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Governing a Seamless Sociality: Beyond Old and New Media

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ABSTRACT

The architecture of the online world along with the cultures of new media are significant in perpetuating male dominant discourses. Rather than dismantling this hierarchical organisation of the digital paradigm, the approach of the family, intermediaries, the law and the state more often than not cements patriarchy. The private family, which the law will not encroach is particularly problematic when one considers how the family is an institution that oppresses women and prevents them from exercising agency online and offline. The family emerges as a significant locus that systematically polices women's online personas by enforcing customary law. While the 'law in books' guarantee women equality of status and opportunity, 'law in action' results in significant differences in the way women access new media.

The police's patriarchal perceptions results in the denial of justice for women who have faced online sexual abuse. Male morality gains precedence over women's agency over their own bodies as the police favours the usage of Section 67 of the Information Technology Act over Section 66 E, despite the fact that the latter is more progressive as it derives its essence from consent rather than obscenity. Thus, in regulating the digital realm the nature of law manifests as not only furthering patriarchal interests but also centres on protecting womanhood, not women. The approach of the law in governing online relations leaves much to be desired because those who frame and implement the law very much inhabit the paradigm of patriarchy. Further, online cultures and institutional predispositions result in the routinised assertion of male power and privilege. In effect, the unequal relations of the offline world are mirrored online.

The advent of new media has revolutionised communication, interaction and presentation of the self. The cyber domain is increasingly viewed as integral to academic and professional pursuits, as well as leisure activities. While celebrating the liberating and open nature of new media, it is essential to acknowledge how not everyone approaches it with the same footing. That is, contrary to the understanding that social interaction on the web occurs in a vacuum, power relations online are also configured to assert male hegemony. Thus, how women

¹ Author is a student in India.

experience the internet is markedly different, as they are compelled to navigate pervasive patriarchy. The architecture of the online world along with the cultures of new media are significant in perpetuating male dominant discourses. Rather than dismantling this hierarchical organisation of the digital paradigm, the approach of intermediaries, the law, and the state more often than not cements patriarchy. In effect, the unequal relations of the offline world are mirrored online.

The fact that women occupy the public space of new media decisively through pictures of themselves, challenges the phallogentric organisation of the social world. In response to this act of assertion, women face trolling for as Salter argues, either appearing as ‘prudes’ or ‘sluts’². For instance, research by IT for Change indicates how 76% of women in their sample were heckled regarding their appearance online. Out of this, 57% of women became more careful while posting images online. Women who have experienced cyberviolence often ‘tailor their online personas’³. This is done in a number of ways, including by presenting themselves as ‘good girls’ on social media and curbing any sexual self-expression, lest the watching eyes of friends and strangers alike may disapprove. Modelling themselves in accordance with the male gaze, women strive to be acceptable in these interactions, which results in their sexual subjectification. The cartography of the virtual world results in women constantly censoring and surveilling themselves, which, as Foucault articulates, results in dynamic normalisation⁴. This refers to the process whereby only conforming identities are reproduced. In essence, it implies that women’s effort to construct a public identity is severely impeded. Thus, as liberal feminist jurisprudence suggests, it is necessary for law to ensure that the public commons of new media are equally accessible to people of all genders⁵. Therefore, the online world requires regulation in order to foster egalitarian relations.

The patriarchal norms of the digital paradigm are also reproduced by women. For instance, when asked a hypothetical question about who was to blame when an ex-boyfriend uploaded naked pictures of his ex-girlfriend, 38% of women respondents in the research cited above asserted that it was the woman’s fault. To another hypothetical question on a female student who ran a Youtube channel on caste and gender and was facing online abuse, 74% of the above

² Anita Gurumurthy & Amrita Vasudevan, *Masculinity, Femininity, Equality — Gender Scripts in the Lives of the Born Digital*, MEDIUM (January 19, 2019). <https://medium.com/field-stories/masculinity-femininity-equality-gender-scripts-in-the-lives-of-the-born-digital-9348a83d007b>.

³ Anita Gurumurthy et al, *Born Digital, Born Free? A socio-legal study on young women’s experiences of online violence in South India*. IT for Change. 1, 16 (2019).

⁴ Mirko M. Hall and Jürgen Link, *Power of the Norm to Flexible Normalism: Considerations after Foucault*, University of Minnesota Press. 14, 16 (2004).

