

Reimagining Legal Approaches to Technology-Facilitated Violence Against Women in India

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Abstract: Digital technology has expanded women's opportunities for expression and participation, while simultaneously enabling new and intensified forms of gender-based violence. In India, technology-facilitated violence against women (TFVW) has increased in scale and complexity, yet existing legal frameworks remain inadequately equipped to address its multidimensional harms. This article identifies a significant gap in Indian law, arguing that the Bharatiya Nyaya Sanhita (BNS) and the Information Technology Act (IT Act) insufficiently recognise psychological harm, informational privacy violations, and non-sexual online abuse, while continuing to rely on patriarchal notions of consent, modesty, and public morality. Adopting a doctrinal legal research methodology informed by feminist jurisprudence, the article examines statutory provisions, judicial interpretations, and enforcement practices governing TFVW in India. It demonstrates how current laws prioritise bodily integrity and obscenity-based regulation, thereby marginalising women's digital autonomy and reinforcing victim-blaming narratives. Drawing on constitutional principles of equality, dignity, and privacy, the article advances a feminist legal framework that shifts the analytical focus from consent and morality to harm, agency, and structural inequality. The article contributes to feminist legal scholarship by reconceptualising TFVW as a constitutional rights violation and argues for transformative legal reform to address the systemic nature of digital violence against women.

Keywords: Technology-facilitated; Feminist; Privacy; Consent; India

1. Introduction

Digital technology has significantly enhanced women's informational and communicative abilities. By blurring the lines between the private and public spheres, these technologies have provided greater opportunities for women to express themselves and engage in public and political discourse.¹ Additionally, the Internet has become as a vital platform for disseminating knowledge and perspectives to marginalized communities excluded from traditional knowledge creation spaces.² Digital technologies empower women but also expose them to persecution, which often occurs in online spaces.³ The anonymity

¹ Hannes Bajohr, "Publicing/Privating: The Gestural Politics of Digital Spaces," *Society* 60, no. 6 (2023): 868-77, <https://doi.org/10.1007/s12115-023-00918-w>.

² Katy E. Pearce et al., "Introduction: Marginality and Social Media," *Social Media + Society* 6, no. 3 (2020): 1-9, <https://doi.org/10.1177/2056305120930413>.

³ Samina Khan et al., "A Routine Activity Approach to Understanding the Reasons for Technology-Facilitated Harassment against Women in India," *IIUM Law Journal* 31, no. 2 (2023): 230, <https://doi.org/10.31436/iiumlj.v31i2.851>.

provided by the Internet fosters patriarchal entitlement, leading to the harassment and intimidation of women who challenge prevailing gender norms. Moreover, individuals discussing sensitive topics, such as caste or religion, face inevitable trolling, and there are instances of politically motivated trolling aimed at spreading misinformation and targeting vulnerable minority groups.⁴ Overall, there is an alarming trend of toxic behavior in the online sphere, leading to an increase in sexist and misogynistic speech and actions.

In a digitalized society, technology-facilitated violence against women (TFVW) is a significant concern. While this mode of aggression affects diverse demographics, studies have revealed that women and girls bear a disproportionate burden of their effects.⁵ Technology-facilitated violence refers to the recognition of a causal relationship between technology and violence, where the use of technology enables or exacerbates acts of violence.⁶ It is defined as:

“any act that is committed, assisted, aggravated or amplified by the use of ICTs or other digital tools, that results in or is likely to result in physical, sexual, psychological, social, political or economic harm, or other infringements of rights and freedoms.”⁷

TFVW worsens digital gender disparities and hinders women’s access to information right. Moreover, it perpetuates traditional patriarchal violence and misogyny while also increasing new forms of violence.⁸

Findings from the 2020 research by the Economist Intelligence Unit (EIU) revealed that a notable portion of adult women who used the Internet across 51 countries faced instances of online violence. Specifically, 38% of the surveyed individuals shared that they had experienced such violence, with a higher percentage of 45% among younger women aged 18 to 30 years who reported direct encounters. Furthermore, 65% of the respondents were aware of other women targeted online and 85% acknowledged witnessing online attacks against women.⁹

⁴ Shakuntala Banaji and Ramnath Bhat, “Social Media, Violence and Hierarchies of Hate in India,” in *Social Media and Hate*, 75-95 (London: Routledge, 2021), <https://doi.org/10.4324/9781003083078>.

⁵ Raphaëlle Rafin and Juncal Plazaola-Castano, *The State of Evidence and Data Collection on Technology-Facilitated Violence against Women*, Working Paper No. 30 (Economic Commission for Europe [ECE], 2024), https://unece.org/sites/default/files/2023-04/E6_WP20_Rafin_EN.pdf.

⁶ Matthew Mitchell et al., “Technology-Facilitated Violence: A Conceptual Review,” *Criminology & Criminal Justice* 25, no. 2 (2022): 649-69, <https://doi.org/10.1177/17488958221140549>.

⁷ U.N. Women and World Health Organization (WHO), *Technology-Facilitated Violence against Women: Taking Stock of Evidence and Data Collection* (New York: U.N. Women, 2023), <https://www.unwomen.org/sites/default/files/2023-04/Technology-facilitated-violence-against-women-Taking-stock-of-evidence-and-data-collection-en.pdf>.

⁸ Amy O’Donnell and Caroline Sweetman, “Introduction: Gender, Development and ICTs,” *Gender & Development* 26, no. 2 (2018): 217-29, <https://doi.org/10.1080/13552074.2018.1489952>.

⁹ Economist Intelligence Unit (EIU), *Measuring the Prevalence of Online Violence against Women* (2021), <https://onlineviolencewomen.eiu.com/>.

Liz Kelly's notion of the "violence continuum highlights that online violence is not isolated but reflects a broader range of crimes against women globally.¹⁰ Women experience a spectrum of aggressions online, similar to those encountered offline, ranging from unwanted advances to racial slurs, and even severe threats.¹¹ TFVW often go unreported due to fear of social repercussions, leading to a need for recognition and categorization of these emerging forms of violence.¹² The pandemic has exacerbated this problem by increasing reliance on technology and intensifying women's vulnerability to online victimization.¹³

In India, incidents reported in 2022 were 11 percent higher than those reported in 2021.¹⁴ This rise highlights the troubling trend of increased digital harassment and crime against women. Despite this prevalence, reporting of TFVW remains low, with only 402 complaints registered with the National Commission for Women (NCW) during 2018-19.¹⁵ Many women were reluctant to seek legal recourse, with 58% of victims having experienced online trolling, harassment, or bullying, and 38% of them did not pursue any legal action.¹⁶

TFVW significantly hinders women's freedom of expression, creating a profound chilling effect on their ability to speak.¹⁷ This emphasizes that online violence acts as a potent form of social censorship, inhibiting women from freely expressing themselves on digital platforms. Fear of retaliation, harassment, or public shaming leads many women to withdraw from online spaces, depriving them of opportunities for self-expression, professional growth, and activism.¹⁸ Recognizing the growing prevalence of TFVW, as well as the evolving and sophisticated tactics used to target women online, highlights the urgent need for transformative social action and legal reforms to effectively combat this phenomenon.

¹⁰ Liz Kelly, "The Continuum of Sexual Violence," in *Women, Violence and Social Control*, ed. Jalna Hanmer and Mary Maynard (Palgrave Macmillan, 1987), 46.

¹¹ Subhra Rajat Balabantaray et al., "A Sociological Study of Cybercrimes against Women in India: Deciphering the Causes and Evaluating the Impact of the Victims," *International Journal of Asia Pacific Studies* 19, no. 1 (2023): 23-24, <https://doi.org/10.21315/ijaps2023.19.1.2>.

