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Online Misogyny as a Hate Crime: An Obstacle to Equality?

Summary

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Abstract

Le campagne per rendere la misoginia un crimine d'odio sono prevalenti, ma tali affermazioni confondono la situazione e sminuiscono le questioni fondamentali. I suggerimenti che la misoginia e l'odio siano intercambiabili non aiutano, e tali suggerimenti mancano delle sfumature e della comprensione olistica che quest'area del diritto richiede. Sugerire che la misoginia sia un crimine d'odio rappresenta erroneamente le sfide della misoginia e del pregiudizio misoginico. In quanto tale, questo articolo delinea la sfida posta dalla misoginia online e sostiene che rappresenta una significativa sfida partecipativa per la vita in una società digitale e rappresenta un ostacolo significativo all'uguaglianza. Nel sostenere questa argomentazione, l'impatto della misoginia online viene preso in considerazione in modo unico, collocando la misoginia all'interno del quadro dell'uguaglianza di genere.

Campaigns to make misogyny a hate crime are prevalent, but such claims confuse the situation, and detract from the core issues. Suggestions that misogyny and hate are interchangeable are unhelpful, and such suggestions miss the nuance and holistic understanding that this area of law requires. To suggest that misogyny be a hate crime misrepresents the challenges of misogyny and misogynistic prejudice. As such, this paper outlines the challenge posed by misogyny online, and argues that it poses a significant participatory challenge for life in a digital society and represents a significant obstacle to equality. In making this argument, the impact of online misogyny is given unique consideration, situating misogyny within the gender equality framework.

1. Introduction

Women across the digital world have embraced the promise of the Internet and all it offers for participation, engagement, community, and connectivity. This 'force for good' has been especially important in 2020 and 2021 given the reliance on all things digital and technological as lifelines during the Covid-19 pandemic.¹ However – and it is a significant caveat – the promise of participation does not come without

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1 L. Taylor, *Love, Tach and Online Abuse in the Time of Coronavirus*, in Thomson Reuters Foundation, 2 January 2021 <https://news.trust.org/item/20210104110922-bqn8t>.

qualification nor without limitation. Where women have turned to online engagement, especially on digital platforms designed to foster and replicate community, or encourage sharing of content and opinion, significant volumes of vitriol, abuse, and hostility have been one of the predominant consequences.²

Where women have sought to speak out against this vitriolic and abusive content, it has led to a significant backlash, which encompasses yet more abusive messages – both directly and personally – and threats to rape, kill, or otherwise cause a range of harms. This “backlash” is broadly speaking encompassing of misogynistic behaviour – taken here to be defined as “prejudice directed against a woman because she is a woman.”³ The overly – and overtly – gendered nature of (i) the abuse and (ii) the backlash arise precisely due to systemic gendered biases. This – to some extent – replicates offline attitudes and patriarchal norms – but in online environments takes on a much more sinister tone. Misogynistic abuses are designed deliberately to make online spaces hostile for women; to counteract the promise of the entire sphere and deliberately silence women.⁴

The phenomenon of online abuse, particularly online misogynistic abuse has become much more prominent in the age of social media. It is not, however, a new phenomenon – misogynistic tendencies and prejudice pre-date the internet and social media but these instant forms of mass communication provide for new outlets of long-held and systemic attitudes. As Scotland’s First Minister, Nicola Sturgeon MSP has stated:

“There’s a link between the misogyny and abuse that women experience offline and online... Social media is just a different way of committing these acts. Ultimately, it’s the misogyny lying behind it that is the problem. So, it’s that we have to tackle, not just the means by which people are able to spread their hate and misogyny and abuse.”⁵

The legal responses to such prejudice and abuse have fallen far short of meaningfully addressing the issue. This article therefore explores the phenomenon of online misogyny, positioning it within the legal framework, and assessing the various branches of law which could – and have failed – to tackle it. The argument offered here focuses on the experiences of the UK in tackling online misogyny across a number of legal branches where action *could* be taken to address the phenomenon.

The discussion here addresses the lack of a holistic and systematic approach to the problematic phenomenon of online misogyny. It critiques the suggestion that introducing a misogynistic hate crime offers – as has repeatedly (and confusingly) been suggested⁶ – a catch-all solution and it scrutinises the (in)action of platforms with regard to tackling online misogyny. In advancing this argument, this paper highlights the inequalities that a failure to address online misogyny perpetuates, and advocates for a holistic approach to tackling the – now – normalised phenomenon of online misogyny, and gender-based abuse online. As such, this paper outlines the challenge posed by misogyny online, and argues that it poses a significant participatory challenge for life in a digital society, but one that has gone unchecked, and unrecognised by the disparate branches of the legal system.

2. The Online Phenomenon of Abuse: Misogyny in the Making

In a society that is ever more connected, digitalised, and dependent on technology, the potential for the Internet to offer enhanced engagement, connection, and communication is unrivalled. The manner, medium, and reach of online interactions, social media, and internet platforms reduces geographical distance, and opens up new channels of consumption that have never been seen on such a scale previously. In doing this, the ability of groups that are marginalised, or less vocal in physical society, to

2 For instance, event hosting of International Women’s Day events attracts online vitriol and backlash, including through Zoombombing of online events: S. Little, *B.C. group’s International Women’s Day event hit by racist, sexist ‘Zoom bomb*, in *Global News*, 7 March 2021 <https://globalnews.ca/news/7682309/womens-day-zoom-bomb-sexist/>.

3 K. Barker & O. Jurasz, *Online Misogyny as a Hate Crime: A Challenge for Legal Regulation?* London, Routledge, 2019, p. xiv.

