internet democracy project

Briefing Paper

Keeping Women Safe? Gender, Online Harassment & Indian Law

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> Girls should not face these problems. Girls or females should not find themselves in a position where they have to go to the police. They should not give their personal information and should not post their original photographs on the Internet. Anyone can snatch the photograph on the Internet and use it for their own purposes. One should do those things to avoid probable offences.
>
> - A Representative from the Mumbai Cyber Police Cell, 22 January 2013

> Everyone I know, any normal person I know is very uncertain of any law and is very unconfident about whatever the legal framework. First step to the police station and you know it is not going to be of any help to you… it is going to be a headache for you... in terms of everything… in terms of listening to you, in terms of helping you… I am always hoping that it will never ever go to the realm of actually hitting the legal framework.
>
> - Muksaan, an active social media user, 11 December 2012

> Most of what we read is how Section 66A is used against the Internet users. I am not sure that if I should go to the police if I face abusive speech online.
>
> - Kalpana, an online activist and social media user, 22 January 2013

From sexual harassment to rape threats to gender-based hate speech, it has become increasingly clear that women around the world face disproportionate levels of abuse online. Findings of the Internet Democracy Project research study, '"Don't Let It Stand!": An Exploratory Study of Women and Verbal Online Abuse in India', indicate that women in India develop a variety of strategies to deal with the verbal threats they face. However, these strategies very rarely include the law, our research shows, resulting in a silence around questions of legal effectiveness and recourse for online verbal abuse.[1]

This paper asks: how and to what extent can the law in India help? As the research documented in '"Don't Let it Stand!"' highlights, for many women living in India, there are several reasons why legal recourse is an absolute last resort, or simply not a resort at all. Given that cyber laws are relatively new, a lack of knowledge around these

[1] This briefing paper is part of a larger research project by the Internet Democracy Project, that looks at the sexist comments, sometimes downright abuse, that women who are vocal on social media face and the strategies women deploy to deal with such comments and abuse. While the briefing paper can be read independently, more information about the context in which the questions raised here first came up can be found in the complementing research report, '"Don't Let it Stand!": An Exploratory Study of Women and Verbal Online Abuse in India'. The authors would like to thank for their valuable inputs colleagues at the Internet Democracy Project and Point of View, participants in the research and participants in two national consultations, in Delhi and Mumbai respectively, where this research was presented earlier. Unless mentioned otherwise, quotes used in this paper are from interviews conducted in the course of this larger research project.

provisions – on both the part of women and the police – poses one significant barrier. Furthermore, '"Don't Let It Stand!"' also clearly brings out women's reluctance to engage with law enforcement as such engagements often result in women being disbelieved or, worse, blamed for the harassment they face, both online and offline, as the above quote from the Mumbai Cyber Cell demonstrates.

But the law itself may be problematic as well. Consider, for example, what is perhaps the most well-known Internet-related law in India at present: the highly controversial section 66A of the Information Technology (Amendment) Act, 2008 (henceforth IT Act), which allows, among other things, for addressing verbal abuse online.

When the section needs defending, the particular difficulties women face online have frequently been used as a justification. Thus, Union Minister for Communications and Information Technology Kapil Sibal has explicitly said in an interview with NDTV,

> Many kinds of threats can be given on the Internet [to women] which cannot be given on a normal communication network. Therefore, the nature of the law has to be different.

The claim, thus, is that the law is what it is to ensure women's protection.

But while section 66A may have been intended to ensure women's protection, it has also been extensively criticised for making possible widespread censorship, and as one of the opening quotations of the paper illustrates, our research has shown that even women who face a great deal of abuse online are now often reluctant to resort to section 66A given the implications that this section has for censorship and freedom of expression.

In the face of such contradictions, a more thorough assessment of whether existing legal provisions to address gendered online verbal abuse in India are adequate — and if not, why not — is, therefore, urgently required, and it is precisely in this exercise that this briefing paper seeks to engage.

The paper begins with an examination of one set of laws in India that can potentially be mobilised to fight gendered online abuse: those regarding obscenity and indecency. In particular, to understand their usefulness, we will ask: how do such laws construct women?