¹² Khan, Nordin, and Hassan, "A Routine Activity Approach," 238.

¹³ Press Trust of India, "Need to Recognise Emerging Forms of Cybercrimes against Women: CBI Officer," *Business Standard*, October 22, 2020, https://www.business-standard.com/article/current-affairs/need-to-recognise-emerging-forms-of-cyber-crimes-against-women-cbi-officer-120102201515_1.html.

¹⁴ National Crime Records Bureau (NCRB), *Crime in India: 2022* (New Delhi: NCRB, 2022), <https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>.

¹⁵ National Commission for Women (NCW), *Annual Report 2018-19* (New Delhi: NCW, 2019), http://ncw.nic.in/sites/default/files/FINAL%20NCW%20ENGLISH%20ANNUAL%20REPORT%202018-19_0.pdf.

¹⁶ Jasleen Pasricha, *Violence Online in India: Cybercrimes against Women & Minorities on Social Media* (New Delhi: Feminism in India, 2016), https://feminisminindia.com/wpcontent/uploads/2016/05/FII_cyberbullying_report_website.pdf.

¹⁷ The Global Partnership, *Technology-Facilitated Gender-Based Violence: Preliminary Landscape Analysis* (2023), https://assets.publishing.service.gov.uk/media/64abe2b21121040013ee6576/Technology_facilitated_gender_based_violence_preliminary_landscape_analysis.pdf.

¹⁸ Shalu Nigam, "Ending Online Violence against Women in India: Calling for an Inclusive, Comprehensive, and Gender-Sensitive Law and Policy Framework," *Impact and Policy Research Institute*, April 22, 2024, <https://www.impriindia.com/insights/ending-online-violence-against-women/>.

While existing Indian scholarship has made significant contributions in documenting the prevalence, forms, and socio-cultural dimensions of TFVW, legal engagement has largely remained fragmented and reactive. Much of the doctrinal discussion has focused on the application of obscenity,¹⁹ defamation,²⁰ and modesty-based provisions under the BNS and the IT Act,²¹ without systematically interrogating their constitutional adequacy in addressing non-physical, non-sexual, and privacy-based harms.²² As a result, Indian legal responses continue to prioritize public morality and sexualized harm, while marginalizing women's informational privacy, dignity, and equality in digital spaces.²³ A feminist-constitutional reinterpretation is therefore not merely desirable but legally necessary²⁴ to realign criminal and cyber law with evolving Supreme Court jurisprudence on privacy, autonomy, and substantive equality.²⁵ Without such a reinterpretation, existing legal frameworks remain ill-equipped to address the structural, psychological, and systemic nature of TFVW in contemporary digital environments.

The present article aims to offer an in-depth examination of TFVW through a feminist lens. It utilizes existing research and insights from Indian feminist experts to address the key social, legal, and institutional issues surrounding TFVW. This study critically examines the current legal framework in India and explores its adequacy in addressing TFVW, highlighting its shortcomings. It discusses the critique of existing laws, focusing on the interpretation of consent and proposing an alternate legal framework that respects the right to equality as well as the right to privacy for women. Additionally, this article explores how digital technologies have shaped TFVW and advocates a fresh epistemological approach to address this pervasive issue. Finally, it briefly analyzes the responses of law enforcement agencies to TFVW.

¹⁹ Latika Vashist, "Disgust for the Sexual: The Emotional Side of Obscenity Law in India," *Oxford University Commonwealth Law Journal* 22, no. 2 (2022): 153, <https://doi.org/10.1080/14729342.2022.2146946>.

²⁰ Nabamallika Dehingia et al., "Violence Against Women on Twitter in India: Testing a Taxonomy for Online Misogyny and Measuring its Prevalence During COVID-19," *PLoS ONE* 18, no. 10 (2023), <https://doi.org/10.1371/journal.pone.0292121>.

²¹ Himanshu Shrivastava and Sabeeh Akhter, "A Comparative Study of the Indian Penal Code and the Bharatiya Nyaya Sanhita's Gender-related Provisions," *Statute Law Review* 45, no. 2 (2024), <https://doi.org/10.1093/slr/hmae033>; Arrie Budhiartie et al., "Critiquing Delegated Legislation on Preventing Sexual Harassment of Women in Indian Higher Education Institutions," *Diponegoro Law Review* 9, no. 1 (2024): 136, <https://doi.org/10.14710/dilrev.9.1.2024.136-152>.

²² Vaibhav Yadav, "Tackling Non-Consensual Dissemination of Intimate Images in India's Contemporary Legal Framework," *International Annals of Criminology* 61, no. 3-4 (2023): 356, <https://doi.org/10.1017/cri.2023.30>; Sahana Sarkar and Benson Rajan, "Materiality and Discursivity of Cyber Violence Against Women in India," *Journal of Creative Communication* 18, no. 1 (2021): 110, <https://doi.org/10.1177/0973258621992273>.

²³ Sahana Sarkar and Rahul Sinha-Roy, "Cybersecurity through an Intersectional Lens: Survivors' Responses to Technology-Facilitated Sexual Violence in India," *Feminist Criminology* (2025), <https://doi.org/10.1177/15570851251406560>.

²⁴ Shraddha Chaudhary, 2024, "The Value of Feminist Legal Methods in Adjudicating Women's Issues: A Critical Comparison of Two Judicial Approaches from India," *Indian Law Review* 8 (1): 68, <https://doi.org/10.1080/24730580.2024.2332821>.

²⁵ *Justice K.S. Puttaswamy v. Union of India*, AIR 2017 SC 4161; *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

2. Method

This study employed a doctrinal legal research methodology to examine the legal framework governing TFVW in India. It analyzes statutory provisions, judicial interpretations, and legislative developments, particularly within the Bharatiya Nyaya Sanhita (BNS) 2023 and the Information Technology Act 2000. Adopting a feminist legal perspective, this study explores how patriarchal norms and systemic misogyny influence legal protection for women, with a focus on interpretations of consent, culpability, and public morality. Through a qualitative content analysis of legal texts, case law, policy documents, and reports, this study evaluates judicial reasoning, enforcement challenges, and institutional responses to TFVW. It also examines how digital technologies facilitate new forms of gender-based violence, necessitating legal and policy reforms. By combining feminist jurisprudence guided by constitutional principles of equality, dignity, and privacy, this study examines the gaps in the existing statutory framework. It recommends a more victim-centric and transformative legal approach to effectively safeguard women's rights in the digital age.

3. Existing Legal Provisions for Addressing TFVW in India

India has adopted a firm stance to address illicit online activity. The IT Act was enacted in 2000 and amended in 2008.²⁶ It serves as comprehensive legislation criminalizing various cyber offences, integrating aspects from the BNS²⁷ to adapt to technological advancements.

Section 66E of the IT Act pertains to privacy violations by forbidding the unauthorized capture, publication, or sharing of images depicting an individual's intimate body parts without consent.²⁸ Meanwhile, section 67 of the IT Act forbids the sending of any obscene material.

"Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it..."²⁹

Nevertheless, the invocation of section 67 of the IT Act to restrict free expression in India has drawn harsh criticism. Research conducted by Point of View indicates that this section has been increasingly employed to stifle dissent against politicians and those in positions

²⁶ Ministry of Electronics and Information Technology (MEITY), *Information Technology Act 2000* (2018), <https://www.meity.gov.in/content/information-technology-act-2000>.

²⁷ The Bharatiya Nyaya Sanhita (BNS) 2023 came into force on July 1, 2024. It was previously referred to as the Indian Penal Code (IPC) 1860.

