

CFPS's PROPOSED DRAFT OF SECTION 354D

354D. Stalking— (1) Whoever, in a repeated course of conduct, amounting to unconsented contact:

- (a) follows a person; or,
- (b) loiters near, watches, approaches or enters a place where such person resides, works or visits; or,
- (c) interferes with property in the possession of such person; or,
- (d) sends, delivers or causes the delivery of letters, packages, facsimiles, or other objects to the person or leaving them where they will be found by, given to or brought to the attention of the person; or,
- (e) communicates through telephone or sends electronic messages to or otherwise contacts such person; or,
- (f) traces the person's use of the internet, e-mail or any other electronic communication, by any means, including accessing or securing access to such computer, computer system or computer network or computer resource of such person, directly or through an intermediary;
- (g) keeps such person under surveillance; or,
- (h) makes information about such person available to anybody else; or,
- (i) acts covertly or otherwise in a way that could reasonably be expected to cause substantial emotional distress to such person; or
- (j) instigates others to do any of the above acts;

commits the offence of stalking.

PROVIDED that such conduct shall not amount to stalking if the person who pursued it proves that:

- (i) it was pursued for the purpose of preventing or detecting crime and the person accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
- (ii) it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
- (iii) in the particular circumstances such conduct was reasonable and justified.

(2) 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.

(3) Whoever, being present at the time of commission of the offence of stalking and being able to prevent such offence, fails to prevent the commission of such offence or not being in position to prevent the commission of such offence, fails to give information of the commission of such offence to the nearest magistrate or the police officer, by any mode, with the intention of screening the offender from the legal punishment, shall be liable for abetment of such offence and shall be punished with imprisonment of either description which may extend to three years or with fine or with both.

(4) Whoever, on once engaging in any of the acts with an individual described in section 354D(1), repeats the same or any of the other acts enlisted thereunder with any family member of the said individual, over a period of time, evidencing a continuity of purpose, such as would cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress to the said individual, shall also be held liable for the offence of stalking, and 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

EXPLANATION -

- I. The phrase **“repeated course of conduct”** shall mean a series of two (2) or more acts which are:
- (a) separate;
 - (b) non-continuous;
 - (c) closely related over a period of time, however short; and
 - (d) evidencing a continuity of purpose.

The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress to the person.

Whoever, on engaging in any of the acts described in section 354D(1) once and then engaging in the same act or another of the acts listed thereunder, closely related over a period of time, evidencing a continuity of purpose, such as would cause a reasonable person to suffer substantial emotional distress and must actually cause substantial emotional distress to the person, shall be taken to exhibit repeated course of conduct for the purpose of this section.

- II. The phrase **“substantial emotional distress”** shall mean mental distress, suffering, or anguish, including depression, shame, humiliation, shock, embarrassment, grief, anxiety, or fear.

III. The phrase **“unconsented contact”** shall mean:

- (a) any contact with another individual that is initiated or continued, despite clear indication of disinterest by that individual that the conduct be avoided or discontinued; or,
- (b) any contact with another individual that is initiated by not providing the individual an opportunity to express disinterest by that individual that the conduct be avoided or discontinued; or,
- (c) any contact with another individual that seeks to obtain consent by way of criminal intimidation, as defined under section 503 of the Indian Penal Code, 1860.

IV. The word **“follows”** shall refer to maintaining a visible physical proximity to another person or pursuing without legitimate purpose so as to cause a reasonable person to suffer substantial emotional distress and to actually cause substantial emotional distress to the person followed or pursued.

V. The phrase **“family member”** shall include the following:

- (A) spouse, child, grandchild, parent, grandparent, sibling, uncle, aunt, nephew, or niece, of the victim, whether related by blood, marriage, or adoption;
- (B) person who lives, or has previously lived, in a spousal relationship with the victim;
- (C) person who lives in the same household as the victim; or
- (D) person who is a former spouse of the victim or is or has been in a dating, courtship, or engagement relationship with the victim;

VI. The words and phrases **“information”**, **“intermediary”**, **“access”**, **“computer”**, **“computer system”**, **“computer network”** and **“computer resource”** shall have the meanings assigned to them in section 2 of the Information Technology Act, 2008.