



# State Response to Violence against Women on Social-Media

Arjun P. George\*

## Abstract

With the proliferation of new social media platforms, women all over the world are more exposed to the risk of being victims of technology crimes such as morphing, bogus profiling, and cyberbullying. Even though the provisions of the Indian Penal Code of 1860 and the provisions of the Information Technology Act of 2000 strive to prohibit these crimes to some extent, it is still a subject of debate whether or not these laws are effective. In addition, women are conditioned by society to ignore the cyberbullying they experience on social media platforms. Because of this, women are compelled to either abstain from using social media sites altogether or to conceal their identities while using them. Technology, which is intended to be a liberating force with the power to fill in existing gaps and disadvantages that women suffer in society, has shown to be counterproductive, by aligning with the older institutions of patriarchy.

**Keywords:** Crime, Information Technology Act, 2000, Patriarchy, Right to Privacy, Rule of Law

## 1. Introduction

A democracy should necessarily ensure the presence of rule of law in all adverse situations. While many, including legal scholars, consider the rule of law to be nothing but a fiction, it is the responsibility of believers and worshipers of the supremacy of law to address social problems that are left unanswered by the law to make themselves and the society

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\* Central University of Kerala; [arjun.pg@cukerala.ac.in](mailto:arjun.pg@cukerala.ac.in)

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believe that rule of law prevails.<sup>1</sup> India at present is going through a phase wherein the society gives the constitution and judgments of the Hon'ble Supreme Court no value due to the inadequacies in the age-old laws in effectively addressing the social violations that are increasing exponentially.<sup>2</sup> The wake-up calls of the academicians and different stakeholders in civil society are often comfortably ignored by the popular will of the community. The law, in its essence, means a system of regulations governing the members and affairs of a society. Uncertainty and subjectivity in law lead to mobocracy, mishandling of justice and destruction of the limbs of the State. The weak and underprivileged sections of society always suffer from atrocious social attitudes and inadequate legal protection. Women, who constitute a valuable section of the society, are subject to severe attacks in households, public places and even in virtual platforms like social media spaces. Though, at present, no special laws or express judgments of the Hon'ble Apex Court are in place to address online violence against women on social media platforms, the already pronounced judgments of the Hon'ble Supreme Court of India and the existing legislation can be properly and effectively applied to at least give a pretext of defense to the society to ensure the existence of rule of law. The laws should be interpreted in such a manner so as to provide solutions to the extent possible. At the same time, it is essential to ensure that laws are not arbitrarily exercised at the cost of women's freedom.

A civilized society cannot remain silent and helpless by citing the non-reforming or ill-equipping laws to deal with the

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<sup>1</sup> Eben Moglan, *Legal Fictions and Common Law Legal Theory Some Historical Reflections*, available at <https://moglen.law.columbia.edu/publications/fict.html> (last visited on December 22, 2023).

<sup>2</sup> Rangin Pallav Tripathy, *Don't Judges Need the Trust of People More than People Need to Trust Judges*, available at <https://thewire.in/law/dont-judges-need-the-trust-of-people-more-than-people-need-to-trust-judges> (last visited on December 22, 2023).

abuse of women on online platforms. Instead, it shall attempt either to reform or to interpret in a reformed manner, the traditional civil and criminal laws to address the issue effectively. The picture is so dismal if one looks at the major provisions of the country's existing penal laws. Section 506 of Indian Penal Code(IPC) of 1860 dealing with threat to cause death, grievous hurt or threats to a woman's chastity, Section 507 of IPC which deals with anonymous threats to cause injury to a person, reputation or property, Section 509 of IPC which deals with acts, words or gestures in nature to insult the modesty of a woman and which endanger her privacy, Section 354 A and Section 354 G of IPC which deal with sexual harassment of women including demand for sexual favors and voyeurism, Section 503 of IPC which deals with threats to injure a person, their reputation or property, Section 66E of the Information Technology Act (IT Act) of 2000 which deals with capturing transmission and publication of a person's private parts without their consent and Section 67B of IT Act which deals with depiction of children in an obscene and sexually explicit manner in an electronic form or facilitating abuse of children online, are some of the penal provisions which have been frequently used to address the violence against women in social media platforms. However, despite all these, the effectiveness of measures to protect women from online abuse is alarmingly low. Often, the freedom of women and especially their sexual choices, are controlled by society under the pretext of ensuring their safety. The law is always the product of society, which provides protection to the members of its community, and this protection is taken away from an individual when society feels that they abuse such protection. However, when the abuse is of such a nature that the majority of society supports it and when it is in tune with societal notions, the individual may not be deprived of their rights. This can often lead to the abuse and violation of fundamental rights of the society's historically and socially underprivileged sections.

The justice delivery systems of civilized communities are supposed to strive to provide solutions to the abused regardless of whether the majority care about it or not. The Indian legislature, however, often fails to address the increasing violence against women and the subaltern classes dynamically.<sup>3</sup> The recent reports of increasing violence against women destroy the faith of the common public in the justice-delivering agencies, which must be adequately addressed.<sup>4</sup> Society is supposed to make its way forward by breaking the stereotypes and this intention of an ideal society may get thwarted by the negative feedback from the justice delivery agencies.<sup>5</sup> Hence, even if the legislature fails to bring in special legislation to address the abuse of societal majoritarianism, the legal fraternity consisting of the judiciary, advocates and academic lawyers are duty-bound to raise their voices against such abuse in society. Though the Indian judiciary is always criticized for its lengthy judgments and judicial activism, these are often helpful in having a long life in effectively addressing the issues the judiciary directly addresses, and the whole set of other problems remotely connected to it.<sup>6</sup> There is no single landmark judgment to date which directly addresses the issue of violence against women in social media platforms because most of these judgments end up in district courts. Thus, even in the absence of direct and recent case law on violence against women in social media platforms, the earlier judgments of the Supreme Court, which have remote connections with this

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<sup>3</sup> Tanni Chaudhuri and Arindam Mandal, *Rape of the Subaltern: India's Recent Sexual Violence in Perspective*, 43 (1) *International Review of Modern Sociology* 137 (Spring 2017).