4 K. Barker & O. Jurasz, *Online Misogyny: A Challenge for Digital Feminism?* in *Journal of International Affairs* 2019, no. 72(2) p95-113; 95.

5 Amnesty International, *Toxic Twitter – A Toxic Place for Women*, March 2018, <https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-1/>.

6 K. Barker & Olga Jurasz, *Why misogyny and hate crime reforms need more than slick campaigns*, in *The Conversation*, 26 March 2020 <https://theconversation.com/why-misogyny-and-hate-crime-reforms-need-more-than-slick-campaigns-134265>.

engage and have their voices heard is greatly enhanced. Digital, internet communication platforms and technologies offer an outlet and reach that can empower such groups, and individuals too, to engage. In this way, there is a utopian ideal at the centre of what the Internet – as a tool for ‘good’ – can offer.

The idea of everyone being able to engage and speak out is tantalising as an equaliser. The reality for many though, never quite reaches this ideal. The technological capabilities, digital divide, and risks of engaging in this way are all barriers to the ideal of an internet for all, and a fully participatory utopia. Furthermore, the rise of new technologies, whilst empowering on one hand, has also contributed to the rise of technologically facilitated abuse, which frequently takes on gender-based and/or sexualised forms. For instance, technologically facilitated abuse has become increasingly common in the context of intimate partner/ domestic violence⁷, whilst critical literature on gendering algorithms highlighted gender biases and intersectional accuracy disparities⁸ which reinforce gender biases and stereotypes which, in turn, feed into cycles of violence. These challenges make the dream make the potential harms of engaging very real.⁹ One of these harms, and one of the most topical, prominent risks, is that of the ‘backlash’. In daring to engage online, women are exposing themselves to invasive, harmful, and pervasive abuse, particularly given the immediacy of disagreement. The risk of engaging online means greater exposure, greater reach, and potentially greater impact. All of these are potentially excellent – but when things go wrong, or there is a backlash, it is often amplified online, rendering the utopian dream of a participatory space for all a myth:

“The Internet, and digital media generally, offer enormous potential as spaces for engagement, activism, and contentious debates. The ideal of an all-inclusive, participatory space that is genuinely open to all poses a challenge... Online spaces and platforms are notoriously hostile places for women who dare to share opinions or speak out against the crowd.”¹⁰

The downside to the Internet’s potential is particularly prevalent with social media, and online abuse, particularly that with a gendered dimension or misogynistic undercurrent. The rise in online engagement has been matched by the phenomenon of abuse directed at those who dare to engage online. Participation online could – and should – mean marginalised or less popular opinions can be given a space for discussion and debate. Unfortunately, the participatory element of the Internet and digital spaces means that those who participate are often met with abuse – in 2021 it seems that the common response to anything is to launch or participate in an online attack at the people involved. This is further amplified where intersectional online abuse takes place. For instance, Amnesty International highlighted disproportionately higher level of online abuse experienced by black women in politics¹¹ whilst other studies confirm that transgender¹² individuals experience higher rates of online abuse and harassment overall and higher rates of sexualised and/or gender-based forms of such abuse than heterosexual cisgender individuals. This undermines the idea of the ability for all to be able to participate freely in entire spaces and means that some groups and figures – especially women – are driven offline¹³.

With the backlash that prominent figures experience in online spaces becoming ever more impactful, there is an even greater risk for women, especially women in politics or women in other prominent, high-profile public roles. This is increasingly apparent through recent notable examples. For instance, Sonja McLaughlan, the BBC Sport presenter suffered an outburst of online abuse on Twitter for asking

7 D. Woodlock, *The Abuse of Technology in Domestic Violence and Stalking in Violence Against Women*, 2017, no. 23(5), pp. 584-602; H. Douglas, B. A. Harris & M. Dragiewicz, *Technology-facilitated Domestic and Family Violence: Women’s Experiences in The British Journal of Criminology*, 2019, no.59(3), pp551-570.

8 C. Madhusudhanan, *AI through an Intersectional lens in Femme First Foundation*, 17 May 2021 <https://www.femmefirst.org/post/ai-through-an-intersectional-lens>; J. Buolamwini & T. Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification in Proceedings of Machine Learning Research*, 2018, pp77-91; E. Fosch-Villaronga, A. Poulsen, R. A. Søraa, & B. Custers, *Gendering algorithms in social media*, in *SIGKDD Explorations Newsletter*, 2020, no.23(1), pp24-31.

9 K. Barker & O. Jurasz, *ivi*, p.3; T. Berners-Lee, *Why the web needs to work for women and girls in The Web Foundation*, 12 March 2021 <https://webfoundation.org/2020/03/web-birthday-31/>.

10 K. Barker & O. Jurasz, *ivi* 4, p.95.

11 A. Dhordia, *Unsocial Media: Tracking Twitter Abuse Against Women MPs in Medium*, 4 September 2017 <https://medium.com/@AmnestyInsights/unsocial-media-tracking-twitter-abuse-against-women-mps-fc28aeca498a>.

12 A. Powell, A. J. Scott, & N. Henry, *Digital harassment and abuse: Experiences of sexuality and gender minority adults in European Journal of Criminology*, 2020, no.17(2), pp199-223.

13 Amnesty International, *ivi* 5; Letters, *To end online harms we must address misogyny in The Guardian*, 6 September 2019 <https://www.theguardian.com/lifeandstyle/2019/sep/06/to-end-online-harms-we-must-address-misogyny>.

difficult questions during the 2021 Six Nations championship.¹⁴ The abuse sent directly to her on Twitter, in her own words, left her in tears.