In the second section, the paper then analyses in greater detail other provisions in the law that can be drawn on to specifically address the verbal abuse of women online, including section 66A.

Finally, in the third section, the paper puts forward a number of possible legal amendments that have emerged over the course of our research as potential ways forward to provide better protection to women who face abuse online. These proposals aim to serve as a starting point for further debate and discussion.

1. Gender and Censorship: where do women fit in?

Let us start by considering the ways in which Indian law seeks to address women's issues and rights. Inevitably, such an examination has to take as its starting point the most visible markers of gender: women's bodies and their sexuality. As we will see in the following sections, throughout the Indian legal system, a disproportionate emphasis has been placed on the representation of these markers. As the creation, publication or circulation of such imagery is believed by many to contribute to the exploitation of women, the protection of a woman is argued to be synonymous with the protection of her image.

But who are these laws really protecting? As will become clear from our analysis, if female sexuality is the culprit, public morality is the victim. The notion of morality vis-à-vis female bodies and sexualities is deeply entrenched within not only our social culture but our legal culture as well. The underlying assumption around which laws focusing on obscenity and (in)decency in India are based is the belief that sexuality is an inherently corrupting force that serves to destroy the moral and social fabric of a culture, and therefore, something that needs to be suppressed.

While many morality-driven provisions are found in the IT Act today, they are thus preceded by offline laws that came into existence long before the cyber era. And it is in this tradition that any woman drawing on obscenity or indecency laws to fight verbal online abuse willy-nilly inscribes herself.

1.1. Women as Objects or Subjects of Obscenity?

Let us explore the ideas outlined above in some more detail by considering the most important obscenity provisions.

Section 292 of the Indian Penal Code (IPC) defines obscenity as that which is 'lascivious or appeals to the prurient interest or tends to deprave or corrupt persons'. In the IT Act, too, specific sections have been included in order to deal with the issue of defining and restricting the 'obscene' on the Internet: there are section 67, 'publishing or transmitting obscene material in electronic form', and section 67A, 'publishing or transmitting of material containing a sexually explicit act in electronic form'. The latter was added when the Act was amended in 2008.

Section 67 exactly replicates Section 292 of the IPC; however, punishments under the IT Act are much higher. Under section 292, a first conviction can lead to a prison term of up to two years and a fine of up to two thousand rupees. A second or subsequent conviction carries a prison term of up to five years, and a five thousand rupee fine. In contrast, under section 67, a first conviction can lead to a prison term of up to three years and a fine of up to five lakh rupees. In the event of subsequent convictions, imprisonment can extend up to five years, with a fine of up to ten lakh rupees. The seriousness with which the crime of obscenity is viewed is, thus, heightened by the change in medium.[2]

Section 67A, on the other hand, is an entirely new legal provision with no offline precedent; it effectively creates a new category of crime, with even higher punishments of up to 10 lakh rupees fines and of imprisonment of up to five years for first convictions and upto seven years for subsequent ones.[3]

Exceptions stated in the law to all the above are materials that can be proved to be 'justified as being for the public good', extending to art, literature, science and learning. However, given that none of these fields are defined monolithically, justifications may be left open to subjective understandings. Obscene material as one having 'the tendency to deprave or corrupt' is a phrase couched in ambiguity, and its potential for varying interpretations may lead, and has led, to disagreements between judges. For example, in a 1986 case pertaining to the description of the female anatomy in a work of literature by a well-known writer, a High Court judge believed the content to be obscene, whereas the Supreme Court judges overruled the decision, believing it to be for the advancement of art.[4] With no scientific or sociologically accepted definition of what is depraved or corrupting – or, for that matter, a singular understanding and approach to the field of 'art' – a large breadth of interpretative space is created as per the personal values, views and perspectives of individuals.