<sup>4</sup> Pushpender Yadav, *Crime Against Women in India: A Theoretical Review*, 69 (4) *Indian Journal of Public Administration*, 925 (2023).

<sup>5</sup> Don't Judges Need the Trust of People More than People Need to Trust Judges, *supra* note 2.

<sup>6</sup> Madhav Khosla, *Addressing Judicial Activism in the Indian Supreme Court: Towards an Evolved Debate*, 32 *HASTINGS INT'L & COMP. L. REV.* 55 (2009).

issue, can be looked into, to understand the gravity and possible solutions for the same. Table 1 provides a list of such cases which affirmed the need to protect the safety and dignity of women. These cases must be looked into, to suggest solutions to the unaddressed issues of violence against women, on social media platforms.

Table 1

Sl. No.	Title of the case	Chief Observation of the court
1.	<i>R Rajagopal v. State of Tamil Nadu</i> <sup>7</sup>	Article 21 of the Constitution of India guarantees an individual's right to privacy.
2.	<i>Vishaka v. State of Rajasthan</i> <sup>8</sup>	Constitutional obligations exist on the courts under Article 21 of the Constitution of India to enforce Fundamental Rights.
3.	<i>Shreya Singal v. Union of India</i> <sup>9</sup>	There exists a need for intermediary regulation.
4.	<i>Ajaha Ali v. State of West Bengal</i> <sup>10</sup>	The modesty of women has to be strongly guarded.
5.	<i>Kumari Ratnabati Barik v. Chittaranjan Rout and Anr.</i> <sup>11</sup>	Even the husband can be liable for outraging his wife's modesty.

<sup>7</sup> R Rajagopal v. State of Tamil Nadu, 1995 AIR 264.

<sup>8</sup> Vishaka v. State of Rajasthan, AIR 1997 SC 3011.

<sup>9</sup> Shreya Singal v. Union of India, (2013) 12 SCC 73.

<sup>10</sup> Ajaha Ali v. State of West Bengal, (2013) 10 SCC 31.

<sup>11</sup> Kumari Ratnabati Barik v. Chittaranjan Rout and Anr, 1992 (II) OLR 305.

Sl. No.	Title of the case	Chief Observation of the court
6.	<i>State of Punjab v. Major Singh</i> <sup>12</sup>	The essence of a woman's modesty is her sex.
7.	<i>State of Tamil Nadu v. Suhas Katti</i> <sup>13</sup>	First conviction under the Information Technology Act, 2000, for circulating defamatory and obscene images.
8.	<i>Ritu Kohli Case</i> <sup>14</sup>	The first reported case of cyberstalking
9.	<i>Justice Puttuswamy v. Union of India</i> <sup>15</sup>	The right to privacy is part of the right to life.
10.	<i>Navteej Singh Johar v. Union of India</i> <sup>16</sup>	Society is vested with the responsibility to identify and correct the injustices existing.
11.	<i>The dissenting judgment of Honorable Justice R F Nariman and Honorable Justice Dr. D. Y. Chandrachud in Kantaru Rajeevaru and Ors. v. Indian</i>	Constitutional morality is nothing but the principles that the Constitution instils. These values can be found in the Preamble

<sup>12</sup> State of Punjab v. Major Singh, 1967 AIR 63.

<sup>13</sup> State of Tamil Nadu V. Suhas Katti – Cyber Law Case in India, (July 14, 2023, 10:00 AM), <https://www.legalserviceindia.com/lawforum/index.php?topic=2238.0>.

<sup>14</sup> Cyber Stalking – A “Virtual” Crime with Real Consequences, (July 14, 2023, 10:00 AM), <https://www.worldpulse.org/story/cyber-stalking-a-virtual-crime-with-real-consequences-43984>

<sup>15</sup> Justice Puttuswamy v. Union of India, (2017) 10 SCC 1.

<sup>16</sup> Navteej Singh Johar v. Union of India, (2017) 10 SCC 1.

Sl. No.	Title of the case	Chief Observation of the court
	<i>Young Lawyers Association through its General Secretary and Ors.</i> <sup>17</sup>	when it is read in conjunction with the other portions of the Constitution, especially parts III and IV.
12.	<i>Joseph Shine v. Union of India</i> <sup>18</sup>	Women are entitled to equal protection of the Constitution as their male counterparts.
13.	<i>Nipun Saxena v. Union of India</i> <sup>19</sup>	Individuals who have experienced sexual violence of any kind are compelled to endure social exclusion, even being blameless in the matter.
14.	<i>Mrs. X v. Union of India</i> <sup>20</sup>	Offending content has to be removed by the intermediaries within twenty hours, and automated tools should be used to identify and remove identical content.

<sup>17</sup> Kantaru Rajeevaru and Ors. v. Indian Young Lawyers Association through its General Secretary and Ors (2020) 2 SCC 1.

<sup>18</sup> Joseph Shine v. Union of India, 2018 Indlaw SC 899.

<sup>19</sup> Nipun Saxena v. Union of India (2019) 2 SCC 703.

<sup>20</sup> Mrs. X v. Union of India, 2023: DHC:2806.