Figure 1: Sonja McLaughlan tweet that left her crying (27 February 2021).¹⁵

The abuse reported by McLaughlan is, sadly, not an isolated nor unusual incident, but serves to highlight the severity, and impact of such levels of abuse. Other prominent figures who have recently experienced significant online abuse include sports figures as well as women in politics.¹⁶ For instance, ex-England international footballer Karen Carney deleted her Twitter account as a result of abuse that she received following her punditry on the BBC in December & January 2021,¹⁷ but hers is not an isolated example. Sports journalists have also highlighted the abuse they receive,¹⁸ reinforcing the point that Sonja McLaughlan's experience is not an unusual occurrence.¹⁹ The ease with which online abuse can be communicated leads to situations where abusive messaging is not isolated, and very rarely a 'one-off'.

The scale of online misogynistic abuse is significant – even overwhelming, highlighting the broader challenge posed in respect of enfranchising women to play an equal role in the digital and public sphere.²⁰ Of significant concern are two distinct factors which highlight the dangers and barriers for women seeking to engage online. First, the protections for women that are designed to prevent and online abuse, online violence, and combat online misogyny are inadequate. Second, the leading and most heavily used social media platforms have been developed and built by men, and – at least at their conception – embodied some of the problematic attitudes that in today's online worlds lead to misogynistic abuse, and online violence against women. Zuckerberg – the Facebook founder – for instance

14 Observer Sport, *BBC's Sonja McLaughlan reveals online abuse over Owen Farrell interview* in *The Guardian*, 27 February 2021 <https://www.theguardian.com/sport/2021/feb/27/bbcs-sonja-mclaughlan-reveals-online-abuse-over-owen-farrell-interview>.

15 Full tweet and thread available at: <https://twitter.com/Sonjamclaughlan/status/1365757473462829066>.

16 S. Watson, *Analysis shows horrifying extent of abuse sent to women MPs via Twitter* in *The Conversation*, 6 November 2019 <https://theconversation.com/analysis-shows-horrifying-extent-of-abuse-sent-to-women-mps-via-twitter-126166>; K. Barker & O. Jurasz, *Gendered Misinformation & Online Violence Against Women in Politics: Capturing legal responsibility?* in *CoInform*, 2019 <https://coinform.eu/gendered-misinformation-online-violence-against-women-in-politics-capturing-legal-responsibility/>; L. Cater, *Finland's women-led government targeted by online harassment* in *Politico*, 17 March 2021 <https://www.politico.eu/article/sanna-marin-finland-online-harassment-women-government-targeted/>.

17 BBC, *Karen Carney: Ex-England international deletes Twitter account after online abuse* in *BBC Sport*, 1 January 2021 <https://www.bbc.co.uk/sport/football/55485336>.

18 P. MacInnes, *Sky Sports tries to tackle online abuse after lockdown surge* in *The Guardian*, 1 October 2020 <https://www.theguardian.com/football/2020/oct/01/sky-sports-online-abuse-lockdown-surge-sexism-racism>.

19 S. Spain, *Grace under fire: Women in media shouldn't have to 'ignore' abuse* in *espnW.com*, 27 April 2016 https://www.espn.com/espnw/voices/story/_/id/15412369/women-sports-media-ignore-abuse; D. Fraser, *'Hate won't stop us' Sky Sports presenters read out horrific online abuse including sick barb over death of brother in bid to combat trolls* in *The Sun*, 1 October 2020 <https://www.thesun.co.uk/sport/football/12820594/sky-sports-presenter-horrific-abuse-trolls/>.

20 K. Barker & O. Jurasz, *ivi* 4, p.95; Amnesty International, *ivi* 5.

developed the platform as it is now on the back of a slightly different website that was developed to allow users to compare two photos of women and vote for which was the most attractive.²¹ This – while arguably a prank – shows the so-called ‘harmless’ behaviours which enshrine patriarchal norms. The platforms that founders such as Zuckerberg have developed have grown out of the shadows of such pranks. As such, it is of little surprise that there remain woeful responses to the online abuse of women but especially the abuse of women on social media platforms. There is – at the time of writing – still no specific reporting category available for misogynistic abuse, nor gender-based prejudice on Facebook. Other platforms – including Twitter where huge amounts of online abusive communications have been shared – fare little better in this regard.

There are therefore significant disbenefits for women to openly engaging in online spaces that are – at least notionally – open to all. Whilst they create spaces for dialogue, the potential of these ‘truly equal’ spaces is undermined by the lack of control, and protections for all of those who seek to participate here, but especially women. It is in some respects, confusing as to why these online spaces (which claim to be open to all) have not addressed an issue which predates their existences: discrimination and inequality, which are also embodied in online hate and online misogyny.

3. The Misogynistic Hate Paradox – A Conceptual Misdirection

The online abuse of women, and online misogyny are two phenomena that present contemporary societal challenges. In recent years, there has been increased interest amongst law and policy makers in highlighting the issue of gender-based hate. Alongside this, the prevalence of misogyny and misogynistic abuse – whilst certainly not a new phenomenon – has been gaining public attention and coverage. For instance, the Council of Europe has recognised that

“[h]ate speech is not limited to racism and xenophobia: it may also take the form of sexism, antisemitism, Islamophobia, misogyny, homophobia, and other forms of hate speech directed against specific groups or individuals” emphasizing that “[s]uch forms of behaviour, which are not accepted offline, are equally unacceptable online”²².

