

Submission on Online Violence Against Women

To the Special Rapporteur on Violence
against Women

IT for Change

An abstract graphic consisting of a network of orange lines and circles of varying sizes, set against a dark red background. The lines connect various nodes, creating a complex web-like structure. The circles represent nodes or data points within this network.

Drawing from IT for Change’s work, this submission provides an overview of legislative and judicial developments in India with respect to online violence against women. It offers an analysis of the government’s response to the issue thus far. Suggestions relating to the future course of action have also been made. Good practices are highlighted in the running text.

1. The Indian context

India has been slowly waking up to the pervasiveness of violence against women in the online sphere. While it lacks a nationwide comprehensive study on the issue, the widespread prevalence of gender based online harassment and abuse against women has come increasingly under the spotlight owing to the national and international media. Women journalists and other women who make their political stance known online are especially vulnerable to receiving sexist and misogynistic comments that often escalate to criminal abuse in the form of rape and death threats.¹

Women who face online violence or witness other women facing abuse often exit or suppress their visibility online. Attacks by a multitude of abusers working in tandem – often referred to as a ‘troll army’² – creates an environment of hostility leading to a chilling effect on women’s free-expression.³

IT for Change’s research ‘Online freedom for all = No unfreedom for women’⁴ explores technology-mediated violence against women (TMVAW) in relation to the gendered nature of the offence, existing legal frameworks and law enforcement. We define TMVAW as ‘acts of gender-based violence that are committed, abetted or aggravated, in part or fully, by the use of information and communication technologies’.⁵ Our approach argues for the phenomenon to be understood for the harm that it inflicts and perpetuates, rather than just through an accent on speech and expression. Acts such as cyber-stalking, non-consensual circulation of sexual images, doxing (publishing private information, usually contact details, on the Internet with a malicious intent usually insinuating soliciting sex) etc., are acts that not only affect women’s expression but invade their privacy, undermine their dignity and erode their agency and autonomy. A shift towards a framework that recognises harm, we believe, dissuades patriarchal quick-fixes – for instance, advice given to women to ‘block the number’ – that tend to discount the violence. Trolls are like a multi-headed hydra that can come back despite being blocked through a new handle and continue to perpetuate the violence.⁶

2. Government response

The union Ministry of Women and Child Development (MWCD) has taken steps to tackle online harassment and violence. Complaints of online harassment can be made directly to [#IamTrolledHelp](#), the social media handle of the Ministry.

1 <https://thewire.in/131224/trolling-women-journalists-threatens-free-press/>, <http://www.hindustantimes.com/india-news/let-s-talk-about-trolls-trolling-is-a-weapon-to-silence-women-barkha-dutt/story-A9X3fAuRwZiwVrhYQnKbYL.html>

2 <http://indianexpress.com/article/entertainment/regional/journalist-faces-online-abuse-from-fans-for-criticising-vijays-film-sura-4786286/>

3 https://motherboard.vice.com/en_us/article/ezvbpn/the-chilling-effect-of-misogynistic-trolls

4 <http://www.itforchange.net/online-freedom-for-all-no-unfreedom-for-women-a-project-on-technology-mediated-violence-against>

5 https://www.apc.org/sites/default/files/HRC%2029%20VAW%20a%20briefing%20paper_FINAL_June%202015_0.pdf

6 http://www.genderit.org/sites/default/upload/end_violence_malhotra_dig.pdf

Apart from the above, the Government has set up a Cell with a dedicated email id, i.e. complaint-mwcd@gov.in, to report complaints relating to online trolling/harassment with effect from July, 2016. So far, 97 complaints have been received through Facebook, Twitter, Instagram, etc⁷.

At the behest of the Minister for Women and Child Development, the Ministry for Communications and Information Technology has issued mandatory guidelines for matrimonial websites to check harassment of women on such sites⁸.

Official intervention through government policies and programmes reflects the uneasy terrain of norms development around online speech and conduct. In India, despite widespread sexism online, concerns around Internet freedoms raised by various constituencies brings in a tension into the debate. The Supreme Court of India repealed Section 66A of the Information Technology Act (2000) in 2015, in a landmark judgment that found the provision to be open-ended, vague and unconstitutional, in view of its misuse and restrictions it caused to citizens' right to free speech. However, this section was important for victims of cyber harassment to obtain immediate relief against abusive content. Thus, an important remedial mechanism available to women to counter cyber offences was taken away. Legal experts have noted that relief for dealing with similar offences under the Indian Penal Code is a lot more laborious⁹. The current status on this lacuna is discussed in Section 4.