²⁸ India, *The Information Technology Act, 2000*, Section 66E, <https://www.indiacode.nic.in/bitstream/123456789/1999/1/A2000-21%20%281%29.pdf>.

²⁹ India, *The Information Technology Act, 2000*, Section 67.

of authority. It has also been used as a censorship tool by artists, filmmakers, journalists, and others.³⁰ This widespread misuse of the law not only threatens freedom of speech, but also creates a climate of fear and self-censorship, where individuals may refrain from voicing opinions on sensitive issues to avoid legal repercussions.

Likewise, the enactment of section 66A of the IT Act criminalizes the dissemination of “grossly offensive or menacing information through using a computer resource or communication device.”³¹ In 2008, this clause was added in response to concerns that the IT Act did not address online violence sufficiently. Section 66A aimed to prohibit the dissemination of online threats, defamatory remarks, and any content deemed offensive. However, section 66A was frequently abused to restrict free expressions in India, as in section 67.³²

Further, the Constitution of India protects “the right to freedom of speech and expression’ under Article 19(1). However, this right is constrained by many provisions stated in Article 19(2), provides the government with the power to limit the freedom of free speech and expression under particular conditions. These limitations include measures taken “... in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.”³³

In *Shreya Singhal v. Union of India*,³⁴ the judiciary asserted its power to invalidate the provision of an act if it contravenes the requirements outlined in the Indian Constitution. Section 66A of the IT Act was deemed “unconstitutional as it violated Article 19 of the Constitution,”³⁵ leading to the striking down of this provision.

Section 67A of the IT Act makes the electronic dissemination of sexually explicit content illegal. This includes sending emails, images, or social media messages that contain sexually explicit content.

Further, the BNS offers protection against online violence against women through section 75, which addresses sexual harassment. As per this provision, the following behaviors constitute sexual harassment for an individual:

- i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- ii) a demand or request for sexual favours; or

³⁰ Bishakha Datta et al., *Guavas and Genital: A Research Study in Section 67 of the Information Technology Act* (2017), https://projects.itforchange.net/e-vaw/wp-content/uploads/2018/01/Smita_Vanniyar.pdf.

³¹ India, *The Information Technology Act, 2000*, Section 66A.

³² Seema Chishti, “Prescription Post Section 66A: ‘Change Law to Punish Hate Speech Online,’” *Indian Express*, October 6, 2017, <https://indianexpress.com/article/india/hate-speech-online-punishment-supreme-court-section-66a-information-technology-act-narendra-modi-4876648/>.

³³ *The Constitution of India*, 1950, Article 19, Clause 2.

³⁴ *Shreya Singhal v. Union of India*, [2015] 5 S.C.R. 963.

³⁵ *Ibid*.

- iii) showing pornography against the will of a woman; or
- iv) making sexually coloured remarks...³⁶

The BNS prohibits voyeurism under section 77, wherein a person is liable to produce, circulate, or distribute sexually explicit content, such as videos or photos of a woman without her consent. This provision is particularly relevant in cases involving malicious dissemination of content. Additionally, section 78 of the BNS pertains to the offence of stalking. Stalking occurs when an individual persistently monitors a woman and attempts to engage her in physical interactions, despite her clear disinterest. This provision also encompasses monitoring women's activities on online platforms or through electronic communication channels.³⁷

Women frequently experience defamation on social media platforms, a crime addressed in section 356 of the BNS. Defamation involves damaging a person's reputation through spoken words, written communication, or visible representations. Section 351 of the BNS allows for legal action in cases of criminal intimidation. This provision may be utilized by women to address threats issued by anonymous trolls whose identities remain concealed. Lastly, section 79 of the BNS prohibits "words, gestures, or acts intended to insult the modesty of a woman."³⁸ Although this clause does not specifically target online sexual victimization, it can still be invoked in such circumstances to seek legal recourse.

4. Identifying Gaps in Existing Provisions and Legal Interpretations

The legal landscape in India surrounding online victimization of women is intricate and multidimensional. Significant gaps and shortcomings exist in the current legal frameworks and judicial interpretations within this context.³⁹

4.1. Absence of legal recognition for psychological violence

TFVW leads to severe emotional and psychological distress among victims.⁴⁰ However, existing legal frameworks fail to adequately acknowledge this aspect. Specifically, psychological abuse caused by privacy violations, such as illegal access and sharing of non-sexual personal data, remains unaddressed by current laws.⁴¹ Victims often experience anxiety, depression, and a constant fear of further harassment, yet no concrete legal remedy for the emotional toll that these violations take.

³⁶ The Bharatiya Nyaya Sanhita, 2023, Section 75, https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf.

³⁷ The Bharatiya Nyaya Sanhita, 2023, Section 78.

³⁸ The Bharatiya Nyaya Sanhita, 2023, Section 79.

³⁹ Khan, Nordin, and Hassan, "A Routine Activity Approach," 250.

⁴⁰ Md Mamunur Rashid Sheikh and Michaela M. Rogers, "Technology-Facilitated Sexual Violence and Abuse in Low and Middle-Income Countries: A Scoping Review," *Trauma, Violence, & Abuse* 25 (2024): 1615, <https://doi.org/10.1177/15248380231191189>.

⁴¹ Alda Widya Syahda and Angayar Kanni Ramaiah, "Sexual Violence in Virtual World: The Unaddressed Legal Protection Issue for Victims," *Neoclassical Legal Review: Journal of Law and Contemporary Issues* 2, no. 2 (2023): 99, <https://doi.org/10.32734/nlr.v2i2.14057>.

Moreover, the law fails to recognize gender-related psychological abuse against women outside domestic settings, leaving a significant gap in protection. The focus of many legal frameworks, including “the Protection of Women from Domestic Abuse Act of 2005,” is limited to intimate relationships, thus excluding the diverse forms of psychological harm made possible through digital platforms. Stalking, online harassment, doxxing, and other forms of technology-enabled violence often have long-lasting psychological impacts; however, these acts are not fully covered by current legislation.

This gap becomes even more problematic when psychological violence in the digital realm is considered to have devastating social and economic consequences. Women may feel forced to withdraw from professional, social, and activist spaces because of emotional strain, limiting their participation in public life.⁴² Furthermore, the lack of legal recognition of this type of violence emphasizes a broader inadequacy to understand the evolving nature of abuse in a technology-driven world. Traditional definitions of violence are no longer sufficient to capture the full range of harm inflicted on women.

4.2. Insufficient coverage for ‘doxxing’ in the IT Act

The IT Act lacks adequate provisions to address doxxing, which involves the unauthorized disclosure of personally identifiable information with the intent of harassing or harming individuals.⁴³ While doxxing constitutes a clear breach of privacy and often leads to severe harassment and emotional distress, existing laws fail to specifically address this form of cyber harassment.⁴⁴ While some parts of the BNS, such as those pertaining to anonymous criminal intimidation, may encompass harassment stemming from doxxing, the original invasion of privacy intended to disparage or target specific individuals remains largely unaddressed.

Section 72 of the IT Act, which addresses privacy and confidentiality breaches, is limited in scope, as it only penalizes individuals who abuse their legal authority to disclose confidential information, leaving out unauthorized acts by regular individuals or groups who participate in doxxing without such legal access.⁴⁵ Furthermore, section 66 of the IT Act criminalizes hacking, but excludes hacking with the intent of doxxing or specifically addresses the malicious use of personal data obtained through cyberattacks.⁴⁶

Similarly, provisions related to obscenity under sections 67 and 67A are not well suited for addressing doxxing, as they primarily deal with sexually explicit content and fail to

⁴² Kalyani Chadha et al., “Women’s Responses to Online Harassment,” *International Journal of Communication* 14, no. 1 (2020): 239, <https://ijoc.org/index.php/ijoc/article/view/11948>.