Interestingly, the definition of obscenity as lascivious (lustful, with a desire for sexual practices) or appealing to the prurient interest (arising from indulgence in lustful thought) is, as Indira Jaising has pointed out, a concept of obscenity that derives from 19th Century Christianity, 'according to which anything to do with sex is dirty and obscene'.[5] More specifically, the definition of obscenity as provided in Section 292 of the IPC was taken from an English case in 1868, in which the presiding judge declared, when asked to determine whether or not the content of a specific text was obscene,

> I think the test of obscenity is this: whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.[6]

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[2] Kovacs, Anja (2012). *An Assessment of India's Compliance with UN Special Rapporteur Frank La Rue's Recommendations regarding the Internet and Freedom of Expression*. New Delhi: Internet Democracy Project.
[3] Ibid.
[4] Jaising, Indira (2006). Obscenity: The Use and Abuse of the Law. In Bose, B. (Ed.), *Gender and Censorship*. New Delhi: Women Unlimited.
[5] Ibid., p. 121.
[6] Quoted in Mazzarella, William (2011). The Obscenity of Censorship: Rethinking a Middle-class Technology. In Baviskar,

It deserves to be asked who the judge is referring to, as having minds that are 'open to such immoral influences'. In colonial times, such references were believed to apply especially not to the colonisers but to the subjects of colonisation: the barbaric, the illiterate, and by extension, the easily corruptible. Today, these standards remain much the same; however, those wielding the censor stick have changed: it is the middle class gatekeepers of Indian culture – in particular the Censor Board and its allies – who are now considered to be 'immune' from the harmful effects of any potentially damaging imagery.[7]

In addition to the role of British rule and Christianity in the development of obscenity laws, it is indeed important to also consider the ways in which culture and morality have become intertwined in the context of an ex-colonised nation that seeks to define itself against the legacy of its past rulers. 'Indian Culture' has been mythologised – in particular by the Hindu right – into a singular, monolithic past of purity, separable from Western influences. Subsequently, the female body has become the site on which this battle for culture plays out, where the sexless, clothed Bhartiya Naari is the epitome of cultural purity, whereas the reality of her body and lived experience are seen as an affront to this mythic culture; something to be curbed. In the context of Indian politics and its grappling struggle with cultural identity, the chastity or purity of the female sexless body has come to be seen as synonymous not only with morality but also with cultural worth.

Be it the colonisers or the Indian middle classes, through their service as censors, the censors, thus, in effect protect themselves, their interests and culture, from the Other. And as Brinda Bose has argued, where matters of sexuality and/or sexual representation somehow become an issue — be it for reasons of decency and morality or for concerns regarding the broader interests of the state — the object of control is a woman: 'It is the woman who represents both the threat of transgression in Indian society and the need for its control, and her body is the single signifier that sums up the problematic'.[8]

1.2. Indecency Laws: The Death of Agency?

The issue of the female body – and its control – as being central to the notion of morality is nowhere clearer than in the Indecent Representation of Women (Prohibition) Act 1986 (IRWA), which is currently under consideration for amendment by Parliament to include virtual spaces. The Act defines the 'indecent representation of women' as a

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A. And Ray, R. (Eds.), *Elite and Everyman: The Cultural Politics of the Indian Middle Classes*. New Delhi: Routledge. pp. 338.

[7] Ibid., p. 342-343.

[8] Bose, Brinda (2006). Introduction. In Bose, Brinda (Ed.), *Gender and Censorship*. New Delhi: Women Unlimited. p. xxxiv.

> publication or distribution in any manner, of any material depicting a woman as a sexual object or which is lascivious or appeals to the prurient interests, or depiction, publication or distribution in any manner, of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent or derogatory to or denigrating women or which is likely to deprave, corrupt or injure the public morality or morals.

Furthering the ideological impetus behind Section 292, the IRWA is steeped within the assumption that any image that is sexually provocative or explicit is insulting to Indian womanhood or necessarily corrupting. Following the patriarchal framework of the Indian legal system, it sees the female body as something to be protected – by covering it up.

The IRWA's ambiguity also results in a situation where the lines of 'decency' are drawn by select and powerful individuals. The vague framing of the law renders the IRWA open to interpretation, wherein the provided definition for the 'indecent representation of women' could potentially be used to ban a vast range of visual communication referring to women, because what is morally injurious is not defined by any universal standard, and will differ from person to person.

