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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

BEYOND RHETORIC: WOMEN TRAPPED BETWEEN DETERRENCE AND ACTION IN THE CYBERSPACE

AUTHORED BY - DEVESHI CHAND
SUPREME COURT OF INDIA

This paper examines the legal and social obstacles women in India face in the cyberspace. While a number of laws exist to prevent online harassment and abuse, it is argued that these laws are frequently ineffective in safeguarding women. The paper also discusses the need for greater awareness and education regarding online safety among women, as well as the need for law enforcement agencies to be more proactive in investigating and prosecuting online offences against women.

Introduction

At no point in history have humans had the means to communicate as easily, access resources as easily, or simply, lead an easier life. The internet has revolutionised communication, education, commerce, trade, travel and but especially our interactions with other members of our species. We have access to information from all around the world, and to people in any corner of it. The 21st century is truly, the digital age. It is the best of times and the worst of times. Technological advancements have set us in a reality so bizarre, that even Orwell's most exaggerated dystopian predictions couldn't possibly foresee. With a female avatar being sexually assaulted in the metaverse, we truly have come far from the age of enlightenment.¹ The digital age has created new challenges for women, who are now exposed to a new form of abuse and harassment, in the virtual world. It takes only an internet connection and a device that provides internet connectivity, to give someone the means to harass online. With a large and developing internet population, online violence against women is on the rise in the world, especially in India. It is no secret that the hollow framework of Indian cyber laws has failed to create safe spaces for women both legislatively and logistically. The Criminal Amendment Act of 2013 included sections (s.354A, s354C & s.354D)², substituted with sections 75, 77 and 78 of the Bharitya Nyaya Sanhita, 2023³, that criminalise harassment of women online and the

¹ "Female Avatar Sexually Assaulted in Meta VR Platform, Campaigners Say" (*BBC News*, 25 May 2022) <https://www.bbc.com/news/technology-61573661> accessed 15 June, 2023.

² The Criminal Law (Amendment) Act, 2013.

³ Bharatiya Nyaya Sanhita 2023.

amendment of the Information and Technology Act that criminalises acts such as voyeurism (s.66E)⁴ and stalking (s.72). Sharing inappropriate images of women without their consent, posting content online, sending them obscene messages or even stalking them online are all offences. But despite these laws, acts like revenge porn, impersonation, and online sexual harassment are still on the rise. The ‘Bully Bai’ case of 2023 highlighted the lacunae in the law in mitigating such activity online. The real issue women face, however, is that despite such abhorrent acts that only seem to be increasing, both, in number and gruesomeness, the legislation and law enforcement for preventing and punishing such offenses does not seem to be improving. Lawmakers seem unable to grasp the urgency and need for a law preventing cyberviolence against women, which allows several of these acts of violence to go unnoticed. This paper shall attempt to expand on the violence and harassment women face online, and the shortcomings of the law that claims to protect them from these acts of aggression and violence online.

Cyberviolence Against Women

Harassing someone online, through the use of the internet, can take various forms, including cyber-harassment, revenge porn, threats of rape, and even more extreme kinds of violence, such as sexual assault or homicide.⁵ The perpetrators could be current or former romantic partners, co-workers, classmates, or even, as is most commonly the case, an unknown person. Some women, such as activists for women’s rights and rights of other marginalised groups, video gamers, public figures, journalists, bloggers and politicians, are in a particularly vulnerable position. Gender inequality (including discrimination, gender stereotypes, and sexism) is the primary motivating factor behind acts of violence committed against women and girls.⁶ In addition, women who have more than one trait that is regularly targeted, or, for the purpose of classification, are doubly marginalised from the perspective of cyberviolence, such as women of colour, members of minority religions, or persons who identify as LGBTQ, may be the targets of more frequent assaults. Abuse and violence directed at women online can stifle their ability to openly express themselves without the threat of physical harm. Women are disproportionately affected by cyberviolence, which not only causes them psychological trauma and suffering but also discourages them from participating digitally in the political,

⁴ The Information Technology Act, 2000

⁵“Cyberviolence against Women” (Council of Europe, April 27, 2023) <https://www.coe.int/en/web/cyberviolence/cyberviolence-against-women> accessed 18 June, 2023.