Across the UK alone, the question of the inclusion of gender within hate crime frameworks has been raised in proposals for law reform across all three of the national jurisdictions comprising the UK legal system²³. In addition, in Scotland, the creation of a new offence of misogynistic harassment has been proposed in recognition of the widespread nature of misogynistic abuse both online and offline²⁴. Whilst these developments have certainly marked a significant shift in focus of the public debate towards these pressing issues, they have also brought to the fore a range of legal uncertainties resulting from such proposals, not least regarding the legal definitions of key terms and legal categories involved. In the context of hate crime law reform in particular, in England, the distinctions between gender-based hate and misogyny hate crime have become blurred. As we argue elsewhere, a number of campaigns – whilst well intended – have contributed to painting a misleading picture of the proposed changes to the law by conflating the key concepts of misogyny as hate crime and gender-based hate.²⁵ It is therefore important to distinguish between misogyny and hate. The two are not the same, and while there

21 S. Levy, *Facebook: The Inside Story*, Penguin, 2020, p.48-49; S. Annear, *A congressman asked Mark Zuckerberg if ‘Facemash’ was still up and running in Boston Globe*, 12 April 2018, available at <https://www.bostonglobe.com/metro/2018/04/12/congressman-asked-mark-zuckerberg-facemash-was-still-and-running-online/IBtqskC771xtkLf6QcQrzL/story.html>; K. Barker & O. Jurasz, *Text-based (sexual) abuse and online violence against women: towards law reform?* in *Technology-Facilitated Violence and Abuse – International Perspectives and Experiences*, J. Bailey, A. Flynn and N. Henry (ed), Bingley, Emerald, 2021, pp. 259.

22 PACE, *Resolution 2144 on ending cyberdiscrimination and online hate*, 25 January 2017, para.2.

23 Scottish Government, *One Scotland: Hate Has No Home Here. Consultation on amending Scottish hate crime legislation*, November 2018 https://consult.gov.scot/hate-crime/consultation-on-scottish-hate-crime-legislation/user_uploads/sct08182935681.pdf; K. Barker & O. Jurasz, *Hate Crime Legislation in Northern Ireland – An Independent Review: Consultation Response*, 2020 <http://oro.open.ac.uk/71116/>; Law Commission, *Hate Crime Laws. A Consultation Paper*, September 2020 <https://www.lawcom.gov.uk/project/hate-crime/>.

24 K. Barker & O. Jurasz, *Misogynistic Harassment: Advancing Scots Criminal Law?* in *Scottish Legal News*, 7 February 2020 <https://www.scottishlegal.com/article/misogynistic-harassment-advancing-scots-criminal-law>; K. Barker & O. Jurasz, *Misogynistic Harassment: A Stumbling Block for Scots Hate Crime Reform?* in *Juridical Review*, 2021, no. 1, pp.14-17.

25 K. Barker & O. Jurasz, *ivi* 6.

are some shared elements focussing on the prejudice against women, hate and misogyny are different issues, should be treated differently within the legal system, and must not be conflated.

In an online context, this hostility is – to coin internet parlance – “levelled up” so that the hostility becomes textualized, more prominent, and voluminous. In categorising, and conceptualising online misogyny, it is essential to recognise the societal foundation of misogyny itself, not only to illustrate the scale of the problem but also to contextualise the impact of such vitriol on the targets of it, and the wider community. After all, the underpinning *raison d’être* of misogyny, alongside structural and patriarchal societal factors, is hostility towards women because they are (or are identified by the perpetrator) as women. Accordingly, we define misogyny in online contexts as: “a form of gender-based cyberhate, directed at women because they are women”²⁶. Consequently, in utilising this definition, there is both a line and distinction to be drawn between misogyny and hate. There is – as we argue elsewhere²⁷ – a connection between the two concepts, but the overlap between misogyny and hate does not equate to one and the same thing.

Hate is a much broader concept which underpins the hate crime legislation as well as hate crime discourse. Misogynistic hate is one of many possible forms of hate speech – as acknowledged by the Parliamentary Assembly of the Council of Europe.²⁸ However, in legal terms, it is difficult to rationalise the conceptualisation of misogyny (as opposed to sex or gender) as a protected characteristic²⁹. If misogyny is to be a hate crime, then this would require – in England & Wales, and Scotland – the law to protect misogyny as a characteristic in a similar way to transgender identity or religion³⁰. This is a short-sighted approach in that it is not the misogyny that ought to be protected and enshrined in the law, but rather the underlying characteristic i.e., that of gender, and as the factor which generates the hostility³¹. To suggest that misogyny itself – as the outcome not the characteristic – be protected is potentially more damaging than not acting at all. At the very least, it focuses narrowly on the notion of misogynistic abuse rather than gender-based abuse, which in turn has potential implications on the conceptualisation of harms arising from such abuse – especially when it happens online.

4. Gender Equality and Discrimination - Where is the (Online) Harm?

Through the existences of such online spaces, the (analogue) patriarchal societal models that have flourished are now replicated in digital form, recreating the norms, and conventions that have perpetuated inequality offline. What is increasingly lost in discussions of online abuse, and the online abuse of women – which manifests itself as online misogyny – is the unequal and discriminatory effect such abuse has. That is not to suggest that online abuse does not have a wide-ranging impact across a range of demographics, but the scale, severity, harm, and gendered nature disproportionately impacts upon women³². The online misogynistic abuse of women is therefore nothing other than the digital manifestation of violence against women (VAW). As such, online misogynistic abuse is not a new phenomenon – rather, it ought to be viewed as a set of behaviours which stem from the same structural causes as VAW: discrimination of women, gender inequalities, patriarchy, which are fuelled and exacerbated by the pervasiveness of gender stereotypes. However, online environments provide a relatively new and fertile ground for these gendered and abusive behaviours, which differ somewhat from the offline environments where misogynistic abuse takes place. Online misogyny brings an additional layer of complexity which is played out through the combination of the anonymity of the abuser(s) and hyper-visibility of such abuse which can be easily amplified through reposting of abusive content by other users or practices such as dogpiling.