In April 2016, the Minister had noted in an interview that the new agenda for women's rights and equality looks "very strongly" at how to fight "viciousness against women on the net."¹⁰ Prompted by the incidence of a brutal rape and murder of a Dalit woman in Kerala's Ernakulum district that sparked mass protests, the Minister also expressed concerns around the competence of the police and forensic experts to address violence against women in general.¹¹

In July 2016, soon after meeting representatives of social media companies, she issued a series of statements on Twitter clarifying that people's freedom to write whatever they please on the Internet will not be compromised and that the Ministry will respond only when complaints about abusive behaviour, harassment and hateful conduct are received.¹²

The Ministry's website itself has been the target of misogynistic comments. In May 2016, the Ministry had put out the draft national policy on women for wider discussion, and a number of responses to this document on the website reflect disparaging comments against women¹³. This year, the MWCD's website to promote products manufactured by women was hacked and had to be shut down for a couple of months.¹⁴

A Press Information Bureau release indicates that from July 2016 to July 2017, 97 complaints relating to online trolling/harassment were received by the WCD Ministry. While it is true that women do hesitate to

7 <http://pib.nic.in/newsite/mbErel.aspx?relid=168792>

8 <http://www.hindustantimes.com/india-news/ncw-questions-wcd-s-anti-trolling-move-asks-how-can-you-police-the-net/story-uYSMFqIW9R08RGh4PCORYO.html>

9 <https://www.legallyindia.com/views/entry/section-66a-its-repeal-and-its-after-effects>

10 <https://www.ndtv.com/india-news/online-trolling-against-women-will-be-considered-violence-maneka-gandhi-1407271>

11 <http://www.deccanchronicle.com/nation/current-affairs/180516/online-trolling-against-women-will-be-violence-maneka-gandhi.html>

12 <http://indiatoday.intoday.in/story/maneka-gandhi-social-media-bullies-beware-maneka-gandhi-war-on-trolls/1/710478.html>

13 <https://secure.mygov.in/group-issue/inviting-comments-draft-national-policy-women-2016/>

14 <http://indianexpress.com/article/india/delhi-confidential-site-down-women-and-child-development-minister-maneka-gandhi-mahila-e-haat-website/>

register complaints or make public the sexual harassment they suffer, (and in this case, those who did decide to complain may have also reached out to the local police), the complaints mechanisms of the Ministry seem to be used by very few women for seeking redress.

It is not clear what actions have been taken on these complaints, even as anecdotal reports of TMVAW seem to be on the rise. Reports indicate that the Ministry's cyber cell does work with the cyber police and social media companies, sending out actionable complaints, suggestions, assistance, etc., to concerned authorities for appropriate resolution¹⁵. However, the National Commission for Women has taken the view that such escalation may not be effective since no public agency can "keep an eye on" social media and that only the police can act on online abuse.¹⁶ Public sentiment also reveals a skepticism about the efficacy of these actions, in the face of the massive prevalence of TMVAW.¹⁷

3. Legislative frameworks for prosecuting and punishing various forms of online harassment and violence against women in India

India has no dedicated legislation that deals with the abuse, sexual harassment or violence women experience online. Provisions to deal with such violence are scattered across laws, but the two main legislations employed are - the Information Technology Act, 2000 (ITA) and the Indian Penal Code, 1860 (IPC). The ITA also provides for certain due diligence to be observed by intermediaries such as social media sites, requiring them to disable or remove any unlawful material.

The ITA was originally conceived to encourage e-commerce.¹⁸ The penal provisions in the Act are thus meant to reduce the risks of transacting online. Later amendments have added provisions that penalize publication and transmission of 'obscene' material, including sexually explicit content and child pornography. The provisions are largely replicated from the pre-digital IPC to apply to the online realm. IT for Change's research has noted the fact that the code does not acknowledge content that is sexist, even though it addresses sexually explicit content. Additionally, in the application of the law, there is a problematic equation of sexually explicit content with obscenity, thus impinging on free sexual expression.¹⁹

The Indian Penal Code is a pre-digital legislation whose provisions are most likely to be applied to cases of online violence against women. Through a recent amendment,²⁰ a provision on stalking was added that includes stalking through electronic media.²¹ This is one of the only sections in the code to explicitly deal with TMVAW. A colonial era legislation, the IPC has retained regressive language, for instance, use of the phrase 'outraging the modesty of women' to refer to the violation of women's rights, reflecting a paternalistic bias. In the discussion paper - 'Technology-mediated Violence against Women in India - How can we strengthen existing legal-institutional response mechanisms?', we make a case for a movement from such

15 http://www.huffingtonpost.in/2016/07/08/maneka-trolling-cyber-cel_n_10887110.html