Sl. No.	Title of the case	Chief Observation of the court
15.	<i>Sabu Mathew George v. Union of India</i> <sup>21</sup>	Search engines should promptly remove advertisements related to pre-natal sex determination upon receiving notification, ensuring their deletion within a timeframe of thirty-six hours.
16.	<i>Anuradha Bhasin v. Union of India</i> <sup>22</sup>	The regulation of online speech must adhere to the principles of proportionality and minimal restriction.

Indian legislature and executive always wish to take the defence of young democracy, which is still in the process of development, in order to hide their inefficiencies in creating and executing legislation capable of effectively addressing the newly arising problems in the society.<sup>23</sup> The crimes resulting from modern technological developments are mainly being dealt with in the Indian Penal Code, which was drafted way back in the year 1860 by the Britishers. Undoubtedly, it is efficient enough in addressing the traditional offences even after its 150th birth anniversary. However, using the same old law to address technological crimes like doxing, stalking, and

<sup>21</sup> Sabu Mathew George v. Union of India, (2018) 3 SCC 229.

<sup>22</sup> Anuradha Bhasin v. Union of India, (2020) 3 SCC 637.

<sup>23</sup> A P Shah, Today's India Has All the Markers of a Failing Democracy. But the Situation Is Not Irreversible, available at <https://thewire.in/rights/india-markers-failing-democracy-justice-ap-shah> (last visited on December 22, 2023).



revenge porn shows nothing but the inefficiency of the Indian legislature.<sup>24</sup> The Information Technology Act of 2000, which was not drafted with the primary intention to be a criminal legislation, does have some provisions to address some of the offences against women on social media platforms. However, due to its different purpose, these provisions alone are not enough to address the rising instances of violence against women on social media platforms.<sup>25</sup> Further, the executive is not adequately equipped to deal effectively with cyber offences. The lack of infrastructural facilities and trained staff makes it extremely difficult for law enforcement agencies to act efficiently upon such violations.<sup>26</sup> It is necessary to analyze the laws in place that address violence against women on social media to suggest solutions for the flaws in the existing legislation.

## **2. Supreme Court and Violence against Women on Social-Media**

Though cyber violence against women is repeatedly pointed out by feminist activists and many famous women scholars to be the reason for increasing sexual violence against women in the real world, such offences fail to be effectively brought before the highest courts of the land.<sup>27</sup> Most of these cases get settled before it reaches the court, and others get settled with district or lower-level courts where the violators who commit serious offences like revenge porn are being charged and

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<sup>24</sup> Submission on Online Violence against Women to the Special Rapporteur on Violence against Women, available at <https://itforchange.net/submission-on-online-violence-against-women-to-special-rapporteur-on-violence-against-women> (last accessed on November 30, 2019)

<sup>25</sup> *Id.*

<sup>26</sup> Nipun Saxena v. Union of India, *supra* note 19.

<sup>27</sup> Cyber Violence Against Women and Girls: A World-Wide Wake-Up Call (A Report by the UN Broadband Commission For Digital Development Working Group On Broadband And Gender), (last accessed on December 22, 2023), <https://en.unesco.org/sites/default/files/genderreport2015final.pdf>.

punished under less severe offences like stalking and voyeurism.<sup>28</sup> Thus, the hands of the lower judiciary are tied by the inadequacy of the existing legislation, while the higher judiciary eventually ignores this grey area on the grounds of the absence of direct litigations before them. However, the honorable Supreme Court of India has passed several authoritative judgments regarding violence against women.<sup>29</sup> The history and cause of these judgments can be looked into in their broad sense to effectively address the increasing violence against women on social media platforms.

## 2.1 Right to Dignity

The right to lead a dignified life is an inseparable part of Article 21 of the Constitution of India. The right to life would be meaningless for women when the rule of law does not recognize their right to lead a dignified life. Section 354 of the IPC was enacted to ensure the dignified existence of women in society.<sup>30</sup> It provides that whoever assaults or uses unlawful force against any woman, intending to outrage her modesty, shall be punished with imprisonment of any description for a duration which may extend to two years or with a fine, or with both.<sup>31</sup> The Honorable Supreme Court, through several judgments, has reaffirmed the dire need to protect the modesty of women by strict application of the provisions of IPC to ensure their dignified existence. According to the Hon'ble Supreme Court's decision, in the case of *Ajahar Ali v. State of*

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<sup>28</sup> N S Nappinai, Tackling Women's Digital Freedoms and Unfreedoms Online - Through Law & Technology, available at <https://itforchange.net/tackling-womens-digital-freedoms-and-unfreedoms-online-through-law-technology> (last visited on 22 December 2023).

<sup>29</sup> Women and Justice: Court: Supreme Court of India, available at [https://www.law.cornell.edu/women-and-justice/court/supreme\\_court\\_of\\_india](https://www.law.cornell.edu/women-and-justice/court/supreme_court_of_india) (last visited on December 22, 2023).

<sup>30</sup> Indian Penal Code of 1860, S. 354, No.45, Acts of Parliament, 1860 (India).