26 K. Barker & O. Jurasz, *ivi* 3, p25; K. Barker & O. Jurasz, *Online Misogyny as a Hate Crime: #TimesUp?* in *Misogyny as Hate Crime*, J. Smith & I. Zempi (ed), London, Routledge 2021.

27 K. Barker & O. Jurasz, *ivi* 26.

28 PACE, *ivi* 22.

29 K. Barker & O. Jurasz, *ivi* 26.

30 §§ 145 and 146 Criminal Justice Act 2003; § 2 Offences (Aggravation by Prejudice) (Scotland) Act 2009; § 1(2) and 4 Hate Crime and Public Order (Scotland) Act 2021.

31 K. Barker & O. Jurasz, *ivi* 3; K. Barker & O. Jurasz, *ivi* 26.

32 Amnesty International, *ivi* 5.

Yet, online misogynistic abuse has gone relatively unchecked to date, despite its growth and prevalence, indicating its systemic character. The misogynistic abuse of women online is therefore nothing novel nor surprising in its nature – it is long-standing prejudice which has found a new mouthpiece in online forms. Misogyny is not a new phenomenon, but it is one that retains discriminatory and unequal principles at its core, and which has now spread to the online environment.

At an international level, the principles of equality and non-discrimination are deeply enshrined in the language of legal obligations and core human rights principles. For instance, The Convention on Elimination of All Forms of Discrimination Against Women 1979 (which is the key instrument protecting women’s rights at an international level) places due diligence obligations on state parties to the Convention with respect to eliminating all forms of violence against women³³. This covers both sex-based and gender-based forms of discrimination³⁴ as well as both direct and indirect forms of discrimination³⁵. Similarly, there is a firmly established commitment, at international and regional levels, to tackling violence against women, which is now also recognised as a form of discrimination³⁶ and includes technology-mediated environments, such as the Internet and digital spaces³⁷. These commitments accumulate under the umbrella of Sustainable Development Goals – more specifically, gender equality (SDG5). The targets of SDG5 include not only the eradication of all forms of discrimination against women and girls (SDG 5.1.) and violence against women and girls (SDG 5.2.) but also seek to ensure women’s full and effective participation in political and public life (SDG 5.5.). Nowadays, both public and political life is heavily reliant on and plays out in the online domain, including social media. As such, it is crucial that online spaces are free from gender-based discrimination and gender-based violence which have a curtailing effect on the participatory rights of women³⁸.

Online violence against women, including online misogynistic abuse, threatens women’s and girls’ freedom of expression online. Online misogyny is not only a form of online violence against women, but also a serious and contemporary challenge to gender equality, non-discrimination of women and women’s rights – especially the right to participate in public and political life as well as the right to freely express themselves without threats of violence or discrimination. Emerging studies suggest the silencing effects of online abuse, including its misogynistic forms, on women. Khoo notes that “[T]he most common response to facing online abuse and harassment is that women reduce their online activities, avoid certain social media platforms or conversations, withdraw from expressing their views, or self-censor if they continue to engage online”³⁹. For instance, alarmingly, the UK Girlguiding Girls’ Attitude Survey (2016) showed that 49% of the 1600 surveyed girls aged 11-16 and 44% of young women aged 17-21 felt unable to express their views in an online environment⁴⁰. The silencing effects of online abuse and violence are also felt by prominent women, who are subjected to volumes of online abuse⁴¹ and who frequently withdraw from participating online and public life as a result of abuse received. This impact is particularly felt amongst women politicians, who increasingly attribute their departure

33 Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women 1979 (hereafter: CEDAW).

34 Although the Convention only explicitly refers to sex-based discrimination, the CEDAW Committee clarified in General Recommendation 28 on the core obligations of States parties under Article 2 of the CEDAW that the Convention extends to gender-based discrimination too (para. 5).

35 CEDAW General Recommendation 28, para.16.

36 CEDAW, General Recommendation 19, paras.1, 6.

37 CEDAW, General Recommendation 35, para.20.

38 K. Barker & O. Jurasz, *ivi* 4, pp.104-106.

39 C. Khoo, *Deplatforming misogyny. Report on Platform Liability for Technology-Facilitated Gender-Based Violence*, 2021 <https://www.leaf.ca/publication/deplatforming-misogyny/>.

40 *Girlguiding, Girls’ Attitudes Survey 2016*, 17-19 www.girlguiding.org.uk/globalassets/docs-and-resources/research-and-campaigns/girlsattitudes-survey-2016.pdf.

41 See, for example: A. Dhordia, *Unsocial Media: Tracking Twitter Abuse Against Women MPs in Medium*, 4 September 2017 <https://medium.com/@AmnestyInsights/unsocial-media-tracking-twitter-abuse-against-women-mps-fc28aeca498a>.

from office to the online abuse and harassment suffered while in elected office,⁴² but also women journalists⁴³ and human rights defenders⁴⁴.

The impact of online violence on women's and girls' freedom of expression highlights the need for a broader conceptualisation of online harms arising from such forms of abuse. As we argue elsewhere, the categorisation of harm must transgress the dichotomy of physical and emotional/ psychological impact which dominates the discourse on online harms⁴⁵. The spectrum of online harms arising from gender-based abuse online is diverse and, in this context, ought to include participatory and democratic harms⁴⁶. Furthermore, where misogynistic content is used to abuse women and girls online, consideration needs to be given to the broader social harm caused. In particular, the hypervisibility of online misogynistic abuse, strengthened by the lack of accountability, perpetuates the everyday violence against women, not only normalising it⁴⁷, but also contributes to its escalation. It is in this context that the role and responsibilities of platforms become central to ensuring that abusive content – especially in its misogynistic and gender-based forms – is treated seriously and addressed adequately.