⁴³ IT for Change, *Cyberviolence against Women – A Roadmap for Legal Reform: Inputs to the Law Review Consultation Convened by the National Commission for Women* (2020), <https://itforchange.net/sites/default/files/1738/NCW-Submission-on-cyberviolence-Dec-2020-IT%20for-Change.pdf>.

⁴⁴ Rohit Harishchandra Surawase et al., “Legal Challenges in the Digital Age: Revenge Porn in India,” *Anvesak* 54 (2024): 32, 36.

⁴⁵ IT for Change, *Cyberviolence against Women*, 2020.

⁴⁶ Vanya Verma, “Legal Analysis of Doxxing,” *iPleaders*, July 1, 2021, <https://blog.ipleaders.in/legal-analysis-doxxing/>.

cover the broader, often-gendered dimensions of privacy violations caused by the exposure of personal information.⁴⁷ Additionally, breaches of privacy and data theft under the IT Act are predominantly treated as economic offences, with a focus on financial harm rather than the social, psychological, and gendered implications of these violations.⁴⁸ The absence of a comprehensive legal provision addressing doxxing leaves victims with limited recourse and fails to adequately capture the seriousness of this type of cyberharassment.

4.3. Inadequate legal coverage for online verbal harassment and abuse

Existing provisions in the BNS, such as sections 356 and 351, which address criminal defamation and anonymous criminal intimidation, respectively, are limited in scope and fall short of addressing verbal harassment that occurs online, but does not occasion sexually explicit material.⁴⁹ These sections mainly focus on the acts of trolling that involve personal threats.

Furthermore, these legal provisions tend to treat verbal harassment and abuse against women as single instance rather than recognizing them as portion of a broader pattern of systemic gender-based violence.⁵⁰ The law fails to acknowledge that women are disproportionately targeted for harassment because of their gender, and does not fully address the cumulative psychological and emotional harm that occurs when such abuse is sustained over time.

4.4. Insufficient framing of violence against women

The existing legal framework under the IT Act and the BNS largely fails to frame violence against women as a fundamental infringement of their personal autonomy and physical integrity.⁵¹ While there are some exceptions, such as section 77 of the BNS and section 66 E of the IT Act, these provisions focus narrowly on privacy breaches related to “private areas” of the body, overlooking other forms of violations women experience online. For instance, acts such as morphing a victim’s face with explicit imagery⁵² or sharing deepfakes often go unaddressed, as the law remains fixated on physical privacy rather than the broader implication of digital and psychological violations.

⁴⁷ Anita Gurumurthy, Amrita Vasudevan, Nandini Chami, and Sarada Mahesh, *Getting It Right Online: Young Women’s Negotiations in the Face of Cyberviolence in Karnataka* (IT for Change, 2019), https://itforchange.net/sites/default/files/1618/Karnataka_Report_Righting-Gender-Wrongs_1.pdf.

⁴⁸ Yadav, “Tackling Non-Consensual,” 355, 362.

⁴⁹ Khushi Girdhar et al., “Pandemic Within a Pandemic: Impact of Covid-19 on Gender-Based Digital Violence,” *International Journal of Research Publication and Reviews* 2 (2021): 294, 300.

⁵⁰ Samina Khan et al., “Social Media, Online Abuse, and the Indian Law: Addressing Online Safety of Women,” in *The Contours of Freedom of Speech and Expression*, ed. Pradeep Kulshreshtha, Versha Vahini, and Swarnim Swasti (Bloomsbury Publishing India Pvt. Ltd., 2024), 186.

⁵¹ Malavika Rajkumar and Shreeja Sen, *The Judiciary’s Tryst with OGBV* (IT for Change, 2024), https://itforchange.net/sites/default/files/2190/The%20Judiciary%27s%20Tryst%20with%20OGBV_0.pdf.

⁵² Om Prakash Sharma and Lalit Kumar Roy, “Protection of Women’s Dignity and Development of Laws against Revenge Porn on Women in India: A Comparative Study,” *Indian Journal of Law and Justice* 15, no. 1 (2025): 463.

Moreover, these provisions tend to focus on physical privacy breaches, failing to cover violations of informational privacy such as doxing, where personal data are maliciously exposed to harass or endanger women.⁵³ This gap in the legal framework reflects an outdated understanding of privacy that does not align with the realities of current digital world, where breaches of personal information can have profound and lasting effects on women's safety and well-being.

Additionally, while section 509 of the IPC criminalizes the violation of a woman's modesty through privacy breaches, the judiciary's interpretation of "modesty" often mirrors patriarchal norms, placing undue emphasis on outdated ideas of honor and shame rather than addressing the violation of personal dignity.⁵⁴ This narrow framing not only undermines women's autonomy but also restricts their access to justice by focusing on societal perceptions of modesty rather than the real harm caused by such violations.

4.5. Lack of comprehensive interpretation of consent

Feminists argue for a multilayered interpretation of consent, allowing women to withdraw consent at any point.⁵⁵ However, existing provisions in the IT Act and the BNS, such as sections 66E and 77, primarily focus on instances of non-consent⁵⁶ without addressing the complexity of consent dynamics in the digital space. Section 77 of the BNS⁵⁷ acknowledges scenarios in which a woman consents to take her picture but not its dissemination. However, this recognition is limited and often fails to consider the ongoing nature of consent, particularly when it comes to the digital circulation of intimate or personal content.

Moreover, women's active sexual agency is not sufficiently recognized under section 66E, particularly in cases where private photos are shared consensually but subsequently misused.⁵⁸ The law tends to frame women as passive victims of privacy breaches, rather than acknowledging their right to control how, when, and with whom their content is shared.⁵⁹ The absence of a more nuanced and affirmative interpretation of consent highlights a significant gap in the legal framework.

⁵³ Gurumurthy et al., *Getting It Right Online*, 2019.

⁵⁴ Rajkumar and Sen, *The Judiciary's Tryst with OGBV*, 2024.

⁵⁵ Heather Hensman Kettrey et al., "Consent Is F#@King Required: Hashtag Feminism Surrounding Sexual Consent in a Culture of Postfeminist Contradictions," *Social Media + Society* 7 (2021): 1, 9, <https://doi.org/10.1177/20563051211062915>.

⁵⁶ Rakesh Chandra, "Electronic Voyeurism in Global Perspective," *International Journal of Legal Developments and Allied Issues* 5 (2019): 91, 108-10.

⁵⁷ *The Bharatiya Nyaya Sanhita*, 2023, Section 77.

⁵⁸ Abhinav Sharma and Ajay Singh, "Cyber Crimes against Women: A Gloomy Outlook of Technological Advancement," *International Journal of Law Management & Humanities* 1 (2018): 1, 6.

⁵⁹ Rajkumar and Sen, *The Judiciary's Tryst with OGBV*, 2024.

4.6. Court's restrictive view on women's sexual autonomy

Anti-obscenity laws in India reflect a deeply patriarchal viewpoint that focuses on policing the female body and perpetuating the male gaze.⁶⁰ For instance, the notion of 'indecent representation' is often defined in ways that reinforce gender stereotypes, limiting women's sexual expression and agency.⁶¹ Rather than empowering women to control how they express their sexuality, these laws impose rigid boundaries that perpetuate traditional restrictive views of female modesty and decency.

In court interpretations, the concept of modesty is largely determined by the woman's gender, with an emphasis on her role as a victim of sexual advances. Modesty is often interpreted as being outraged only when a woman rejects sexual advance, reflecting the view that women must be passive recipients of male attention. This narrow and regressive interpretation fails to account for scenarios in which women may initially consent to sexual advances or relationships but later withdraw consent or object to further advances.⁶² It disregards women's right to change their minds or exert control over their bodies at any stage of the sexual interaction.