⁶ COE (n 6)

social, and cultural life of their communities.⁷ The right to internet usage has been classified as a human right.⁸ But how humane are the conditions for women on the internet?

Sexual Harassment on the Internet

Sexual Harassment has been classified into three types: gender harassment, unwanted sexual attention and sexual coercion.⁹ On the Internet, all three forms of sexual harassment that exist offline are also present. Due to the virtual nature of cyberspace, however, the most prevalent forms of SH on the Internet are gender harassment and unsolicited sexual attention.¹⁰ Sexual coercion does exist on the Internet, albeit without physical contact and in the form of virtual exploitation and assault.¹¹ Children and minors are, unfortunately, are at an extremely high risk of online sexual coercion¹². Sexual coercion includes asking for sexual content in the form of nude photographs, coercing someone to create explicit content similar to something they had created in the past, asking someone to share other explicit content with the coercer, by threatening to make previous content public, etc¹³. Sexual harassment in cyberspace is extremely prevalent. It is depicted in a variety of common formats that internet users encounter frequently, including verbal and graphical formats and both active and inert modes of online delivery.¹⁴ Active verbal sexual harassment consists primarily of offensive sexual communications initiated by the harasser¹⁵. The increase of internet usage has increased rates of sexual harassment online. The COVID-19 pandemic saw a massive spike in the rates of online sexual harassment against women.¹⁶ Since India was dealing with a major resource shortage, people were asking for help online. During this time of major distress, while a lot of women were appealing on social media to ask for help, and disclosing their contact details to ask for basic amenities like oxygen cylinders and ventilators, they were faced with a number of lewd messages and phone calls.¹⁷

⁷ *ibid.*

⁸ Saumya Uma, "Outlawing Cyber Crimes Against Women in India" (2017) BLR.

⁹ Fitzgerald LF, Gelfand MJ and Drasgow F, "Measuring Sexual Harassment: Theoretical and Psychometric Advances" (1995) 17 *Basic and Applied Social Psychology* 425.

¹⁰ Barak A, "Sexual Harassment on the Internet" (2005) 23 *Social Science Computer Review* 77.

¹¹ *ibid.*

¹² "Online Sexual Coercion and Extortion of Children | Europol" (*Europol*) <https://www.europol.europa.eu/crime-areas-and-statistics/crime-areas/child-sexual-exploitation/online-sexual-coercion-and-extortion-of-children> accessed 17 June, 2023.

¹³ *ibid.*

¹⁴ *Europol* (n 12)

¹⁵ *ibid.*

¹⁶ Mishra A, "A Study on Online Violence Against Women During COVID-19 Pandemic with a Special Reference to India" (2021) 4 (6) *IJMLH* <https://www.ijlmh.com> accessed 18 June 2023.

¹⁷ *ibid.*

Further, the internet is not where the harassment and victimisation ends. Where primary victimisation ends, secondary victimisation begins. Like offline sexual harassment, victims of online sexual harassment face similar stigmas and challenges in reporting. Victims of cyber sexual harassment experience similar stigma and often refrain from reporting. The delay in the process, incompetence and insensitivity of the authorities, and the social stigma associated with being victims of sexual harassment make things a lot more difficult for victims.

Where is the Law?

The natural question that follows, is, “what about the law?” How effective is it in curtailing these offenses online and what are the rates of conviction?. Even though India was one of the first countries to adopt a law for punishing offences relate to information technology¹⁸, it did not include offences for victimisation of people using technology until much later. Cybercrimes became punishable only under the Information Technology (Amendment) Act of 2018. Indian legislators have not enacted a law specifically regulating cyberspace activities. The Information Technology Act of 2000 consists of the chapter "Offenses", which punishes several acts of cyberviolence, such as stalking¹⁹, cyberspace harassment, publishing sexually explicit content in digital formats²⁰, etc. However, there is no separate and designated law to prevent and punish cyberviolence or any such acts committed in the cyberspace. In 2022, Muslim women were ‘mock-auctioned’ on an app named ‘*Bulli Bai*’, hosted on GitHub, wherein pictures of hundreds of Muslim women were used without their consent.²¹ This is one of several other platforms that have turned up in the past. IN 2021, ‘Sulli Deals’, which was a similar app, and ‘Liberal Doge’, a YouTube account, were also committing the same offense of auctioning off women online.²² However, these incidents went unnoticed by the authorities and hence the perpetrators escaped unpunished. The persons behind *Bulli Bai* were arrested, however, when it came to charging the accused, the lacunae in the law was evident as the IT Act simply did not contain adequate provisions for such offences.²³ Absence of specific laws for cyberviolence against women laws, is hence a huge challenge, especially since the existing definitions of cybercrimes are vague,