16 <https://www.ndtv.com/india-news/in-war-against-trolls-maneka-gandhi-sets-up-cyber-cell-1429411>

17 <https://yourstory.com/2016/07/maneka-gandhi-iamtrolledhelp/>

18 Specifically, to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as electronic commerce
http://www.dot.gov.in/sites/default/files/itbill2000_0.pdf

19 http://www.itforchange.net/sites/default/files/Technology_mediated_VAW_in_India_issue_paper_ItforChange_Feb_2017.pdf. Concerns about unreasonable policing of speech have also been raised in relation to the many cases that have employed the offline counterpart of the obscenity provision – See
<https://www.scribd.com/document/202317643/What-is-Obscene-in-India>

20 The Criminal Laws (Amendment) Act 2013 <http://indiacode.nic.in/acts-in-pdf/132013.pdf>

21 Section 354 D of the IPC

protectionist stances to a framework that acknowledges the agency of women. We argue that a privacy-based model that is situated in the equality and dignity of women is the paradigm India must shift to. Privacy in this context is three dimensional; it includes personal autonomy, bodily integrity and confidentiality of personal information.²²

Section 354 C of the IPC addresses voyeurism. It states that “Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section,” thus recognising consent to be multi-layered. This provision is a refreshing departure, one that shifts the patriarchal narrative denouncing women’s ostensibly ‘risky’ actions to one that is based on a recognition of their agency.

Another good example is section 66E of the IT Act. The section punishes the violation of privacy. It states “whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished”. Both non-consensual capturing and non-consensual circulation of images are covered by the ambit of this section. However, the language of the section does not cover non-consensual re-sharing of intimate images that may have been shared voluntarily, in the first instance, as a violation of privacy. However, on balance, the section does suggest a progressive view, since it places the loss of agency at the core of the violation.

The simultaneous presence of obscenity based provisions (Sections 67 and 67A of the ITA) that criminalize publication and transmission based on content rather than consent can override a section like Section 66E that focuses on privacy.²³ Since the statute prescribes a higher punishment for the former, police are tempted to apply both sections simultaneously. Scholars in India have also observed that a complainant or victim who approaches the police for the non-consensual circulation of sexually explicit images of herself can also be booked alongside the offender, under sections 67 or 67A of the ITA, if the image was shared consensually in the first instance.²⁴

As part of our research, when we conducted interviews with police officials, we saw that overwhelmingly, the onus is put on women to self-police and ensure that private information is not leaked, unlike in economic cyber offenses where victim-hood is seen as ‘genuine’.²⁵ IT for Change’s findings of victim-blaming by law enforcement officials is corroborated by other studies in the field.²⁶ This is one important reason that women who face violence online are often reluctant to approach the police. Part of the problem is also the limits placed by the law itself as explained above. If intimate images are shared voluntarily by a woman, its subsequent non-consensual circulation may not be seen as a violation of privacy.

22 http://www.itforchange.net/sites/default/files/Technology_mediated_VAW_in_India_issue_paper_ITforChange_Feb_2017.pdf

23 <https://internetdemocracy.in/wp-content/uploads/2013/04/Internet-Democracy-Project-Gender-Online-Harassment-and-Indian-Law.pdf>

24 http://www.huffingtonpost.in/2017/07/13/what-can-victims-of-revenge-porn-in-india-do-to-punish-the-perpe_a_23027563/

25 From interviews conducted by IT for Change of law enforcement officers in cyber crime cells, bengaluru, October 2017

26 https://feminisminindia.com/wp-content/uploads/2016/05/FII_cyberbullying_report_website.pdf

4. Emerging jurisprudence from national courts

Courts in India, especially the higher judiciary have often played an active role in not only putting a more feminist spin on the law, but also filling in the lacunae in the legal landscape.

4.1 Affirming free expression

The chilling effect on women's participation online is perpetuated not only by state's inaction with respect to violence but also state action that impinges on constitutionally protected speech. Two years back, the Supreme Court of India gave a ruling that sought to prevent the state from carrying out such acts. In the much celebrated *Shreya Sinhal v Union of India*,²⁷ the apex court held section 66A of the ITA to be unconstitutional. The vaguely worded section punished offensive communications (sent through a computer resource or a communication device). Offensive communication included 'offensive or has menacing character' or 'any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will'.

