

Report of the pre-consultation on Technology-mediated Violence Against Women January 19th, Bengaluru

Organised by IT for Change

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The objective of this pre-consultation organised by IT for Change was to debate the key strategic directions for forging an effective legal-institutional response to technology-mediated violence against women (VAW) in the Indian context, a problem that has assumed pandemic proportions in recent years. The starting point of this dialogue was a draft paper¹ prepared by IT for Change on this issue, that raised key questions around the areas of: overhauling legal frameworks, strengthening institutional mechanisms including law enforcement and effectively scoping intermediary liability. The meeting addressed deeper questions and dilemmas associated with legal frameworks and the need to acknowledge the complex socio-cultural factors associated with VAW and the redressal women seek. This report summarises the key threads of this day-long process of sharing reflections.

1. Setting the Context: How does the digital context force us to re-evaluate our understanding of violence against women?

- Digital technologies have always been seen as liberating because of the cloak of anonymity they provide. This very anonymity that enables women and gender minorities to break free from ascribed identities has also facilitated their surveillance and control.
- Law assumes stability but digital technologies have made the world transient. Legal concepts which are reliant or modeled upon traditional coordinates of space and time simply do not apply to online acts. For example, the concept of ‘jurisdictional limits’ completely collapses in the face of remote violence enabled by the Internet. Similarly, the concept of ‘culpability’ needs to be radically redefined to account for new forms of technology-mediated violence against women, such as recirculation and sale of rape videos. Is it just the one who made these videos and uploaded them culpable, or is it anyone who forwarded or enabled them to go viral?
- Technology-mediated violence against women should not be just understood as stranger violence. It is misleading to compare all violence on online platforms with stranger violence, as these platforms are equally spaces for private interactions/ intimate relationships that may at times turn violent. There must be greater focus on intimate partner violence and

1 The draft paper that was tabled has been revised to incorporate comments from the consultation. The revised version is available at <http://www.itforchange.net/technology-mediated-VAW-India>

surveillance within a relationship, especially its emerging technology-mediated forms. In the cases that come to Family Courts, this is becoming a key issue – especially issues pertaining to possession of intimate pictures.

- In the 2000's, technology-mediated violence against women was seen as an elite issue. But increasing digital diffusion has meant that it affects individuals across different classes and in both rural and urban areas.

2. The existing legal framework: Where are the gaps?

- In India, the law views violence against women as a 'private crime'. The systemic nature of violence against women is not acknowledged. Psychological harm caused by acts of technology-mediated violence is not adequately recognised. Also, the law does not adequately acknowledge generalised misogynistic abuse.
- As the IT Act was originally enacted to regulate e-commerce, it is geared to address financial crimes and hence its response to countering online violence against women is inadequate.
- Existing legal provisions rooted in a narrowly moral public decency framework end up penalising sexual expression, rather than tackling violence. For example, in Pune city, there was a case four adolescent boys sharing sexually explicit pictures with a friend, that unfortunately got leaked. The police booked the boys under IPC provisions for creating and circulating obscene content. This is not an isolated instance, but part of a larger trend. Research by Point of View has indicated that cases such as circulation of rape videos, non-consensual circulation of sexual images, that should have been booked under Section 66 E of the IT Act that penalises non-consensual circulation of private images, end up being booked under Section 67 of the Act that punishes circulation of obscene material. This finding has also been corroborated by NCRB data. It is imperative that we transition from a starting point of morality to one of harm/ violation of consent when dealing with technology-mediated violence.

3. Overhauling the legal framework: Areas for reform

- When we shift from a morality to a privacy/harm framework in countering violence against women (including its technology-mediated forms), we need to find a way to effectively tackle the private harm it inflicts on specific individuals, and the public harm on society as a whole.
- It is important to remember that pushing for a new law can sometimes backfire, and we need to be cautious in our efforts in this direction. Firstly, the Indian feminist movement has many a time experienced how the campaign for a nuanced law ends up finally ushering in another piece of sledgehammer legislation that is quite unhelpful. Secondly, the campaign for legislative reform sometimes invokes a patriarchal backlash. For example, when the gay rights movement challenged Section 377 of the IPC in court, they ended up with a reinforcement/ return of a regressive legal provision criminalising homosexuality.