¹⁸ Halder D and Jaishankar K, “Cyber Gender Harassment and Secondary Victimization: A Comparative Analysis of the United States, the UK, and India” (2011) 6 *Victims & Offenders* 38 <http://dx.doi.org/10.1080/15564886.2011.607402> accessed 18 June, 2023.

¹⁹ The Information Technology Act 2000, s 66E.

²⁰ IT ACT 2000, s 67.

²¹ Anand G and Verma H, “*Bulli Bai* and Cyber Violence: A Symptom of Power Imbalance” (*The Leaflet.*, 5 January 2022) <https://theleaflet.in/bulli-bai-and-cyber-violence-a-symptom-of-power-imbalance/> accessed 17 June, 2023.

²² *ibid.*

²³ *Anand* (n18).

making it difficult to prosecute instances of cyberviolence against women. definition of "sexual harassment" in both the aforementioned legislations is extremely broad, making it difficult to prove that the accused's actions constituted sexual harassment. Quite often, cases for online offences such as morphing, impersonation, etc. are registered under more general provisions such as outraging of modesty of a woman u/s 354²⁴, s. 507²⁵ and s.509²⁶ of the IPC, for lack of any substantial and specific provisions for such offences.²⁷ Further, there is a lack of understanding regarding cyberviolence against women, especially amongst law enforcement authorities who do not necessarily process all cases and in case they do, it is often extremely hard to find the perpetrator due to the lack of resources,²⁸ making it challenging to prosecute the few reported cases. The lack of resources and funds to investigate such cases, in addition to the lacunae in the law that makes it difficult to charge the offenders in the first place, is a reflection of the lack of seriousness with which cyberviolence is viewed by the lawmakers. It is difficult to protect women from such forms of violence due to these lacunae and inadequacies in the laws, since there are almost negligible laws for preventing cyberviolence against women. A concerning number of cases reporting cybercrimes against women have been registered since 2014 according to NCRB reports, but a considerable number of women online are aware of their rights under the law, which in the first place are scanty. Of the women who do report cyberviolence to law enforcement authorities, a major percentage find them to not be helpful.²⁹ Moreover, Internet Service Providers (ISPs) in India are not mandated by the law to share information regarding the offenders. Their responsibility is limited as per the IT Act,³⁰ which makes the process of identifying the offender considerably more difficult. What is needed is a more stringent framework that regulates ISPs and places more accountability and responsibility on them.³¹

Even digital evidence, for that matter, has to undergo the same process as all other forms of evidence, i.e., through the Indian Evidence Act. There are no separate mechanisms or legislations in place to allow for better and easier processing of digital evidence. For years, lawyers, activists and women's organisations have been pushing to introduce a separate

²⁴ IPC 1860, s 354

²⁵ IPC 1860, s. 507

²⁶ IPC 1860, S. 509

²⁷ *Uma* (n 9)

²⁸ *ibid.*

²⁹ *Uma* (n 9)

³⁰ IT Act 2000, s 72.

