⁸ In this context, online realms would make everyone powerful since in online transactions everyone is on a virtual equal plane and as a result thereof, consent can very rarely be forced.

⁵ Deborah Smith, "The Law on Consent: What's new?", *General Osteopathic Council*, January 24, 2017, available at: <https://cpd.osteopathy.org.uk/learn-from-others/thought-pieces/the-law-on-consent-has-changed-whats-new/> (last visited on January 23, 2021).

⁶ Anastasia Powell, "Sex, Power and Consent" 22 *Griffith Law Review* 465 (2013).

⁷ *Id.*, at 466.

⁸ Neil Howard, "On capitalism and coercion Are trafficking, slavery and forced labour actually necessary for maintaining liberal capitalism?", *Aljazeera*, April 18, 2014, available at: <https://www.aljazeera.com/opinions/2014/4/18/on-capitalism-and-coercion> (last visited on November 18, 2020).

Before going into the question of consent online, it would make sense for us to deduce the premises of sexual relationships that can actually take place online. Very broadly, online sexual activities can be either solitary, such as viewing pornography, or shared, such as engaging in sex chats. The element of touch and physicality is missing in such activities and the essence of such relation is the feelings that accompany such activities: the feelings of thrill of the unknown and the vast freedom that the online space offers as compared to the offline world. In fact, sexual activities such as role-play etc, are much simpler online than offline⁹. There are many factors that give online sexual activities an advantage as compared to the traditional avenues of sex: the relative ease of access to the net and the sexual stimuli available therein, the comparatively lower costs involved and of course the complete absence of the fear of sexually transmitted infections.

It is for this reason that online sexual activities have been accepted so readily by internet users. From the psychological point of view, online sexual activities provide a cloak of anonymity that is not easily available online. The fear of liability or of ‘getting caught’ online is much lesser as compared to offline activities.¹⁰ In this context it becomes imperative for us to deduce the importance of consent in online sexual activities, more specifically in which cases consent may be deduced and wherein an absence of the same has to be compulsorily assumed which, in turn, would lead to an assumption of sexual abuse which might even amount to cyberrape.

III. Why is ‘Consent’ important?

Consent is important when imputing legality upon a certain action. Consent acts to impose certain features upon an action that make it legally tenable and valid, most importantly by giving rise to a necessary implication that the person providing consent is willing to face all the consequences of the act in question.¹¹ This can be derived from the maxim of tort law: *volenti non fit injuria*. This dictum stands in direct and clear contrast with the maxim of *scienti non fit injuria* which clearly implies that mere knowledge of risk does not in any way negate liability. The knowledge must be coupled with an active consent, more importantly free consent. This also conforms to the rule of equity since a person who willingly and freely

⁹ Juan Ramon Barrada, Paula Ruiz Gomez, *et al.*, “Not All Online Sexual Activities Are the Same”, 10 *Frontiers in Psychology* 1 (2019).

¹⁰ *Ibid.*

¹¹ *Vijayan Pillai @ Babu v. State of Kerala*, 1989 2 KLJ 234.

consents to some action cannot later on claim damages or compensation for the reasonable consequences of such action.¹²

A parallel can be drawn with the law of torts wherein a person who uses the internet must be aware of the inherent risks associated with the internet: such as the revealing of the IP address for accessing the internet or the fact that email addresses can be used by others for communication with such person. But it would be too much of a stretch of an imagination to assume that a person consents to such data being used for all sorts of communication- notably advertising. It is for the same reason that privacy laws upon the internet are an area of study unto themselves.¹³

Mere knowledge of risk can never be an assumption that such risk is being agreed to.¹⁴ There are certain risks that we just cannot avoid but that should not lead us to any avoidable pitfalls.¹⁵ The same applies for consent on the internet. What actually constitutes free consent is a mixed question of facts and law, because free consent is to be signified either expressly or it may be implied from conduct. But such a simplistic distinction is not possible in cases of a criminal matter because the definition of consent in criminal and sexual matters is dynamic and rather fluid, and most importantly consent once given may be withdrawn at any point of time.¹⁶ It is this particular feature that deserves our attention. For instance, in the Michigan laws, consent is not even a defence to the charges of sexual assault in certain cases.¹⁷

One of the cyber-crimes that proceeds specifically on the premise of absence of consent is that of cyber-stalking. The crime contemplated in 'cyber-stalking' proceeds basically on two disjunctive premises: Whoever follows a person and contacts, or attempts to contact such person to foster personal interaction repeatedly, despite a clear indication of disinterest by such person, or whoever, monitors the use by a person of the Internet, email or any other

¹² Graham Hughes, "Two Views on Consent in the Criminal Law" 26 *Modern Law Review* 234 (1963).

¹³ Economic Laws Practice, "Data Protection & Privacy Issues in India" 5 (September, 2017)

¹⁴ Application of Volenti non fit Injuria, *available at*: <https://www.legalserviceindia.com/legal/article-3952-application-of-volenti-non-fit-injuria.html> (last visited on January 26 2021)

¹⁵ Craig Gillespie, Andrea Manning-Kroon, *The Defence of Inevitable Accident*, Bottom Line Research (2013), *available at* https://bottomlineresearch.ca/articles_index.html (last visited on January 26 2021)

¹⁶ Sherry F. Colb, "Withdrawing Consent During Intercourse: California's Highest Court Clarifies the Definition of Rape" *Findlaw*, 15 January, 2003 *available at*: <https://supreme.findlaw.com/legal-commentary/withdrawing-consent-during-intercourse.html> (last visited on February 23, 2022)

¹⁷ The Michigan Penal Code, 1931, (Act 328 of 1931), s. 520e

form of electronic communication.¹⁸ Thus, online stalking forms just a part of the greater offence of stalking. The second requirement is the monitoring of the emails of a woman by a man without any reasonable excuse; and although the same has not been particularly mentioned it may be read into the section that the person being monitored is aware of such monitoring. Such an assumption reasonably excludes cases wherein the person being monitored does not have such knowledge. The first requirement basically proceeds on fear generated in the victim and the second requirement introduces an element of discomfort in the crime or a reaction that exists outside of the cyber-realm. This might give rise to the assumption that where such extra-cyber effects are missing the law will not treat an action as a crime. Therefore, for instance, mere stalking of a person, without causing any annoyance or fear to such person is not a crime and legally not actionable. The law also clearly lays out that the purported victim must make such displeasure, fear or lack of consent very clear to the perpetrator in order to constitute a crime. Therefore, in case a person is able to ‘stalk’ another without the knowledge of the other person, there is no crime!