<sup>31</sup> Supra note 32

*West Bengal*,<sup>32</sup> the provisions of Section 354 of IPC have been enacted in order to protect public morals and decent behaviour. Therefore, a person is to be penalized if they employ criminal force upon any woman with the aim or knowledge that the woman's modesty will be violated in the process. The above judicial observation understood as criminal use of force may not only mean the use of physical strength, but can also mean such pressure exercised by using social media.<sup>33</sup> Limiting the essential elements which are required to constitute the criminal offence of outraging the modesty of women to those in the physical world might result in injustice to many of the victims of virtual abuse in this digital era. The Hon'ble Supreme Court, in the case of *State of Himachal Pradesh v. Dharam Pal*,<sup>34</sup> held that "according to us, the offence of an attempt to commit rape is a serious offence, as ultimately if translated into the act leads to an assault on the most valuable possession of a woman, i.e., character, reputation, dignity and honour." Thus, heinous offences like rape and its modern forms like revenge porn and doxing, violate women's character, reputation and honour in society. Hence, these offences need to be thoughtfully handled to ensure that the right of women to lead and enjoy their life to its fullest form is not compromised. In the case of *State of Punjab v. Major Singh*,<sup>35</sup> the honorable Supreme Court defined the term modesty and explained what would amount to a violation of modesty. The court, in this case, observed that modesty is the quality of being modest, which means with regard to women, good in manner and conduct and scrupulously chaste, even though the word "modesty" has not been defined in the Code.<sup>36</sup> According to the court, the ultimate litmus test for assessing whether or not a violation of modesty has occurred is whether or not the action

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<sup>32</sup> *Ajaha Ali v. State of West Bengal*, supra note 10.

<sup>33</sup> *Id.*

<sup>34</sup> *State of Himachal Pradesh v. Dharam Pal*, (2004) 9 SCC 681.

<sup>35</sup> *State of Punjab v. Major Singh*, supra note 12.

<sup>36</sup> *State of Punjab v. Major Singh*, supra note 12.

of the offender can be seen as one that is capable of degrading the sense of decency of a lady.<sup>37</sup> Thus, in the words of the honorable Supreme Court, modesty means the right to decency enjoyed by women in society and anything that lowers this enjoyment of their right amounts to a violation of the modesty of women. Even though the expression “scrupulously chaste” appearing in the observation warrants further debate as from a feminist perspective, women can be ‘chaste’ by choice but never by force, the concept of dignity and decency of women propounded by the Hon’ble court, in this case, is of paramount importance.<sup>38</sup> Further, the Apex Court, in this case, pointed out that the essence of a woman’s modesty is her sex.<sup>39</sup>

The Court held that,<sup>40</sup>

“The essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses a modesty capable of being outraged. Whoever uses criminal force on her with intent to outrage her modesty commits an offence punishable under Section 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as, for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anesthesia, she may be sleeping, or she may be unable to appreciate the significance of the act; nevertheless, the offender is punishable under the section.”

Thus, it must be understood that regardless of the response of the victim and irrespective of whether the act of violation

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<sup>37</sup> State of Punjab v. Major Singh, 1967 AIR 63.

<sup>38</sup> *Id.*

<sup>39</sup> State of Punjab v. Major Singh, supra note 37.

<sup>40</sup> State of Punjab v. Major Singh, supra note 37.

occurred in the physical or in the virtual world, the actions which violate the right to the decency of a woman need to be punished and accordingly dealt with under the provision of Section 354 of IPC. Further, the violator's relationship with the violated is no reason to excuse him from the offence that he has committed.<sup>41</sup> In many instances, like in revenge porn, intimate partners may be responsible for violating the victim's modesty. The right to lead a dignified and decent life is not limited to the physical world; it also applies, and is supposed to regulate the acts of persons in the cyber world to ensure that their actions in no way violate women's right to enjoy decency in society. In the famous case of *Ritu Kohli*, the accused used the victim's identity to chat on an illegal platform, which affected the victim's personal life.<sup>42</sup> A case was filed, but the accused was released on bail, as Section 509 of IPC, which criminalizes the word, gesture or act intended to insult the modesty of a woman,<sup>43</sup> under which the accused was charged, was found incapable of addressing the offences in cyberspace. <sup>44</sup>This case led to the enactment of Section 66A of the Information Technology Act of 2000,<sup>45</sup> which provides punishment for sending offensive messages through communication services, etc. This case is the best example that clearly shows the weakness of the Indian law enforcement system in using the existing provisions properly to address the necessities of the future.

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41 Kumari Ratnabati Barik v. Chittaranjan Rout and Anr, supra note 11.

42 Cyber Stalking, supra note 14.

43 Indian Penal Code of 1860, S.509, No.45, Acts of Parliament, 1860 (India).

44 V.M. Eshwar and Aswathy Rajan, A Critical Analysis on Judicial Activism in Relation to Cyber Law-An Indian Perspective, (July 23, 2023, 11:00 AM), <https://acadpubl.eu/hub/2018-119-17/2/123.pdf>

45 Information Technology Act of 2000, S.66A, No.21, Acts of Parliament, 2000 (India).

## 2.2 Right to Reputation

Cyber violence against women is normally becoming violative of their right to reputation as this is fundamental and connected to the right to privacy, which is necessarily held to be a part of the right to life. Women from all walks of life are the most viciously attacked prey of defamation, and with the development of social media platforms, such attacks have largely been normalized. Society, out of its conception and belief that women are supposed to live within the four walls of their home, sanctions cyber-attacks against women who react as deserving punishment for those trying to exceed the limits set by society. Though the Information Technology Act of 2000 provides for the offence of transmitting obscene materials, other forms of defamation remain to be addressed. In the case of *State of Tamil Nadu v. Suhas Katti*<sup>46</sup> the accused was convicted under Section 67 of the Information Technology Act for posting obscene messages on the internet. However, this led to a partial ban of pornography in India, under which the government has curtailed all forms of materials that they intended to ban under the vague definition of the term obscene. While it is essential to protect the rights of women on social media platforms, it is equally important to ensure that the laws which are intended to provide such protection shall in no way violate the constitutional guarantee of freedom of speech and expression. It must also be realized that on one end, while Section 67 of the IT Act grants abusive power to the investigating agencies, on the other end, the Section is so restrictive as to limit itself to the cases of transmission or publication of obscene materials in an electronic form, unlike the offence of defamation as provided under Section 499 of IPC, which has a very wide ambit.<sup>47</sup>

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<sup>46</sup> State of Tamil Nadu V. Suhas Katti, supra note 13.