- A law on gender-based hate speech may be a weapon in the hands of the state and of self-proclaimed cultural guardians. There is enough evidence of such manipulation of the existing section on hate-speech: Section 153A of the Indian Penal Code.
- It is not sufficient to look at one-off laws on specific forms of technology-mediated violence against women; a jurisprudence around digital constitutionalism must also be developed.
- The existing legal response is not effective. But the strategy to reform the IPC/other legal provisions, given the existing complexities in India, needs to be backed by larger process which first aims to build awareness and a broad consensus. Also, lobbying for strengthening institutional responses may be more effective than lobbying for a new law.
- The Evidence Act must be revisited so that producing secondary evidence that is electronic in nature does not become too cumbersome for complainants, in cases of technology-mediated VAW. For instance: Section 65B of the Indian Evidence Act lays down the various conditions for the admissibility of electronic record, including a certificate identifying the electronic record as authentic that is signed by ‘a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities.’ Further, the Supreme Court in *Anvar P.V vs P.K.Basheer* has categorically held that electronic records cannot be produced as secondary evidence without fulfilling the requirements of Section 65B. This may prove to be difficult for the victim.

4. Institutional mechanisms: New directions

- There was a debate among the group on what institutional mechanisms should underpin the new legal framework on technology-mediated violence that we seek to move towards, as otherwise courts could get flooded with a flurry of new cases. Some held the view that we could borrow the UK arrangement of setting up civil society monitors to track child rights violations in online spaces. There were others who felt such a body would be toothless, and that it was better to opt for one of two options:
 - set up an independent commission/authority with representatives from government and non-governmental organisations.
 - adopt the model prescribed in New Zealand’s *Harmful Digital Communications Act 2015* of setting up an ombudsman-like authorised agency.

To avoid overreach of powers and excessive/arbitrary curbing of citizen-rights by this new body, it was felt that a network of civil society organizations could be set up to keep a check on it.

- State and/or civil society organisations should set up helplines to deal with cases of technology-mediated violence. In Pakistan, the Digital Rights Foundation has set up such a helpline.

5. Intermediary Liability: How best to manage this?

- Considering that many a time women who encounter technology-mediated violence want immediate take-down of the specific piece of content that harms them, there were many in the group who opined that the current regime of intermediary liability in India that allows content-takedowns only on executive/judicial orders is extremely dis-satisfactory. While some felt that the way to address this situation was to opt for an arrangement similar to that of New Zealand (explained in Section 4), there were others who felt that it may be important to transition from a framework of intermediary liability to platform responsibility, by encouraging platforms to pro-actively manage user-complaints about online VAW, in the spirit of the UN Guiding Principles of Business and Human Rights. There were some members who disagreed with this view – citing both the horrendous track-record of platforms in protecting user-rights and questioning the very basis of privatising justice. If courts take time to deliver and we want to enhance the powers of online platforms to adjudicate in such cases, we are guilty of opting for the very arrangement that we criticise in offline spaces – going to *khap panchayats* rather than district courts, as they are more accessible! What everyone agreed with was the fact that Internet intermediaries are extremely powerful actors in online spaces, and their policies and actions determine the nature of freedom of speech and expression and the balancing of this right with that of freedom from violence – so there had to be some way of checking their power.
- Apart from the state and the intermediary, the user is the third actor in these situations. If a woman is being trolled online, it would be important for her to have her own allies and friends who can support her through words; enabling her to stand up to online mobs.

6. Next steps: How can we take this agenda forward?

- Organise a series of consultations in different cities, inviting women's rights groups, digital rights activists, new media organisations etc.
- Majlis' consultation on 'Negotiating Spaces' being planned for March 2017 can become a key space to take these debates forward.
- It may be important to form a core group who will be interested in developing a portal that provides information to women facing technology-mediated violence on how to seek redress; also gives them space to record their stories. There should be a community-facing element in its design that is able to spread awareness about this issue in creative ways – through digital comic strips, audios etc.
- Curate existing literature on technology-mediated violence against women to scope the areas in which more in-depth research is required. For example, technology-mediated intimate partner violence and its various dimensions has not been fully understood. The extent to which the IT Act is currently serving the cause of justice in cases of online VAW is not fully understood. Another area where more work is required is to understand how psychological/emotional violence-related provisions scattered across different legislation can be invoked in cases of technology-mediated violence. After scoping the existing

research, new areas where think pieces are required and other areas where in-depth exploratory research is required may need to be mapped.