In the seminal article by Julian Dibbell,¹⁹ the entire phenomenon that has been described is of an ‘online rape’ wherein an online avatar of a real individual was violated online, with no physical harm being affected upon the ‘victim’ in person, nonetheless she felt violated. However, no legal recourse was resorted to the only recourse sought and affected was a technological one wherein the ‘accused online avatar’ (entitled Mr. Bear) was technologically punished through being banned. This was a case of the entire incident (cause and effect) being restricted just online.

IV. How to deduce/signify ‘consent’?

Procurement of consent

Affirmative consent once validly established is enough to absolve all criminal liability imputed for any sexual matter.²⁰ The stance in sexual crimes is that in case a victim claims sexual assault, including rape, the onus is on the accused to prove that there has been no rape

¹⁸ The Indian Penal Code, 1860, (Act 45 of 1860), s. 354D

¹⁹ Stephanie Buck, “The ‘rape in cyber space’ from 25 years ago posed problems we still haven’t solved today”, *Timeline*, October 30, 2017, available at: <https://timeline.com/rape-in-cyberspace-lambdamoo-da9cf0c74e9e> (last visited on Jan 20, 2022).

²⁰ Michelle J. Anderson, “Campus Sexual Assault Adjudication and Resistance to Reform” 125 *The Yale Law Journal* 41 (2016).

and there was consent.²¹ Thus, the question of signification of consent in an implied or indirect manner, in sexual matters assumes importance. Sadly, though, such deduction of consent is anything but simple. For the sake of simplicity and convenience, this paper would restrict its discussion only on the matters of rape since sexual intercourse in the absence of consent implies rape *simpliciter*.

In sexual matters consent is given by one identified person to another and the consent is given for specific actions and such consent is usually instantaneous.²² The legal regime specifically recognizes areas in which consent may be sought and given and how the same may be procured. The law also recognizes specific areas in which consent may be legally untenable, such as consent received through fraud, however, a perusal of the law would also make it clear that such fraudulent consent also has to be appended with a corresponding sexual action, and the offence committed depends massively upon the reality of sexual action performed.

Currently in the Indian legal regime catfishing is an independent action that stands distinct from sexual offences, and as per the IPC even impersonation is an independent crime and has no correlation with sexual offences.²³ Catfishing per se is not treated as a crime in India.²⁴ When identity is faked for the sexual ends, the punishment is for the sexual actions and not the identity theft. Going by normal logic consent obtained through the means of catfishing should be treated as no consent at all, and such process of obtaining consent through for fraudulent matters online should be treated as an offense separate from other cases of identity theft and/or impersonation. But then, in the case of sexual communication through catfishing, what is the harm or crime committed? An unwitting victim spends time chatting with a catfish, thereby wasting time and internet data.

²¹ Seema Rao, "A troubling precedent for rape cases", *Mint*, October 20, 2017, available at: <https://www.livemint.com/Opinion/aUWJYk8psY6PwbzWdrsKsI/A-troubling-precedent-for-rape-cases.html> (last visited on January 30, 2021).

²² Pallavi Prasad, "Consent Is More Than Just a Yes to Sex, It's an Enthusiastic Yes", *The Swaddle*, September 17, 2019, available at: <https://theswaddle.com/enthusiastic-consent/> (last visited on January 31, 2021).

²³ The Indian Penal Code, 1860, (Act 45 of 1860) s. 416.

²⁴ Eric Vanman, "It's Not About Money: We Asked Catfish Why They Trick People Online", *The Conversation*, July 26, 2018, available at: <https://theconversation.com/its-not-about-money-we-asked-catfish-why-they-trick-people-online-100381> (last visited on Jan. 31, 2021).

Catfishing is specifically used for financial or sexual ends and considering the statistics of the same it would make sense to consider it as an independent crime.²⁵ But having said that identity theft on the internet is unbelievably easy and detecting or preventing catfishing is more a question of technology than of law. Nonetheless, catfishing is a legal reality that we must factor into consideration if we are to think of a meaningful legal regime for the cyber-realm.

Deduction of consent

In terms of consent, the law recognizes that consent obtained on the pretext of marriage is no consent and the accused is liable to be charged of rape. However, there has been a paradigm shift in this stance of late. For instance in a recent case the Kerala High Court has laid down that in case relationship between two parties, who are in a physical relationship, turns sour in the future, an allegation of rape simply cannot be brought on such grounds.²⁶

The above judgment brings focus to a few things: consent here has been provided by an adult woman and the same was continuously provided for a number of years. Of course, it is true that the consent was provided on the understanding that the parties will eventually get married in the future, but finally when the subject of marriage was being seriously considered, it broke down on grounds of differences arising between the two. The important factors to be considered here are that the complainant was an educated and working adult woman with her own source of income. This implies that she is in a position to appreciate what she was getting herself into. The fact that she continued for a given period of time, considering all the relevant circumstances, was the ground that the court imputed consent in the scenario. But, the above situation is a one-off situation, female education or job prospects are still unachieved, or even unachievable goals for many women.²⁷

Another way by which courts would deduce consent, or the absence of the same, was by going into the question of resistance offered by the victim in such cases. The courts usually deduce consent after factoring into considerations the relevant circumstances of the case.

