



The Righting Gender Wrongs Project

Towards a safer cyberzone

A study on gender and online
violence in Tamil Nadu

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Overview

This is the report of an in-depth field research on gender-based cyber violence that was carried out between October 2018-March 2019 across 1 metropolitan city and 3 peri-urban areas of Tamil Nadu. It was part of a larger multi-state research study conceptualised and led by IT for Change, with support from the Web Foundation, across multiple locations in Kerala, Karnataka and Tamil Nadu, with a view to enhance our prevailing understanding of the typologies of cyber violence experienced by young women, and evaluate the robustness of current legal-institutional response mechanisms.

In specific, the following methodologies were adopted:

- (a) Survey to capture experiences of gender-based cyber violence of young women college students in the age group of 19-23 years, covering 241 respondents across 7 colleges in a metropolitan city and 6 colleges in 3 peri-urban areas of Tamil Nadu. Purposive sampling was adopted in order to cover a large cross section of students, across a wide spectrum of socio-economic and geographic locations.
- (b) Two focus group discussions with young women college students and two focus group discussions with young men college students in one metropolitan city and one peri-urban area.
- (c) Key informant interviews with a range of stakeholders: family court lawyer, women's rights advocate, member of an Institutional Complaints Committee in a college, law enforcement officials, women who have faced cyber violence.

This report distills the key insights from our field research and clusters them into the following sections: Section 2 lays out the experiences of gender-based cyber violence experienced by the young women participants of the survey. Section 3 examines the responses examines the perspectives of the respondents about the liability of the women in cases of online harassment and violence. Section 4 analyzes men's perceptions of online violence and harassment in both rural and urban areas. The perspective of law enforcement officers' on online harassment and violence is explained in Section 5. Section 6 of the report explains the difficulties of women in accessing the criminal system, particularly due to lack of social capital. The provisions for privacy, online harassment and violence and the law are laid down in section 7. In Section 8, we get an understanding of the responses from different digital corporations to the complaints put forth by women. Section 9 explains the complications involved in dealing with cases of cyber violence due to the anonymity involved in the legal process. Finally, section 10 provides for recommendations for the improvement of the legal system to deal with the cases of online gender-based cyber violence. In each section, the findings from the survey are foregrounded and then supplemented with observations from the focus group discussions and key informant interviews.

Young women's experiences of gender-based cyber violence

As indicated in **Table 1** below, 30.3% of the 241 young women participants in the survey admitted to having faced harassment, abuse or unwanted behaviour when online, in the past one year.

Table 1. Experience of harassment, abuse or unwanted behaviour online

In the past year, have you ever faced harassment, abuse or unwanted behaviour when online that has made you feel afraid, depressed, alone and/or angry?	Frequency	Percentage
Yes, but it stopped	57	23.7
Yes, it is continuing	16	6.6
No	164	68.0

Not responded	4	1.7
Total	241	100

The most common sites where respondents faced harassment were Whatsapp (58.9%), Facebook (46.6%), and Instagram (20.5%). More details in Table 2.

Table 2. Sites of harassment

Service/application where harassment took place	Frequency	Percentage
SMS	14	19.2
E-mail	8	11.0
WhatsApp	43	58.9
Facebook	34	46.6
Instagram	15	20.5
YouTube	14	19.2
Twitter	3	4.1
Snapchat	2	2.7
Dating apps	2	2.7
Matrimonial sites	2	2.7
Others (messenger, landline)	4	5.5
Total number of respondents who have faced some form of harassment/abuse/unwelcome behaviour	73	100

Of the 73 respondents who reported facing online harassment, the frequency of harassment was as follows: 45.2% had encountered it once, 34.2% had encountered it multiple times, and 16.4% said they continue to face it (**See Q 4.4 in Annex 1**). 46.5% of the 73 respondents reported that the perpetrator was male (**See Q 4.6 in Annex 1**).

19.17% said that the perpetrator/s were known to them, while 53.4% reported that the identity of the perpetrator/s was not known to them (**See Q 4.7 in Annex 1**). Known perpetrators predominantly included persons from their community(21.7%), friends (21.7%), family members (13%), classmates(13%), and acquaintances (13%). Harassment by boyfriend (8.7%), girlfriend (4.4%), ex-boyfriend (4.4%) and teacher/staff at college (4.35%) was also reported by a lesser number of respondents. In the 'others' category, reported by 8.7% of the respondents, harassment at the hands of one's brother's friends was mentioned. (**See Q 4.8 in Annex 1**.)

The main forms of harassment encountered online – either from direct personal experience or experiences of other women in their circle of acquaintance – are detailed in Table 3 below.

