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LEGAL RESPONSES TO ONLINE SEXUAL HARASSMENT: A SOCIO-LEGAL EVALUATION

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ABSTRACT

Digital communication has changed the way sexual harassment shows up — it's not just something that happens in workplaces or public spaces anymore. Now, it happens online too. Things like cyberstalking, sharing private images without consent, sexualized trolling, morphing, and unwanted explicit messages all create new hurdles for the law. Our legal systems were built around people being physically present and easy to identify, but that doesn't cut it online.

This article takes a close look at how India tackles online sexual harassment, examining laws like the Information Technology Act (2000), the Bharatiya Nyaya Sanhita (2023), and the law on workplace harassment (2013). It also compares India's setup with approaches in the UK, US, and EU. While India has expanded its laws since the 2013 amendments, real progress is still slow. The problem is that tech companies aren't held accountable enough, courts don't always agree on how to interpret the laws, police and investigative teams don't have the resources they need, and on top of all that, social pressures often keep survivors from coming forward.

In the end, this article lays out some ideas for building a legal system that puts survivors at the centre, actually works with new technology, and fits together more smoothly.

Keywords: online sexual harassment, cyberstalking, Information Technology Act, intermediary liability, socio-legal analysis, digital gender-based violence.

I. INTRODUCTION

Sexual harassment has historically been theorised as a spatial harm — one occurring in the office, the street, or the home.¹ The advent of networked digital technology has dislodged this spatial assumption. Online sexual harassment now manifests through a wide repertoire of conduct: persistent unwanted sexual messaging, the non-consensual creation or circulation of intimate images (“revenge pornography”), digitally morphed or synthetically generated sexual imagery (“deepfakes”), doxxing accompanied by sexual threats, and coordinated networked harassment campaigns.²

Online sexual harassment looks very different from what happens offline. Here, the harasser can hide behind a screen, harmful posts can spread quickly and stay online forever, and people from all over the world can get involved. Plus, it's not just about one person causing harm—responsibility often gets passed around between the perpetrator, the platform, and sometimes bystanders who make things worse by sharing or encouraging the abuse. This article looks at how India's laws, along with some examples from other countries, are handling this new reality. It's laid out in six sections. First, it builds a basic understanding of what online sexual harassment is. Next, it explains the main Indian laws that deal with it. After that, it looks at key court cases and how judges have responded. Then it compares how the UK, the US, and the EU are tackling similar issues. The next section digs into why enforcement often fails in practice. Finally, it wraps up with some recommendations.

II. UNDERSTANDING ONLINE SEXUAL HARASSMENT: A CONCEPTUAL FRAMEWORK

Sexual harassment online is not a single harm but a bundle of harms that share a common theme, that of sexual, gender and technologically mediated harms.³ At least four types of recurring typology have been identified: (i) unsolicited sexual communication (explicit messages, unsolicited images); (ii) image-based sexual abuse (non-consensual distribution of intimate images, image manipulation); (iii) cyberstalking and surveillance (persistent monitoring, tracking, repeated unwanted contact); and (iv) networked or mob harassment (harassment through coordinated trolling or sexual abuse and threats following a woman's

¹Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (Yale University Press 1979).

²Danielle Keats Citron, *Hate Crimes in Cyberspace* (Harvard University Press 2014) 3-12.

³Emma A. Jane, *Misogyny Online: A Short (and Brutish) History* (SAGE Publications 2017) 21-45.

public visibility on the Internet).⁴

Here, a socio-legal approach is essential as the law cannot be considered separate from society. Social attitudes towards women's use of public digital spaces, victim-blaming narratives, and perceived legitimacy of women's presence online shape not just the nature of reporting behaviour, but also the nature of evidence and evidence gathering practices, and even the classification of behaviour as “harassment” versus “trolling”.⁵ Therefore, any assessment of legal solutions should consider not only the letter of the law, but also how it has been applied, the capacity of law enforcement to enforce it, and the reality of the complainant's experience through the criminal justice system.

III. THE LEGAL FRAMEWORK IN INDIA

A. The Information Technology Act, 2000

The IT Act (2008) as amended is the key legislation on behaviour related to digital media. One of the most fundamental forms of image-based sexual abuse is captured, published or transmitted images of a person's private area without their consent and is a form of sexual abuse covered by Section 66E.⁶ The publication or transmission of obscene material in electronic form or sexually explicit material or child sexual abuse material is criminalised in the relevant provisions of the Indian Evidence Act, 1872 (sections 67, 67A and 67B) respectively.⁷ Section 72 imposes a penalty for violation of confidentiality and privacy by persons who, in the exercise of powers under the Act, disclose without consent personal information, but is only likely to be applied to the conduct of persons other than in the exercise of powers under the Act.