⁵ HARALAMBOS. SOCIOLOGY THEMES AND PERSPECTIVES 106 (Collins 2014).

women upheld her right to free speech. This reveals how while women view participating in the digitally mediated sphere as their right, they also tend to negate women's sexual agency, and condone male violation of female privacy. This hence ensures that women online 'accommodate rather than resist patriarchy, avoid rather than confront misogyny, and assimilate rather than disrupt gender norms'⁶. As Nell Haynes argues, the norms and practices of the offline world permeate the online world, implying that patriarchal relations persist⁷. Hence, while the 'law in books' guarantee women equality of status and opportunity, 'law in action' results in significant differences in the way women access new media.

Women assimilate into the patriarchal culture of new media rather than seeking support from their families to address online abuse. This is primarily because they fear that their family will deprive them of access to the internet. 54% of respondents in the research by IT for Change opined that they would not confide in their parents and relatives regarding their experience of cyber violence. Half of those respondents stated that they would not do so as they feared that their parents would confiscate their electronic devices⁸. Thus, the private family, which the law will not encroach is particularly problematic when one considers how the family is an institution that oppresses women and prevents them from exercising agency online and offline.⁹ For instance, in *Balfour v Balfour*, one of the reasons why the court did not consider a contract between a wife and husband as enforceable was because it occurred in the domestic sphere.¹⁰ Thus, even in the online world there is a need to rethink the rigid bifurcation of public and private realms, with law recognising and regulating the fluidity of patriarchal relations straddling both.

Family and societal institutions curtail women's sexuality, mobility, and reproductive health online. For instance, in Tamil Nadu, women respondents were not allowed to own smartphones, and instead were compelled to use their brother's. Women who breach gender norms and patriarchal protocols often suffer severe societal sanctions. In Kerala, a woman researcher recounted a case where a girl was blackmailed into having sex with strangers, by her cousin, who threatened that he would reveal pictures of her clandestine outings with friends on social media to her parents¹¹. Such policing is typical of 'honour cultures'. In honour cultures, male relatives fashion themselves as 'protectors' and actively control the sexuality of 'their' women, in order to preserve the family's honour. Thus, law cannot only be viewed myopically as

⁶ GURUMURTHY, *supra* note 3, at 21

⁷ NELL HAYNES, *SOCIAL MEDIA IN NORTHERN CHILE* 41 (UCL Press).

⁸ GURUMURTHY, *supra* note 3, at 17.

⁹ JUDITH SQUIRES, *WHAT IS POLITICS* 125 (Cambridge 2004).

¹⁰ *Balfour v. Balfour*, 2 K.B. 571 (1919).

¹¹ GURUMURTHY, *supra* note 3, at 19.

codified statutes, but also must be viewed as customs. In terms of a Weberian conception, honour cultures can be understood as substantively irrational¹². Therefore, the systematic policing of women's online personas is a function of customary law.

New media has provided a platform for the cultivation of cultures celebrating retributive masculinity. In these homo-social, male only spaces, sexualised memes are circulated, male virility is asserted, and female sexuality is trivialised.¹³ These realms of toxic masculinity are governed by their own practices and norms. For instance, creating and forwarding a non-consensual picture of a woman classmate is a rite of passage into becoming a man. Nell Haynes provides the case of Carlos, who has a 'boys club' on Whatsapp where 'men (can) be men without worrying'¹⁴. The rise of hypermasculinity online is closely linked to the perceived egalitarian nature of the law. For instance, cases such as *Faheema Shirin R.K. v. State of Kerala* have adjudicated that women cannot be prevented from accessing new media on the basis of discipline.¹⁵ As a consequence, it is often argued how in today's time equality between sexes has been achieved, as social and legal institutions have provided women significant gains. Men may also opine that law is unjustly pro-women and use new media as an avenue for asserting male authority and prerogative.

Intersectionality is also vital to understanding cyber violence. For instance, lesbian women face online abuse on the basis of their sexuality¹⁶. A study by Amnesty International reveals how 94.1% more religious insults were targeted at Muslim women as opposed to women from other communities. Scheduled caste or scheduled tribe women politicians faced 59% more online abuse than women belonging to the general category¹⁷. In IT for Change's study, 14% of lower caste women faced caste based trolling, as opposed to 4% of upper caste women¹⁸. Lower caste women often face sexual abuse both online and offline, because their bodies are viewed as available and disposable. While in *Arumugam Seervai v. State of Tami Nadu*, the court ruled against caste based hate speech, women still are systematically targeted on the basis of their caste and gender online.¹⁹ MacKinnon argues that this is primarily because consent is determined legally in terms of the relation a woman has with a man, rather than a woman's

¹² MATHIEU DEFLEM. *SOCIOLOGY OF LAW, VISIONS OF A SCHOLARLY TRADITION* 45 (Cambridge 2008).