Once again, a law that in name serves the interests of women, in practice seeks to curb the sexual and bodily freedoms of women in the name of morality, and by extension, culture.

Indeed, despite the IRWA's vaguely worded definition of obscenity, legal activist and author Flavia Agnes points out that there have been no discrepancies in its implementation – and this to the detriment of women. She writes, 'the equation of indecency with nudity and sex allowed all other portrayals of women to pass off as 'decent'. When women clad in saris were depicted in servile, stereotypical roles, these images were not attacked as indecent.'[9] While women's groups are seeking to include into the notion of indecency those images depicting women in domestic or submissive roles, these attempts thus have had little success, affirming that is a wider narrative of morality that governs these laws, rather than a genuine commitment to the empowerment of women and a gender equal society.

In addition to the larger context of colonialism and subsequently a Victorian morality inherited by India's middle class, Madhu Kishwar and Ruth Vanita identify three specific groups who had an interest in getting the IRWA tabled and passed. For one thing, they see the government as a force that welcomes any opportunity to acquire more control over its citizens. In addition, they argue that the impetus here is a Hindu state dominated by the values and morals of men who fundamentally support 'the notion that anything sexual is obscene and that respect for women is equivalent to treating

[9] Agnes, Flavia (2006). Indecent Representation of Women. In Bose, B. (Ed.), *Gender and Censorship*. New Delhi: Women Unlimited. p. 139.

them as sexless'.[10] In other words, they see the law as a reflection of the strength of the conservative lobby in its desire to impose a repressive culture on people – and in particular, women – in the name of Indian tradition. Finally, and interestingly, the authors point to urban women's groups who, taking their cues from similar campaigns in the Western world, campaigned for this law as a means to prevent the exploitation of women in visual culture. The notion of nudity as exploitation has been endorsed by these feminists, who argue that a sexualisation of the female body is insulting, humiliating, and a marker of objectification.

Indeed, as Brinda Bose has written,

> The central dilemma of censorship for feminists clearly rests on the (perhaps potential) conflict between the question of freedom of speech, expression and representation on the one hand and the possibility/threat/reality of exploitation on the other'.[11]

Given the tensions arising from the battle for 'culture' in the context of a powerful conservative bloc seeking to silence dissenting voices, the question of to what extent censorship can be a productive tool for women's rights advocates in India will remain a controversial one — and in the Internet age perhaps more so than ever. Without a consideration of women's right to self-expression as well as the notion of consent, it is questionable to what extent laws that seek to cover up flesh can usefully contribute to the wider struggle for women's rights.

1.3. Consent and the Censor

> a woman's right not to be exploited, degraded and demeaned by the sexual use of her body is counteracted by her right to consensually expose her body in whatever way she deems fit, as also by her – and everyone else's – right to freedom of speech, expression and representation that is guaranteed by democratic constitutions all over the world.
>
> - Brinda Bose[12]

Perhaps one of the most neglected questions in relation to a wide range of women's issues is indeed: where laws are meant to protect women, what emphasis do they place on consent? In situations that may be potentially exploitative, a focus on consent considers the wishes of an individual as having precedence over externally imposed interpretations. When considering issues arising within the arena of obscenity, indecency and immorality, what space does the law provide, or deny, to women's own desires and rights to express themselves as sexual or independent individuals? The IRWA, for example, fails to acknowledge the idea that women may choose certain

[10] Kishwar, Madhu and Vanita, Ruth (2006). Using Women as a Pretext for Repression: The Indecent Representation of Women (Prohibition) Bill. In Bose, B. (Ed.), *Gender and Censorship*. New Delhi: Women Unlimited. p. 110.
[11] Bose, Op. Cit., p. xxi.
[12] Bose, Op. Cit., p. xx.

representations of themselves, or enjoy certain forms of visual entertainment that the state deems 'indecent'. Without a provision for consent, can a woman who publishes a 'sexually explicit', 'obscene' or 'indecent' photograph of herself be booked under a series of acts originally designed with the intention to 'protect' her? If so, what is being protected under these laws – women, or an idea of womanhood? As the above sections have shown, legal justice tends to side with the latter.

