

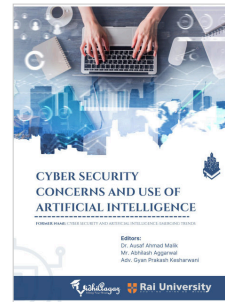
CHAPTER 19

Addressing Online Gender-Based Violence: Legal Limitations and Human Rights Concerns in Cyber Spaces

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ADDRESSING ONLINE GENDER-BASED VIOLENCE: LEGAL LIMITATIONS AND HUMAN RIGHTS CONCERNS IN CYBER SPACES

Ruthuparna M.N.²⁴ and Yesnas B.S²⁵

ABSTRACT

Online Gender-Based Violence (OGBV) is one of the emerging forms of abuse in the face of rapid growth of digital spaces and social media platforms. This research paper points out several dimensions of OGBV to understand how such violation impacts certain core human rights, namely privacy, freedom of expression, and equality. The main aim of the paper would be to hit disproportionately women and marginalized gender identities with key forms of abuse, such as cyberstalking, doxing, revenge porn, and online harassment. In doing so, it will discuss how such platforms contribute to the unfriendliness of these groups through weak regulatory mechanisms and content moderation policies. This paper will consider some of the most well-known cases of OGBV that have come to light in India: the notorious Bois Locker Room scandal, but also the Sulli Deals and Bullibai app cases, although the latter kind of two are not as sensational or recognizable: the diffuse, widespread online harassment of female public figures and journalists. This paper thus analyzes these cases to condemn the current legal structures of the Indian State, i.e., the Information Technology Act of 2000 and relevant provisions of the Indian Penal Code (IPC) and the new Bharatiya Nyaya Sanhita (BNS), as an ineffectual legal structure for effectively protecting OGBV. The paper highlights challenges in enforcing the aforementioned laws, and the lack of proper support systems to a victim of such crimes. Hence, in addition to calling for greater accountability on the platforms, more stringent laws, and policies tailored for the victims, their fulfilment calls for that they are achieved now in both their legal and psychosocial capacities. This requires a study of the existing international human rights frameworks such as CEDAW or the Convention on the Elimination of All Forms of Discrimination Against Women. This paper would look to develop a comprehensive strategy for addressing OGBV: legislative reform, digital literacy programs, and global cooperation toward safer online spaces for all genders.

Keywords: Online Gender-Based Violence (OGBV), Cyber Harassment, Human Rights, Privacy Violations, Platform Accountability.

INTRODUCTION

The internet and the social media revolution represent a new age of worldwide interaction and communication that brings utterly new changes to the ways in which people communicate with one another, the way they share information and participate in public debate. This digital revolution has unparalleled opportunities in connection, education, and empowerment but also new forms of abuse and harassment, Online Gender-Based Violence, OGBV, has indeed presented itself as a major challenge in the digital age, according to Gordon.

OGBV refers to any gender-based violence committed, assisted or aggravated using information and communication technology against a person on the ground that their gender is. This kind of violence affects disproportionately women and other marginalized gender identities. Such violence encompasses a spectrum of abusive behaviours that include cyberstalking, doxing, revenge porn, and online harassment.

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Beyond the digital world, the effects of OGBV continue with violations of glaring basic rights of privacy, freedom of speech, and equality. Victims of OGBV face extreme psychological distress with social exclusion, and even danger, sometimes in the real world where online threats translate into actual violence. The insidious and public nature of the abuse, which is incessant, might have long-term impacts on personal and professional lives for victims, limiting their participation in digital spaces as well as reinforcing gender inequalities in broader society.

The anonymity and borderlessness of the internet made the fight against OGBV very challenging. Deep-rooted legal systems, which are mainly comprised of structures of accountability designed to handle situations outside the internet, are already brought to their limits as they strain to keep pace with these ever-changing statuses surrounding abuse on the internet. This mismatch between law and its application has developed an environment where perpetrators of OGBV can almost go about with impunity, and victims have very little avenue for justice or protection.