²⁵ “Digital Fraud Attempts from India Rise by 89%”, *Outlook Money*, June 29, 2021, available at: <https://www.outlookindia.com/outlookmoney/tech-toys/digital-fraud-attempts-from-india-rise-by-89-7865> (last visited on August 29, 2021).

²⁶ *Navaneeth N Nath v. State of Kerala*, 2022 (Ker) 335.

²⁷ Shiv Prakash Katiyar, “Gender Disparity in Literacy in India” 46 *Social Change* 47 (2016).

Whether such deduction is correct or not is debatable, but such judgments make one thing clear: consent can be deduced in matters of sex. The question is when and how?

The judgment mentioned in the above instance,²⁸ is a good example wherein consent can be deduced. In the instant case such a deduction is also pertinent because the parties were involved in a romantic relationship and not in a marital relationship, the woman was earning and was thus financially independent. Rape charges were framed on the ground of false pretext of marriage, which the court refused to entertain on the ratio that simply because the relationship soured later on, and the chances of marriage stood scuttled, there cannot be said to be rape, particularly since the offence of deception could not be made out. This in turn leads to another pertinent conclusion: consent can obviously be withdrawn, but future withdrawal of consent does not make past actions criminally liable. It is only when such withdrawal is based on factors rooted in the past itself, such as fraud or deception by means of false identity, can future withdrawal affect past actions. This particular thought can be reasonably extrapolated to the online realm.

But in the online realm two distinct and specific situations are to be made out: first is the breach of trust and procurement of consent based on such breach and second is the misuse of such consent. For instance, if a person engages in sexual communication online with another person based on a fake identity, there are three distinct offences here: 1. Misrepresentation on the internet 2. Procurement of consent based on such misrepresentation and 3. Sexual communication based on such consent and misrepresentation. Since these offences are distinct, they may exist separately.

However, there are a few instances in the online realm that are worth a revisit. For instance, where a person engages with another for sexual communication for a long period of time and thereafter it is revealed that one of the parties to such communication had been catfishing the other, what is the offence here apart from a fake identity assumed for communication? Or what is the harm affected? Equitably, offence should not depend on harm or effect, because as per the doctrine of *mens rea*, it is not action alone that is punishable, but the mental reasoning behind such action.

²⁸ *Supra* note 26.

A potentially criminal act might fail, but such failure nonetheless does not affect or mitigate the illegality of such action, but then at the same time the law should not be concerned with trifles. Where such catfishing is used to financially cheat or sexually or otherwise blackmail the victim, a clear offence is made out, but what about cases wherein the catfishing was done just for the sake of sex-chat, what is the offence? Where is the harm? For the sake of objectivity, we might argue that the harm here may be that a person was led to having a sex-chat with someone who he/she may not have had a sex-chat with, but for that purported identify.

Thus, this is a case of personating for online sexual ends. This is a case somewhat akin to the situation contemplated by Julian Dibbell,²⁹ wherein the entire matter was restricted to online transactions and there had been no offline effect. In that case no legal recourse was sought, should the same approach be applied here? For a moment if we were to assume that a person catfishes other on the internet and in the process is catfished himself or herself, according to the rules of equity, does any party have any right to object? Specifically, when the entire transaction is completely online, with no offline effect, and no tangible or quantifiable harm in any case, should the law even deal with the matter?

There is also the famous case of *Tukaram v. State of Maharashtra*³⁰ popularly known as the Mathura rape case in which the court had deduced consent based on the fact that the victim had not raised an alarm and that she was used to sexual intercourse, thereby implying that consent is always a given for her. The takeaway from this case was that consent depends on the antecedents of an individual and there were differential levels of yardstick for men and women for judging the presence and absence of consent. Feminist jurisprudence has always been vocal on this issue since they are of the view that it has always been assumed that women by default are always consenting to sex,³¹ or it is their duty to cater to the carnal demands of men.³² For a woman, lack of consent must be very loud, clear, unequivocal and consistent to be taken seriously.³³ Such a viewpoint has been meticulously extrapolated on

²⁹ Julian Dibbell, *A Rape in Cyberspace*, 1998, available at: <http://www.juliandibbell.com/articles/a-rape-in-cyberspace/> (last visited on June 20, 2021).

³⁰ 1979 AIR 185.

³¹ Dawn M. Szymanski, Lauren B. Moffitt, *et al*, "Sexual Objectification of Women: Advances to Theory and Research" 39(1) *The Counseling Psychologist* 10 (2011).

³² World Bank Group, "Voice Agency and Empowering women and girls for shared prosperity" 105 (2014).

³³ Maddy Coy and Liz Kelly, *et. al*, *Global Perspectives and Key Debates in Sex and Relationships Education Addressing Issues of Gender, Sexuality, Plurality and Power* (Palgrave Pivot London, 2016).

the online realm wherein women have reported being subjected to unwanted and vulgar sexual communication simply by having an online presence or by being online.³⁴

Western jurisprudence with regard to rape and the consent thereof fares no better. In a US Supreme Court decision, it has been held that a woman must defend herself to the point of death in order to put up a reasonable resistance to rape, else the offence of rape is not made out.³⁵ There have been innumerable cases, both at home, and abroad, that have shifted the onus of rape on the victim simply based on the kinds of clothes that the victim was wearing, in many cases there have been discourse on what is appropriate and what is inappropriate for a victim to wear and how the clothes have contributed to the sexual assault that the victim was subjected to.³⁷ Specifically, here clothes have acted as a substitute for consent. This is the stance even in developed nations.³⁸ Taking forward this analogy, if clothes were to be taken as an indication of consent, the online presence or avatar of a user may also be construed as consent. Both these approaches are problematic and would open a floodgate of sexual attacks.

This all brings us back to square one: In terms of online realm, how should a victim actually express a lack of consent? Or even a lack of interest? In the online realm, an attractive picture used by a person seems to act as a substitute for clothes; the narrative being the bolder the picture, the louder the consent.³⁹ In terms of communication not replying does not seem to work since women have reported receiving voyeuristic messages anyway despite not replying or reciprocating.⁴⁰ In fact, in case of the online realm, the mere presence of women online somehow seems to spur unwanted sexual attention and communication. Such a phenomenon renders the online realm a somewhat risky and uncomfortable place for women, and if abuse were to be treated as something that makes people uncomfortable, such action is undoubtedly abusive.