How do India's Internet laws, then, fare on their inclusion of consent? In the IT Act, the question of consent is particularly relevant with regard to three sections. Section 66E of the IT Act concerns 'punishment for violation of privacy' and reads:

> Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.

What is most striking about this law is that the requirement of consent is clearly stated: an image exposing certain parts of a person's body 'without his or her consent'' is punishable. In this respect, section 66E is a progressive clause that places the absence of consent at the heart of criminalising an act.

However, this is in stark contrast to the two following sections of the IT Act: Section 67, 'publishing or transmitting obscene material in electronic form', and section 67A, 'publishing or transmitting of material containing sexually explicit act, etc in electronic form'. Neither section 67 nor section 67A allow for the provision that consensual or voluntary publishing of such material is acceptable, thus effectively overriding the provision for consent in 66E. In fact, punishments under section 67A are exactly the same as those under section 67B – a clause pertaining to child pornography, both in its production, distribution and consumption and in its cultivation of sexual relationships with children through an online medium. The exposure of a woman's body (irrespective of her consent in the situation) is thus effectively equated to the sexual exploitation of children,[13] indicating the extent to which a woman's consent is overridden and overshadowed by the need to fulfil the public moral compass.

Until consent is on the table, women aren't being dealt a fair legal hand. While some women may at times be able to mobilise discourses of morality and decency in favour of their own interests, including when seeking to fight online abuse, ultimately sections of the law on obscenity and indecency that ignore women's consent contribute to women's continued subjugation, rather than to their empowerment.

[13] On this point, see also Kovacs, Op. Cit. Note that the viewing of child pornography is illegal, whereas the viewing of adult pornography is not, though its sale and distribution are.

2. Verbal Abuse Online: How the Law Can Help

The laws discussed so far pertaining to the exploitation of women online address predominantly the representation of the female body and sexuality. Indeed, it is worth noting the emphasis placed even by the IT Act on women's bodies or sexualities: within the Act, while section 66A deals with a generic category of 'offensive messages', various sections have nevertheless additionally been included to specifically address obscenity, the representation of sexually explicit acts and of a person's private parts, some with heavier punishments than section 66A carries.

Yet not all women can or will draw on obscenity or indecency provisions in their fight against verbal online abuse. What alternatives exist and how useful are they?

2.1 The IT Act: Understanding Section 66A

For women seeking recourse to the law to fight online abuse, section 66A of the IT Act might seem like a valuable option, as it provides the widest legal recourse for the use and misuse of words online. The section was included after the Act's amendment in 2008, and deals with the sending of offensive messages through communication services. The law reads:

> Any person who sends, by means of a computer resource or a communication device,-
>
> a) any information that is grossly offensive or has menacing character; or
>
> b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or
>
> c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages,
>
> shall be punishable with imprisonment for a term which may extend to three years and with fine.

As highlighted above, Union Minister for Communication, Information and Technology Sibal has argued that section 66A was designed specifically, among other things, as a response to harassing speech and verbal abuse as faced disproportionately by women. However, despite the fact that the impetus behind the law may have been well intended, its vague framing, for many, leaves much to be desired. Repeatedly in the news for its draconian enforcement, tendencies toward censorship, and misuse, the problems with 66A are, again, rooted in the language of the law itself.

Under section 66A, any message or information sent for the purpose of causing 'annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will' is punishable. Given the fact that several of these words are not defined within the law and have no singular denotative definitions, the scope for interpretation is huge. Emotive terms such as 'annoyance' or 'inconvenience' are as open to subjective interpretation as the 'moral injury' posed by a violation of the obscenity or indecency laws, thus potentially creating a situation where the powerful, rather than the vulnerable, are protected. As a result, the opposition to 66A has been great, and many people of all genders consider it to be a violation of the right to freedom of speech, and a means for the state to enforce a higher degree of censorship in its own interests.