5. The Platform Problem: Better Regulation, not More

While discussions of internet regulation are not new, they have recently occupied the agendas of a number of law-making and political bodies with an intensity rarely previously seen. Contemporary developments focus on the potential of policing content, and the almost unresolvable categorisations content (and speech) as a result. These are particularly difficult to resolve in respect of the division between harmful but not illegal content, and illegal content posted on social platforms online. Such a division presents a number of difficulties for content such as that which contains misogynistic online abuse.

It is this artificial – and unhelpful – distinction which has dominated discussions of attempts to create – and impose – liability for online content since the Internet developed a user-generated content element to it. It is also this legacy which has been retained across Europe, with the liability shield provisions of the eCommerce Directive⁴⁸, and its soon-to-be successor, the Digital Services Act 2020⁴⁹ which retains the liability shield provisions established over 20 years ago⁵⁰. Significantly, the distinctions between active and passive hosts have been codified within the DSA – resolving the situation from the e-Commerce Directive, and offering some additional clarity for platforms in respect of their roles regarding online content⁵¹. While this step potentially offers clarity for platform providers, it does little to assist women online given that platforms now have codified distinctions to allow them to remain passive, and therefore not prejudice their liability shield by taking an active role in editorialising content posted on their platforms. In some respects, the benefits of increased codification for platform providers are a further obstacle for tackling gender-based abuse online. Interestingly, when seeking to position

42 K. Barker & O. Jurasz, *Gendered Misinformation & Online Violence Against Women in Politics: Capturing legal responsibility?* in *CoInform*, 2019 <https://coinform.eu/gendered-misinformation-online-violence-against-women-in-politics-capturing-legal-responsibility/>.

43 UNESCO, *The Chilling: Global trends in online violence against women journalists*, May 2021 <https://en.unesco.org/sites/default/files/the-chilling.pdf>.

44 Kvinna till Kvinna, #femdefenders. *The hatred towards women human rights defenders – online and offline*, October 2018 <https://kvinna.tillkvinna.org/wp-content/uploads/2018/10/10-Femdefenders-the-hatred-against-women-ENG.pdf>; UN HRC, *The impact of online violence on women human rights defenders and women's organisations*. Statement by UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, 38th session of the Human Rights Council, 21 June 2018 <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=23238&LangID=E>.

45 K. Barker & O. Jurasz, *ivi* 21, p. 259.

46 K. Barker & O. Jurasz, *ivi* 21, p. 257.

47 K. Barker & O. Jurasz, *ivi* 3, Chapter 2; C. Khoo, *ivi*, 39, p. 60.

48 Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on *Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce, in the Internal Market* [2000] OJ L178/1.

49 European Commission, *The Digital Services Act package*, 26 April 2021, <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package#ecl-inpage-klc959ki>.

50 eCommerce Directive, *ivi* 48, Articles 12-15.

51 Digital Services Act 2020, Recital 18.

online misogyny, or online violence against women, these forms of online speech fall into the blurry categorisations of content under the current platform regulations, creating uncertainty as to whether there is any obligation on a particular platform to address it or not.

The regulation of online platforms has consistently overlooked gender-based abuse online. Where discussions of internet regulation, online content regulation, and hate speech online are mooted, discussed, or even proposed, these tend to overlook the online abuse of women, online misogyny, and online hate speech targeting women.⁵² The long-established model relating to liability shields⁵³ casts a very long shadow over internet content regulation across the European Union, and its legacy is difficult to overcome even where there is a clear political appetite to do so – such as that evident with the Digital Services Act 2020.

Concerns over increasingly polarized societies, and inequalities have led to a number of national ‘online hate speech’ laws in recent years, ostensibly in an attempt to tackle online hate speech, and social media platforms, while regulating the technological impacts upon society and democracy⁵⁴. Various EU member states have taken action domestically to address what is broadly conceived as online hate speech, and who have sought to introduce legislation beyond – and arguably – in contravention of the DSA and its broader scope. National laws in Germany, France, and Austria have all been implemented to ‘beef up’ national hate speech provisions. These independent but national initiatives generally attempt to impose greater controls and stricter standards on social media platforms operating within national territories.

These national laws tend not be in alignment with each other, nor broader regional initiatives, such as the Digital Services Act. They also – inevitably – focus on different priorities under the same broad umbrella of online hate speech / hate speech, or instead focus on online regulation without highlighting the interrelationship with other areas of law such as offensive communications or hate speech laws. For instance, the UK’s Online Safety Bill (formerly known as the Online Harms package)⁵⁵ attempts to sidestep the issues of online hate speech together with the categorisation of content, and instead, impose duties of care on platforms to ensure that certain harms do not arise as a result of content posted on their platforms⁵⁶. In Germany, which introduced one of the first – and most controversial – national laws to govern online content as a standalone domestic provision separate from the EU regulations in this area, the Network Enforcement Act (NetzDG)⁵⁷ was introduced to tackle social media platforms. It seeks to regulate hateful speech online and imposes a liability structure requiring strict removal of content, or financial penalty. It has attracted significant outcry from freedom of expression advocates⁵⁸, as well as the social media platforms it seeks to regulate, with the law itself being deemed unconstitutional⁵⁹.