Table 3. Nature of harassment encountered online

Nature of harassment	Yes, respondent encountered this but it has stopped now	Yes, respondent continues to be attacked/bullied	Respondent knows another woman it has happened to
Personal contact details shared/ distributed online without their knowledge or fake profile created	18	1	19
Morphed image circulated online	2	3	14
Contacted online repeatedly by same person(s), proposing and/or wanting/ demanding a sexual relationship	17	4	13

Sexually explicit image, video or text shown/sent online, without consent	17	1	12
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Focus group discussions revealed that unwanted contact over the phone/ Internet was a commonly experienced problem, and women participants reported the following manifestations: constant stream of messages on social media about one's appearance; incessant phone calls and prank calls and messages from unknown numbers and multiple numbers; unwanted messages and vulgar messages/pictures from strangers and acquaintances on WhatsApp; circulation of one's number by unknown person to strangers; and hacking of one's Facebook profile / creation of a false Facebook profile by an unknown perpetrator who then proceeds to use this compromised Facebook profile to send unwanted messages to one's network of friends and acquaintances. Harassment also oftentimes spills across multiple platforms. One woman reported that after she matched with a man on Tinder, he started sending her lewd messages. When she unmatched him, he traced her on Facebook and Instagram and continued his unwanted messaging on these spaces. The group discussions also revealed that acquaintances and friends resort to sending vulgar messages/ pictures because of their inability to accept a woman's refusal of a romantic relationship. One woman reported that after she turned down her male friend's proposal for a romantic relationship, he started using vulgar language on chats.

Using pictures as blackmail:

1. Morphing WhatsApp display pictures (multiple) and threatening to circulate them if she refused to reply or speak to the man;
2. Threatening to print and make posters of the woman's WhatsApp picture morphed with his and paste them outside her house.
3. Using old pictures to blackmail the woman

In one instance online harassment led to physical harassment. There are indications that women want to start a friendship or a romance, and often it turns into harassment perpetrated by the man. Even one of the surveyors who led the group discussion among urban males faced this. She gave her phone number to one of the participants who continued to persistently call her and send her messages. Only after a strict threat did it stop.

Following are the major kinds of harassment and the percentage of the participants who have reported either having faced it or knowing another woman who has faced it -

Harassment, identity and appearance

Identity, particularly when marginalised, plays a role in the kind of harassment meted out. The following table reports these categories of harassment and the percentage of women who reported harassment or who knew another woman who was harassed based on these categories:

Table 4

Identity/characteristic	Percentage of women who reported harassment/knew another woman who was harassed, based on this identity/characteristic
Caste	19.2%
Community	9.8 %
Religion	12%
Economic Status	9.6%

Nationality	9.4%
Race	9.2%
Gender	22.3
Sexual Orientation	14.8%
Body shape	26.4%
Weight	27.8%
Skin colour	27.3%
Looks	21.8%

The table above indicates that identity and appearance-based harassment constitutes a significant proportion of the harassment that the surveyed women have faced.

Identity of harassers

Table 5

Identity of harasser	Number of respondents	Percentage
Known	14	22.6
Unknown	39	62.9
Known in some cases	9	14.5
Total respondents	62	

There is a preponderance of harassment by strangers. Known harassers included a friend of a friend, and a friend and their brother.

Impact of harassment

Harassment results in psychological impact and causes women to change their social activity, including online activity. In some cases it also leads to self-harm.

Table 6

Impact of such bullying/harassment	Yes, even now (%)	Yes, previously/not anymore (%)	Total (%)
Scared for my safety and security and/or that of my loved ones	9.1	10.4	19.5
Anxious all the time	8.3	5	13.3
Alone and helpless	6.2	5.8	12
Depressed	10	5.8	15.8
Afraid of going out of my house	6.6	6.2	12.8
Afraid of using my mobile phone/laptop and/or going online	6.2	8.7	14.9
Reduced use of mobile phone/laptop and/or	7.1	5	12.1

internet			
Scared to post or share messages, images, photos, videos /audios online	10.4	5.8	16.2
Distrust in my friends and family	6.6	6.6	13.2
Attempt to harm myself	5	6.6	11.6
Distancing myself from friends and family	4.6	7.1	11.7
Sudden dip in academic performance	5	7.1	12.1
Negative impact on health	4.6	6.6	11.2
Changed my number	5.8	6.6	12.4
Deleted my social media account	5.8	7.5	13.3

The survey indicates that it is the victim who reduces using the internet while there is likely no similar impact on the perpetrator. The anxiety, depression and fear that victims report facing after these situations indicate that there is a great effect on their mental health. There is also a fear of violence towards them or their families that would require an intervention.