Furthermore, offences under section 66A are cognisable, which means the criminalisation of speech under the law is subject to the ways in which the case is interpreted by the police, to whom the complaint is filed, rather than by a Magistrate. In addition to this, sub-section c of 66A states that the law can be applied to 'electronic mail messages', which in effect includes private mobile phone text messages that may serve to 'annoy' or 'inconvenience' someone.

Arrests made under 66A illustrate the ways in which the law is used to protect those who already have power, and by extension to curb the right to speech and expression of those without similar influence. During the shutdown of Mumbai city after the death of Shiv Sena leader Bal Thackery in November 2012, 21 year old Mumbai resident Shaheen Dhada posted the following status update on Facebook:

> With all respect, every day, thousands of people die, but still the world moves on. Just due to one politician died a natural death, everyone just goes bonkers. They should know, we are resilient by force, not by choice. When was the last time, did anyone showed some respect or even a two-minute silence for Shaheed Bhagat Singh, Azad, Sukhdev or any of the people because of whom we are free-living Indians? Respect is earned, given, and definitely not forced. Today, Mumbai shuts down due to fear, not due to respect.

Renu Srinivasan, her twenty year old friend, 'liked', shared and commented on the status, following which the two women were arrested under both Section 66A of the IT Act and Section 505(2) of the IPC, which pertains to promoting enmity ill will or hatred between classes.[14] 'Insult' and 'injury' – both causes for criminalising speech under Section 66A – are ambiguous words. Earlier in the year, a man with less than 16 followers on Twitter was arrested under the same section for alleging that the son of Indian Finance Minister P. Chidambaram was corrupt, subsequently leading the Twitter user to face up to three years of imprisonment along with a fine.

[14] The women were initially arrested under 66A (IT Act) and 295A of the IPC, which pertains to the hurting of religious sentiments. On further investigation, the charge under 295A was replaced with 505(2).

In light of instances such as these and others, free speech activists and many social media users believe that section 66A has become a tool used in the interests of the powerful – either individuals or the state – in order to enforce censorship and suppress dissent. And as a result of the manner in which 66A has been used to restrict the freedom of expression, some of the most abused women online maintain that despite the high degrees of abuse they face, section 66A would never be a law to which they would take recourse. The issue of gender-based abuse on the Internet remains one of urgent and large scale propensities, and must be addressed by providing women who experience abuse with sufficient legal recourse. For women who see 66A as being in direct conflict with values of free speech, this law is problematic. In light of this, it is useful to consider laws outside of the IT Act that women may use to address the verbal abuse they face online, and examine to what extent they can supplement or entirely replace Section 66A.

2.2. Beyond the IT Act: Legal Alternatives

The Indian Penal Code (IPC) contains various sections that address crimes of verbal abuse against and the harassment of women. Section 509 – 'Word, gesture or act intended to insult the modesty of a woman' – pertains directly to sexual harassment, and reads:

> Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, of that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Though initially designed to address the widespread issue of street sexual harassment (or 'eve-teasing' in its watered-down version), section 509 can be applied to the harassment of women in online spaces. In 2001, a young man in the 11th Grade was convicted under section 509 for making vulgar remarks about female classmates on a website called Amazing.com. It was not only a successful use of 509 to curb online harassment, but the first time a minor had been booked under the law.

In addition to this, under the Criminal Law (Amendment) Act 2013, the addition of section 354A to the IPC provides a more comprehensive definition of sexual harassment, which includes 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.

Section 354D of the new Act pertains to stalking, explicitly including crimes that involve monitoring the electronic communication of a woman. The law reads:

> Any man who –
>
> (i) follows a woman and contacts, or attempts to contact such woman to foster personal interactionrepeatedly, 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

Section 507 of the IPC – criminal intimidation by anonymous communication – is another provision that may be used by women facing harassment and threats online, particularly given the fact that rape threats are the most common form of verbal harassment faced by women. Furthermore, given the fluidity of identities and the proliferation of 'trolls' in virtual spaces, the notion of 'anonymous communication' comes into significant play, allowing women to take recourse to the law without knowing the 'real' or 'true' identity of their harassers.