³⁴ Pew Research Center, "The State of Online Harassment" 10 (2021).

³⁵ *State v. Rusk* (1981) 289 Maryland 230.

³⁶ National Institute of Justice, "The Criminal Justice and Community Response to Rape" 33 (1994).

³⁷ Gravelin CR, Biernat *et. al.*, "Blaming the Victim of Acquaintance Rape: Individual, Situational, and Sociocultural Factors" 9 *Front Psychol.* 10 (2019).

³⁸ Maya Oppenheim, "Majority of men believe women more likely to be sexually assaulted if wearing revealing clothes, study suggests" *Independent*, February 23, 2019, available at: <https://www.independent.co.uk/news/uk/home-news/men-sexual-assault-clothes-women-victim-blaming-rape-a8792591.html> (last visited on February 20, 2021).

³⁹ Plan International, "Abuse and Harassment Driving Girls Off Facebook, Instagram and Twitter" (2020), available at: <https://plan-international.org/news/2020-10-05-abuse-and-harassment-driving-girls-facebook-instagram-and-twitter> (last visited on March 1, 2021).

⁴⁰ Crime Prevention Ottawa, "Sexual Violence and Social Media Building a Framework for Prevention" 408 (2013).

Factors affecting consent

The law is quite clear at least on one count: the consent for sexual matters has to be completely free and voluntary. Consent obtained by means of coercion, financial, physical or otherwise colors the consent with a lack of freedom and thus vitiates the same.⁴¹ There are many factors playing on consent and economic factor is one of the strongest of those. There have been cases documented where financially dependent women have had to consent to sex simply to procure money from the people on whom they depend for the money.⁴² This is a form of rape since the consent is not free.

Age is obviously another factor that plays heavily on consent. Many jurisdictions simply don't consider consent from underage victims and any sexual contact with such victim is treated as sexually abusive amounting to rape.⁴³ Problem arises when the alleged rapist is purportedly underage. The recent Nirbhaya amendment act has brought about qualified protection to accused within the ages of 16-18 and this move has garnered severe criticism. Considering the fact children can get involved in online activities that may be potentially criminal, the concept of consent must be relooked when it comes to online action.

For accessing the online realm age is not a factor. The number of underage internet users is staggering and it would not be hard to imagine the number of children thus being exposed to the various pornographic stuff on the internet. The subsequent effect such pornography will have on their understanding of the concept of consent or even the concept of rape can also be guessed.⁴⁴ Sometimes, children themselves indulge in the creation and dissemination of voyeuristic videos without understanding the ramifications thereof.⁴⁵ This is all the truer since the phenomenon of peer pressure is infinitely amplified in the online realm, a case in point being the Boys' locker room chat. Since the scope of this paper is limited only to sexual abuse of adults, we will not delve further into the issue but suffice it to say that the internet has a rather strong role to play in making children sexually aware and mature, sometimes in very undesirable manners.

⁴¹ K.G. Santhya, Nicole Haberland, *et. al*, "Consent and Coercion: Examining Unwanted Sex Among Married Young Women in India" 33 (3) *International Family Planning Perspectives* 128 (2007).

⁴² Elizabeth Hanus, "Rape by Nonphysical Coercion: State v. Brooks" 64(5) *Kansas Law Review*, 1151 (2016).

⁴³ Amita Pitre, Lakshmi Lingam, "Age of consent: challenges and contradictions of sexual violence laws in India", 29 (2) *Sexual and Reproductive Health Matters* 2 (2021).

⁴⁴ Harsh Mander, "Amendments in Juvenile Justice Act prevents children's reform", *The Hindustan Times*, June 8, 2015, available at: <https://www.hindustantimes.com/columns/amendments-in-juvenile-justice-act-prevents-children-s-reform/story-A50Odzwe5n31CKqAyGSV2I.html> (last visited on March 1, 2021).

⁴⁵ *Ibid*.

V. 'Consent' in the Online World

For dealing with the relevance of sexual consent in the online world, we first need to deduce the premise of sex in the online realm. Statistically it has been shown that when it comes to online-sex, there is a marked difference between the preferences of men and women: men prefer visual pleasure in terms of cybersex, like watching porn or erotica and women prefer sex-chat,⁴⁶ thus it may be said that women and men use internet with widely varied ends in mind when it comes to sex. Obviously, the most potent form of online sexual interaction is through the means of sexually colored communication since physical touch is impossible in cyber communication, thus where does the question of consent arise in cases of the online realm? Communication is a two-way process, and the greatest usage of the internet is for communication. thus, does it necessarily imply that people using the net should all automatically consent to communication? The simple answer is no.

The Information Technology Act⁴⁷ was brought under the ambitious ideals of the UNCITRAL Model Law⁴⁸ and the main aim of the Act was to promote e-commerce and ease of communication; ease of communication should in no way be made to imply forcible communication. To make matters even simpler, merely the fact of having an online presence does not necessarily imply that the person present is open to communicating with others on the internet. This would be akin to saying that a person walking on the road is obliged to talk to everybody else on the road.

The internet, though instantaneous, is very impersonal and remote in nature, thus consent in the internet has to be necessarily deduced, but then how should such deduction occur. When is a person said to consent to communication on the internet and when can a person be said not to be open to communication? Then is sex a reality or even a practical proposition on the internet? The precise answer is that sexually colored communication and sexual innuendoes are very much a reality on the internet. And despite its inherent differences with the social reality, there are certain aspects in which the internet takes very much after the society: here again women having an online presence, particularly ones with a pronounced online

⁴⁶ Kristian Daneback, Al Cooper, *et. al.*, "An Internet Study of Cybersex Participants" 34(3) *Archives of Social Behaviour* 321 (2005).