³¹ *Halder* (n 17)

legislation for cybercrimes, stating plainly that the current regulations in place are simply inadequate and do not cover all types of offences.³² The Information Technology (Amendment) Bill 2022 defines some of these vague terms more clearly, making it easier to include more acts of cyberviolence within the ambit of the legislation. It proposes to introduce subsection G to section 66, which makes the act of intimidating a woman, and coercing her into expressing a certain opinion or refraining from expressing an opinion through any threat of sexual assault, physical violence to her or her property, threat to reveal personal information about her or spread any false information about her, or other types of abuse, a cognizable and non-bailable offence, punishable up to 10 years.³³ This amendment, if approved and enacted, is a milestone in preserving the safety of female journalists, who are often abused online for expressing their opinions, especially since abusers often go so far as to make death or rape threats. This attempt, though laudable, does not fill the gap that exists in the law, and can only be filled by a separate, special legislation for preventing and punishing cybercrimes and cyberviolence.

The Delhi High Court issued a significant judgement in April 2021 on reposting and republishing offensive content on different websites. In *X v. Union of India*,³⁴ wherein the petitioner's photos were taken from her Facebook and Instagram accounts and posted on a pornographic website, then reposted on other websites and online platforms, violating Section 67 of the IT Act³⁵ and other IPC offences. The Delhi Police's cybercrime unit expressed its willingness to comply with the Court's order to remove/disable access to the petitioner's offending content, but due to technological constraints, it could not guarantee that it could completely remove them from the internet. However, the petitioner complained that the offenders had redirected, reposted, and republished the offending content onto other websites and online platforms, rendering the Court's orders ineffective. It is to be noted that the cybercrime unit openly addressed its technological restraints. The Court made directions to resolve a dispute involving offensive content on the internet. The petitioner was directed to furnish in writing to the Investigating Officer of the FIR, all available information relating to the offending content, including the Image URL and Web URL pertaining to the offending image files, within 24 hours of receipt of a copy of the judgment, the Delhi Police/Cybercrime

³²Mandavia M, "NCW Conducts Consultation on Amending IT Act to Protect Women Better Online" (*The Economic Times*, 3 December, 2020) <https://economictimes.indiatimes.com/news/politics-and-nation/ncw-conducts-consultation-on-amending-it-act-to-protect-women-better-online/articleshow/79549273.cms> accessed 18 June, 2023.

³³ IT (Amendment) Bill 2022.

³⁴ 2021 SCC OnLine Del 1788.

³⁵ IT Act 2000, s 67

Cell were directed to remove/disable access to the offending content, the Web URL and Image URL of which would be furnished by the petitioner as above, from all websites and online platforms, forthwith and in any event within 24 hours of receipt of information from the petitioner.³⁶ Further, directions were issued to various search engines to globally de-index and de-reference from their search results the offending content as identified by its Web URL and Image URL, including de-indexing and de-referencing all web-pages, sub-pages or sub-directories concerned on which the offending content could be found and they were directed to endeavour to use automated tools, to proactively identify and globally disable access to any content which is exactly identical to the offending content, that may appear on any other websites/online platforms.³⁷ The Delhi Police was directed to obtain from the pornographic website concerned and from various search engines all information and associated records relating to the offending content such as the URL, account ID, handle name, Internal Protocol Address, hash value and other such information as may be necessary for investigation. The petitioner was granted liberty to issue written communication to the Investigating Officer for removal/access disablement of the same or similar offending content appearing on any other website/online platform or search engine(s), whether in the same or in different context; with a corresponding direction to the Investigating Officer to notify such website/online platform or search engine(s) to comply with such request.³⁸ The Court made it clear that non-compliance with the foregoing directions would forfeit the exemption, if any, available to it generally under Section 79(1) of the IT Act and as specified by Rule 7 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, and make such entity and its officers liable for action as mandated by Section 85 of the IT Act.³⁹

The Impact of Cyberviolence on Women

It is important to also discuss how these acts of aggression impact the victims of such cyberviolence in the long term and short term, emotionally and psychologically. Women suffer prolonged distress, throughout the duration of their online victimisation, which lasts long after this primary victimisation ends. They face a setback and degradation in their quality of work, apart from mental health disorders like depression and anxiety. Abuse and violence directed at women online can stifle their ability to openly express themselves without the threat of physical

³⁶ 2021 SCC OnLine Del 1788.