The section was arbitrarily used by ruling governments to punish political dissent or for just expressing an opinion. For example, two girls were arrested under the section for posting and liking a comment on Facebook that condemned the shutdown of a city after the death of an influential politician. They were being apprehended for sending a 'grossly offensive' and 'menacing' message through a communication device.²⁸ Striking the section off the statute book, the court held that 'liberty of thought and expression is a cardinal value that is of paramount significance under our constitutional scheme.'²⁹

Undoubtedly, this was a poorly worded and unconstitutional section, but in its absence there is no legal provision that can directly speak to online harassment faced by women.³⁰

Recent reports indicate that there is a proposal to revive the repealed provision to address online abuse and harassment in a well-defined form as a hate speech law.³¹ The Union Ministry of Home Affairs (MHA) has recommended the strengthening of sections 153A and 505 of the Indian Penal Code (IPC). Section 153A of the IPC prohibits hate speech and punishes any form of action or communication that leads to disharmony or feelings of enmity, hatred or ill-will among people. The maximum punishment is three years in jail. Section 505, on the other hand, punishes statements that amount to public mischief. Both sections have the ramifications similar to the now repealed section 66A, but unlike it, are non-bailable offences.

As part of its prescriptions of such a comprehensive overhaul, the Ministry of WCD has mooted the idea of a green channel for raising cyber crime cases on a real-time basis, where the abusive content can be taken down immediately.

27 Writ Petition (Criminal) No.167 OF 2012

28 <http://www.thehindu.com/opinion/lead/an-unreasonable-restriction/article4432360.ece>

29 <https://indiankanoon.org/doc/110813550/>

30 For example when faced online sexual harassment, a well known singer in India used section 66A ITA <http://archive.indianexpress.com/news/prof-arrested-for-sexual-harassment-of-singer-chinmayi-sripada-on-twitter/1020945/>

31 <http://www.dnaindia.com/india/report-with-section-66A-of-information-technology-act-gone-stronger-law-on-cards-2534756>

These recent developments are encouraging, given that gender based hate speech and the public harm dimensions arising from pervasive sexual harassment of women and girls in technology-mediated spaces requires a rebooted approach in the law.

4.2 Regulating Intermediaries

Take-down of infringing content implicates other actors in the digital ecosystem, apart from the complainant and the violator, namely the intermediary.

Internet intermediaries are ‘technical providers of Internet access or transmission services, and providers of content hosting services,’³² such as, Internet Service Providers, search engines like Google, content providers like YouTube or social media networks like Facebook, Twitter etc. Most legal regimes think of intermediaries as conduits and have sought to provide them ‘safe harbor’ from direct liability when criminal content is posted on their services by users. India too has a safe harbor regime for intermediaries that was considerably strengthened by the Shreya Singhal judgment. Prior to the judgment, intermediaries were held liable if they have ‘actual knowledge’ of infringing content on their platforms. A user’s complaint to an intermediary that it is hosting infringing content was enough to constitute actual knowledge. This is known as a ‘notice and take-down’ regime. The bench in Shreya Singhal read down the intermediary liability provision of the ITA (section 79) and the corresponding rules, by requiring a judicial or executive order before content is taken down. The court also held ‘it would be very difficult for intermediaries like Google, Facebook etc., to act when millions of requests are made and the intermediary is then to judge as to which of such requests are legitimate and which are not.’³³

However, in later cases, the court has had to re-evaluate its stance in the Shreya Singhal judgment. One such case dealt with circulation of videos of rape.³⁴

Via a Public Interest Litigation initiated by the NGO, Prajwala, the Supreme Court took cognizance of the circulation of videos of rape online, and made Facebook, Yahoo, Google and Microsoft respondents to the case. At one of the hearings the bench asked the counsel for respondents - “take for instance, nobody has reported (about any such material), do you act on your own to decipher it?”³⁵

Surely, unlike in the case of copyright infringement³⁶, waiting for a court/ executive order before blocking content such as videos of rape and child pornography is unacceptable. These are grievous crimes that demand a stronger response than a standard ‘notice-and-take down’ approach. As suggested by the Ministry of WCD, immediate take-downs are necessary in certain cases. In Sabu Mathew George v. Union of India, the Indian Supreme Court was tasked with stopping advertisements for pre-natal and pre-conception sex determination kits from showing up on online search results. In light of rampant sex selective abortion of female fetuses a practice rooted in cultural preference for male children, India had outlawed such advertisement. In this case, the court took quick action whilst still working within the

32 <https://www.apc.org/en/pubs/frequently-asked-questions-internetintermediary-l>

33 http://www.itforchange.net/sites/default/files/Technology_mediated_VAW_in_India_issue_paper_ITforChange_Feb_2017.pdf

34 <http://www.aljazeera.com/indepth/features/2016/10/dark-trade-rape-videos-sale-india-161023124250022.html>

35 <http://www.itforchange.net/Unpacking-the-Supreme-Courts-Emerging-Stance-on-Online-Censorship>