⁴⁷ The Information Technology Act, 2000 (Act 21 of 2000).

⁴⁸ UN General Assembly, *UNCITRAL Model Law on International Commercial Arbitration*, UN GAOR, UN Doc A/61/17 (July 07, 2006).

presence, are assumed to be easily available.⁴⁹ Gender plays a very prominent role when it comes to power and ease of access on the internet.⁵⁰

The following deductions regarding consent in the online realm may be drawn: when a person has an online presence, it implies that such person is willing to use the internet and is open to communication with others, and thus the person may be approached for communication, but reciprocity should not be taken as a given; just as a person walking on the street is under no obligation to talk with other people walking on the same street unless necessary. Consent for communication on online realms is never to be assumed and such a tendency should be thoroughly discouraged. Consent may be deduced in two ways: either in an expressed manner by the consent provider himself or herself or in an implied manner by the actions; such as continued engagement or reply.

Sexual communication is a specialized kind of communication and an intensely intimate one at that, there must be clear and unambiguous consent for such kind of communication from both the parties.⁵¹ Where two parties start off with innocuous conversation and thereafter the conversation veers to carnal stuff and the conversation continues mutually, it may be assumed that there is mutual consent in such communication. Where one party expresses his or her displeasure regarding such conversation, that should be a clear and unambiguous indication of lack of consent of such party. Forced communication should indeed be treated as abusive since it makes the cyberspace an unsafe space. It deters potential users of cyberspace from accessing the same for fear of unwarranted adverse and negative attention. There might be psychological repercussions as well.

When a person shares pictures (of any nature) with another person, such an action is definitely consensual, however, if the recipient of such pictures shares the same with further others without the explicit consent of the first party the same should be treated as pure case of breach of privacy in general and where the conversation/picture shared is of a sexual nature, the offence should be treated as a sexual one. In case of public pictures, the question of

⁴⁹ *Supra* note 34.

⁵⁰ Human Rights, Big Data and Technology Project, University of Essex, "Ways To Bridge The Gender Digital Divide From A Human Rights Perspective" 3 (2017).

⁵¹ Treena Orchard, "Sex and the Internet", The University of Western Ontario, *available at*: https://www.researchgate.net/publication/336495958_Sex_and_the_Internet (last visited on March 15, 2021).

consent is irrelevant since the picture is public anyway, however, simply because a picture is public, does not in any way imply that such picture is open to misuse.

VI. Cyber Rape

Physical element is irrelevant when it comes to the cyber-realm, however Israel has created a pertinent jurisprudence with respect to cyberrape that other jurisdictions would do well to emulate.⁵² The essence of rape lies in two factors: physical intercourse and a lack of consent (or alternatively a factor of force). These two factors are conjunctive and must be present in tandem for an offence to be termed as rape in the traditional sense of the term. Following this, it may be argued that cyber-rape is an impossible proposition due to the inherent lack of physicality in the cyber realm. However, the Israeli Supreme Court has rendered a judgment which lays the proposition that forcing a person to commit any sexual act online is to be considered as cyber-rape.⁵³ The judgment further goes on to say that where a person is made to consent to sexual matters through nefarious means, such as deceit or coercion, the same is no consent and the resultant action is liable to be legally dealt with.

Cyber rape as a concept proceeds on two factors: first is the presence of an element of sexuality or a carnal element, and the second is the lack of free consent. Both these elements are conjunctive and have to be present in tandem to constitute the offence of cyberrape. The main distinction in terms of consent, between cyberrape and physical rape is that in case of cyberrape the coercion or deception takes place remotely, wherein one person might blackmail another to perform sexual acts, or might deceive a person to commit sexual acts.

Thus, as per this concept blackmailing a person using electronic means into performing sexual acts should be counted as cyberrape instead of a simple case of sexual abuse. Here it is agreed that the physical element is missing, but there is an element of violation of physical or sexual autonomy of the victim at the behest of an offender with nefarious means. This is in direct consonance with the principles detailed in the seminal work "A Rape in Cyberspace, or How an Evil Clown, a Haitian Trickster Spirit, Two Wizards, and a Cast of Dozens Turned a Database into a Society"⁵⁴ written by freelance journalist Julian Dibbell and first carried in

⁵² Asaf Harduf, "Rape Goes Cyber: Online Violations of Sexual Autonomy" 50 *University of Baltimore Law Review* 365 (2021).

⁵³ *Ibid.*

⁵⁴ *Supra* note 29.

The Village Voice in 1993 which specifically deals with scenario wherein online avatars of people are forced to perform acts against their will and obviously without their consent. Strangely enough, the victims in these cases refused to prosecute the alleged perpetrator in a court of law.⁵⁵

Psychologically such an action will have an equal impact, if not greater, than that of physical rape.⁵⁶ The main reason being that cyberrape does not provide the advantage of distance in case a person becomes a victim of sexual abuse on the internet; in fact, the entire information highway becomes an unsafe place for such person. Moreover, recording or retrieving such voyeuristic actions on the internet is very easy.⁵⁷ The internet is one such place which records everything that occurs and such record is stored perpetually.

Thus, escaping from an unpleasant experience is rather tough on the internet, and thus, tacitly the impact of such actions on the internet is rather profound. In case of physical rape, the offence takes place just once and thereafter the victim has to contend with the consequences of such offence, in case of cyberrape, there are chances that a victim might have to go through the trauma again and again in case the same is recorded and repeated. However, for the offence of rape to be extended to the cyber-realm, the definition of rape should be expanded to include the cases of violation of personal and sexual autonomy of a person through cyber-means.