Despite its controversy, the NetzDG has still paved the way for other European states to follow suit – some of which have used it as a model⁶⁰, while others have used the German boldness to move ahead with legislation that is not EU compatible as a shield to do similar. In Austria, for instance, the German

52 K. Barker & O. Jurasz, *Online violence against women as an obstacle to gender equality: a critical view from Europe* in *European Equality Law Review*, 2020, no. 1 pp47-60 <https://www.equalitylaw.eu/downloads/5182-european-equality-law-review-1-2020-pdf-1-057-kb>.

53 *Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC*. COM(2020) 825.

54 L. M. Neudert & N. Marchal, *Polarisation and the use of technology in political campaigns and communication*, in *European Parliamentary Research Service (STOA)*, March 2019. [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/634414/EPRS_STU\(2019\)634414_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/634414/EPRS_STU(2019)634414_EN.pdf),

55 Online Safety Bill 2021; HM Government, *Online Harms White Paper: Full government response to the consultation*, 2020, Cmd 354.

56 Duties of care to include (amongst others): the illegal content risk assessment duty; illegal content duties; rights to freedom of expression and privacy duties; reporting and redress duties; record-keeping and review duties; children’s online safety duties; and adults’ online safety protection duties. See Online Safety Bill 2020, s5.

57 Network Enforcement Act (*Netzwerkdurchsetzungsgesetz*) 2017.

58 Reporter ohne Grenzen (ROG), *The Network Enforcement Act apparently leads to excessive blocking of content*, in *ROG News*, 3 August 2018, <https://rsf.org/en/news/network-enforcement-act-apparently-leads-excessive-blocking-content>.

59 A. Heldt, *Germany is amending its online speech act NetzDG... but not only that* in *Internet Policy Review*, 6 April 2020 <https://policyreview.info/articles/news/germany-amending-its-online-speech-act-netzdg-not-only/1464>.

60 . J. Mchangama & J. Fiss, *The Digital Berlin Wall: How Germany (Accidentally) Created a Prototype for Global Online Censorship* in *Justitia*, November 2019 http://justitia-int.org/wp-content/uploads/2019/11/Analyse_The-Digital-Berlin-Wall-How-Germany-Accidentally-Created-a-Prototype-for-Global-Online-Censorship.pdf; J. Mchangama & N. Alkiviadou, *The Digital Berlin Wall: How Germany (Accidentally) Created a Prototype for Global Online Censorship – Act Two* in *Justitia*, September 2020

NetzDG example has been followed, almost as a direct inspiration, through the KoPL-G⁶¹, which seeks to introduce high levels of financial penalty for platforms that fail to address problematic content within the required time frame. It has a number of striking similarities to the NetzDG and has attracted similar controversy. These are not the only examples though – in other European states, such as France and Italy, legislation has unfolded with a slightly different focus, albeit one that notionally seeks to capture hate speech and online content regulation. In Italy, for instance, recognition has been given to hatred against women in draft anti-misogyny laws⁶², whereas France is adopting a more draconian approach through its Loi Avia⁶³. Despite all of these national initiatives, few of them specifically address gender-based abuse online, nor gender-based hate. The willingness and appetite to legislate on hate and online hate in particular is a significant development, but it still falls short of addressing the phenomenon of online misogyny and gender-based abuse online.

Other European states are taking different measures, using hate crime provisions and internet regulation, to shift what public debate can and cannot comment on – notable especially in Hungary⁶⁴ and Poland⁶⁵. The Freedom of Speech Act⁶⁶ also follows – at least in part – the German NetzDG example, by seeking to introduce financial penalties. It also contains proposals to do other things, including establishing what is referred to as a ‘Freedom of Speech Council’⁶⁷.

Beyond isolated examples though, none of these national initiatives – which all claim to be addressing either hate speech and hate crimes, and / or content regulation – address the issue of online misogyny or the broader phenomenon of online violence against women. The UK’s draft Online Safety Bill and the Italian hate bill are isolated examples, where *some*⁶⁸, elements of the phenomenon have been recognised, but neither one places women explicitly within their remit. The UK Online Safety Bill for instance provides scope to recognise the impact of online abuse as one of the categories of ‘content that is harmful to adults’⁶⁹ – an improvement – but simultaneously does not recognise the gendered elements to it. Meanwhile, the Italian draft law recognises the prejudice women receive⁷⁰, but does not explicitly acknowledge the enhanced aspect of this in online environments and social media platforms. The DSA also falls short in this regard, albeit was not charged with regulating online hate speech nor gender-based abuse online specifically.

While the DSA is long overdue, it is not a tool designed to address content like that of online misogynistic abuse, focusing instead on regulating service providers. The ongoing discussions of illegal versus legal but harmful content offer little in the way of hope for addressing the phenomenon of online misogyny phenomenon. The – best – that can be hoped for at present is that platforms use their new duties under the DSA to introduce more than minimal standards on their individual platforms. While this approach may offer some potential opportunities – but nothing more – a lot still needs to be done by platforms with little onus to do so.

https://futurefreepress.com/wp-content/uploads/2020/09/Analyse_Cross-fertilizing-Online-Censorship-The-Global-Impact-of-Germans-Network-Enforcement-Act-Part-two_Final.pdf

61 Communication Platforms Act 2020.

62 The so-called ‘Zan bill’ 2020. See: M. Rubino, *Omotransfobia, la commissione Giustizia dà il via libera al testo. La legge in aula alla Camera il 3 agosto* in *La Repubblica*, 29 July 2020, https://www.repubblica.it/politica/2020/07/29/news/omofobia_ok_accordo_legge_aula_camera_3_agosto-263148982/.