These due diligence obligations were significantly increased under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, with the requirement of removing such content within 24 hours of a complaint for ‘significant’ social media intermediaries, and the appointment of Grievance Officers. This is an indication that individuals are beginning to understand that actions taken by the platform can have real-world consequences, even if enforcement isn't flawless. For 2021, the Rules require intermediaries to offer verification of accounts to users (if they so choose) and to provide periodic compliance reports. The measures were designed to help identify anonymous accounts behind harassment,

⁴Nicola Henry and Anastasia Powell, 'Technology-Facilitated Sexual Violence: A Literature Review of Empirical Research' (2018) 19(2) Trauma, Violence & Abuse 195.

⁵Sonia Livingstone and Mariya Stoilova, 'The 4Cs: Classifying Online Risk to Children' (CO:RE 2021).

⁶Information Technology Act 2000, s 66E.

⁷Information Technology Act 2000, ss 67, 67A, 67B.

while also helping to ensure respect for the privacy of users. It's not known how well this will work out will depend on how much a platform can truly moderate.⁸

B. The Bharatiya Nyaya Sanhita, 2023 (formerly the Indian Penal Code, 1860)

Substantial changes were made in the substantive criminal law after the Criminal Law (Amendment) Act, 2013, passed in the wake of the Justice J.S. Verma Committee Report.⁹ The amendments of 2013 added to the Indian Penal Code were Sections 354A for sexual harassment (which included sexually coloured remarks and demands for sexual favours through electronic means), 354C for voyeurism (which extended to the dissemination of images taken without consent by electronic means), and 354D for stalking (which expressly included the monitoring of a woman's use of the internet, email or any other electronic communication).¹⁰ The substantive criminal law has been re-stated in the Bharatiya Nyaya Sanhita, 2023, and these provisions have been retained and largely preserved with continuous wording, thus retaining the doctrinal benefits of the reforms of 2013, while thematising in the new codification. The reforms in Section 507 IPC (now incorporated in the BNS) also sought to punish anonymous criminal intimidation, which directly impacts anonymous online threats.

C. The POSH Act, 2013 and its Digital Extension

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was prepared keeping the physical workplace in mind and reflects the guidelines in *Vishaka v. State of Rajasthan*.¹¹ The statutory definition of what constitutes a “workplace” and harassment that takes place “in relation to” employment has been interpreted by Internal Committees and courts to include harassment that happens in the process of “communication through an official or workplace communication channel” and from “groups on social media platforms” linked to the workplace and/or the employment relationship, as well as harassment that occurs from “conduct relating to employment” even if the harassing activities occur on a personal digital device, provided there is a sufficient connection with the employment relationship. However, the Act does not apply to purely private online harassment, which is only to be dealt with under the IT Act and criminal law.

⁸Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 3(2)(b).

⁹Justice J.S. Verma Committee, Report of the Committee on Amendments to Criminal Law (23 January 2013).

¹⁰Criminal Law (Amendment) Act 2013; Indian Penal Code 1860, ss 354A, 354C, 354D (as inserted).

¹¹*Vishaka v State of Rajasthan* AIR 1997 SC 3011; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

D. Constitutional Dimensions

In the case of Justice K.S. Puttaswamy v. Union of India, the Supreme Court has provided a constitutional basis for the claims of such cases, which now consider non-consensual dissemination of private images not only as an obscenity offence but as a violation of informational and decisional privacy. This has had an impact on later High Court decisions where there was no national statute of a right to be forgotten, but the court still found that the spread of an "intimate image" online gave rise to such a right.¹²

IV. JUDICIAL RESPONSES: AN ANALYSIS OF KEY DECISIONS

The Supreme Court in *Shreya Singhal vs Union of India*¹³ declared that Section 66A of the IT Act, which criminalised sending "grossly offensive" or "menacing" electronic messages, was unconstitutional on the grounds of being vague and infringing on Article 19(1)(a). The judgment was an important development for free expression but also eliminated a clause that had often been invoked in online harassment cases, placing Sections 354A, 354D IPC/BNS, and 67/67A of the IT Act under a heavier burden of proof.