Consent in terms of cyberrape

Unlike in civil jurisprudence, consent in criminal jurisprudence is fluid and is liable to be withdrawn at any time after it is given.⁵⁸ Consent is a matter of comfort and will, where a person is feeling uncomfortable, such a person has every right to withdraw consent at any point.⁵⁹ However, what if a person feels uncomfortable and yet does not withdraw consent, and continues in the uncomfortable action. The logical conclusion shall be that in such a case

⁵⁵ Stephanie Buck, "The 'rape in cyber space' from 25 years ago posed problems we still haven't solved today", *Timeline*, October 30, 2017, available at: <https://timeline.com/rape-in-cyberspace-lambdamoo-da9cf0c74e9e> (last visited on June 20, 2021).

⁵⁶ Amnesty International, "Toxic Twitter - The Psychological Harms of Violence and Abuse Against Women Online", March 20, 2018, available at: <https://www.amnesty.org/en/latest/news/2018/03/online-violence-against-women-chapter-6/> (last visited on June 20, 2021).

⁵⁷ Thomas Keenan, "On the Internet, Things Never Go Away Completely", 262 *International Federation for Information Processing* 5 (2007).

⁵⁸ Matthew R. Lyon, "No Means No: Withdrawal of Consent during Intercourse and the Continuing Evolution of the Definition of Rape" 95 *Journal of Criminal Law and Criminology* 308 (2005).

⁵⁹ *Id.*, at 277.

it may be assumed consent is present, or the right to object has been effectively waived off. Where the person does not even express his or her discomfort in the entire matter and continues therein, consent must necessarily be implied on the part of such person. Where a person expresses displeasure or unwillingness to continue, such an expression is obviously an indication of lack of consent. In short, consent is free to be withdrawn at any time prior to the culmination of the transaction⁶⁰ and such withdrawal needs to be signified. Once an online transaction has ended consent cannot be withdrawn subsequently and no abuse should be made out.

For instance, where a person continues chatting with another person, despite feeling uncomfortable and making such discomfort known to the other person, and there being no element of coercion or undue influence present (for instance between two strangers), an element of mutual consent may be imputed in the matter since the unwilling person has every opportunity to make use of technological remedies to stop the chat and yet does not use the same. The worst that has happened here is that the other person does not respect the boundaries of the first person while there are technological remedies available to establish such boundaries. In case such remedies are not availed of, an element of consent may be deduced. Such a scenario also stands in clear contrast with the offence of cyberstalking as has been contemplated in the IPC which occurs over a span of time. A one-off communication should not be treated as an offence.

Of course, consent and the withdrawal of the same is dependent on many factors, financial and social ones being the pertinent ones,⁶¹ however, the internet is an empowering tool⁶² and users of the internet have many options to avoid forced interactions, thus such technical recourse should be exhausted first before turning to the law. In case, consent for cybersex is obtained through non-cyber means, then the elements of a cyber and non-cybercrime get mixed up. For instance, a person misuses his or her position as the administrative senior of a person and procures cybersex using coercion or undue influence, the offence should be

⁶⁰ *Id.*, at 279.

⁶¹ Jane Im, Jill Dimond, *et. al.*, *Yes: Affirmative Consent as a Theoretical Framework for Understanding and Imagining Social Platforms*, CHI Conference on Human Factors in Computing Systems, held on May 8–13, 2021, Yokohama, Japan, available at: <http://efaidnbnmnnibpcajpcglcfindmkaj/viewer.html?pdfurl=http%3A%2F%2Ffeegilbert.org%2Fpapers%2Fchi21-consent-im.pdf&cldn=1669017> (last visited on September 1, 2021).

⁶² United Nations Security Council, “Gender equality and empowerment of women through ICT” 14 (September 2005).

treated as that of physical rape, since a physical element or an element of physical threat is present.

For the deduction of consent and the juxtaposition of the same to the online world, it would be useful if we were to turn to Westen's exegesis to consent.⁶³ Through a careful and rigorous analogy Westen establishes the situations in which a victim, or to be more precise, a woman consents to sex, given other choices. The most controversial and notable of such cases include the case of *Blair v. Wyoming*⁶⁴ wherein the defence lawyer successfully argued that the victim had actually 'consented' to sex when the perpetrator offered to have sex with the victim, else the perpetrator had offered the choice of physical harm. Westen though dwells more on the etymological and syntactical connotation of consent and argued that the victim had indeed consented to sex, when given a choice between sex and physical violence. In the case of online realm such choices increase manifold since potential victims in the online realm are not under an immediate threat of physical or other harm, and they in fact have a wider variety of more, or less, effective recourse against the perpetrator. Keeping Westen's views in mind it might be claimed that victims of sexual abuse on the internet consented to such abuse.

But then again, such an exegesis would apply only when the victim and the perpetrator are involved in a two-way communication, as in the case of cyberrape. Where the perpetrator commits sexual abuse unilaterally- for instance by unlawfully sharing compromising pictures of the victim online, there is no question of consent since the victim is unaware of what is happening here.

Would Westen's analysis be relevant when it comes to cyberrape? Here the victims provide consent, though not a happy one, but the actions happen with the active participation of the victims. As per Westen,⁶⁵ the consent is present in such cases. But looking at the same logically or from the point of view of equity such a conclusion would be untenable. The 'consent' provided here is definitely not free consent and as far as experience goes, the same

⁶³ Ferzan, Kimberly Kessler. "Clarifying Consent: Peter Westen's The Logic of Consent." 25 *Law and Philosophy*, 198 (2006).

⁶⁴ *Blair v. Supreme Court of Wyoming*, United States Court of Appeals, Tenth Circuit. Feb 17, 1982.

⁶⁵ *Supra* note 63 at 197.

may be deduced broadly in two ways: either through the means of deception or through blackmail.