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ *ibid.*

harm. Women are disproportionately affected by cyberviolence, which not only causes them psychological trauma and suffering but also discourages them from participating digitally in the political, social, and cultural life of their communities.⁴⁰ Especially for women who express their opinions online, such as journalists and authors, the space, which is essentially their working space, becomes extremely hostile and violent. The repercussions may be extremely significant. A very real threat of bodily injury, as well as damage to livelihoods produced by the broadcast of fraudulent and sexually explicit photographs or other malicious lies, adds to the victims' worry and fear, which is worsened by the fact that they are already suffering from anxiety and fear.⁴¹ Amnesty International reported that at least 41% of women who had faced online abuse were afraid for their personal safety, and that 24% feared for the protection of their family, due to the fact that online mobs who attack women often issue explicit and graphic threats against their children.⁴² The poll was conducted in eight different nations last year. In addition to this, these assaults happen all over the place and are very common.⁴³ In a survey conducted in 2014 by the EU Fundamental Rights Agency, approximately one quarter of women reported having been the target of harassment online.⁴⁴ These effects are recognised by the United Nations, the Council of Europe, and other major bodies that are working towards creating a better environment for women.

Conclusion

The violence that women face online is as devastating as the violence that they must face offline, and the roots for this lie in the gender equality issues that continue to plague society. If nothing is done to stop it, continuous acts of cyberbullying like this will not only have a chilling effect on women and cause them to engage in self-censorship, but they will also have long-term negative effects on their mental health.⁴⁵ Cyberviolence, particularly that with sexual undertones like the Bulli Bai app, is a symptom of a larger problem - a society that deprives women of their ability to equally engage in political, social, and cultural life; a society that is also Islamophobic and misogynistic⁴⁶. This type of society is a root cause of the cyberviolence

⁴⁰ *Europol* (n 12)

⁴¹ Al Hussein, Zeid Ra'ad, 'The Impact of Online Violence on Women Human Rights Defenders and Women's Organisations' (*United Nations Human Rights Office of the High Commissioner*, 21 June 2018) <https://www.ohchr.org/en/statements/2018/06/impact-online-violence-women-human-rights-defenders-and-womens-organisations> accessed 17 June 2023.

⁴² *ibid*

⁴³ *Al Hussein* (n 41)

⁴⁴ *ibid*

⁴⁵ *Mishra* (n17)

⁴⁶ *ibid*

that occurs. In this instance, the targeting of vocal women, the majority of whom belong to a minority community, is an overt display of dominance.⁴⁷ This power imbalance needs to be addressed by the implementation of awareness initiatives, complaint and protection systems, and harsh consequences that will deter such behaviour in the future.⁴⁸ It is necessary to address cyber sexual and gender harassment issues. As a result of the world's transition to the digital era, technological advancements will accelerate in the future. If we continue to do nothing, these crimes will only increase, the people will endure mental anguish, and the law will become unenforceable⁴⁹. By enacting specific laws to address cyberviolence against women, clarifying the definitions of cybercrimes, raising awareness about cyberviolence against women, and providing more resources to investigate and prosecute cybercrimes, these gaps may be closed.⁵⁰ To ensure that women are protected from this form of violence, there is still much work to be done to address the gaps in Indian law regarding cyberviolence against women. However, the successful prosecutions of these cases demonstrate that perpetrators can be held accountable and victims can receive justice.⁵¹ The unresolved issue of cyber violence has gained momentum because of the COVID-19 epidemic, and the shift of various platforms into the online format. Now that the right to internet usage is a human right, it is the responsibility of the government to enable humane conditions for its usage, and to create a safe environment for women to freely browse and use the internet. Long-term strategies that address root issues are needed to end online violence against women. Online and offline violence against women is evidence of systemic marginalisation of women. Inequality between men and women, discriminatory attitudes and beliefs, gender stereotypes, social norms that accept and perpetuate violence and abuse, and institutional structures that repeat inequality and discrimination cause this imbalance.⁵²

All agents, including law enforcement authorities, the government, the parliament, ISPs, popular media platforms and social media websites, organisations and workspaces must all come together to create a safer environment for women. The parliament must work towards creating new laws that ensure greater safety for women online. Online platforms must create more efficient software and algorithms to better identify online abuse, any obscene or indecent