Furthermore, the focus on modesty and honor often perpetuates victim-blaming narratives, in which women's behavior is scrutinized more than the actions of the perpetrator.⁶³ This restrictive view leaves little room for the recognition of women's sexual autonomy and their right to explore and express sexuality on their own terms.

5. The Framework of Consent and Its Limitations

Although overtly patriarchal legislation has been replaced by consent-based laws, such as section 66E of the IT Act, women's experiences in courtrooms reveal a different reality. Their interactions with the legal system demonstrated the ongoing influence of patriarchal values and norms.⁶⁴ Despite this progress, the persistence of patriarchal views remains evident in how women's cases are handled in court. Courts tend to reinforce essentialist conceptions of victims rather than acknowledge women's sexual agency.⁶⁵ Even judgments that seem progressive are affected by male-centricity and protectionist attitudes.

⁶⁰ Gurumurthy et al., *Getting It Right Online*, 2019.

⁶¹ Bishakha Datta et al., *EROTICS South Asia Exploratory Research: Sex, Rights and the Internet* (Association for Progressive Communications, 2017), https://www.apc.org/sites/default/files/Erotics_1_FIND.pdf.

⁶² *Ramkripal S/O Shyamlal Charmakar v. State of Madhya Pradesh*, (2007) 11 SCC 265.

⁶³ Anupriya Dhonchak, "Standard of Consent in Rape Law in India: Towards an Affirmative Standard," *Berkeley Journal of Gender, Law & Justice* 34 (2019): 29, 39.

⁶⁴ Mridula Sharma, "Judicial Patriarchy: How Hindutva Culture Dominates the Indian Courts," *Feminism in India*, June 15, 2023, <https://feminisminindia.com/2023/06/16/judicial-patriarchy-manusmriti-dominate-indian-courts/>.

⁶⁵ Rajkumar and Sen, *The Judiciary's Tryst with OGBV*, 2024.

Citing women's alleged shyness, judges reject the requirement for corroborated evidence in rape trials, as in the case of *Punjab v. Gurmeet Singh*.⁶⁶ Additionally, during investigations, judges may question consent and label victims as 'good' or 'bad', recognizing only 'good' women as true victims. Consequently, gender-based power disparities in society have not been sufficiently acknowledged or addressed when discussing violence against women.

The underlying difficulty that courts have in obtaining consent is shown by the interpretations of rape prohibitions, which are predicated on a consent framework. It is common to use the past intimate activities of the victim to challenge the prosecution's claim of consent. Even if the law that permitted this kind of character evaluation was repealed in 2003, victims are nevertheless subjected to medical examinations to ascertain their sexual histories.⁶⁷

In *Mahmood Farooqui v. State*,⁶⁸ it was emphasized that a mere expression of reluctance, particularly a weak one, might not suffice to constitute rape. The court suggested that the previous relationship and closeness of the victim to the accused could have created an impression of consent.

In affirming the Court's ruling, the Supreme Court accentuated that, for there to be rape, there must be both a lack of consent and the accused's knowledge of that lack of consent.⁶⁹ This requirement implies that the victim, especially in situations where the parties are familiar, must demonstrate resistance to alert the perpetrator to her lack of consent, making it challenging for the victim to prove rape.

The Punjab and Haryana High Court in *Vikas Garg* ⁷⁰ overturned the conviction of the accused persons of raping and blackmailing their classmates, citing the complainant's alleged drug usage and her 'promiscuous attitude' as extraneous factors. The court blamed the victim and lamented "the degenerative mindset of the youth," but it also found that the lack of "gut-wrenching violence" suggested a consenting sexual connection with the complaint.⁷¹

When private photographs are circulated without consent, it is common to believe that the parties' previous connections have an impact on consent. Even if the image was initially shared voluntarily, consent for further distribution may not have been provided.⁷²

⁶⁶ *State of Punjab v. Gurmeet Singh & Others*, (1996) 2 SCC 384.

⁶⁷ Dhonchak, "Standard of Consent in Rape Law," 39.

⁶⁸ *Mahmood Farooqui v. State*, (2017) 243 DLT 310.

⁶⁹ Tannvi Tannvi and Sharmila Narayana, "The Challenge of Gender Stereotyping in Indian Courts," *Cogent Social Sciences* 8 (2022): 1, 4-6.

⁷⁰ *Vikas Garg & Others v. State of Haryana*, Cr. M 23962 & 26930 of 2017

⁷¹ *Ibid.*

⁷² Iman Said and Rachel L. McNealey, "Nonconsensual Distribution of Intimate Images: Exploring the Role of Legal Attitudes in Victimization and Perpetration," *Journal of Interpersonal Violence* 38 (2023): 5430, 5433, <https://doi.org/10.1177/08862605221122834>.

This complexity of consent is often disregarded, leading to misunderstandings by both accused and legal systems. Consequently, privacy considerations are often neglected or misunderstood, contributing to the mishandling of such cases.

Women's rights organizations support the "no means no" paradigm, although they overlook situations in which fear may prevent victims from explicitly refusing consent. Additionally, complexity arises in cases where initial refusal may later change to acquiescence due to coercion or fear. Courts typically focus on the presence of physical force, but the concept of "meaningful choice" should be considered, emphasizing human dignity over simplistic notions of consent.⁷³

Feminist critiques of legal epistemology highlight the inadequacy of the rational masculine ideal as the foundation of law.⁷⁴ This ideal fails to acknowledge the lived experiences of women and their complexities in providing their consent. Feminist perspectives argue that autonomy is not innate, but shaped by social and relational factors, leading to varying degrees of independence exercised by individuals.⁷⁵ Therefore, while the law may recognize certain declarations, further investigation is needed to understand the scope of a woman's autonomy. Furthermore, in cases of custodial sexual violence, there is a strong argument for presuming "no consent," acknowledging the inherent vulnerability of women in such situations.⁷⁶ Given the power dynamics involved, feminist movements have advocated for making the accused responsible for proving their innocence in these cases.

The concept of agency is challenged by the online realm, especially when it comes to unconsented sharing of private photos. While consent frameworks may apply to initial sharing, once images are online, they can spread rapidly without regard to consent.⁷⁷ This challenges informed consent, especially in the realm of data protection, where individuals may have little control over how their data are used. Instead of relying solely on consent, a harm framework is proposed to address instances in which harm occurs despite consent being given.

6. Towards a Feminist Framework

The legal understanding of violence to a strict interpretation of consent disregards the nuanced nature of consent, as argued by feminists, who emphasize its contextual and

⁷³ Stephen J. Schulhofer, "Taking Sexual Autonomy Seriously: Rape Law and Beyond," *Law & Philosophy* 11 (1992): 35, 42.

⁷⁴ Ales Zavrsnik, *The Feminist Critique of Law and the Criminal Justice System* (2008), https://www.pf.uni-lj.si/media/s.zavrsnik2008_eng.pdf.

⁷⁵ Catriona Mackenzie, "Feminist Innovation in Philosophy: Relational Autonomy and Social Justice," *Women's Studies International Forum* 72 (2019): 144, 148, <https://doi.org/10.1016/j.wsif.2018.05.003>.

⁷⁶ Lisa Avalos, "Seeking Consent and the Law of Sexual Assault," *University of Illinois Law Review* 3 (2023): 731, 760. https://digitalcommons.law.lsu.edu/faculty_scholarship/459.