In this context, trolling is an obvious example which is a purely cyber phenomenon. Trolling is a malicious and defamatory attack on an individual.⁶⁶ Sexist trolls are a very popular method of demeaning the intended targets.⁶⁷ Making vulgar comments on the profile of another is a type of abuse since such comments have the effect of making the internet an unsafe place for the target of such comments and they should be treated as abuse simpliciter. Where such vulgar comments are made in a public manner, they are to be treated as an aggravated form of abuse since the abuse here has been made publicly and thus the effects here would be greater and in case the attacks are of a sexual nature, they should be treated as online sexual abuse, as distinct from off-line sexual abuse. But the same should not be treated as rape since though there are cyber-attacks, there is no element of physicality or sex and the fear of physical threat or violence is remote. It is defamation using sexual means. Of course, trolling is said to adversely affect the mental health of a person, and might extend to physical ramifications as well, but the essence of the intention of the offence of trolling, as also deduced etymologically, is online cause and effect and not physical harm, and thus the offence should be treated exclusively as a cybercrime.

VII. Deduction of consent in cyberspace

This brings us back to the issue of how can consent be deduced or read into actions on the cyberspace. Owing to the volume and rapidly changing nature of the internet, assuming the presence, in fact absence as well, of consent is onerous. In case of sexual matters, continued and active participation by all parties in exchanges of sexual nature may be treated as consent. Where an internet user has access to material that depicts such user in a sexually explicit form, and thereafter such user does not object to such depiction, consent may be implied. Wherein a user expressly declares and indicates the kind of usage that such party will not object to, that may be treated as express consent. Absence of consent may also be signified expressly by words or actions or a simple refusal to engage. In general, there should

⁶⁶ BBC Bitesize, Why do people troll and what can you do about it? (2021), *available at*: <https://www.bbc.co.uk/bitesize/articles/zfmkrj6> (last visited on September 4, 2021).

⁶⁷ Stephanie M. Ortiz, "Trolling as a Collective Form of Harassment: An Inductive Study of How Online Users Understand Trolling" 1-9 *Social Media + Society* 4 (2020).

be a legal requirement of disclosure of consent when one user uses the image or any other online depiction of some other user for some sexual purpose.

Coming back to cyberrape, it is a reality and something that the law and society should accept, however clear distinctions should be made from the existing offence of rape. In case any element of cyberrape is present in the physical world, such as wherein the consent to cybersex is procured through physical coercion, the same should be treated as physical rape and not cyberrape. In fact, since cyberrape is essentially a violation of the consensual and personal autonomy of the victim, there should be a distinct terminology for the same to differentiate the same from conventional rape.

It would be better if the offence of cyber sexual abuse be contemplated which would be distinct from physical or verbal abuse. Indicative examples of such abuse include scenarios where:

- i. a person induces another to engage in cybersex (such as sex-chat or sharing voyeuristic pictures) and thereafter blackmails for future cybersex using material from the first instance;
- ii. where a person makes voyeuristic picture of another person, public through online means, such as in the case of revenge porn or sharing pictures of two persons engaged in sexual intercourse;
- iii. cases wherein a victim is financially or sexually blackmailed online (colloquially known as 'sextortion') should be treated as aggravated cases of cyber-violation as well as a financial crime.
- iv. Issuing rape threats, or any other threats of a sexual nature on the internet, the threat being directed at the recipient or some third party related to or somehow connected with the recipient.

In all the cases, two conjunctive elements are a lack of consent and the presence of a sexual overtone. Even sexual innuendoes and hints should be brought under the ambit of cyber-violation and the victim must make the discomfort clear.

Cyberrape forms a part of the broader offence of cyber-violation. The conventional meaning of rape involves the element of penetration, no matter how small and no matter in what

manner and an absence of consent or the procurement of consent through dubious means. Therefore, cyberrape may be defined as a situation wherein a user of the internet infringes upon the sexual autonomy of another user of the internet through means such as violating the sexual privacy of the other user, forcing the other user to engage in sexually coloured communication with the first user or unauthorized usage of sexual information of the other user for nefarious purposes.

In case any such activity spills over offline, for instance wherein a person blackmails another person online for offline sexual crimes, the crime should be treated as a contiguous online and offline crime.

Overall indicative examples of such issues (cyber sexual abuse as well as cyberrape):

- i. propositioning a person wrongly on the internet or constant attempt to sexually engage with a person despite a clear indication of lack of interest should be treated as cyber sexual abuse;
- ii. In case a person misrepresents himself or herself and thereafter procures voyeuristic pictures of another person based on such misrepresentation, such a situation is a cyber sexual abuse;
- iii. Unauthorized access to the sexual information of a person, or
- iv. The misuse of the sexual information of a person (such as sexual history, sexual orientation) for nefarious purposes.
- v. Wherein a person shares the sexually explicit pictures of another person without the consent of such other person, such an activity should be considered as cyberrape. Although the said offence is already covered under the offence of breach of privacy, it warrants greater legal recognition;
- vi. The offence of revenge porn should be treated as aggravated cyberrape;
- vii. Wherein a person forces another to engage in physical sexual intercourse by the usage of sexually explicit pictures procured online, such an activity should be treated as both cyberrape as well as physical rape.

Exceptions

The law recognizes certain situations wherein ostensibly criminal actions are free from any legal liability, such as self-defense or likewise. In the same vein, there should be an exception to the offence of cyber-violation. Naming and shaming an offender should not be counted as an offence. For instance, wherein a person consistently pesters another for online communication despite a clear indication of disinterest and thereafter the aggrieved party calls out the accused party publicly with adequate valid evidence in the form of screenshots should be made free from criminal liability.

The offence of cyber-violation, as contemplated, should be gender-neutral. The law should promote both a deterrent and a punitive approach for cyber-violation and active support from technology towards such ends is essential. Since cyber-violation targets the reputation of a victim, the law should provide remedy in the form of ensuring that the victim is adequately compensated for the reputation lost and mental harassment suffered. There might also be punitive measures commensurate with the kind and extent of cyber-violation that the victim has had to face. Cases such as sextortion, revenge porn and sexual vendetta should be treated with the greatest severity. In terms of deterrent measures the punishment, if cyber-violation is proved, should be exemplary, either in the means of pecuniary liability or denial of service to the convict to ensure that such actions are deterred as well as prevented in the future.