36 In fact, distinguishing the Shreya Singhal judgement which dealt with reasonable, constitutionally-recognized restriction on speech and copyright law, the High Court of Delhi has held that in case of the latter that notice need not have judicial intervention. (MySpace Inc. v. Super Cassettes (C.S(OS) 2682/2008), <https://iltb.net/analysis-of-the-delhi-high-courts-myspace-judgment-12dda95b2fb0>)

Shreya Singhal framework. It ordered the government to set up a nodal agency that will monitor search results and notify search engines, who in turn have to take down such content within a specified time period. By setting up a dedicated institutional mechanism, the court also acknowledges that in special cases, urgency acquires precedence over other factors. A similar mechanism has also been suggested in the Prajwala PIL³⁷.

4.3 Privacy

Despite a mixed bag of regressive and progressive laws, the higher courts in India have made an effort to recognize the agency of women.

Whether it is autonomy to choose one's profession (women's right to work in dance-bars³⁸) or make reproductive choices, as affirmed in the right to personal liberty guaranteed by Article 21 of the Constitution³⁹, the Supreme Court of India has at various instances affirmed women's right to privacy. However, it was only in August this year that the Supreme Court of India ruled that the right to privacy is indeed a constitutional right. The bench made a causal connect 'linking the three aspects of privacy (bodily integrity, informational privacy, and the privacy of choice) ... with the preamble of the Constitution, which guaranteed democracy, dignity, and fraternity'.⁴⁰ The judgment also acknowledges the feminist critique that privacy – as in the private sphere – can act as veil for patriarchy to perpetuate violence. The court observed;

“The challenge in this area is to enable the state to take the violation of the dignity of women in the domestic sphere seriously while at the same time protecting the privacy entitlements of women grounded in the identity of gender and liberty.”⁴¹

This path breaking ruling, and hopefully, the new developments in the law, will pave the way for more progressive frameworks, rooted in furthering the privacy, dignity and agency of women, encouraging women to employ the law as a key instrument of their empowerment.

Conclusion

India has a long way to go before it can claim to have a robust legal framework to address violence women face online. It has made some forays in this regard, but the fragmented nature of the provisions and retrograde social attitudes to the problem takes away any real impact the law can have. The Ministry of WCD is looking to tighten the law, and bridge the gap between the existing provisions of the IPC and ITA in addressing sexual violence online against women.⁴² Such stop-gap solutions are good for the interim, but for

37 <http://www.itforchange.net/Unpacking-the-Supreme-Courts-Emerging-Stance-on-Online-Censorship>

38 Anuj Garg v Hotel Association of India (2008) 3 SCC 1

39 Suchita Srivastava v Chandigarh Administration (2009) 9 SCC 1

40 <https://indconlawphil.wordpress.com/2017/08/27/the-supreme-courts-right-to-privacy-judgment-i-foundations/>

41 http://supremecourtsofindia.nic.in/supremecourt/2012/35071/35071_2012_Judgement_24-Aug-2017.pdf

42 <https://timesofindia.indiatimes.com/india/centre-plans-to-tighten-laws-following-surge-in-revenge-porn-videos/articleshow/58953474.cms?from=mdr>

the long run relying on colonial law or a law meant to further e-commerce to address systemic violence against women under an equality and dignity framework is neither feasible nor advisable.

Back in 2014, the National Commission of Women had organised a consultation on “Ways and Means to safeguard women from Cyber Crimes in India’. One of the recommendations from the consultation noted that “A woman eccentric information technology law must be drafted defining types of cyber crimes targeting women.”⁴³ Just like the Philippines⁴⁴ and the US⁴⁵, India too must work to a single comprehensive legislation on TMVAW.

43 <http://ncw.nic.in/pdfReports/RecommendationsConsultation23072014.pdf>

44 Senator Risa Hontiveros is pioneering the Gender Based Electronic Violence (GBEV) bill in the Philippines. The Bill defines GBEV as “acts involving use of any form of information and communications technology which causes or is likely to cause mental, emotional or psychological distress or suffering to the female victim or lesbian, gay, bisexual, transgender, queer (LGBTQ) victim, and tending to disparage the dignity and personhood of the same on account of his or her gender” <https://www.rappler.com/nation/153196-risa-hontiveros-tres-marias-bill-attacks-social-media>

45 Congresswoman Katherine Clark, Congresswoman Susan Brooks, and Congressman Patrick Meehan introduced the Online Safety Modernization Act to address crimes online that disproportionately affect women and girls. <http://katherineclark.house.gov/index.cfm/press-releases?ID=C0878679-D18D-496F-8096-B996CB985BB6>