Redressal for psychological trauma

Some examples of how the women dealt with harassment are below:

My friend was bullied online. She shared the particular phone number with her boyfriend. When he called the harasser and spoke, it completely stopped.

I personally feel, we should not bring another guy into the picture to tackle this. If the harasser gets offended, he will continue disturbing the woman.

One of my school mates who spoke out in school was strongly advised not to speak to boys. Though she was a victim the school believed her to be responsible for the problem. She was given a transfer certificate and made to leave the school.

During the focus group discussion, the participants revealed that they would mostly confide in and approach their close friends for support in these situations. Some said they would approach their parents if they are in such a situation. One of the participants was approached by her friend for support and she helped her speak to her parents about the issue. Two participants faced strangers messaging them to find out their whereabouts and they have not replied and have blocked those numbers. Another participant shared the instance of her neighbour using her mobile to make a call to somebody. After that, the unknown person, to whom the call was made, started messaging her inappropriately on WhatsApp. She immediately blocked the person. These girls have not shared these experiences with anybody in the family or outside because it would result in the

constraints on mobility and participation in online and offline spaces.

The fear of being stopped from using a smartphone was another factor that was a barrier to seeking help. The idea that the victim permeates in the case of harassment over social media as well. Thus, if a woman wants to be just friends but the man persists in wanting to go beyond a friendship, she is blamed for wanting to be friends with a man. Some women are not allowed to have their own smartphones, and are only allowed to use their brothers' phones. Thus, instead of being a tool of empowerment, the internet and smartphones have become a tool of rigid control.

Who gets blamed?

The following table based on responses to hypothetical questions indicates that women are often blamed for online harassment and violence.

Q 3.1-While in a relationship, a woman sends nude pictures of herself to the man. However, due to various reasons, their relationship ends soon and the man puts up the pictures of the woman on the Internet without her knowledge. What is your opinion on this?

Table 7

Option	Number of respondents	Percentage
The woman is at fault. She should have known that the man may react this way.	151	62.66%
The woman is at fault. She gave him the pictures in the first place.	100	41.49%
The man is at fault. There was an implied understanding of trust and confidentiality when the pictures were sent, and this has been broken by the man.	95	39.42%
The man is not at fault. He did it as a joke and did not mean to harm her.	3	1.24%
The man is justified in taking revenge because he really loved her, and he should have a way to vent out his anger against the woman for suddenly leaving him.	8	3.32%
Other opinions (please specify)	18	7.47%

'Other opinions' predominantly include:

- Both the man and woman are at fault.
- Irrespective of who is at fault, women should always be cautious because men will be men.
- While both are at fault, the man is more at fault as such an action is not a solution for his anger as it will ruin the woman's life.
- Irrespective of whether or not men share them, women should take not take such intimate/nude pictures at all.
- Women have broken men's faith in women which is why men take revenge.

The group discussions and the data clearly indicate that the idea of blaming the woman for such actions persists. Other opinions were subtle in the blame, saying that a woman should not take intimate pictures. The survey indicates that on the issue of sexuality, female sexuality is discouraged while it is acceptable for men.

Also, the difference between sexuality and sexual violence was not understood at all.

Men's perceptions of online violence and harassment

Men's responses differed across rural and urban areas.

Rural responses

Rural men had clear opinions as to what constitutes harassment. According to them the following acts were harassment:

- Morphing the girl's image if she refuses to be friends with a boy without giving him a reason.
- Creating fake IDs and uploading the woman's pictures, including intimate pictures.
- Uploading a duet video to the woman's single video in TikTok in to tease and demean her.
- Opening a fake account in her name and uploading her photo as a profile picture to make everyone believe it is hers, and then sharing vulgar comments or obscene pictures with her friends.
- Trolling.
- Uploading obscene photographs and tagging her.
- Posting material that interests her and tagging her in order to impress her and get her attention.

One of the participants described incidents where his friends shared screenshots of intimate conversations with their girlfriends on social media. This was done in order to show off to other friends about their ability to maintain such a relationship with a girl and in another instance, to take revenge on the girl when the relationship ended. One respondent spoke of his friend who shared the girl's phone number with many other boys asking them to call her constantly just to tease and irritate her. This was because she suddenly blocked him in her social media account. Another explained an incident where someone teased a girl who posted a music video without wearing a dupatta on musical.ly; he had posted a duet video and drawn a dupatta for her to wear. The video concludes with her appearing in a saree. Some knew of boys who had shared the girl's phone number on a porn website in order to take revenge for her act of blocking his access to her social media accounts.

Despite understanding that this amounts to harassment, they chose to blame the woman. The following quotes indicate it very clearly:

If girls face cyber violence, they won't think of taking revenge, because they will easily switch over to another boy. Most girls do this.

