



## Taking Down Cyber Violence

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(This editorial is based on the article “Taking Down Cyber Violence” which appeared in EPW for 2nd January 2019. In this editorial, we’ll see how the existing laws governing the internet are inadequate in preventing or stopping gendered violence in online spaces.)

**In India, as elsewhere in the world, online harassment of women and marginalized genders and sexualities is rampant, in sharp contrast to the Internet’s initial promise of equal opportunity and neutrality.**

Through the proliferation of rape videos, morphed images, etc, the **internet is witnessing increasing instances of violence against women.**

**As websites sometimes claim to be intermediaries which cannot be always held responsible for the nature of content uploaded online, the issue of intermediary liability needs to be addressed urgently.**

Internet intermediaries can be described as entities that facilitate access to the internet or services on the internet (Association Progressive Communications 2014).

Common types of intermediaries are internet service providers, search engines, social media networks, etc. Unlike book publishers, internet intermediaries adopt a passive relationship with the content they host. Since they do not exercise editorial control, countries have been encouraged to legislate safe-harbor\* protections of internet intermediaries from strict or criminal liability.

**\*Safe harbor** refers to a legal provision to reduce or eliminate liability in certain situations as long as certain conditions are met.

- Safe-harbour Protection can provide protection against liability, it is like an immunity clause.
- Safe-harbor laws can be understood in the Indian context by comparing with laws like the AFSPA that grant special powers to the Indian Armed Forces in which each act terms "disturbed areas".

## Concerns

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- **Vitriolic sexism online has become commonplace** in the Indian internet landscape.
- **The United Nations Broadband Commission** reports that one in three women have faced some kind of cyber violence (Working Group on Broadband and Gender 2015).
- Trolling, rape and death threats, morphing of images and the non-consensual circulation of intimate images (also known as 'Revenge Porn') are some of the many ways in which violence against women is carried out online.
- **There has been a discernible pattern of sexual violence, where the assault is videotaped and consequently used to blackmail the victim by threatening to upload it to social media or pornographic websites or send it to her family, friends or employer.**
- The United Nations Special Rapporteur On Violence Against Women notes that the qualities of online global searchability, persistence and scalability have not only resulted in the replication of offline violence but amplified, redefined and created new forms of gender-based discrimination online.

## Regulations

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- **In 2008, India introduced significant amendments to the Information Technology Act, 2000 (IT Act)**, by adopting a notice-and-take-down regime, along with the lines of the European Union (EU) E-Commerce Directive.
- **In 2015, via the landmark Shreya Singhal v Union of India (2015) judgment**, the Supreme Court tweaked the intermediary liability regime, by reading down "actual knowledge" to mean a court or executive order.
- In the same year, two other cases before the Supreme Court were gathering steam. One dealt with search engine liability for allowing advertisements related to prenatal sex determination to display in search results and another that related to the liability of social media networks for the circulation of rape videos online. By the end of 2017, the court decided in both the cases that a combination of measures would be required—pre-filtering of content by the intermediary as well as notice-and-takedown—as a result of which the government set up special nodal agencies to receive complaints and initiate takedowns. The response to the court's stance has been critical, accusing the Court of ignoring the safeguards to free speech online, established under the Shreya Singhal judgment.
- **Online circulation of rape videos and advertisements for prenatal sex determination tests are patently illegal in the Indian context and warrants an immediate takedown, whereas other kinds of illegal content can afford to stay online, pending a court order.**
- An intermediary liability regime must adapt to the ideas of rights that are organic to their location. This does not mean doing away with safeguards to free speech. On the contrary, it means legislatively and juridically balancing the rights of the complainant,

internet users at large, and the intermediary, based on the situation at hand.

- **In June 2018, the Human Rights Council** adopted the resolution on “accelerating efforts to eliminate violence against women and girls: preventing and responding to violence against women and girls in digital contexts.” The resolution, in particular, condemns “the dissemination of content that promotes and reinforces violence against women and girls, which can result in the perpetual revictimization and retraumatization of women and girls, given that a permanent digital record is created by content shared in digital contexts” (Human Rights Council 2018).

## Way Forward

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- Despite the general conviviality after the Shreya Singhal judgment, **there were also those who felt the delays of an adversarial system and court orders could lead to flagged illegal content staying online for extended periods before it is pulled down.**
- **The Andhra Pradesh High Court, in Google India Private Limited v M/S Visaka Industries Limited (2009)**, observed that if sexually explicit images or morphed images can only be taken down on court orders, they could end up remaining online for a long time. Receiving an order for takedown years after the content is posted is a futile exercise. Unfortunately, at present, neither the IT Act nor its rules have provisions for immediate relief.
- **In India, intermediaries are allowed to terminate access to those users who violate the Intermediary Guidelines.** This punishment is reminiscent of the much-criticized three-strikes rule, a graduated response to copyright infringement online that can ultimately lead to cutting-off of internet services to the accused (that France had once followed).
- **Further, in India, neither are intermediaries obligated by law to notify the authors of disputed content, when access to the content is sought to be disabled nor is there any provision for the author to challenge allegations of illegality through a counter-notice. In other words, due process procedures are found to be lacking and need to be infused into the framework of intermediary liability in the country.**

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