In the recent past, problems of OGBV have emerged as some of the most widely commented-upon concerns in India, as high-profile cases in the media present the gravity and prevalence of the problem. From the "Bois Locker Room" scandal showing pictures of underage girls shared by schoolboys to the "Sulli Deals" and "Bulli Bai" apps that "auctioned" Muslim women online, such incidents have garnered national outrage and necessitate sterner countermeasures at law and in society against OGBV.

In the context of such laws as the Information Technology Act, 2000, and relevant sections of the Indian Penal Code, these legal instruments leave an incomplete impact in the prevention of OGBV. Jurisdictional issues plague cybercrime cases, and technical grounds go hand in hand with a lack of specific provisions to deal with the unique aspects of online gender-based violence.

This paper will look into, from a research point of view, the nature and the scope of OGBV in India, evaluate effectiveness of legal measures available so far, and suggest comprehensive methods to combat this issue which is really developing. In this research, there will also be an exploration of key case studies and considerations of national as well as international legal frameworks in relation to OGBV to bring about better approaches to handling OGBV.

The objectives of this research are:

1. The various modes in which OGBV occurs and its impact on human rights, specifically in relation to privacy and freedom of speech and equality.
2. Study the most notable cases in the context of OGBV in India, which includes the "Bois Locker Room," "Sulli Deals," and the app "Bulli Bai" to understand the patterns and effects of online harassment.
3. How effective are India's legal frameworks-including the Information Technology Act, 2000, Indian Penal Code, and the new Bharatiya Nyaya Sanhita (BNS)-in dealing with OGBV?
4. How effective are international human rights frameworks in dealing with OGBV? To critically study the same, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has been focussed upon.

5. To propose a comprehensive, multi-pronged approach for addressing OGBV through legislative reform, accountability on the platforms, victim support systems, and global cooperation.

In order to address such goals, this paper will contribute to the already deeply debated OGBV issue, providing policymakers, legal professionals, and digital platforms with concrete steps on their way toward the objective. It is about reducing the potential violence and enhancing the online public safety by conducting a systematic assessment of the effects of OGBV on female victims' personal rights.

Thus, going into the specifics of OGBV, we realize that it is not just an issue that can be so easily dealt with but one at the intersection of technology, gender, and law. Therefore, tracing these conversations and challenges while proffering possible solutions geared at bridging that gap between the constantly shifting digital space and legal frameworks intended to protect people within it is what this paper will do.

UNDERSTANDING ONLINE GENDER-BASED VIOLENCE

Forms of OGBV

Online Gender-Based Violence refers to a broad range of abusive behaviours enabled by digital technologies. Common forms of OGBV include:

1. **Cyberstalking:** Repeated, unwanted online monitoring of a victim's activity often coupled with threats and psychological intimidation.
2. **Doxing:** Unauthorized release of private or personal information in social media, hence exposing victims to actual and psychological harm.
3. **Revenge Porn:** They are the intentional posting of intimate images with no consent mostly done to shame and control victims.
4. **Trolling and Online Harassment:** Gendered abuse, which includes death and rape threats, is used to muzzle women and marginalized genders on line.

These are the publicized harassments that are mostly faced on digital platforms, and hence the impact is more extended and not easy to be dealt with.

HUMAN RIGHTS CONSEQUENCES

The fundamental right of the victims is severely impacted due to the radical outcome of OGBV, as found below:

1. **Privacy Violations:** In OGBV, private information or content is oftentimes disclosed without consent, violating the right to privacy guaranteed by Article 21 of the Indian Constitution.
2. **Freedom of Expression:** Women, activists, and LGBTQ+ individuals are disproportionately more vulnerable on social media platforms to receiving violent threats; women become "silenced" and reduced their participation in public debates as a result.

3. **Equality:** OGBV mainly centers on excluded gender identities, hence propagating some flawed gender stereotypes, which are already forms of existing inequalities in the genders.

The United Nations Human Rights Council identifies online harassment as the significant barrier to women's full participation in society, compelling OGBV to be a global human rights concern.