<sup>47</sup> Indian Penal Code of 1860, S.499, No.45, Acts of Parliament, 1860 (India)

### 2.3 Right against all Forms of Discrimination

In the landmark judgment of *Vishaka v. State of Rajasthan*,<sup>48</sup> the Hon'ble Supreme Court focused on gender-specific violence. Though the apex Court, in this case, has focused on increasing violence against women in workplaces, it has also addressed the issues of gender equality, discrimination and guarantee against sexual harassment.<sup>49</sup> The court has also stressed on the application of international legislation in the domestic legal system, in the absence of appropriate legislation to secure the rights of the citizens.<sup>50</sup> Further, the court referred to its constitutional obligation under Article 21 of the Constitution of India to enforce fundamental rights.<sup>51</sup> In the words of the then Hon'ble Chief Justice of India, Justice Verma,<sup>52</sup>

"The objectives of the judiciary mentioned in the Beijing Statement are:

- (a) to ensure that all persons can live securely under the Rule of Law;
- (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and
- (c) to administer the law impartially among persons and between persons and the State."

In the absence of capable domestic legislation to address violence against women in social media platforms, the constitutional ideals and international conventions, like that of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), are of great relevance to guarantee an equal platform for women on social media in tune with Article 14, Article 19 (1) (a) and Article 21 of the Indian

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<sup>48</sup> *Vishaka v. State of Rajasthan*, supra note 8.

<sup>49</sup> *Vishaka v. State of Rajasthan*, supra note 8.

<sup>50</sup> *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

<sup>51</sup> *Id.*

<sup>52</sup> *Vishaka v. State of Rajasthan*, supra note 50.

Constitution.<sup>53</sup> Article 1 of the Convention on Elimination of All Forms of Discrimination Against Women defines the term discrimination as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”<sup>54</sup> Further, Article 2 (b)<sup>55</sup> and Article 3<sup>56</sup> of the Convention on Elimination of all Forms of Discrimination against Women provide for the duty of the State parties to take all measures possible, including drafting legislation and prescribing punishments for eliminating all forms of discrimination against women.

Thus, it can be understood that the violence against women on social media platforms is a form of discrimination directed against women, owing to the very reason of unequal ground that it offers for women. There is an express duty cast upon the court and the executive under Part III of the constitution of India to effectively address the challenge of increasing violence against women on social media platforms to permit them to enjoy a platform equal to that of men in cyberspace, and thus make their fundamental rights meaningful.<sup>57</sup> Therefore, through this judgment, the court has effectively stressed the significance of the rule of law, which demands a logical association of governance with the constitutional scheme. In the absence of such an established connection, the declared objectives of constitutionalism would be of no relevance.

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<sup>53</sup> *Vishaka v. State of Rajasthan*, supra note 50.

<sup>54</sup> Convention on the Elimination of All Forms of Discrimination Against Women, 1981, Article 1.

<sup>55</sup> Convention on the Elimination of All Forms of Discrimination Against Women, 1981, Article 2 (b).

<sup>56</sup> Convention on the Elimination of All Forms of Discrimination Against Women, 1981, Article 3.

<sup>57</sup> *R Rajagopal v. State of Tamil Nadu*, supra note 7.



## 2.4 Right to Privacy

In the case of *R Rajagopal v. State of Tamil Nadu*,<sup>58</sup> popularly known as the Auto Shankar case, the court held that the right to privacy is a guarantee of Article 21 of the Indian Constitution. Justice B Jeevan Reddy, in this case, held that Article 21 of the Constitution protects an individual's "right to privacy," also known as the right to be left alone. A person has the right to protect the confidentiality of his or her private affairs, as well as those of his or her family, marriage, procreation, motherhood, childbearing, and education, among other things. Nobody is allowed to write anything regarding the topics mentioned above without his/her permission, regardless of whether it is true or not and regardless of whether it is laudatory or critical.<sup>59</sup> Thus, this judgment is considered to be one of the landmark judgments of the honorable Supreme Court of India, which has dealt with the importance of privacy in the life of every human. The right to life would only be complete in the presence of the right to privacy. This right was further reaffirmed in the case of Justice *Puttaswamy v. Union of India*.<sup>60</sup> The Apex Court, in this case, has rightly held that:<sup>61</sup>

“Natural rights are not bestowed by the State. They are inherent in human beings because they are human. They exist equally in the individual irrespective of class, strata, gender or orientation. Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution.”

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<sup>58</sup> *R Rajagopal v. State of Tamil Nadu*, supra note 7.

<sup>59</sup> *R Rajagopal v. State of Tamil Nadu*, 1995 AIR 264.

<sup>60</sup> *Justice Puttaswamy v. Union of India*, supra note 15.

<sup>61</sup> *Justice Puttaswamy v. Union of India*, supra note 15.

All forms of violence directed against women on social media platforms affect their right to privacy and hence require proper attention as all these hamper the right of a woman to lead a dignified life.<sup>62</sup> Further, this right is inalienable and inseparable from a dignified human existence, which is the foundational pillar of the Indian Constitution.

