

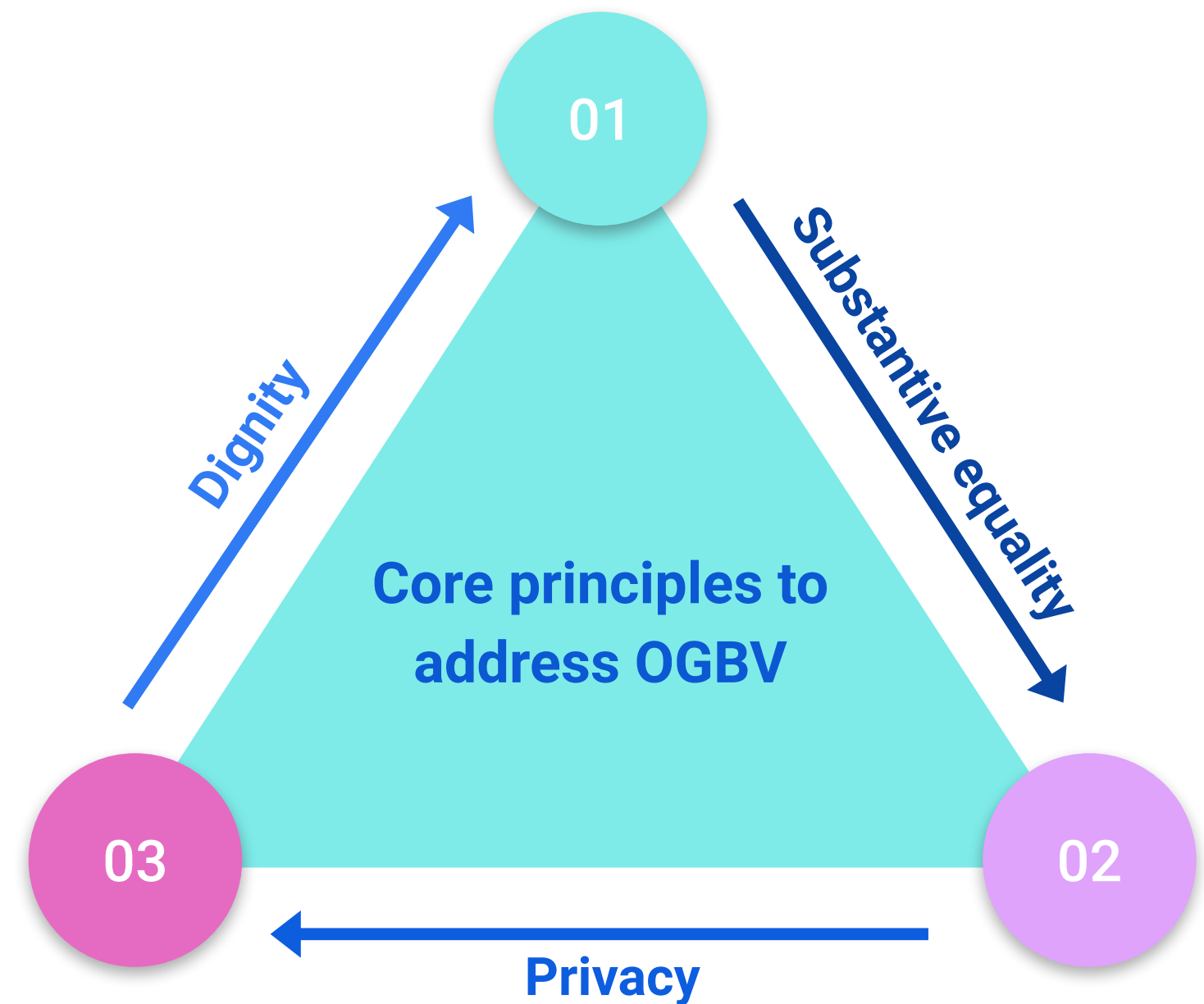
The Judiciary's Tryst With Online Gender-Based Violence