OGBV IN INDIA: CASE STUDIES

India has witnessed a number of high-profile cases of OGBV that presents the depth of the issue and its result are drastic below:

1. Bois Locker Room Scandal

"Bois Locker Room" is a scandal that came out in May 2020, a private Instagram group chat involving schoolboys from Delhi, where images of underage girls were being circulated against their will and disgusting discussions on sexual violence were going on. It catalyzed national outrage and brought focus to the all-pervasive nature of women's and girls' online objectification and harassment.

The case exposed the void left by the present legal system in matters such as these, mainly when children are involved. It also stressed the need for good-quality digital literacy programs and tighter regulation of social media applications.

2. Sulli Deals and Bulli Bai Apps

In two successive but well-related incidents in the years 2021 and 2022, the apps named "Sulli Deals" and "Bulli Bai" were made to "auction" some Muslim women, activists, and journalists. The images of the ladies appeared without their consent on these apps and exposed them to communal as well as gender-based harassment.

These incidences are a representation of how OGBV cuts across intersecting axes where women belonging to the marginalized sections are discriminated based on gender and religion. While people were arrested in such cases, these incidents revealed deep structural failures in shielding vulnerable groups from strategic attacks.

3. Cyber Harassment of Women Journalists

In India, female journalists here are constantly targeted and harassed on the internet with concerning severity, especially those reporting sensitive topics or controversies. Some of the celebrated journalists, like Rana Ayyub, had to face misogynistic hate speech and threats of sexual violence plus doxing because they voice their critical opinions.

Such abuse curtails freedom of speech at the same time as threatening democratic participation; it suppresses the opposition voices. This case calls for strengthening legal protections and more effective mechanisms of enforcement in order to ensure freedom of expression in digital space for women journalists.

INDIAN LEGAL FRAMEWORKS

Information Technology Act, 2000

The main enacted law of the country relating to cybercrime, including Online Gender-Based Violence (OGBV) is the Information Technology (IT) Act, 2000. This enactment was made without any explicit thought on OGBV as an instrument against the same. It is read and constructed to address certain forms of digital violence. Notably by the way, the provisions of Section 66A dealt with sending "offensive messages" through communication services. The chapter, however, fell because it was drafted in obfuscatory terms and stood poised to be used to choke free speech-an eventuality of which this court had, in *Shreya Singhal v. Union of India* (2015) held to be unconstitutional.

The consequence of this is the crucial lacuna wherein no specific provisions have been made that criminalize cyber abuse. The other section is Section 67, which criminalizes the publication or transmits "obscene material" in electronic form. Whereas this chapter can be stretched to an extent to include types of OGBV-such as revenge porn or explicit material posted online-this is also not applicable to a large extent. Example Section 67 cannot be accommodated under contemporary acts of OGBV, such as doxing-publication of private information-or cyberstalking-online surveillance.

It is considered to be an archaic provision and is not regarded as adequate enough to consider the complexities of OGBV.

Indian Penal Code (IPC): Sections of the Indian Penal Code (IPC) may also be referred to as evidence to take action against the OGBV. For instance, section 354D provides for stalking with any means whatsoever that adopts digital or online in some manner.

Again, this is an important application in the trials of digital harassment cases, but the interpretation of this law is not uniform, and even victims in most cases face problems in the first place to get justice either because of the societal stigma often attached to rape victims or because the police are reluctant to dig into digital complaints. Sections The above sections are also generally used for internet complaints against abuse, more often the case concerning criminal defamation under Section 499 of the IPC and criminal intimidation under Section 503. Yet the same sections were primarily drawn up in consideration of an offence that has already occurred offline and give little indication of scope or nature of OGBV.

For example, most the incidences of violence and cyber stalking are anonymous or cross-border which make it complicated tracing the culprit, therefore, would complicate the process of doing justice to them also.

Protection of Women from Domestic Violence Act, 2005: Although focused mainly on physical and emotional violence in the domestic sphere, provisions of the PWDVA, 2005 was also invoked in the case of cyber harassment. Section 3, Act defines domestic violence: which not only reflects in the act of physical abuse but also the kind of emotional and verbal abuse that can extend to cover OGBV when the abuser knows the victim, such as revenge porn or cyberstalking by an ex-partner.