High Courts have now increasingly become involved with intermediary duties in the dynamics of non-consensual intimate imagery. The Delhi High Court judgments that mandated search engines and platforms to remove images that had been circulated, even in the absence of the original uploader's information, demonstrate a judicial appetite to impose proactive duties on intermediaries beyond the notice-and-takedown minimum suggested by Section 79.¹⁴ The courts also have been faced with the conflicting interests between the need for complainants to ensure that the information they provide about a sexual harassment offense is anonymous (often crucial in such cases, for complainants to protect their privacy), and the need to prove the identity of the anonymous perpetrator of the harassment, which can be particularly difficult in cases of cyberstalking, where tracing the IP address of the offender and the platform's co-operation can be slow or incomplete.¹⁵

There's a pattern in how courts handle bail in online sexual harassment cases, but the approach

¹²See, eg, orders of the Delhi High Court directing removal of non-consensually circulated intimate imagery on privacy grounds.

¹³ *Shreya Singhal v. Union of India*, AIR 2015 SC 1523.

¹⁴See orders of the Delhi High Court directing search engines to de-index non-consensually circulated images in proceedings concerning image-based sexual abuse, illustrative of an expanding proactive removal jurisprudence.

¹⁵Debarati Halder and K. Jaishankar, *Cyber Crimes Against Women in India* (SAGE Publications 2016) 112-130.

isn't consistent. In some instances, judges have also granted anticipatory bail simply because there is no physical aspect to the sending of offensive messages online as compared to traditional sexual offences. The problem is, this way of thinking tends to minimise the harm that people endure when harassment is relentlessly coming at them online, both emotionally and in terms of reputation. Other judges opt for the other way around. They actually consider the ongoing, public nature of the online harassment as making the crime worse, particularly because things online never go away. This wrangling only demonstrates that the rules are not clear when it comes to bail or sentencing in the case of tech-related sex crimes. So, the outcome of the cases often depends greatly on the judge.

V. COMPARATIVE PERSPECTIVES

A. United Kingdom

Online sexual harassment is dealt with under the Protection from Harassment Act 1997, the Malicious Communications Act 1988 and, more recently, the Online Safety Act 2023, which places statutory duties on platforms to proactively identify and remove illegal content, including intimate image abuse, and introduces new criminal offences for cyberflashing and non-consensual sharing of intimate images.¹⁶ This strategy is especially striking because it places some of the responsibility for platform accountability, namely the enforcement, in the hands of the communications regulator Ofcom, rather than the courts, which are only used for the after-the-fact approach called for in criminal prosecution.

B. United States

In the U.S., however, the picture is divided by the robust free speech protections of the First Amendment, and the all-encompassing platform immunity granted under Section 230 of the Communications Decency Act 1996, which has traditionally protected online platforms from liability for user-generated content, including harassing material.¹⁷ The criminalisation of image-based sexual abuse and cyberstalking has instead taken a state-by-state form, and the majority of states have passed their own “revenge pornography” laws, creating significant doctrinal variation between states.¹⁸

¹⁶Online Safety Act 2023 (UK); Protection from Harassment Act 1997 (UK); Malicious Communications Act 1988 (UK).

¹⁷Communications Decency Act 1996, 47 USC s 230 (US).

¹⁸Cyber Civil Rights Initiative, 'State Revenge Porn Laws' (survey of state-level image-based sexual abuse statutes).

C. European Union

The EU's Digital Services Act 2022 sets harmonised due diligence requirements across member states, including “notice and action” duties and obligations to manage “systemic risks” such as gender-based violence through the platform.¹⁹ This regional harmonisation differs from a state-fragmented US system and the less well-resourced (though more centralised) enforcement system in India, and serves as a roadmap to coordinated platform accountability that India's 2021 Intermediary Rules only partially mimic.

VI. SOCIO-LEGAL EVALUATION: GAPS AND CHALLENGES

With the growing extent of statutory coverage, a number of structural shortcomings remain in the Indian context. First, the ability of the states to investigate cybercrime is not uniform, with specialised cybercrime cells only located in metropolitan areas, and complainants in smaller towns relying on generalist police stations with limited technical expertise in collecting digital evidence.²⁰ Second, platforms and perpetrators are often located across jurisdictions, and even across jurisdictions outside of the country, making enforcement difficult in light of the slow pace of mutual legal assistance requests for data disclosure from foreign platforms..²¹

Third, reporting is greatly hindered by socio-cultural challenges. Surveys of technology-mediated gender-based violence (GBV) in India have repeatedly yielded results showing that many women who have encountered online sexual harassment are not likely to bother reporting to the police, for fear that they will be subjected to more harassment, or that the police will be unresponsive, or that they may face social stigma for reporting the incident in public. This underreporting is exacerbated by the tendency, reported in a number of studies, for police officers to provide counselling to the complainant that encourages an informal solution or withdrawal of the case instead of FIRs, especially when the accused is known to the complainant.²²

Fourth, there are difficulties with intermediary compliance with the 2021 Rules, especially for

¹⁹Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services (Digital Services Act) [2022] OJ L277/1.