## 2.5 Intermediary Liability

Individuals who have been victims of any form of sexual violence are often subjected to social marginalisation, irrespective of their innocence in the situation.<sup>63</sup> This marginalisation can stem from deeply ingrained societal beliefs and misconceptions surrounding sexual violence. Victims may be blamed for their victimization, facing stigmatization and isolation from their communities.<sup>64</sup> Such social marginalisation not only compounds the trauma experienced by survivors but also hinders their ability to seek support and justice, perpetuating a cycle of silence and impunity. Hence, it is very important to hold the intermediaries liable for systematic violence directed against women on social media platforms. The Hon'ble Apex Court, in the case of *Shreya Singhal v. Union of India*,<sup>65</sup> to a considerable extent, has identified and addressed the offences of violence against women on social media platforms. The court, in this case, differentiated social media platforms from traditional

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<sup>62</sup> No Space for Violence against Women and Girls in the Digital World, (November 15, 2023, 11:00 AM), <https://www.coe.int/en/web/commissioner/-/no-space-for-violence-against-women-and-girls-in-the-digital-world>.

<sup>63</sup> Rula Odeh Alsawalga, Cyberbullying, social stigma, and self-esteem: the impact of COVID-19 on students from East and Southeast Asia at the University of Jordan, available at <https://www.ncbi.nlm.nih.gov/https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8045034/> (last visited on December 22, 2023).

<sup>64</sup>Id.

<sup>65</sup> *Shreya Singal v. Union of India*, supra note 9.

media and identified the need for prescribing intermediary regulation.<sup>66</sup> The court observed that:<sup>67</sup>

“By the very nature of the medium, the width and reach of the internet is manifold as against newspaper and films. The said medium has inbuilt limitations, i.e., a person will have to buy/borrow a newspaper and/or will have to go to a theatre to watch a movie. Television also needs at least a room where a television is placed, and can only watch those channels to which he has subscribed and that too only at a time when it is being telecast. While in case of an internet, a person abusing the internet, can commit an offence at any place at the time of his choice and maintaining his anonymity in almost all cases.”

The Supreme Court, in this case, clearly held that the intermediaries should take down content only upon receiving judicial or executive orders by reading down Information Technology (Intermediaries Guidelines) Rules, 2011, to prevent the arbitrary exercise of their power in deciding what ought to be removed and what not to be removed.<sup>68</sup> In this case, the court went on to strike a balance between the rights of the individuals and reasonable restriction.<sup>69</sup> By doing so, the court reaffirmed the always-known principle that restrictions should be imposed only to the extent necessary to maintain order.<sup>70</sup> The principles of proportionality and minimal constraint should guide the regulation of internet speech.<sup>71</sup> This means that any regulation should only be implemented if it is necessary and proportionate to achieve a legitimate aim, such as protecting individuals from harm or ensuring national

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<sup>66</sup> *Shreya Singal v. Union of India*, supra note 9.

<sup>67</sup> *Shreya Singal v. Union of India*, (2013) 12 SCC 73

<sup>68</sup> *Id.*

<sup>69</sup> *Shreya Singal v. Union of India*, supra note 67.

<sup>70</sup> *Shreya Singal v. Union of India*, supra note 67.

<sup>71</sup> *Reno v. American Civil Liberties Union*, 521 US 244.

security. Additionally, any restrictions on internet speech should be minimal and narrowly tailored to avoid unnecessary censorship or infringement on individuals' rights to freedom of expression. By adhering to these principles, governments can strike a balance between protecting the public and preserving the fundamental principles of a free and open internet.<sup>72</sup> As directed by the honourable apex court in the case of *Mrs. X v. Union of India*,<sup>73</sup> intermediaries are required to remove offensive content within a timeframe of twenty hours expeditiously. In order to accomplish this, automated technologies should be employed to accurately detect and eliminate content that is an exact match.<sup>74</sup> These technologies should be capable of swiftly identifying and removing offensive content that is similar to previously flagged material. However, it is crucial for intermediaries to also invest in advanced algorithms that can recognize offensive content, ensuring a more comprehensive and effective content moderation process. By combining automated technologies and advanced algorithms, intermediaries can improve their ability to promptly remove offensive content and create a safer online environment for women.

## 2.6 Constitutional Morality

As long as one's life pattern is in accordance with the constitution of the nation, they are fully entitled to pursue the same, which is guaranteed by the principle of constitutional morality. The concept of constitutional morality embedded in the constitution is a progressive notion, while the same in an undemocratic constitution can force its subjects to subordination. Indian Constitution, in its very essence, is known for its broad and accommodative character and hence, is emphatically a progressive holy document. Hon'ble Justice

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<sup>72</sup> *Id.*

<sup>73</sup> *Mrs. X v. Union of India*, supra note 20.

<sup>74</sup> In Re: Prajwala Letter dated 18.02.2015 Videos of Sexual Violence and Recommendations, 2023 LiveLaw (SC) 604.

R F Nariman, in his famous dissenting judgment in the case of *Kantaru Rajeevaru and Others v. Indian Young Lawyers Association through its General Secretary and Others*,<sup>75</sup> pointed out the nature and character of the Indian Constitution. He held, “let every person remember that the “holy book” is the Constitution of India, and it is with this book in hand that the citizens of India march together as a nation so that they may move forward in all spheres of human endeavour to achieve the great goals set out by this “Magna Carta” or Great Charter of India.”