Another relevant section of the IPC that may be used in lieu of section 66A of the IT Act is section 499, which pertains to defamation. The law reads:

> Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

In our research, women bloggers often expressed their concern over the ways in which the abuse they receive is an attack on their families or their names.[15] The repeated use of the words 'whore' or 'slut', and the frequent suggestions of women being involved in various sexual acts can be perceived as slander to the reputation of a woman, particularly within her family or community. Section 499 of the IPC may therefore perhaps be used to address this aspect of online abuse, though it is unclear as to whether any precedents for this exist.

There are, thus, various provisions that pre-exist the Internet which women can draw on to fight online abuse without having to inscribe themselves in the problematic discourse of the obscenity and indecency laws or off section 66A. However, the question remains: can a woman choose to use another law in lieu of 66A? Since the inclusion of section 66A into the IT Act (and the introduction of the IT Act itself), Internet-based crimes that could be dealt with under relevant sections of the IPC seem to be always coupled by a booking under both the IPC and the IT Act. Given that 66A is a cognisable offence –

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[15] This has been noted elsewhere as well. See for example Smith, S.E. 'On Blogging, Threats, and Silence'. *Tiger Beatdown*, 11 October 2011. http://tigerbeatdown.com/2011/10/11/on-blogging-threats-and-silence/ Last accessed 8 March 2013..

where the police decide whether or not a crime has been perpetrated under it, rather than a magistrate – a woman may argue for another law (or set of laws) to be used when she goes to register a complaint; however, given the mistrust of and unfavourable experiences with the police as found in our study, the extent to which women will be willing and able to make these arguments with success is perhaps questionable. Ultimately, the decision is in the hands of law enforcement, for whom the grounds on which someone may reject Section 66A may be a subject that seems as alien as unnecessary.

3. The Way Forward: Do We Require Legal Reform?

As highlighted in the previous section, the legal provisions pertaining to women – both online and offline – are often predicated on the notion of protection rather than empowerment. From indecency and obscenity provisions that emphasise morality over consent to the various problems raised by the IT Act (and the difficulties in implementing its alternatives), are the current laws enough? Or is there a need for a wider, more structural shift in the way women are constructed by the law?

What one can note in the case of all the laws discussed above – and perhaps practically all the laws within the Indian legal system – is the way in which they emphasise the *individual* rather than the collective. In both the IT Act and the IPC, instances of harassment, intimidation and violations of privacy are seen as isolated instances existing between the perpetrator and the victim, rather than as part of a systemic discrimination that privileges certain groups of people above others. The fact that violence against women takes place within a wider and systemic marginalisation of women throughout society is not legally acknowledged anywhere. However, given the low success rates in implementing women's laws, would an acknowledgement of structural gender inequalities in a more general law actually help?

3.1 Do We Need a Wider Women's Law?

Currently, the only legal provision in India that acknowledges the historical and structural marginalisation of any disadvantaged group is the Scheduled Castes and Tribes (Prevention of Atrocities) Act 1989. The Act's statement of objects and reasons for the formation of the Act (in addition to the Protection of Civil Rights Act and the sections of the Indian Constitution pertaining to caste) reads:

> despite various measures to improve the socioeconomic conditions of SCs & STs, they remain vulnerable. They are denied a number of civil rights; they are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious atrocities are committed against them for *various historical, social and economic reasons.* (italics ours)

Here we find a legal recognition of systemic marginalisation that *general laws cannot sufficiently address*. Inlight of this, it is maybe, then, through a legal acknowledgement of the wider, structural gender-unequal system in which crimes against women take place – and the horrifying effects this has - that the laws surrounding women may be strengthened.

Whether this should be developed through a separate act – as in the case of the SC/ST example – or by incorporating a recognition of structural discrimination into existing laws that currently isolate and individualise crimes, are questions that need to be considered in greater depth and after further research and discussion. It is perhaps useful to note here that the conviction rates under laws protecting women tend to be low, and they are believed by many to be 'soft laws' without real consequences. To develop a law that recognises the structural marginalisation of women may either change this attitude or further entrench it. Therefore, it may be more useful to instead incorporate gender into existing laws around *speech* to better address verbal abuse against women.