¹³ *supra* note 2.

¹⁴ HAYNES, *supra* note 7, at 50.

¹⁵ *Faheema Shirin R.K. v. State of Kerala*, AIR 2020 KER 35 (India).

¹⁶ GURUMURTHY, *supra* note 3, at 37.

¹⁷ Amnesty International. *Troll Patrol in India: Exposing Online Abuse Faced by Women Politicians in India*. INDIANS FOR AMNESTY INTERNATIONAL TRUST. (2020), https://decoders.blob.core.windows.net/troll-patrol-india-findings/Amnesty_International_India_Troll_Patrol_India_Findings_2020.pdf.

¹⁸ GURUMURTHY, *supra* note 3, at 9.

¹⁹ *Arumugam Seervai v. State of Tami Nadu*, AIR 2011 SC 1859 (India).

ownership of her own body²⁰. That is, the law creates categories of women whose sexual assault is deemed to be legitimate. Therefore, markers of caste, religion and sexual orientation become critical to decoding online abuse.

Anna Kurian argues how ‘the moral standing of characters’ determines whether society empathises with them²¹. Drawing the example of Syed Sarifuddin Farid Khan, she emphasises how he received no empathy from the populace as his categorisation as a rapist overrode his categorisation as a victim who was brutally lynched to death²². Similarly, as women who exercise agency on the internet are viewed as transgressing moral standards, when they face online abuse, they are seldom lent support. This is also because women actively occupying the public sphere challenges the ‘regime of memory’ which conceives of our nation as the Bharat Mata, a woman who requires male protection. Thus, as new media provides women the space to cultivate resistant femininities that contradict community memory, legal institutions tend to overlook crimes against women committed on social media.

Having established how patriarchal cultures are rampant in new media, it is imperative to critically evaluate the role of law in regulating online abuse. Section 66 E of the Information Technology Act penalizes anyone who ‘captures publish or transmit the image of a private area of any person without his or her consent’. Section 67 involves ‘punishment for publishing or transmitting obscene material in electronic form’ and Section 67A pertains to sexually explicit images. While the former Act lays emphasis on privacy and the right to give consent, the latter acts are grounded on the archaic notions of morality and obscenity. Given this, the fact that the police favour the use of Section 67 (for instance, 28 out of 99 cases registered under Section 67 involved the circulation of non-consensual images and hence ought to have been mentioned under Section 66 E), results in male morality gaining precedence over women’s agency over their own bodies²³. For instance, three doctors were charged under Section 67 for filming and subsequently circulating a video of a childbirth without the woman’s consent²⁴. This implied not only that the crime lay in the nature of the image and hence rendered women’s bodies as obscene, but also erased the vital question of consent. Additionally, consent is not seen as exercised by women, but is determined by the patriarchal perceptions of the police. Thus, the

²⁰ CATHERINE MACKINNON, *RAPE: ON COERCION AND CONSENT, TOWARD A FEMINIST THEORY OF THE STATE* 175 (Harvard University Press 1989).

²¹ Anna Kurian, *Dimapur Lynching and the Impossibility of Remembering*, Economic and Political Weekly, (2015).

²² *Id.*

²³ Sonali Verma, *Route 67: How the IT Act's Section on Obscenity is Being Misused to Violate Digital Freedom*, THE WIRE, November 29, 2017.

²⁴ Bishakha Datta et al, *Guavas and Genitals*, Point of View 1, 9 (2018).

police were seen registering a rape video under Section 67 rather than 66 E as they believed that it appeared consensual²⁵. MacKinnon argues that rape is defined in terms of force with a certain level of male coercion being assumed as the norm. Thus, ‘where the legal system has seen the intercourse in rape, victims see the rape in intercourse’²⁶.