An Empirical Analysis of Indian Cases
and Prevalent Judicial Attitudes

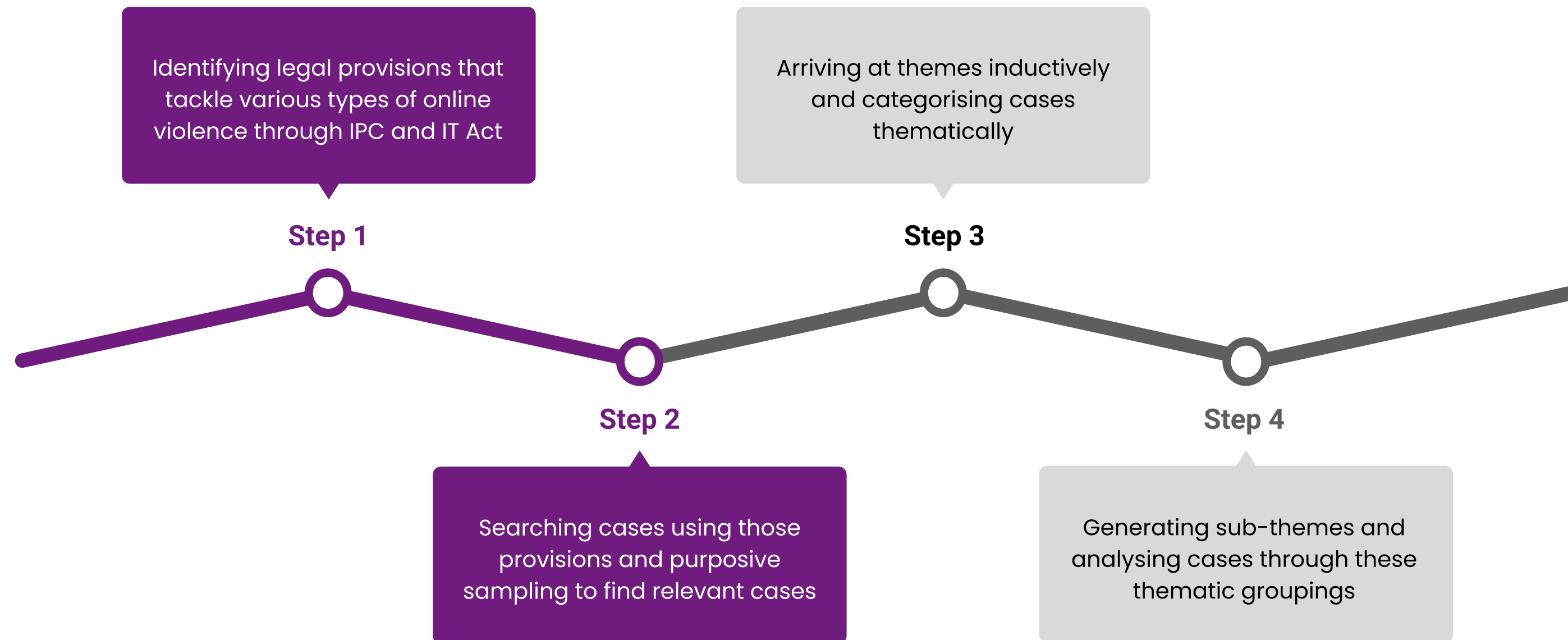
IT for Change | November 2023

Introduction

- Digital society transformation and social relationality
- Ubiquity of online gender-based violence
- Courts as important avenue for recourse
- Objectives of this study
 - How are cases of OGBV handled by courts?
 - What are judicial attitudes in these cases?
 - Are digital platforms held to account?



Methodology



Findings (1/2)

Types of Cases

- Posting and uploading non-consensual intimate images and videos to social media and/or pornographic websites
- Voyeurism
- Creating fake accounts
- Intimidation
- Cyberstalking
- Hateful comments

Apparent Power Structures

Study reveals a recurrent pattern: older men – family members, teachers, workplace superiors – misuse fiduciary relationships, and target women and girls.

Findings (2/2)

Gaps in Courts' Understanding of the Online Public Sphere

Patriarchal Notions in Court Orders

Limited Understanding of Privacy in OGBV Cases

Procedural Hurdles regarding Digital Evidence and Inadequate Focus on the Online Public Sphere in Bail Orders

Challenges in Ensuring Accountability of Transnational Social Media Corporations

Finding 1

Gaps in Courts' Understanding of the Online Public Sphere

- Courts treat online violence as less serious than physical violence.
- Courts, by and large, do not yet recognize gendered hate speech, gendertrolling or doxxing because of the lack of statutory recognition of these new and evolving online offenses

Finding 2

Patriarchal Notions in Court Orders

“Even a bare reading of the said posts leaves a sour taste in the mouth of this Court, as those statements are overly derogatory in nature and it demeans, the modesty and chastity of the women folk [...] It has been oft said that the essence of a woman’s modesty is her sex. The culpable intention of the petitioner is the crux of the matter and the reaction of the general public in this regard is very relevant and so also that of the woman against whom such scandalous posts are made. **Modesty is an attribute associated with female human beings and it is a virtue which attaches to a female owing to her sex.**”

– The Present Petition Has Been ... v. Unknown, Crl. O.P. No.12604. (2020).

Finding 3

Limited Understanding of Privacy in OGBV Cases

“Sexual violence against women, apart from being a dehumanizing act, is an unlawful intrusion into the right to privacy and sanctity of a female. It is a serious blow to her supreme honor and offends her self-esteem and dignity. It degrades and humiliates the victim and leaves behind a traumatic experience. The Courts are, therefore, expected to deal with cases of sexual abuse against women with utmost sensitivity... **A murderer destroys the physical body of the victim, but a sexual assaulter degrades the very soul of a helpless female.** The Courts, therefore, shoulder a great responsibility while trying an accused on charges of sexual abuse.”

- Smt Qamar v. State of Telangana, Bail No. 3669. (2021).

Finding 4

Procedural Hurdles regarding Digital Evidence and Inadequate Focus on the Online Public Sphere in Bail Orders

- The requirement under Section 65B(4) of the Indian Evidence Act, 1872 for a certificate to authenticate secondary electronic evidence can often lead to evidence not being considered altogether.
- There is a lack of consideration in bail conditions for the risks arising from technological aspects affecting the complainant.

Finding 5

Challenges in Ensuring Accountability of Transnational Social Media Corporations

- The role of social media platforms in the dissemination and amplification of content impacting the safety and wellbeing of victims/survivors of online offenses seldom acknowledged by courts.
- In the rare instance that the courts identify the complicity of the social media platform in question, bringing the latter in as a party to the case to assist in content takedowns is not easy.

Way Forward



Steps for courts



Ecosystem-level changes