Facebook is a public forum, and she has the responsibility to do something about it and not keep quiet. If she is not okay with this, she should not use this forum.

Not accepting a friend request is arrogance. If at all she wants to reject it, she should explain why.

Girls should dress properly when they post music videos on TikTok. If they don't, they should not complain about any misogynist counter duet video posted to tease them.

When you try to get attention, you end up sacrificing your private life.

Though most of the boys accept that this is not the right way to deal with the issue, to do they felt that such a

response was justified.

Urban responses

According to urban men, the following acts were harassment:

- Morphing pictures.
- Asking friends for nude pictures.
- Messaging persistently after being asked to stop.
- Trolling.
- Body shaming.
- Revenge porn.

They had mixed opinions on misogynist memes. Opinions ranged from such memes being meant to be taken lightly, to them meant to be ignored. They were concerned about taking consent of people before uploading their pictures on social media.

The group discussions indicated a difference in the way rural and urban boys understand the impact of sexual harassment. Both groups understood what constituted harassment. But in rural Tamil Nadu, the boys blamed the girls for transgressing. There was also distrust towards women: nearly half of the boys in the focus group discussions expressed that girls always manipulate boys. Almost everyone agreed that revenge porn should not be used as retaliation to girls cutting off contact, but they seemed to blame the girl for cutting off contact at all.

In urban areas, while there was a better understanding of harassment and the impact that it had on women, the attitude towards women using social media was paternalistic. Some expressed that caution should be exercised with women. Empathy for women and trans people also emerged from the discussion.

Law enforcement officers' perception of online harassment and violence

Interviews were conducted with senior officers of the Cyber Cell, Crime and women Inspectors who deal with crimes against women only in Chennai. The officers spoke on condition of anonymity.

In Tamil Nadu there is a cyber cell where cases pertaining to violation under the Information Technology Act are filed. These cases are not filed in isolation, but an offence is clubbed with other provisions of the Penal Code or under the provisions of Tamil Nadu Prohibition of Women Harassment Act that is a state statute. The officers were sensitive to the issue of online harassment as the increasing prevalence has made them aware of the need to respond.

The following is an extract from the affidavit of a senior officer in the court which indicates the number of cyber-crime cases filed -

It is submitted that there are complaints being received upon cyber crimes such as data theft, defamation, cyber stalking, identity theft, transmission of obscene material in electronic form, cheating by impersonation through computer source etc. Any complaints received against any activity involved in Facebook, Gmail or Twitter or other such social activity sites, this respondent is dependent on the information that is provided from the said company. Further

only after receiving the details from the said company it is possible for this respondent to take next step, i.e. to analyze the IP logs, to send request to ISP for getting user details etc.

It is submitted that during the year 2016 to 2018, the Chennai City Police, Cyber Crime Cell had sent about 1940 requests to such online social media companies. Among which 885 requests were sent to Facebook, 101 requests were sent to Twitter, 788 requests were sent to Gmail, 155 requests were sent to YouTube and 11 requests were sent to WhatsApp. Out of which, IP logs details were received for only 484 requisitions. Out of the said replies, 211 replies received were from Facebook, 1 reply from Twitter, 268 replies from Gmail, 4 replies from YouTube and no reply received from WhatsApp. It is necessary to state that remaining 1456 IP requisitions were rejected by social media companies.

It is submitted that on receipt of IP logs for the 484 requests, 9 cases were registered, 28 cases were closed after the petitioner withdrawn and counter petitioner warned, 15 were closed as there was no prima facie case made out, 26 IP locations found located outside the Indian jurisdiction, 286 requests were pending for receiving IP User details from Internet Service Providers (ISP) and 120 IP were found to be dynamic IP logs. Hence, out of 1940 requests sent, only 484 IP Logs were received and out of which 52 cases were resolved by identifying the culprits, 146 are untraceable and remaining 286 were pending for want of details.

During the discussions it emerged that the cyber cell does not file cases unless the harassment is by a stranger. If it is by a known person then it is handled by the regular police.

Cyber crimes are treated less seriously than regular offences. There have been two instances even in the case of offences against journalists, when directions had to be obtained from the court for registering a case. Despite the registration of the case, the trolling and harassment continued. It is also found that the response is stronger in cases where the intimate pictures are used when the complainant is married, since the spouse would also have filed cases under other provisions of law such as 498 A IPC.

Also, the police have a process when they warn the person who indulges in such behaviour and decide to register an FIR only if the complainant wants to pursue this course of action. Most often, according to the police, the woman only wants the harassment to stop and does not want to continue with the case.