⁷⁷ Rajkumar and Sen, *The Judiciary's Tryst with OGBV*, 2024.

situational aspects. There is a need to shift towards a rights-oriented perspective in legal frameworks, especially concerning data protection laws.⁷⁸ This approach grants individuals inherent rights to their data, which cannot be waived by consent alone. Additionally, data controllers have the burden of ensuring protection from harm.

Thus, the emphasis is on shifting the focus towards prioritizing choice and drawing insights from legal strategies in data protection, with an emphasis on recognizing damage by looking at it through the angle of equality, privacy, and dignity. Moreover, rather than supporting patriarchal public morality that categorizes any portrayal of female sexuality as 'obscene' and consequently controls sexual expression, there is a need to promote a feminist approach based on constitutional principles.

The right to privacy encompasses three main aspects: decisional privacy, which protects individual autonomy from irrational outside influence; physical privacy, which guards against illegal breaches of bodily integrity; and informational privacy, which deals with ownership of personal data.⁷⁹ This approach was supported by a judgment affirming the fundamental right to privacy. This paradigm was reinforced by the judiciary's decision to endorse its right to privacy.⁸⁰

Feminists criticize the right to privacy for failing to address domestic abuse against women and the absence of privacy for women in public spaces.⁸¹ For instance, Law Commission's 2000 report argued that criminalizing marital rape could excessively disrupt marital dynamics. *Mrs. Neera Mathur v. LIC of India*,⁸² it was held that the LIC was permitted to mandate pregnancy tests for female job applicants to prevent immediate maternity leave after employment. The court justified asking intrusive questions about the candidates' menstrual cycles, citing potential discomfort due to modesty concerns among women.

The Puttaswamy judgment acknowledges feminist concerns regarding privacy and suggests an interpretation that prioritizes equality. The court stated that:

*"The challenge in this area is to seriously violate the dignity of women in the domestic sphere while simultaneously protecting the privacy entitlements of women grounded in the identity of gender and liberty."*⁸³

⁷⁸ Daniel Spichtinger, "New Data Protection and Privacy Laws Have Changed the Regulatory Landscape for Researchers in the Global North," *LSE Impact Blog*, April 15, 2024, <https://blogs.lse.ac.uk/impactofsocialsciences/2024/04/15/new-data-protection-and-privacy-laws-have-changed-the-regulatory-landscape-for-researchers-in-the-global-north/>.

⁷⁹ Michele E. Gilman, "Welfare, Privacy, and Feminism," *University of Baltimore Law Forum* 39 (2009): 5. <https://scholarworks.law.ubalt.edu/lf/vol39/iss1/4>.

⁸⁰ *Justice K.S. Puttaswamy v. Union of India*, AIR 2017 SC 4161.

⁸¹ Jens T. Theilen, Andreas Baur, Felix Bieker, Regina Ammicht Quinn, Marit Hansen, and Gloria González Fuster, "Feminist Data Protection: An Introduction," *Internet Policy Review* 10, no. 4 (2021), <https://doi.org/10.14763/2021.4.1609>.

⁸² *Mrs. Neera Mathur v. LIC of India*, AIR 1992 SC 392.

⁸³ *Justice K.S. Puttaswamy v. Union of India*, AIR 2017 SC 4161.

It emphasizes the challenge of addressing violations of women's dignity within the domestic sphere, while safeguarding their privacy rights based on gender identity and liberty.

The depiction of women in a discriminatory manner extends beyond sexually explicit content to include other forms of sexist representations that perpetuate women's social subordination and oppression. Furthermore, sexist content, even if not sexually explicit, should be considered harmful and subject to legal scrutiny.⁸⁴ There is a danger of institutionalizing popular morality linked to obscenity as it tends to promote gender discrimination. In addition, as the Naz Foundation case in 2001 clarified, constitutional morality must take the place of public morality to guard people's rights to privacy and dignity. The court observed, "Moral indignation, howsoever strong, is not a valid basis for overriding individuals' fundamental rights of dignity and privacy."⁸⁵ Therefore, it is imperative for the state to uphold constitutional morality.

7. Proposing New Legislation for Addressing TFVW

To fully grasp and address TFVW from a feminist perspective that emphasizes privacy, equality, dignity, and constitutional morality, it is necessary to explore the potential implementation of a specific law that can comprehensively define and address this growing phenomenon. The circulation of intimate or sexual images without consent must be viewed not merely as harm to speech or representation, but as a profound assault on the person depicted.

The misuse of anti-obscenity laws, which target content rather than the violation of privacy, is inappropriate in cases where private images are shared without consent via platforms such as WhatsApp.⁸⁶ Legal experts warn that such laws, including section 67A of the Act, could inadvertently penalize individuals who voluntarily share personal images and later seek legal recourse against their non-consensual distribution. In these cases, the law fails to account for the violation of bodily autonomy, and instead focuses on the perceived obscenity of the content. This legal approach is deeply flawed as it prioritizes the impact on viewers over the invasion of the victim's privacy and dignity.

Consent-based laws such as section 77 of the BNS and section 66E of the IT Act, while preferring morality-based laws, offer limited protection in practice. However, the advantage lies only in the literal interpretation of law. Court decisions have demonstrated

⁸⁴ Ved Kumari, "Gender Analysis of Indian Penal Code," in *Engendering Law: Essays in Honour of Lotika Sarkar*, ed. Amita Dhanda and Archana Parashar (Eastern Book Company, 1999), 139-141.

⁸⁵ *Naz Foundation v. Government of NCT of Delhi and Others*, (2009) 160 DLT 277.

⁸⁶ Bishakha Datta, "Sexual Expression, Law and Media in Contemporary India," in *Acts of Media: Law and Media in Contemporary India*, ed. Siddharth Narrain (Sage, 2022), 80-97.

that an individual's agency is often undermined by manipulating consent or the lack thereof.⁸⁷

Section 66E of the IT Act fails to provide a comprehensive meaning of the term "reasonable expectation of privacy," especially in light of the current understanding of the right. As a result, a woman cannot be granted the presumption of privacy if she shows her partner a private photo. Furthermore, the idea of personal autonomy emphasizes that the right to privacy persists even if private information is revealed to a third party. This perspective becomes significant because it upholds the intrinsic right to privacy of the portrayed individual, especially when private photos are shared with other parties.

Furthermore, several US states have enacted specific laws targeting revenge porn, requiring proof of intent to harass or hurt the victim.⁸⁸ Similarly, section 77 of the BNS makes it an offence if the victim consents to taking intimate photos but not their transmission to third parties. However, proving intent or mens rea in such cases remains a challenge, making it difficult to hold secondary criminals accountable, especially when images are widely circulated across digital platforms.

Legal frameworks should expand to consider the three types of knowledge—actual, constructive, and knowledge—in the third degree: to hold individuals responsible for "the non-consensual distribution of images."⁸⁹ In Canada, the offence of non-consensual distribution of intimate images is codified under section 162.1 of the Criminal Code (RSC 1985, c C-46), introduced through the Protecting Canadians from Online Crime Act, 2014.

section 162.1(1) criminalises the knowing publication, distribution, transmission, sale, or making available of an "intimate image" of a person without that person's consent, regardless of whether the image was originally created or shared consensually.⁹⁰ Crucially, the provision defines "intimate image" to include images taken in circumstances giving rise to a reasonable expectation of privacy, thereby affirming that consent to creation or initial sharing does not negate continuing privacy rights.⁹¹ The Canadian approach places the burden on the distributor to ensure consent and treats privacy as an ongoing, inalienable right, rather than a moral entitlement contingent on

⁸⁷ Nadine Barrett-Maitland and Jenice Lynch, "Social Media, Ethics and the Privacy Paradox," in *Security and Privacy from a Legal, Ethical, and Technical Perspective*, ed. Christos Kalloniatis and Carlos Travieso-Gonzalez (IntechOpen, 2020), 11.