3.2 Do We Need a Better Hate Speech Law?

One could argue that the current provision against hate speech in Indian law is section 153A of the IPC, which criminalises the promoting of enmity between different groups on the grounds of religion, race, place of birth, residence, language etc., and doing prejudicial acts to maintenance of harmony. The law reads:

> Whoever - by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place or birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities… shall be punished with imprisonment which may extend to three years, or with fine, or with both.

There are three central problems with this provision as it is currently structured. The first is that the thresholds for when speech under the law can be criminalised are unclear. In a report to the UN, Special Rapporteur on Freedom of Expression Frank La Rue outlines the thresholds for hate speech, wherein the speech must be of a public nature, at the very minimum must present a real and imminent danger, and must contain the *obvious* intention to harm. It is only when speech crosses these thresholds that it should be criminalised.[16] This is in stark contrast to section 153A, which apart from hatred, includes 'disharmony or *feelings* of enmity or ill-will' (italics ours), and like section 66A, creates a legal situation where someone 'feeling' insulted can result in criminalisation – or censorship – of speech. Therefore, one way to strengthen the laws

[16] La Rue, Frank (2012). Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (A/67/357). New York, United Nations General Assembly, 7 September 2012.

around speech in India would be to explicitly adopt internationally recognised thresholds for hate speech – most notably outlined by Frank La Rue – in order to prevent a misuse of the law to promote censorship and restrict free speech.

Secondly, while section 153A addresses the incitement of hatred based on identity, it fails to account for the unequal power relations between different groups, races and religions. Without this inclusion of reference to wider discrimination, the law places all groups – religious, racial, etc – on an equal footing, so that slander directed at an economically powerful majority can be equated with that targeted at a marginalised community or individual. In order for hate speech laws to effectively curb hate speech rather than foster a culture of censorship, they must clearly also be anti-discrimination laws, where discrimination is understood as the historical and systemic marginalisation of a group of people on the basis of their identity.

Lastly, 153A only takes into account certain aspects of a person's identity – excluding, most notably in the context of this study, gender. The phrase 'on any other ground whatsoever' could perhaps be used to persecute people for hate speech pertaining to an individual's identity on a variety of grounds other than those explicitly stipulated; however, there exists no legal precedent for this, and it is unlikely that a case pertaining to gender-based hate speech can be successfully tried under this law. Many suggest, however, that hate speech laws across the world should include more aspects of an individual's identity, extending to gender, sexual orientation, and disability. A striking example of this is South Africa's hate speech and harassment law – The Promotion of Equality and Prevention of Unfair Discrimination Act (2000) – which lists the grounds for identity-based discrimination as race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

Therefore, perhaps another legal solution to strengthen the laws around women is to develop a more inclusive hate speech law that takes into account the systematic discrimination of people on the basis of different aspects of their identities, with high and rigorously applied thresholds for what 'incitement to hatred' means.

Conclusion

In a wider legal context that seeks to 'protect' women – most often without taking into account their consent or wishes to express themselves in certain ways – how can we forge a legal response to the verbal online abuse of women that truly advances women's rights? It is first important to take into account how the representation of women through visual culture has been largely seen as immoral or indecent, and consider whether this framing is more restrictive than it is progressive. Furthermore, with the development of a law like section 66A of the IT Act in the name of women's rights, only to be used to enforce censorship to an extraordinary degree, it is important to find legal alternatives that allow women to seek recourse without impinging on freedom of expression.

In light of this, the possible suggestions this paper makes are the use of alternative legal provisions, the development of a broader women's law that accounts for systemic discrimination, and the development of rigorous hate speech laws that take into account gender, amongst other aspects of an individual's identity. Rather than providing solutions to an issue that extends to nearly all laws within India that seek to address women's rights, this paper hopes to have provided a starting point for further conversations, debate and discussion around possible legal measures to address the verbal abuse faced by women online.