Social capital and recourse against harassment

Women require social capital to be able to engage with the criminal justice system, not least because practically they need to hire a lawyer to fight a case. The responses to the situational question below, however, indicate that a good number of students (64.3%) were of the opinion that a woman harassed must inform the police regarding threats to her life both online and offline. This is encouraging, as young people believe that there has to be access to justice and the system should be accountable to them.

A female student, who is studying in Bangalore, decides to start a YouTube channel of her own and uses the platform to explain her opinion on issues relating to gender and caste. For example, she has various videos in which she says women should be given the freedom to choose who they want to marry, and that it should not matter if that person is from a different caste or religion. Her channel becomes very popular and receives a lot of appreciation. However, it also irritates a lot of people who feel that "she is far too forward thinking and liberal, and must behave like a normal woman." Despite these comments, she continues to make and put up such videos. She then begins to get personal messages including insults and death threats. Some people even manage to find out where she lives and begin to follow her. What should she do?

Table 9

Option	Number of respondents	Percentage of respondents
1. By posting videos on a platform like YouTube, she is making herself vulnerable. If she wants to prevent any harm to her life, she should immediately take down the channel.	42	17.43%
2. She should have expected such a reaction; it is not right for a woman to speak like this. She should take down the videos.	29	12.03%
3. She should inform the managers of YouTube.	65	26.97%
4. She must not take down the channel and should instead inform the police regarding the threats to her life, which are both online and offline.	156	64.73%
5. Other options (please specify)	11	4.56%

However, only 9.3% of the women who were harassed approached the police. The following reasons were given for approaching the police:

- Thought that the harassment cannot stop without their intervention
- Thought they would remove the sexually explicit images or videos/ morphed images or videos/ fake profile(s) quickly
- Thought they could trace the harasser(s) and arrest them
- The SIM card provider or the app provider or the website asked to approach the police first

Those who approached the police had the following experiences:

Table 10

Experience	Number of respondents
They were helpful, and started investigations in a timely manner	1
They blamed the respondent for the harassment	1
They advised the respondent not to file a complaint	1
They said they could not do anything	3
They told me to block the person(s) harassing the respondent by contacting my SIM card or app provider	2

The women who did not approach the police (90.7% of the total women who were harassed) gave the following reasons:

Table 11

Reason	Percentage of respondents
Did not think it was/is a crime.	6.22%
Felt uncomfortable to go the police station.	8.71%
Felt that the police would not take my complaint seriously.	9.96%
Felt like the police would not act in a timely and effective way.	11.62%
Felt that the harassment would become worse if a complaint was made.	7.47%
Felt like the police might blame me.	7.05%
Worried about the time and expenses involved in the process.	5.81%

Worried that the police would contact my parents, relatives or college authorities	6.22%
Worried that if a complaint is filed more people will know about the harassment	5.81%
Scared that they will confiscate my mobile phones/ tablet/ laptop/computer	3.73%
Did/ do not want the harasser(s), who is known to me, to be investigated by the police.	2.07%

Dealing with the criminal justice system

Discussions with the police revealed that in most instances, women do not pursue cases beyond registering an initial complaint. Government statistics do not indicate the break up of the cases under the various sections that have followed after the criminal law amendment Act of 2013.

Only 5 respondents, i.e. **2.1%** answered that they approached the court when they faced harassment/unwanted behaviour online.

Those that did end up approaching courts reported the following experiences:

- The judge was/is empathetic (1 respondent)
- The case was/is being heard in a timely manner (1 respondent)
- The harasser(s) was/were punished (3 respondents)
- The harasser(s) was/were NOT punished (1 respondent)

The chart below indicates that there was an apprehension about the process such as delays, expenses, not knowing lawyers that discouraged women from accessing the legal system. There is also a genuine fear of one's personal life being made public and the process being humiliating. Only 8.71% respondents were worried about not having the support of family and friends.

Those who did not approach the court stated the following reasons:

Table 12

Reason	Percentage of respondents
Did not know any lawyer.	4.98%
Worried about the time and expenses involved in the process.	7.47%
Worried that it may not stop the harassment.	10.37%
Worried that it would take a long time before my case would be heard.	12.03%
Worried that personal details of my life would have to be disclosed.	8.71%
Worried that I would not have the support of my family and friends.	8.71%
Worried that the court proceeding would be humiliating.	8.30%

23.4% of the respondents who were harassed, approached college authorities to make a complaint. These were their experiences:

Table 13

Experience	Number of respondents
The college was supportive and gave me a chance to explain what happened to me	3

They took appropriate action against the person(s) who harassed me	4
They advised me to not go ahead with the complaint	2
They were supportive AND advised not to go ahead with the complaint	1
They were supportive and they told me to block the person who was harassing me	1
They dismissed my complaint and blamed me for the incident and they advised me to not go ahead with the complaint and they told me to block the person who was harassing me	3

Students overall did not trust college authorities, and their fear of their families was high. Families often control women in various forms and do not take any action against the perpetrator. This prevents women from speaking up which in turn encourages harassment. It also indicates that more confidence-building needs to be done between parents and educational institutions.