⁸⁸ Roni Rosenberg and Hadar Dancing-Rosenberg, "Revenge Porn in the Shadow of the First Amendment," *Journal of Criminal Law* 24 (2022): 1285, 1290.

⁸⁹ Krishna Deo Gaur, *Textbook on the Indian Penal Code* (Universal Law Publishing, 2011), 80-81.

⁹⁰ Moira Aikenhead, "Revenge Pornography and Rape Culture in Canada's Non-Consensual Distribution Case Law," in *The Emerald International Handbook of Technology-Facilitated Violence and Abuse*, ed. Jane Bailey, Asher Flynn, and Nicola Henry (Emerald Publishing Ltd., 2021), 535.

⁹¹ Alexa Dodge, "Nudes are Forever: Judicial Interpretations of Digital Technology's Impact on "Revenge Porn"," *Canadian Journal of Law and Society* 34, no. 1 (2019): 126, <https://doi.org/10.1017/cls.2019.4>.

sexual propriety or modesty.⁹² This rights-based framing stands in contrast to obscenity-centric models and aligns liability with violations of dignity and informational self-determination. Canadian rape laws similarly placed the burden of ensuring consent on the accused, necessitating them to demonstrate that they actively sought consent for an intimate act.⁹³ Unless Indian judicial interpretations evolve to adopt similar principles, the disproportionate application of anti-obscenity laws will continue, further victimizing individuals whose privacy has been violated.

Further, New Zealand's Harmful Digital Communications Act 2015 (HDCA) establishes a comprehensive civil and criminal framework to address digital harms, including the unauthorised sharing of intimate images. Section 22 creates the criminal offence of posting a "harmful digital communication" with the intent to cause harm, where posting results in serious emotional distress. Section 5 sets out ten statutory communication principles, including respect for privacy, dignity, and personal autonomy. Although the Act does not exclusively focus on intimate images, it explicitly encompasses such conduct within its harm-based framework.⁹⁴ Importantly, the HDCA shifts the legal focus away from sexual morality and toward foreseeable harm, privacy violation, and victim protection, supported by remedies such as takedown orders, cease-and-desist directions, and criminal sanctions in aggravated cases.⁹⁵ This model reflects a preventive, victim-centred approach that recognises digital abuse as a structural harm rather than an issue of indecency or obscenity.

In the Philippines, the Anti-Photo and Video Voyeurism Act of 2009 (Republic Act No. 9995) directly addresses non-consensual intimate image abuse. Section 3 defines prohibited acts to include the recording, copying, reproduction, and distribution of photo or video coverage of a person's sexual act or intimate parts without consent, even where the original recording was consensual. The Act expressly recognizes that consent must extend beyond creation to dissemination, thereby affirming that privacy rights persist notwithstanding prior intimacy or trust.⁹⁶ By grounding liability in lack of consent and violation of personal dignity, the Philippine framework avoids the pitfalls of obscenity-based enforcement and foregrounds bodily autonomy and informational privacy.

These comparative models expose the limitations of India's current reliance on section 67A of the IT Act and section 79 of the BNS, both of which remain anchored in public

⁹² Olga Marques, "Intimate Image Dissemination and Consent in a Digital Age: Perspectives from the Front Line," in *The Emerald International Handbook of Technology-Facilitated Violence and Abuse*, ed. Jane Bailey, Asher Flynn, Nicola Henry (Emerald Publishing Ltd., 2021), 324.

⁹³ Tatjana Hörnle, ed., *Sexual Assault: Law Reform in a Comparative Perspective* (Oxford University Press, 2023), 95.

⁹⁴ Nicola Henry et al., "Devastating, Like it Broke Me': Responding to Image-Based Sexual Abuse in Aotearoa New Zealand," *Criminology & Criminal Justice* 23, no.5 (2022): 861, <https://doi.org/10.1177/17488958221097276>.

⁹⁵ Laura Higson-Bliss, "Prosecuting Communication Offences: Interpreting the Harms Model," *Criminal Law Review* 4 (2022): 272, <https://doi.org/10.3316/agispt.20220322064068>.

⁹⁶ Christine Marie Habito, Alison Morgan, and Cathy Vaughan, "'Direct' and 'Instant': The Role of Digital Technology and Social Media in Young Filipinos' Intimate Relationships," *Culture, Health & Sexuality* 24, no. 5(2022): 657.

morality and sexualized notions of harm. While section 77 of the BNS (voyeurism) and section 66E of the IT Act (violation of privacy) represent incremental progress, they fail to articulate a robust conception of continuing consent, secondary dissemination, and reasonable expectation of privacy in digital contexts.

To ensure comprehensive coverage of all actions that establish a criminal violation of privacy, whether in online or offline media, section 79 of the BNS requires reformulation. Drawing inspiration from section 77 of the BNS, which addresses voyeurism, the focus shifts from the outdated notion of “outraging the modesty of a woman” to a framework centered on physical privacy. It is necessary to replace the broader definition of privacy infringement, which encompasses invasions of physical integrity and individual liberty, with the idea of “insulting the modesty of a woman.”

The section should explicitly include accessing, distributing, publicly exhibiting, or circulating a woman’s personal information without her consent, covering acts such as doxxing. Based on the rule in *R. Rajagopal’s* case, breaches of personal information confidentiality should be understood. The Supreme Court identified the following.

“The ‘right to privacy,’ or the right to be let alone is guaranteed by Article 21 of the Constitution. A citizen has the right to safeguard his own privacy, his family, marriage, procreation, motherhood, child-bearing, and education among other matters. None can publish anything concerning the above matters without his consent, whether truthful or otherwise, and whether laudatory or critical.”⁹⁷

This landmark decision highlights the need to identify privacy as a fundamental human right and to extend this protection to the digital realm. As technology continues to evolve, law must adapt to protect individuals from privacy violations that extend beyond the physical, ensuring that their digital autonomy is equally respected and upheld.

8. Advocating for New Legislation Addressing TFWV

Recognizing the unique dynamics of online communication and interaction, many legal scholars and activists argue for the creation of dedicated legislation specifically tailored to address TFWV in all its forms. Crucially, any legislative framework aimed at combating TFWV should acknowledge the interconnectedness of online and offline violence, emphasizing that both spheres contribute to gender-based violence. While understanding this continuum is essential, it is essential to acknowledge the distinct nature of online interactions compared with offline interactions. The digital realm

⁹⁷ *R. Rajagopal v. State of Tamil Nadu*, 1995 AIR 264.

introduces entirely new dimensions of violence that are facilitated by the unique architecture of online platforms.⁹⁸

Moreover, the dissociative anonymity offered by the Internet, coupled with the lack of immediate feedback or consequences for harmful actions, fosters disinhibition, which can lead to extreme forms of violence online.⁹⁹ It is important to emphasize that online violence does not merely affect one's digital representation; it constitutes a direct assault on one's sense of self, identity, and emotional well-being. The harm caused by cyber interactions can be as severe as that inflicted through physical interactions, demonstrating the need for laws that treat online and offline violence with equal gravity.¹⁰⁰

The digital realm operates within a neoliberal framework that shapes social interactions, introduces new actors, such as social media platforms, and elevates corporate interests.¹⁰¹ This framework complicates online identity, as it is influenced not only by personal agency, but also by patriarchal and neoliberal structures that dictate the rules of engagement and shape user experiences. Consequently, legal frameworks must consider these new actors, including tech companies and digital platforms, which hold immense power to shape how violence occurs and is managed online.