Feminists have also opposed the use of Section 67, pointing to how it polices women’s bodies. As Section 67 is based on the principle of morality, it ‘stifles sexual expression’²⁷. Agnes asserts how it not only regards women as beings devoid of sexual agency and desires but also constraints their mobility. Jaising too reiterates how the legislation is problematic as it views sex as profane²⁸. In *Regina v. Hicklin*, obscenity was defined as what reasonable men consider as violating moral standards²⁹. Thus, the nature of law manifests as not only furthering patriarchal interests but also centers on protecting womanhood, not women.

The police’s patriarchal perceptions result in the denial of justice for women who have faced online sexual abuse. Only 10% of respondents who had experienced harassment online approached the police. In Karnataka, a woman who had experienced cyber violence recounted how the police responded to her complaint with a ‘you were asking for it’ jibe³⁰. The police also prioritize cases of cyber terrorism, sidelining cases concerning gender trolling and other cyber crimes where women are implicated. Additionally, the police also equate the ‘or’ clause in Section 66 E to ‘and’. As a consequence, the police fail to recognise how while the capturing of an image might be consensual, women may not give consent for its subsequent transmission. Women who have political online personas are confronted by the police’s judgmental attitudes. Thus, the legal system too is a vehicle of patriarchy that enables the subordination of women. As dominance theorists argue, laws applied to the arena of new media more often than not consolidate male interests.

Platform intermediaries consolidate male hegemony. For instance, they do not regulate misogynistic speech. Facebook refused to intervene against an account issuing rape threats to the journalist Barkha Dutt³¹. Additionally, new media platforms are often seen censoring women. Twitter deleted feminist Japleen Pasreecha’s account for tweeting in solidarity with the protest of the Manipuri Mothers³². Further, due to the Eurocentric bias of these companies,

²⁵ *Id.* at 8.

²⁶ MACKINNON, *supra* note 20, at 174.

²⁷ DUTTA, *supra* note 24, at 18.

²⁸ DUTTA, *supra* note 24, at 19.

²⁹ VERMA, *supra* note 23.

³⁰ GURUMURTHY, *supra* note 3, at 24.

³¹ Anita Gurumurthy, *How the online space for women is in a crisis and what needs to be done about it*, *FIRSTPOST*, March 8, 2018.

³² *Id.*

police investigations into cyber violence against women are significantly encumbered. For instance, Facebook refused to consider the term ‘machi’ which means infertile in Malayalam as an offense. Hence, they did not cooperate with the Kerala police’s demands in the investigation³³. Rather than regulating intermediaries, in *Avnish Bajaj v. State (N.C.T.) of Delhi*, the court exempted them from liability³⁴. Therefore, the law supports corporate interests rather than ensuring that the cyber space is made equally accessible to women.

Recent movements such as the MeToo movement have suggested that new media is a vital platform for women to voice their struggles. While Di Leonardo argues that ‘MeToo is a form of social justice’, she emphasises how it requires theoretical grounding³⁵. Brackette Williams and Drexel Woodson elaborate on the young nature of the movement³⁶. Thomas Hylland Eriksen on the other hand describes MeToo as mob rule. La Cecla notes how it is part of a ‘biopolitical war’³⁷. Regardless of the conflicting nature of these characterisations, it is imperative to acknowledge how the MeToo movement’s relevance is confined to first world nations. This is because gender based violence must be ‘complicated, contextualised, and de-colonised’. More specifically, in India, the movement has seen erasure of Dalit voices. Thus, movements launched on new media have had limited impacts with regard to transforming legal institutions to enable greater social justice.

In conclusion, new media is not new in that it carries with it eons of patriarchal baggage. Rather than offering women a radical public space, its configuration and topography caters to male interests. Online cultures and institutional predispositions result in the routinised assertion of male power and privilege. The approach of the law regarding regulating online relations leaves much to be desired. This is primarily because those who frame and implement the law very much inhabit the paradigm of patriarchy. Thus, the face of law appears at best as an apologist for patriarchy and at worst an embodiment of patriarchy itself.

³³ GURUMURTHY, *supra* note 3, at 30.

³⁴ *Avnish Bajaj v. State (N.C.T.) Of Delhi*, (2005) 3 CompLJ 364 (India).

³⁵ Stavroula Pipyrou, *#MeToo is little more than mob rule // vs // #MeToo is a legitimate form of social justice*, 8 University of Chicago Press 415, 417 (2018).

³⁶ *Id.*

³⁷ PIPYROU, *supra* note 35, at 418.