⁴⁷ *ibid*

⁴⁸ *Mishra* (n17)

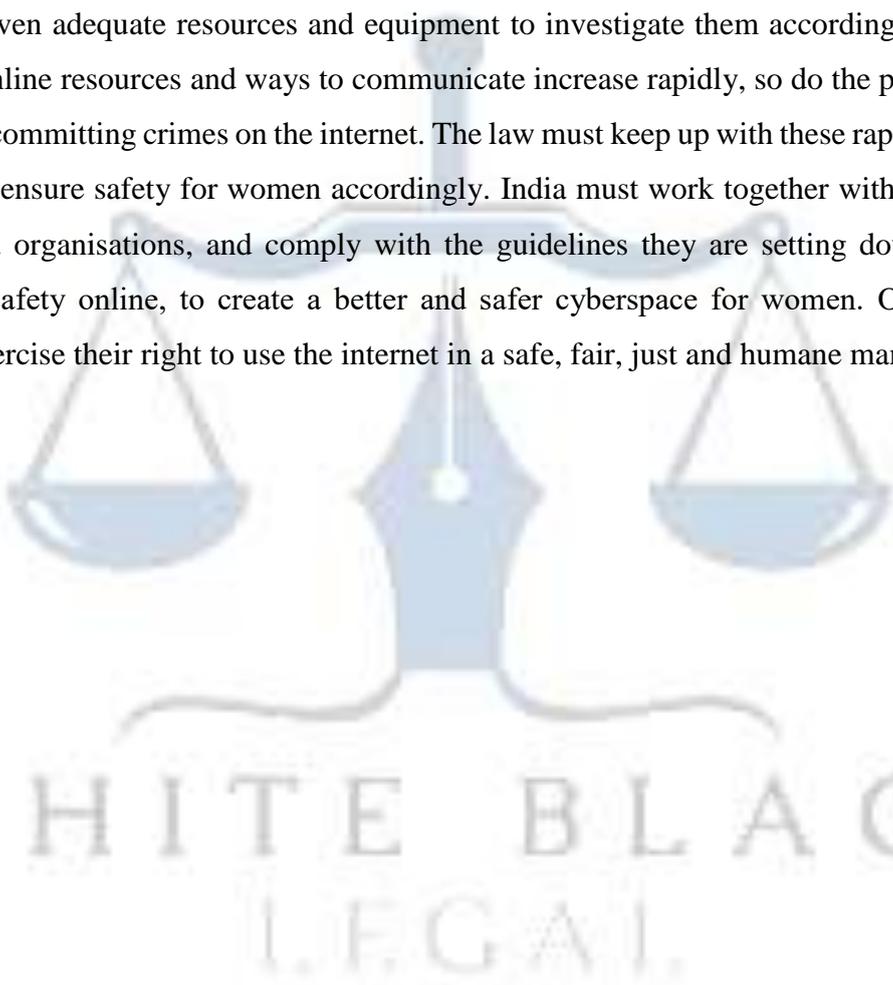
⁴⁹ *Mishra* (n17)

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² *ibid.*

content and any form of cyberviolence. Certainly, women must also be made more aware of their rights online and the recourses available to them for reporting any form of cyberviolence. However, the main focus should always be on the cause of the problem and not the victim. Hence, it is of absolute importance for lawmakers and law enforcement authorities to take cognizance of the lack and incompetence of the laws as well as their resources to combat the issue of cyberviolence against women. There must be better and quicker mechanisms for not only reporting such offences, but also for coping with them and acting upon them with efficiency. Law enforcement authorities must be better trained to deal with such offences and must be given adequate resources and equipment to investigate them accordingly. While the internet, online resources and ways to communicate increase rapidly, so do the possibility and agency of committing crimes on the internet. The law must keep up with these rapidly changing times, and ensure safety for women accordingly. India must work together with international bodies and organisations, and comply with the guidelines they are setting down regarding women's safety online, to create a better and safer cyberspace for women. Only then can women exercise their right to use the internet in a safe, fair, just and humane manner.



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