Respondents who did not approach college authorities gave the following reasons:

Table 14

Reason	Number of respondents
Did not think the college was the appropriate authority to contact.	12
Not aware that the college handled such cases	10
Did not think the college would be very helpful.	13
College has not been supportive of other female students who have complained of harassment in the past.	3
Felt/feel that they would not take the complaint seriously.	14
Afraid classmates would come to know about the harassment.	9
Afraid that if teachers find out, it could affect my marks or reputation.	9
Worried that the college would contact my parents or relatives.	10
Felt like the college authorities would blame me for the harassment.	7
Afraid of revenge by the harasser(s).	9
Felt/feel that my classmates and friends would not support me.	2
Did/do not want the harasser(s), who is known to me, to be investigated by the college authorities.	1

9.5% of respondents who were harassed said they approached their family when they faced harassment. These were their experiences:

Table 15

Experience	Percentage of respondents
They were supportive.	6.64%
They encouraged me to go to the police/ court/ college authorities/ SIM card provider or app provider.	2.07%
They confronted the harasser(s)	0.83%
They blamed me for the harassment.	2.49%
They took away my mobile phone, tablet laptop or desktop computer.	0.83%
They tried to stop me from going to college.	0.83%
They did not allow me or restricted my participation in extracurricular	2.07%

activities.	
They did not allow me or restricted me from meeting friends.	0.83%
They did not allow me to go out.	2.07%
They were physically violent towards me.	1.66%

Online harassment and the law

The discussions indicate that the Information Technology Act is used less compared to other provisions of the IPC. The IPC was amended in 2015 change provisions on sexual harassment and to add provisions on voyeurism and stalking (see Appendix 1).

It emerged that one police officer did not know about the amendments that made certain conduct online stalking. The Tamil Nadu Police have a state enactment that is similar to the definition of sexual harassment in section 354 A which is used. In the context of defamation this can be filed only as a private complaint by the victim directly in the court with her appearance at every stage. This would also require her to collect the evidence and is very cumbersome.

The process is very cumbersome despite amendments made to Sections 65 A and 65 B of the Evidence Act that considers information in electronic record printed in a paper, stored, recorded or copied in optical or magnetic media produced by the computer as a document.

Moreover, when a complaint is made, the complainant's phone or computer can be taken by the police for evidence. This would be produced in court and would then involve a lengthy process of retrieval. Again, getting information from the servers who as indicated by the affidavit in High Court is next to impossible.

The language of Section 66 A of the IT Act was very broad, making it open to wide misuse so it was struck down. It being struck down has removed one option for registering cases of online violence. However, other provisions under the Penal Code and 66 E of the IT Act can be used.

Privacy, online harassment and violence and the law

Under the two new provisions on voyeurism and stalking in the IPC, a man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image commits an offence of voyeurism. Voyeurism is also committed in cases where the victim consents to the capture of the image or any act but not to the dissemination to third persons in which case the person who disseminate and those who watch also commit the offence. A private act is defined as a place that is expected to provide privacy where the victim's private parts stand exposed or where the victim is doing a sexual act not ordinarily done in public.

Additionally, monitoring the use by a woman of the internet e mail or any other form of electronic communication is an offence of stalking (Section 354 D). A similar provision is in Section 66 E of the Information Technology Act where intentionally or knowingly capturing, publishing, or transmitting the image of a private area of any person without his or her consent under circumstances that violate the privacy of that person commits an offence.

While the IPC section is gender-specific and applies only to women, the provision under the IT Act is gender neutral.

Despite changes in the law, there is a lack of understanding of privacy. While the principle of privacy has been a constitutional right, there is no statute that actually addresses it, except for the provisions given above. So even though the *de jure* law permits a person to take their private pictures, and makes its circulation without consent an offence as the survey indicates there is victim blaming that operates in the *de facto* application of the law. This is reflected in the fact that even the police do not encourage registering an FIR but just warn the person or destroy the records. As regards filing a criminal complaint, despite lawyers advising clients it is the police that actually registers the provisions of law and often they do not include the sections that the victims want.

Many lawyers and law enforcers would however use Section 67 of the IT Act that makes publishing or transmitting or causes to be published or transmitted in the electronic form any material which is lascivious or appeals to the prurient interests or if it is likely to deprave and corrupt persons who read, see or hear the matter. The provision is identical to Section 292 of the IPC that deals with obscenity. This provision technically ought not to be applied for such acts since obscenity deals with community standards. (*Ranjit Udeshi vs State of Maharashtra AIR 1965 C 881*).