However, as if it had been drafted with the off-line cases of intimate partner violence, PWDVA is restricted to its use in OGBV only due to its inadequacy in ascertaining the anonymity of the criminal in most the cases of online crimes.

The Bharatiya Nyaya Sanhita (BNS) Act, 2023: It imposes numerous provisions that bear relevance to addressing OGBV. Though the act does not pay specific attention to OGBV, various provisions indirectly affect the subject by updating the legal framework of digital-related crimes such as abuse and violations of privacy.

BNS introduces the category of organized crime under Section 111 that includes cyber-related offenses. It can therefore be invoked in cases where OGBV is carried out with the help of organized efforts which include coordinated harassment or trafficking for illegal purposes such as sexual exploitation.

For the first time ever, some sections have been amended to make them gender-neutral; for instance, stalking and voyeurism, which were formerly gender-specific under the IPC, are now made gender-neutral in BNS. That is, men as well as women can be prosecuted under these sections; otherwise, this goes one step further towards justice in the digital medium where offenders relating to OGBV could be male or female.

Voyeurism and Harassment: Offenses associated with voyeurism-that is to say, observing or photographing someone in private without his or her consent-or stalking, which are forms of OGBV, have been retained and consolidated. Sentences for such acts are severe and can even now technically reach online behavior invading privacy thus potentially making revenge porn as well as cyberstalking easier to prosecute under Indian law.

Section 69 of the BNS criminalizes "deceitful promises," for example false promises to marry that are very often associated with cases of revenge porn or exploitation after intimate relationships. This will add another layer of protection towards victims of OGBV who are deceived in both digital and real life.

BNS has incorporated provisions against the spread of false information and other harmful digital content, which may well fall under OGBV. This can be used where false or libelous information finds its way to malign the reputations of women and other vulnerable groups.

INTERNATIONAL OBLIGATIONS AND COMMITMENTS

India is also a signatory to many international conventions and treaties that enforce an obligation to the state to ensure human rights, amongst them, the right not to experience violence based on gender. For example, CEDAW or Convention on the Elimination of All Forms of Discrimination Against Women, and resolutions of the UN Human Rights Council, both demands how deep legal frameworks must be to prevent OGBV according to UN Women, 2020. (add citation) India has attempted to fulfil this obligation but still the domestic law cannot address the underlying problems with OGBV, especially from cyberspace due to the reason that it has faced an enforcement problem due to anonymity and jurisdiction.

In a nutshell, although legal frameworks appear to be ready and available in the books of India on which avenues may be utilized in approaching the issue of OGBV, it is very apparent that there are gaps with

significant magnitudes. There also seems to be a need for missing specific legislation with regard to digital forms of gender-based violence and laws to enforce or hold the participating platforms accountable in the fight against OGBV. Only such adequate reforms combined with the adoption of such OGBV legislation will ensure better protection for today's victims of such practices.

Legal and enforcement challenges in combating online gender-based violence.

Despite some awareness about OGBV and several laws intended to prevent this tide, the one major challenge still remains to be that of effective enforcement in India. OGBV has been described as hostile actions deliberately directed at persons on account of their gender online; it has different implications for women and marginalized gender identities. Legal provisions, even though available, display variable skills in implementing these and multiple barriers prevent effective dispensation of justice in such cases.

JURISDICTIONAL ISSUES

The major hurdles in dealing with OGBV are their cyber nature usually making it a transnational issue as cases start to flow across borders. Internet anonymity enables perpetrators to perpetrate injurious conduct without the true identities or locations being known. It goes very difficult if the perpetrator is sitting in some other country to get them prosecuted under Indian law. Like every other country, India too faces jurisdiction issues in this regard. The Information Technology Act, 2000, among other enactments of India, also provides legal remedies against the domesticated crimes of the internet and cyber space. However, when crime crosses its borders and commits cross border offences, such enactments become ineffective. For example, if some person sitting abroad indulges in doxing, cyber stalking or revenge porn against some other person sitting in India, the Indian judiciary has very little jurisdiction over this latter person. This cross-border nature of digital crimes complicates investigations and enforcement.