A legal approach is required that separates technology-facilitated speech and action while ensuring comprehensive protection for victims of online violence. The NCW highlighted the inadequacies of the existing IT Act, noting that it lacks sensitivity to the unique forms of violence women face online. As the NCW stated:

*"A woman centric information technology law must be drafted defining types of cybercrimes targeting women. The IT Act of 2000 (amended in 2008) is not a women-sensitive act (sic). This needs to be reviewed to introduce more innovative approaches in law."*¹⁰²

Beyond piecemeal revisions to the existing legislation, several countries have enacted new laws specifically aimed at combating gender-based technological violence. A few nations, such as the Philippines, are passing new legislation to address gender-based

⁹⁸ Chandell Gosse, "Not the Real World": Exploring Experiences of Online Abuse, Digital Dualism, and Ontological Labor, in *The Emerald International Handbook of Technology-Facilitated Violence and Abuse*, ed. Jane Bailey, Nicola Henry, and Asher Flynn (Emerald Publishing, 2021), 47, 49.

⁹⁹ Jessica Mueller-Coyne et al., "The Impact of Loneliness on the Six Dimensions of Online Disinhibition," *Computers in Human Behavior Reports* 5 (2022), <https://doi.org/10.1016/j.chbr.2022.100169>.

¹⁰⁰ Gargi Sarkar and Sandeep K. Shukla, "Behavioral Analysis of Cybercrimes: Paving the Way for Effective Policing Strategies," *Journal of Economic Criminology* 2 (2023), <https://doi.org/10.1016/j.jeconc.2023.100034>.

¹⁰¹ Antonio Castillo-Esparcia et al., "Evolution of Digital Activism on Social Media: Opportunities and Challenges," *Profesional de la Información* 32, no. 3 (2023), <https://doi.org/10.3145/epi.2023.may.03>.

¹⁰² National Commission for Women, *Recommendations of the Consultation on Ways and Means to Safeguard Women from Cybercrimes in India* (2014), National Commission for Women, accessed March 16, 2025, <http://ncw.nic.in/highlights/consultation-%E2%80%9Cways-and-means-safeguard-women-cyber-crimes-india%E2%80%9D-organized-national>.

technological violence.¹⁰³ Philippine Senator Risa Hotiveros proposed enacting a bill that prohibits gender-based electronic violence.¹⁰⁴ The Bill defines “gender-based electronic violence as an offence referring to any acts or omissions involving the use or exploitation of ephemeral data or any form of information and communications technology (ICT), which causes or is likely to cause mental, emotional, or psychological distress or suffering.”¹⁰⁵ This bill outlines such violence in the digital realm and emphasizes the importance of dignity and personhood. Similarly, gender-neutral approaches are used in other nations, such as New Zealand, to address the problem of online harm. Aiming to avoid and lessen the damage caused by communications made digitally, the “Harmful Digital Communications Act of 2015” defines harm as “serious emotional distress.”¹⁰⁶

In advocating for new legislation, it is important to note that existing legal frameworks often fail to address the unique and evolving nature of digital violence. The intersectionality of online violence, where gender, class, race, and sexuality all play a part in the type and severity of harassment faced by individuals, must be considered.¹⁰⁷ India has the opportunity to formulate a comprehensive TFVW law that incorporates global best practices, while addressing the unique challenges faced by Indian women online.

9. Improving Law Enforcement Effectiveness

Despite efforts to provide gender sensitization training, law enforcement authorities frequently overlook the severity of online violence against women (VAW). Complaints regarding TFVW are frequently encountered with victim-blaming or dismissal by the police. This situation has not progressed substantially with the creation of cyber-cells. Furthermore, officials often disregard the withdrawal of consent from victims, undermining their subjective experience of violation.¹⁰⁸ A study conducted in 2016 found that a significant proportion of respondents who sought police assistance for online VAW felt that their complaints were not taken seriously or addressed adequately.¹⁰⁹

To improve responsiveness, NCW recommended the deployment of female officers in Cyber Cells. With funding from the Nirbhaya Fund, schemes have been initiated to create online reporting systems, forensic laboratories, and training institutes. 82.8 Crore rupees were allocated to set up training facilities in each state or UT. While these measures are

¹⁰³ The World Bank, *Gender-Based Violence Policy and Institutional Mapping Report* (2020), accessed March 16, 2025, <https://thedocs.worldbank.org/en/doc/e1575832e43d4030373f9a616975364f-0070062021/original/Philippines-Gender-Based-Violence-Policy-and-Institutional-Mapping-Report.pdf>.

¹⁰⁴ Risa Theresia, *Seventeenth Congress of the Republic of the Philippines* (2022), <https://legacy.senate.gov.ph/lisdata/2513321647!.pdf>.

¹⁰⁵ *Ibid.*

¹⁰⁶ *The Harmful Digital Communications Act 2015*, § 4 (N.Z.).

¹⁰⁷ Khan, Nordin, and Hassan, “Social Media, Online Abuse,” 186.

¹⁰⁸ Nigam, “Ending Online Violence against Women,” 2024.

¹⁰⁹ Pasricha, *Violence Online in India*, 2016.

crucial for combating cyber crimes in general, their application in addressing gender-based cyber crimes requires clarification. The Ministry of Home Affairs (MHA) has allocated funds for capacity building with a special focus on combatting cybercrime against women.¹¹⁰ The crucial challenge lies in dismantling the “culture of impunity” within enforcement authorities. Two possible approaches to addressing this issue include: (1) enhancing the effectiveness of police complaint authorities to address complaints of police inaction, with a mandate to establish such authorities in every state as per a decade-old Supreme Court order.¹¹¹ (2) Imposing penalties on police and Cyber Cell officers who neglect incidents of technology-mediated violence against women reported to them.¹¹²

Investigating officers require training to gather and preserve digital evidence for courtroom presentations. To guarantee the acceptability of digital evidence in court, police should adopt standard procedures. Accessing secondary electronic evidence for victims of TFVW should not pose undue challenges in legal proceedings.

10. Conclusion

This study examines the complexities of TFVW and its intersection with legal frameworks. It emphasizes that legislative measures alone cannot address their deep-rooted ties to misogyny and patriarchy. A robust regulatory framework must address the evolving nature of digital violence effectively. This requires re-examining legal concepts such as culpability and shifting from public morality to constitutional morality. Courts must adopt feminist jurisprudence and a consent-based approach to adjudication to ensure that legal provisions reflect the realities of digital harm. The formulation of digital age legislation must focus on the principles of equality, dignity, and privacy. Moreover, judicial procedures require meticulous reforms to align with the dynamic landscape of TFVW. A legal framework founded on these principles is essential to safeguard women’s rights in the digital sphere and advance a society free from gender-based violence and discrimination.

¹¹⁰ Ministry of Home Affairs (MHA), *Advisory on Cyber Crime Prevention and Control* (New Delhi: MHA, 2018), https://www.mha.gov.in/sites/default/files/2022-08/CIS_AdvisoryCyberCrime_14112019_0%5B1%5D.pdf.

¹¹¹ Amit Gopal Thakre and Jaishankar Karuppannan, “Contemporary Indian Policing,” in *A Critical Approach to Police Science: New Perspectives in Post-Transitional Policing Studies*, ed. Veronika Nagy and Klara Kerezi (Boom Uitgevers, 2020), 85-86.

¹¹² United Nations Office on Drugs and Crime (UNODC), *A Training Handbook for Criminal Justice Practitioners on Cyberviolence Against Women and Girls* (Vienna: UNODC, 2022), https://www.unodc.org/documents/southernafrica/Publications/CriminalJusticeIntegrity/GBV/UNODC_v4_121022_normal_pdf.pdf.

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Conflict of Interest Statement: The author(s) declares that the research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

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