The court is however expected to put itself in the place of every reader/viewer. In the interests of community standards, the obscene material will have to affect those who view it and not the person who is a victim who is in the material. So in effect the woman who would have consented to the photo may not consider it obscene but would want the circulation to be stopped and the offender punished. By dealing with a provision that strictly would not apply to the incident especially in view of another specific provision available in the form of Section 66 E, the agency of the woman is taken away.

Another offence that could be included is criminal intimidation (Section 503) where threats to person and reputation are a crime.

In a traditional case of obscenity the material has to be produced in court and two witnesses will have to speak as to how they found it obscene and how it affected their prurient interests. The language of prurience and lascivious are archaic and not understood easily today.

The judgments of the Supreme Court on privacy emphasized that it is a constitutional right subject to reasonable restriction supplements the provision of law.

Digital evidence and the law

Digital evidence is now routinely accepted in courts. The Indian Evidence Act, 1872 applies to both civil and criminal proceedings. The responsibility of collection of evidence in cases of online harassment or violence would initially be on the victim/complainant. To that extent the offences are like offences relating to property where information relating to documents, bills etc. has to be kept by the complainant.

The difficulty in this case is that often the materials such as the phone and lap top may have to be handed over to the investigation agency, for which most women are reluctant. There is the fear that the police may have access to other communications that are there in the phone or laptop.

While the perpetrator can delete material, police officers mentioned that if there is a careful record maintained by the woman and a digital footprint is left, offenders can be caught. But the tendency on the part of women is to delete the material out of fear or embarrassment.

Also, digital evidence has to be kept available for a long time, since trials take a few years. In one case, the laptops belonging to the accused were not seized on time resulting in destruction of evidence. Retracing is a very difficult and elaborate process. The police officers were unanimous in their opinion that training for such evidence gathering was virtually non-existent. Funding was more often than not focused on urban areas.

Jurisdictional challenges

According to the police, there are difficulties in getting details from social media companies which are located outside the country. This is compounded by companies like Google that refuse to share IP log details citing that the IP address originated outside Indian jurisdiction. The companies also refuse to share the port numbers of the IP logs that are required to fix and locate the exact user. Facebook has asked police to approach the IP logs through MLAT or a letter rogatory. In fact, Facebook itself has an exclusive on line [request portal](#) for law enforcement officials. However, this procedure has to be routed through the diplomatic channel. In order to route through MLAT the police have to first also route it through CBI.

According to Section 75 of the Information Technology Act, 2000, the provisions of the Act would apply to any offence committed outside India by any person irrespective of their nationality. Nevertheless, it would be difficult to enforce the law involving the major social media companies since they are registered abroad. And in their country of registration, the company could refuse to abide by a decision if it is not an offence there. In the context of individuals while the extra territorial jurisdiction clause can have enforceability in economic offences since there could be similarities of the offence which could be done in two states the problem becomes complex with reference to freedom of speech. If the individual lives in a state that has near absolute freedom of speech like the USA unlike in India where the right to speech is subject to reasonable restriction the individual violator could refuse to be bound by Indian law.

Hate speech

The term hate speech is not in the Constitution, which only makes reasonable restrictions to Article 19 that guarantees free speech. These restrictions are sovereignty and integrity of India, security of the State, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation or incitement to an offence. Any statute that restricts freedom must stand the test of falling within these reasonable restrictions. The provisions of the Indian Penal Code relating to hate include Section 153 A that makes it an offence if enmity is promoted between different groups on the ground of religion, race, place of birth, residence language or regional groups or castes or communities. Additionally, it can be an offence if any act is committed which is prejudicial to the maintenance of harmony between these groups.

So the concept of gender hate speech is not known to law. This would also bring another complexity. As of now the offences though considered against the state still require the woman or a person interested to make a complaint. If it were to be included under Section 153 A then any person would be able to set the law in motion. While hate speech in the context of gender can be understood, bringing it into the framework of law would require a nuanced approach. Especially in the context of Section 153 A itself being subject to abuse now, where anyone files a complaint even though it would require a sanction from the Government under Section 198 of the CrPC.