Further, he explained “Constitutional law keeps evolving keeping in view, among other things, the felt necessities of the time. As has been explained in some of our judgments, “constitutional morality” is nothing but the values inculcated by the Constitution, which are contained in the Preamble read with various other parts, in particular, Parts III and IV thereof.”<sup>76</sup> In the case of *Navteej Singh Johar v. Union of India*,<sup>77</sup> Hon’ble Justice Dr. D Y Chandrachud clearly pointed out the responsibility of society to identify and correct the injustices existing in society. He further identifies that constitutional morality is separated from social morality by the ideals of liberty and dignity. In his words, “we must, as a society, ask searching questions to the forms and symbols of injustice. Unless we do that, we risk becoming the cause and not just the inheritors of an unjust society.” Thus, laws should be made to give better protection to the lives of individuals in accordance with the transformative and progressive nature of the Constitution, based on the principle of constitutional morality. The violence directed against women on social media platforms are forms and symbols of injustices against women in our society, and it requires society to address and remove

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<sup>75</sup>Kantaru Rajeevaru and Ors. v. Indian Young Lawyers Association, supra note 17.

<sup>76</sup>Kantaru Rajeevaru and Ors. v. Indian Young Lawyers Association, supra note 17.

<sup>77</sup> Navteej Singh Johar v. Union of India, supra note 16.

the same, failing which the society will be guilty of becoming the cause of such crimes.<sup>78</sup>

## 2.7 Patriarchy

The role of patriarchy in influencing Indian society is very much evident in its societal structure. The laws, culture and social morality were all set in a manner that was desirable to the patriarchal majority of the nation. These are not mere inferences but observations of the honourable Supreme Court in the 2018 landmark judgment of *Joseph Shine v. Union of India*.<sup>79</sup> Hon'ble Justice D. Y Chandrachud, in this case, observed that:<sup>80</sup>

“As an embodiment of virtue, society expects the women to be a mute spectator to and even accepting of egregious discrimination within the home. This is part of the process of raising women to a pedestal conditioned by male notions of what is right and what is wrong for a woman. The notion that women, who are equally entitled to the protections of the Constitution as their male counterparts, may be treated as objects capable of being possessed is an exercise of subjugation and inflicting indignity. Anachronistic conceptions of 'chastity' and 'honour' have dictated the social and cultural lives of women, depriving them of the guarantees of dignity and privacy contained in the Constitution.”

Thus, the constitution of India ascribes all rights to citizens regardless of sex and gender. The limitations imposed on women by men are sheer patriarchal notions of social morality

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<sup>78</sup> Cyber Violence Against Women and Girls: A Worldwide Wakeup Call, (November 16, 2023, 11:30 AM), <https://en.unesco.org/sites/default/files/genderreport2015final.pdf>.

<sup>79</sup> *Joseph Shine v. Union of India*, supra note 18.

<sup>80</sup> *Joseph Shine v. Union of India*, supra note 18.

designed to deprive women of their enjoyment of life, dignity and privacy guaranteed to them by the nation's constitution.

### **3. Laws to Address Violence against Women on Social Media Platforms**

Though India is increasingly affected by online violence, the nation lacks a proper research study for appropriate accounting and developing mitigating tools. The women who are active in various spheres of their social life and who are known for making their political stance known to the world are often subjected to online abuse, and they are attacked with various forms of harassment.<sup>81</sup> These unwelcome acts range from sexist comments to rape and death threats.<sup>82</sup> However, due to the lack of proper laws and social support, they often make themselves invisible from online platforms. The violators, through their acts, create an environment of hostility that affect women mentally and socially. These days, the acts of gender-based violence which are abetted and encouraged, are dealt with the help of legislations such as the Indian Penal Code of 1860 and the Information Technology Act of 2000.<sup>83</sup> While India suffers from inadequacy of laws to deal with online violence against women, the Indian government was forced to look into this issue seriously by realizing the gravity of the same. The Union Ministry on Women and Child Development took steps to address violence against women on social media platforms.<sup>84</sup> These include, but are not limited to #IamTrolledHelp campaigns for registering complaints and creating a dedicated Email ID, [complaint-mcwd@gov.in](mailto:complaint-mcwd@gov.in), to

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<sup>81</sup> Violence Against Women: Causes and Consequences, available at <https://medicamondiale.org/en/violence-against-women/causes-and-consequences> (last visited on November 15, 2023).

<sup>82</sup> Id.

<sup>83</sup> Cyber Stalking, *supra* note 14.

<sup>84</sup> Cyber Stalking, *supra* note 14.

report complaints relating to online harassment.<sup>85</sup> The direct involvement of different ministries through various policy initiatives shows how difficult it is to create norms for regulation and control of online aggressions. While it is necessary to check and curb the sexist tendencies prevailing in these platforms, it is also essential to prevent unfair interference by State authorities, which can affect the free speech of individuals on such platforms. Misuse of Section 66-A of the Information Technology Act, which was a necessary provision available for the victims of cyber harassment against abusive content, is the best example of such unfair and unconstitutional interference of the law enforcing agencies in the pretext of ensuring order in social media platforms.<sup>86</sup> One landmark example of the misuse of Section 66A by the state occurred in 2012 when two young women were arrested in Palghar, Maharashtra.<sup>87</sup> Shaheen Dhada and Rinu Shrinivasan were arrested due to a Facebook post in which they expressed their dismay on the shutdown of Mumbai after the demise of Shiv Sena leader Bal Thackeray.<sup>88</sup> Shaheen Dhada had expressed scepticism on the necessity of a bandh, a form of protest involving a widespread strike, in Mumbai. Rinu Shrinivasan had indicated approval of the post by 'liking' it. Both women were arrested, invoking Section 66A, on the grounds that their online remarks were deemed insulting and had the potential to provoke communal unrest.<sup>89</sup> The arrest incited widespread public indignation and prompted apprehensions regarding the misapplication of the IT Act to

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<sup>85</sup>Cyber Stalking – A “Virtual” Crime with Real Consequences, (July 14, 2023, 10:00 AM), <https://www.worldpulse.org/story/cyber-stalking-a-virtual-crime-with-real-consequences-43984>

<sup>86</sup>Vishal Raghavan, Recalling why Section 66A of IT Act was struck down, available at <https://theleaflet.in/recalling-why-section-66a-of-it-act-was-struck-down/> (last visited on 22 December 2023).