Moreover, mutual legal assistance treaties between other nations are also generally slow procedures, bureaucratic processes that are now hampering timely justice. That process for seeking cooperation in another country is also quite lengthy and complicated, requiring extradition treaties in other countries is a significant hurdle toward bringing criminals to justice.

Such international cooperation of social media companies is indeed necessary but not readily available in these cases involving the proofs to be fetched from outside India in the form of IP addresses or server logs.

Platform Accountability

While social media platforms play a very important role in the perpetuation of OGBV, they rarely act promptly or adequately on complaints of online harassment. Obligations to remove offensive content have been imposed by Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, but their provisions are often only insufficient in terms of covering the extent and intensity that obtains with OGBV.

Criticisms to these platforms have been towards laxity in accountability about OGBV issues and the tardiness in complaint handling. Active abuse against women and marginalized gender identities

includes rape threats, death threats, and doxing, yet reports on such matters are oftentimes ignored, delayed, or not acted upon.

The absence of stiff liability for social media companies allows OGBV to operate through the digital interface.

There is often extremely low transparency regarding complaints, how many are solved, and the action taken. Platforms are not by law mandated to make any disclosures relating to the data over the number of reports received concerning OGBV; neither must they describe the action taken toward their efforts at protecting victims. Such a scenario prevents the public or regulatory bodies from holding these platforms accountable for their part in facilitating such behaviour.

Victim Support and Social Stigma:

There is also social stigma attached to an OGBV victim, which deters many victims from coming forward. Victims of online abuse in India are predominantly women exposed to victim-blaming attitudes. This creates an atmosphere that deters victims from approaching law courts out of fear of social ostracism and reputational damage.

This tragedy is altogether unwarranted since most victims of OGBV remain uninformed both about their rights and ways of redress. Without complete victim support structures, including legal assistance, counselling services, and rehabilitation programs, the tragedy is altogether unwarranted. Victims of OGBV usually suffer very serious psychological effects among them anxiety and depression and, in many cases, post-traumatic stress disorder. In the absence of sufficient mental health support, such people are left exposed to further abuse.

Also, the law enforcement agencies in India generally do not have facilities for digital complaints. The cyber cells of the police are still in a developing stage, and there is a scarcity of technical expertise regarding complex cases of OGBV. The insensitive nature of the police personnel towards the type of OGBV is also one of the reasons, as they treat OGBV as less heinous than any other physical crimes, and victims are deterred from reporting such incidents.

Moreover, the slow process of judicial prosecution in India discourages many victims from pursuing justice.

ADDRESSING OGBV: PROPOSED SOLUTIONS

To combat OGBV, an approach is multifaceted given the challenges seen in its relation. Included are legal reforms, platform accountability, victim-centric policies, and international cooperation that must aim to attack the problem comprehensively.

Legal Reforms

The specific legislation dealing with forms of digital violence has to form one of the first steps in addressing OGBV. No specific law deals with OGBV in India. Such a gap pushes victims to rely on vague and outdated provisions that were never designed to deal with the digital world. Definition, criminalization, and penal provisions in specific laws are required for OGBV behaviours in the form of cyberstalking, doxing, and revenge porn.

1. **OGBV Legislation:** India needs to have special legislation which specifically caters to OGBV. This legislation may include the legal definition of various types of OGBV and rigid penal provisions for offenders. There should also be a specific clause that deals with cross-border jurisdiction and presents mechanisms for international cooperation in order to prosecute cases of OGBV.
2. **Reformulation of Existing Laws:** Already prevailing laws, like the IT Act, 2000, and the Indian Penal Code (IPC), must be reformed so that their digital nature would qualify for OGBV. The IT Act must specifically include laws that criminalize doxing, revenge porn, and cyber harassment. The IPC likewise needs reformulation in light of the kind of offense faced while dealing with anonymous perpetrators.
3. **Expedited Legal Processes:** Special courts or fast-track procedures should be established for OGBV cases to ensure timely justice. Victims of OGBV often face lengthy legal battles, during which they continue to experience abuse and harassment. Expediting the legal process will provide relief to victims and serve as a deterrent for future perpetrators.