Responses from digital corporations

From the survey of women, the following responses from different digital corporations were revealed:

1. WhatsApp - Helpful and responded immediately; they removed the text, image, video or audio that was the source of harassment (1 respondent)
2. Facebook, Instagram and Twitter - They did not acknowledge or respond to the complaint (1 respondent each)
3. YouTube -
 - a) They did not acknowledge or respond to my complaint (2 respondents)
 - b) Helpful and responded immediately; they removed the text, image, video or audio that was the source of harassment (1 respondent)
 - c) Removed the text, image, video or audio that was the source of harassment, but this took a long time (2 respondents)
 - d) Blocked/suspended the harasser(s) account (2 respondents)
4. Snapchat -
 - a) They did not acknowledge or respond to the complaint (1 respondent)
 - b) Helpful and responded immediately; they removed the text, image, video or audio that was the source of harassment (1 respondent)
5. Dating apps -
 - a) They did not acknowledge or respond to the complaint (2 respondents)
 - b) Removed the text, image, video or audio that was the source of harassment, but this took a long time (1 respondent)
 - c) Blocked/suspended the harasser(s) account (1 respondent)

The following reasons were given by those who did not approach social media companies in case of harassment:

1. Not aware of this option.
2. Did not think they could help.
3. Did not know how to make a complaint to the SIM card provider, or app provider.
4. From my previous experience, they were not very helpful.
5. The user policy was not clear about the harassment I was facing

It is seen from the above that often digital corporations have not even acknowledged complaints.

Popular dating apps such as Tinder, Bumble etc. have taken measures to verify users through their phone number or by connecting the user's social media profiles to ensure authenticity. Linking one's social media profile to the dating/matrimonial app is discretionary to the user. The apps also have options to 'report' profiles/users which are offensive.

There have been demands for matrimonial websites to verify the genuineness of advertisements. But the sites have said that it is impossible for them to do "detective work", and that similar standards are not applied to ads in newspapers.

Anonymity in the legal process

In the legal process anonymity is not entertained. The court can, of course, camouflage or suppress the name of the victim in some rape trials. However, one of the basic principles is that the names of the parties must be revealed to the court and to the defense. In GBCV cases, the anonymity of the perpetrator encourages him to be more malicious and violent – something that he would not do in real life situations. This aggression can often

translate into physical violence. This then has the impact of women exercising self-censorship.

Recommendations

1. The substantive provisions of law are scattered in the Indian Penal Code and the Information Technology Act. There is no clear understanding of the law among law enforcement authorities.
2. Applying the law would require a nuanced understanding of gender, sexuality and sexual violence. This is currently absent in the victims, perpetrators and the agencies who deal with the same from the lens of a moralistic and protectionist approach. There is a great need for developing materials and training in this area.
3. There is an overall necessity of systematic and focused trainings on GBCV with all branches of the criminal justice system that would include, police, public prosecutors and the judicial officers.
4. There has to be a clear understanding among enforcement officials and judiciary that online abuse is a violation of human rights and not one of crime control.
5. There is a need to extradite offenders so that they do not take advantage of the various legal systems in this regard.
6. There must be measures for international, regional and bilateral cooperation among countries for the purpose of GBCV.
7. Legal aid clinics and legal services authorities must be empowered to intervene in cases of GBCV where the victim cannot afford the services of a lawyer and must be trained in this area. A network could be created that would provide legal services in this regard.
8. There must be a witness protection program in place to protect the victim as well as for effective prosecution.
9. Educational institutions must develop a multi-sectoral integrated approach that addresses GBCV its link to health for young people and education is necessary.
10. GBCV must be seen as a serious crime and not treated as if it is less serious than physical violence. There must be an understanding that GBCV is higher than violation of the right to privacy in its impact on health of the affected.
11. There is a necessity to address legislative interventions that give a clear understanding of GBCV and not link it to obscenity.
12. Civil remedies such as compensation must be strengthened and a separate legislation if contemplated must provide remedies in this regard.
13. A legislation similar to The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 can be considered to address non-workplace situations, that provides for conciliation and could address issues of compensation with a time bound structure.

Appendix 1

Sexual harassment and punishment for sexual harassment.

Indian Penal Code

Section 354 A.

1. A man committing any of the following acts—
 - i. physical contact and advances involving unwelcome and explicit sexual overtures; or
 - ii. a demand or request for sexual favours; or
 - iii. showing pornography against the will of a woman; or
 - iv. making sexually coloured remarks, shall be guilty of the offence of sexual harassment.
2. Any man who commits the offence specified in clause (I) or clause (ii) or clause (iii) of sub-section (I) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
3. Any man who commits the offence specified in clause (iv) of sub-section (I) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

Voyeurism. (capturing of images and their dissemination)

Section 354C. Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but 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 shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation I.— For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2.— 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.

Stalking.

Section 354D.

1. Any man who—
 - i. follows a woman and contacts, or attempts. to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
 - ii. monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking:

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

 - i. it was pursued for the purpose of preventing or detecting crime and the man 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.'