VIII. Conclusion

One of the main functions of law is to ensure a semblance of predictability and certainty in the life of individuals subject to such law.⁶⁸ Making the law effective to ensure safety for all citizens is an assured way of ensuring peace and predictability. To that end, it is imperative that we deduce the law in an effective manner. The online realm is unique in the sense that it defies all conventional intelligence, particularly the omnipotent rules of geography and physicality. Thus, it would be a short-sighted approach if we were to blindly replicate existing laws of the offline realm to the online realm. John Perry Barlow was right when he beckoned the Governments of the Industrial World to leave us alone.⁶⁹ Thus, as users of the internet, the onus is on us to ensure that we are able to come up with a meaningful and

⁶⁸ Adam Rigoni, "Common-Law Judicial Reasoning and Analogy" 20 *Legal Theory* 137 (2014).

⁶⁹ John Perry Barlow, A Declaration of the Independence of Cyberspace, Electronic Frontier Foundation, available at: <https://www.eff.org/cyberspace-independence> (last visited on September 1, 2021).

effective social regime for the online world, to ensure that the vices of the offline world are not extrapolated to the online world.

An old Mughal saying goes that you cannot miss a feeling unless you have specifically had the experience of such feeling.⁷⁰ This analogy is quite apt for the online regime since there are numerous crimes or numerous means of abuse and loss of agency that we are not yet aware of and consent is essentially a human agency. The online realm is a hybrid place, it works in the absence of human physicality but works exclusively based on human agency and interaction. Consent in the cyberspace is also a novel concept, but that does not necessarily imply that we should forego this concept altogether. The discussion has dwelt on the importance and relevance of consent and why is it necessary. Consent is the basis of law and it is one of the most important factors that distinguish an illegal act from a perfectly legal one. One of the areas in criminal law in which consent is the most relevant is the area relating to sexual actions since the absence of consent imputes a criminal tinge to a sexual action.

Thus, deduction of consent in such matters is very important. The judicial approach to consent has been a chequered one with many judgments and judges differing on the calibration of consent: in some cases the antecedents of the victim have been the yardstick of deduction of consent,⁷¹ in some cases the clothes,⁷² other cases have deduced consent based on the intensity of the defence put up by the victim⁷³ to ward off a sexual action and still other cases have put under the scanner the actions of the victims⁷⁴ after the purported and controversial sexual action has been performed.

There are other factors as well that deal with efficacy and acceptability of consent, such as age and the marital status of an individual. There are also certain social factors that influence the perception of consent on the members of the society, gender being the most famous of them. These considerations are all pertinent to the offline realm, thus are such considerations even relevant for the online realm? Is sexual action even possible when it comes to the online realm? The answer is yes, one of the most potent forms of sexual intimacy is through actions

⁷⁰ R. Nath, *Private life of the Mughals of India, 1526-1803 A.D* (Rupa Publications, India, 2005).

⁷¹ *Regina v. A*, [2001] UKHL 25.

⁷² *R v. Ewanchuk*, [1999] 1 SCR 330.

⁷³ *Supra* note 35.

⁷⁴ Shalini Ojha, "Women Don't Sleep After Being Raped: Karnataka HC", *News Bytes*, June 25, 2020, available at: <https://www.newsbytesapp.com/news/india/karnataka-hc-s-shocker-while-giving-bail-to-rape-accused/story> (last visited on June 7, 2024).

and communications and keeping in mind that the online realm has increased ease of communication unimaginably, sexual communication and actions on the online realm is a rather plausible idea. Thus, it is undeniably true that sexual communication in the online realm should be consensual like in the offline world.

Finally, we have Westen's exegesis on consent and the same may be said to be even more pertinent to the online realm since in the online realm users have a much greater scope of exercising choice, in terms of technological options to filter out abusers or unwanted people, than in the offline realm, but then such a stance would be problematic, since many offline factors, such as gender and privilege, have an immense impact in online interactions as well.

There are a few factors that are well-worth emulating in the online realm. It has to be unequivocally agreed that simply having an online presence does not necessarily imply that the user is willing to engage sexually or otherwise. Just as clothes cannot be taken to be a substitute for consent, a pronounced online presence should also not be construed as consent to engage in online interaction. Consent in online realm, sexual or otherwise should be readily and automatically assumed only when both the parties are freely and continuously engaging with each other in any nature, sexual, professional or otherwise since not engaging in the online realm is a rather easy proposition. However, where such engagement has been affected through nefarious means, or more specifically means that vitiate consent in the offline world as well, the consent should be assumed to be wanting and the onus should be on the person who has procured consent to show that there was no *mens rea* involved.

Cyberrape though oxymoronic, is an actual phenomenon when a person is induced to perform a sexual act on himself or herself at the behest of another and such action is devoid of consent, the action is definitely criminally reprehensible. Just rape is a form of aggravated sexual assault, when such actions are aggravated or of an extreme nature, the same should be treated as cyber rape. However, since physicality is impossible in case of cyberrape, and so are the immediate physical consequences such as pregnancy or the fear of STDs it would make sense to use an alternative nomenclature to ensure ease of distinction between normal rape and cyberrape. For such ends the nomenclature of cyber-violation is suggested. Israel has made quite good progress in the area of cyber-rape in the form of verbal rape or oral rape. There needs to be specific differentiated cases wherein an action may be treated as cyber-

violation and in cases wherein an action cannot be so termed, and cases which spill over to cyberrape. An indicative list of such actions has also been provided above previous section.

The online realm is still a massively uncharted territory and the law relating to the online world even more so. The task is undoubtedly daunting, but that does not necessarily imply that the task may be avoided or ignored. We have to accept that the use of the internet will only increase in the years to come and so will the legal problems of the internet. A stitch in time saves nine and thus, if we are to save ourselves the trouble of going into unnecessary trouble in the future, it's best if we were to acknowledge that trouble exists in the first place and we have to tackle the same. Consent in the online world should not be deduced merely by having an online presence, but there should be specific and clear cases of procurement as well as deduction of consent. Any action in the absence of consent should attract legal liability and action.