<sup>87</sup>Shreya Singal v. Union of India, *supra* note 67.

<sup>88</sup>Shreya Singal v. Union of India, *supra* note 67.

<sup>89</sup>Shreya Singal v. Union of India, (2013) 12 SCC 73



suppress freedom of expression.<sup>90</sup> It was widely perceived as a state overreach that violated the right to freedom of expression.<sup>91</sup> The occurrence drew attention to Section 66A, emphasising its susceptibility to misuse and its inhibitory impact on internet expression. The court found that Section 66A allowed for arbitrary and excessive restrictions on online speech.<sup>92</sup>

Thus, an essential remedial mechanism available for women to seek justice was completely taken away by the unlawful misuse of the State power. Apart from the inefficiencies in the existing legislation, the political executive has expressed concerns about the competence and efficiency of the police and forensic experts in addressing violence against women on social media platforms.<sup>93</sup> The political dilemma of balancing conflicting interests has prompted even the executive to make public statements that action will be taken against violations in social media platforms only upon receipt of complaints. This raises genuine concerns in the minds of ordinary citizens of the nation who always attempt to keep themselves away from the agencies of law. It is interesting to note that often, the websites of these official agencies are also subjected to targeted cyber-attacks. Section 67, Section 67A, Section 66E, and Section 43 of the Information Technology Act of 2000 are significant provisions for dealing with violence against women on social media platforms. Information Technology Act of 2000 was enacted to encourage e-commerce and reduce risks in online transactions, and it is currently the most utilized legislation to prevent online abuses against women.<sup>94</sup> However, one of the forms of violence against

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<sup>90</sup>*Id.*

<sup>91</sup>*Shreya Singal v. Union of India*, supra note 89.

<sup>92</sup>*Shreya Singal v. Union of India*, supra note 89.

<sup>93</sup> *Id*

<sup>94</sup>Information Technology Act of 2000, Preamble, No.21, Acts of Parliament, 2000 (India).

women is expressly discussed in these provisions. Section 354 A, Section 354C and Section 354D of the Indian Penal Code expressly identify the offences of voyeurism and stalking. Section 503, Section 506, Section 507, and Section 509 of IPC identify threats to reputation and sexual harassment as serious offences. However, there is no sufficient provision in IPC to efficiently deal with forms of online violence other than cyberstalking and voyeurism. The existing conditions are given broad meaning to cover these offences. However, these provisions do not correctly identify the nature of these offences, their characteristics, and the extent of harm they cause. Without such information, the punishments prescribed for such crimes can be viewed as treating an illness without properly examining the patient.

#### **4. Conclusion and Suggestions**

Though the internet has brought about large-scale developments in the information and communication world, it has also developed as a medium widely used to circulate hate and violence. The increase in the number of social media users and the possibility of frequent changes of identity makes it extremely difficult for the State to regulate these platforms effectively. Social media platforms have never been a level playing field for women. Women activists in social media platforms who are otherwise known as netizens are frequently being threatened and harassed for expressing their opinions in the open. The chances of women activists in social media getting subjected to public scrutiny and harassment are much more than what is faced by a male user, who has divergent opinions. The legal system of a welfare democracy is responsible for ensuring free speech, by providing security and equal opportunities for all citizens regardless of race, age, sex, religion, caste, political affiliations or societal status, to use public facilities. The idea of human rights, which continues to evolve rapidly, should progressively be recognized by all societal stakeholders. To accommodate such a development,

society should develop itself to such an extent that it can be bold enough to do away with the patriarchal notions of the past. In the effort to efficiently address violence against women on social media platforms, it has to be ensured that intermediaries are not engaging in general monitoring or policing of third-party data and the implementation of filters to block search results. Such actions of intermediaries would constitute a form of prior censorship.<sup>95</sup> Additionally, such filters could potentially impede freedom of expression and restrict access to valuable information. It is crucial to strike a balance between protecting intellectual property rights and preserving the open nature of the internet.<sup>96</sup> Instead of imposing strict filtering measures, intermediaries should focus on facilitating dialogue and cooperation between content creators and users. This approach can encourage innovation and creative collaboration while respecting the principles of free speech.<sup>97</sup>

Merely advocating the human rights of women and the marginalized would be meaningless when the State's inability to grant three basic freedoms of human rights remain unaddressed. The country's legal system must properly take care of the three basic concepts of freedom from want, freedom from fear, and freedom from discrimination. The effective exercise of these freedoms will not be possible without specialized legislation and technologically empowered agencies capable enough to deal with the 21<sup>st</sup> century digital age offences. Even in the absence of legislative provisions which are efficient enough in regulating violence against women on social media platforms, the progressive judgments of the Hon'ble Supreme Court should help in restructuring the patriarchal nature of social media platforms and thereby

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<sup>95</sup> *Da Cunha v. Yahoo de Argentina SRL and Another*, Expte. N 561/2010.

<sup>96</sup> *Google LLC v. Commission Nationale de l'informatique et des libertés (CNIL)*, Case C-507/2017.

<sup>97</sup> *Anuradha Bhasin v. Union of India*, supra note 22.

making legal remedies accessible to women. Giving wider meaning to the existing penal provisions can also be a solution to address the increasing violence against women on social media platforms. The nation's well-cherished spirit of the rule of law based on democratic values can be protected and safeguarded only in an egalitarian public space, both real and virtual, offering equal space to all with equity, gender neutrality and liberty.