²⁰Aparna Chandra and Bhagwan Das, 'Access to Justice and Digital Evidence in Indian Cybercrime Investigations' in Aparna Chandra (ed), *Criminal Justice in India* (Oxford University Press 2020) 210-225.

²¹Jonathan Zittrain, 'Jurisdiction and the Internet' in *The Future of the Internet - And How to Stop It* (Yale University Press 2008) 145-160.

²²Amnesty International India, *Troll Patrol India: Exposing Online Abuse Faced by Women Politicians in India* (Amnesty International 2020).

smaller platforms, which may be failing to designate a grievance officer, or failing to meet the 24 hours rule for removing content that is non-consensual intimate imagery.²³ There is a gap in terms of monitoring and enforcement of platform compliance, which, in the UK and EU, is performed by a dedicated and well-resourced regulatory body, rather than the Ministry of Electronics and Information Technology's largely reactive approach. Finally, the doctrinal reliance on obscenity-oriented provisions (Sections 67, 67A of the IT Act) for image-based sexual abuse sits uneasily with a privacy-based conceptual framework, since obscenity doctrine centres on community standards of decency rather than the violation of the victim's consent and autonomy, occasionally producing outcomes that scrutinise the content of the image rather than the absence of consent to its circulation.²⁴

But there's another reality about the mismatch between the law and life that is not so well known: intersectional vulnerability. Many people who are in marginalised castes, religious minorities or sexual and gender minorities experience online sexual harassment that is intertwined with abuse against their caste, religion or sexual orientation. However, the existing laws apply this harassment in the same way to all forms of harassment, and don't give special recognition or more severe penalties for attacks based on identity. In some instances, hate speech is considered an aggravating circumstance in sentencing, but not in this instance. Not to mention the emotional toll: anxiety, self-censorship, even withdrawal from online environments, rarely part of the legal process. The criminal justice system is more concerned with establishing guilt than with the complainant's suffering as the case goes on. So, the law is about punishment, but the survivors want something more - a civil remedy to get the content removed from the internet ASAP, before it gets lost in the court system. That would address a gap in the current system that it continually fails to fill.

VII. RECOMMENDATIONS

Let's pull together some takeaways from this analysis. First, Parliament needs to set up a clear, consent-driven law around image-based sexual abuse. Take a cue from the UK: instead of using outdated obscenity rules, shift the focus to whether someone actually agreed to have their image shared—not just whether the content is sexually explicit. Next, create a dedicated digital safety regulator. Give it real muscle—enough funding, authority, and the power to issue binding

²³Internet Freedom Foundation, 'Compliance Report on the IT Rules 2021' (Internet Freedom Foundation 2022).

²⁴Chinmayi Arun, 'Obscenity, Consent and the Regulation of Online Sexual Content in India' (2019) 4(1) Indian Journal of Law and Technology 55.

orders, as Ofcom has under the Online Safety Act 2023. Right now, the system relies too much on intermediaries reacting after harm's already been done.

Third, states should get central government funding to set up specialised cybercrime units—not just in big cities, but in every district. Trained people everywhere would help fix the uneven enforcement you see now. Fourth, police need better training. Courses should include trauma-informed and gender-sensitive approaches to handling online sexual harassment. This kind of training makes it less likely that complaints will just get brushed off, which happens all too often.

Finally, speed up legal cooperation with countries that host major online platforms. Quicker mutual legal assistance means you can cut down the lag between when harmful content shows up online and when authorities either take it down or track down who's responsible.

VIII. CONCLUSION

India's legal response to online sexual harassment has significantly evolved since 2013, transitioning from minimal statutory coverage to a comprehensive framework that includes criminal law, intermediary regulation, and constitutional privacy jurisprudence. However, despite these advancements, issues such as underreporting, inconsistent enforcement, and reliance on inappropriate obscenity concepts persist, indicating that simply expanding statutes has not led to adequate protection. A socio-legal perspective suggests that the effectiveness of the law depends not only on having offences in place but also on institutional capabilities, holding platforms accountable, and the social circumstances that influence survivors' decisions to seek legal recourse. Drawing from the experiences of the UK and EU, it is evident that a shift towards proactive, regulator-enforced platform accountability, rather than relying on individual complainants to navigate a reactive criminal justice system, offers a more promising path for reform.

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See, eg, orders of the Delhi High Court directing removal of non-consensually circulated intimate imagery on privacy grounds.

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