Platform Responsibility

Hold social media platforms accountable for their role in fuelling the spread of OGBV. Also, more stringent regulations must be enforced to ensure active moderation and responsible tooling to fend off abuse to users.

1. **Forced Content Moderation:** To ensure that the platform adopts proactive content moderation measures and its implementation of highly advanced technologies, such as AI-based tools, for the identification and removal of abusive content, the law must make known such measures and hold it to ensure any offending content violating community guidelines was removed promptly.
2. **Transparency Reports:** Media should be mandated to make annual transparency reports showing the OGBV complaints received, the measure taken, and the time taken within the specified timelines to address complaints. This will also act as a check on platforms' accountability to the regulatory body and the population.
3. **User Verification:** More rigid verification processes for users are imperative to lower unauthorized use without affecting the issue of anonymity. Though there are areas where anonymity is needed, such as by people in activism or whistleblowers, it means that perpetrators of OGBV can operate freely because they have anonymity. A verification system could help find a balance between some issues of privacy and accountability.
4. **Cooperation with the Police:** Social media companies should have explicit policies regarding cooperation with law enforcement agencies. This cooperation will ensure swift inquiries and take-downs of violative content as well as the identification of perpetrators of OGBV.

Victim-Centric Policies

Effective responses towards countering OGBV must be centered on the victim's needs. Support struc-

tures must be developed for victims to provide them with justice and to recover from such experiences.

1. **Legal Aid:** There must be specific legal aid services to help OGBV victims receive justice in the court of law. These services would inform the abuse victims on how to file such cases, take legal action against the abuser, and receive compensation.
2. **Counselling Services:** The victims of OGBV are basically exposed to grave psychosocial challenges. Counselling services ought to be provided towards the victims from all potential sources, free or at a reasonable cost in order to help grapple through this traumatic situation caused by online abuse.
3. **Digital Literacy Programs:** Widespread digital literacy programs are essential for educating internet users about aspects of online safety, privacy settings, and how to report OGBV. These programs can empower the individual to further protect him or herself online and significantly reduce the rates of occurrence of OGBV.
4. **Public Awareness Campaigns:** The country should implement nationwide campaigns that will increase awareness of the existence of OGBV and dispel its social stigma. These campaigns should try to liberate victims from their fear of reporting due to victim-blaming or being judged.

International Cooperation

Because of the international character of the internet, combating OGBV demands cooperation among nations.

1. **Cross-Border Legal Frameworks:** There should be agreement, for example on cross-border jurisdictions, so that it becomes effective and safe to come together to address some of the challenges in OGBV cases.
2. **Global Standards:** India should be collaborating with international organizations to arrive at global standards in dealing with OGBV. These standards may then become included in a package of best practices from multiple countries and adapted for India. unique legal framework.
3. **Knowledge Sharing:** Create avenues for knowledge sharing among countries that would provide a channel for information, research, and strategy dissemination in the battle against OGBV. Such cross-national interaction may also strengthen each nation's capabilities to counter online abuse.
4. **Harmonisation of Laws:** There should be a harmonisation of cyber laws among countries with an eye towards similar protection of all victims in every country across the globe. The uniform legal approach will allow for the ability to combat cross-border abuse and an ability to hold abusers accountable wherever they may be.

CONCLUSION

In this regard, online gender-based violence is an issue that has become pervasive in this digital age, threatening fundamental rights, including those of women and other underprivileged gender identities.

Legal frameworks are in place to address OGBV, but they are usually inadequate and archaic, making the victims susceptible to continuous abuse. OGBV must be addressed as a complex and all-rounded phenomenon that needs legal reforms, platform accountability, victim-centric policies, and international cooperation. The strengthening of legal provisions on OGBV in addition to building responsiveness of the platforms also call for national and international stakeholders to collaborate in creating a safer and more inclusive space on the internet. Such will be the case with legal frameworks, with further developments in the world of the digital habitat. These will have to undergo a shift to meet the challenges developed by OGBV. Only collectively, through national and international efforts, is it possible to perhaps mitigate online abuse and ensure that all digital platforms are tools for empowerment, not instruments of oppression.