63 Bill No 1785 Aiming to Fight Against Hatred on the Internet (‘Avia’ Bill) 2020.

64 N. Đorđević, *Poland and Hungary are gunning for the social media giants* in *Emerging Europe*, 4 March 2021 <https://emerging-europe.com/news/poland-and-hungary-are-gunning-for-the-social-media-giants/>.

65 Reporters Without Borders, *Poland’s new social media law puts freedom of expression at risk, RSF warns*, 28 January 2021 <https://rsf.org/en/news/polands-new-social-media-law-puts-freedom-expression-risk-rsf-warns>; A. Easton, *Poland proposes social media ‘free speech’ law* in *BBC News*, 15 January 2021, <https://www.bbc.co.uk/news/technology-55678502>.

66 Ministerstwo Sprawiedliwości, *Zachęcamy do zapoznania się z projektem ustawy o ochronie wolności użytkowników serwisów społecznościowych*, 1 February 2021 <https://www.gov.pl/web/sprawiedliwosc/zachecamy-do-zapoznania-sie-z-projektem-ustawy-o-ochronie-wolnosci-uzytownikow-serwisow-spoecznosciowych>.

67 M. Sałajczyk, *Online Freedom of Speech Bill in Poland* in *Lexology*, 3 February 2021, <https://www.lexology.com/library/detail.aspx?g=3ae0a3cc-fdef-4d88-9f60-a91ea285fc41>.

68 Emphasis added.

69 Online Safety Bill 2021, s46(2); s46(3).

70 M. Rubino, *ivi* 62.

The pan-EU DSA could – and should – have considered online misogyny and online violence against women. That it does not, and instead returns to the ideas of distinguishing illegal versus harmful content keeps alive the idea that platforms can simultaneously avoid responsibility for the content they host and circumvent needing to introduce mechanisms to address all forms of harmful content, rather than only illegal content. It is particularly noteworthy that despite other legislative initiatives addressing – for example, extremist content online,⁷¹ that not all illegal content is given the same focus and attention. While the potential consequences for society are more evident from allowing extremist content to go unchecked, there are also profound harms for allowing online misogyny (as a form of online violence against women), and gender-based prejudice to go unchecked but also unchallenged.

Similarly, where legal provisions do not recognise online misogyny, online platforms themselves have done little to proactively address online misogyny and the gendered abuses prevalent across their sites. For instance, while reporting mechanisms exist for users to complain about posts and / or content that they believe to be problematic, the categories usually do not include an option to report on the basis of gendered prejudice or online misogyny, or gender-based abuse. For instance, while Twitter’s Rules now allow for the reporting of abuse/harassment, defined by Twitter as: “wishing or hoping that someone experiences physical harm”⁷² and for the reporting (in a separate category) of ‘Hateful conduct’ defined for Twitter as content which could: “promote violence against, threaten, or harass other people on the basis of race, ethnicity, national origin, caste, sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease”⁷³, there is no specific category to report gendered abuse – users must choose to report the abuse as abuse/harassment, or report it as hateful conduct so as to capture the gender element specifically. This causes an additional layer of confusion when navigating the regulation of online misogyny, online violence against women, and online hate speech. Not least because while abuse/harassment can be reported under the Twitter Rules⁷⁴, these categorisations do not conform nor align to national laws⁷⁵. Where platforms therefore have enacted mechanisms by which reporting of content can be conducted, there is a mismatch between what the platform itself declares to fall into a category of hate, and what the national law applicable where the person reporting will capture as criminally actionable hate. In England & Wales for instance, gender is not a protected characteristic for the purposes of hate crime offences⁷⁶. As such, there is no recognisable gender hate crime offence for criminal law purposes – something that is markedly different from being able to report ‘hateful conduct’ on Twitter to Twitter. The situation on Facebook is similar under the Community Standards⁷⁷, where gender does not feature beyond the Hate Speech policy rationale where Facebook too lists it as a protected characteristic⁷⁸. There is little other mention of gender within Facebook’s Community Standards – there are mentions within the Bullying and harassment policy rationale, but gender here tends to appear where Facebook refers to “female-gendered cursing terms.”⁷⁹ It therefore seems that two of the leading social media platforms recognise that there is a need to capture ‘hate’, but do not capture characteristics such as gender for other categories of problematic content which fall short of hateful conduct, such as abuse and harassment

This is not however the only flaw in platform reporting processes – even where a report is made, it does not guarantee a response, or a reaction from the platform itself. Where a response is forthcoming, it may not be timely⁸⁰, allowing the account and content poster to continue both to use the platform and to create and share content that could be distressing or in violation of the platform terms and conditions,

71 Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online, L 172/79, 17 May 2021. (TERREG Regulation).

72 Twitter, *The Twitter Rules – Safety: Abuse/harassment*, 2021 <https://help.twitter.com/en/rules-and-policies/twitter-rules>.

73 Twitter, *ivi* 72m, Safety: Hateful conduct.

74 Twitter, *The Twitter Rules*, 2021 <https://help.twitter.com/en/rules-and-policies/twitter-rules>

75 In England & Wales the monitored strands of hate crime are covered by legislation: s28-32 of the Crime and Disorder Act 1998; and s145-146 Criminal Justice Act 2003.

76 K. Barker & O. Jurasz, *ivi* 3, p101.

77 Facebook, *Community Standards*, 2021 <https://www.facebook.com/communitystandards/introduction>.

78 *Ibid.*, Objectionable Content: 12. Hate Speech.

79 *Ibid.*, Objectionable Content: Safety: 9. Bullying and harassment.

80 Though some platforms – such as YouTube – have introduced enhanced automated systems to attempt to respond more timeously. See for example: Google, *Removals Under the Network Enforcement Law* <https://transparencyreport.google.com/netzdg/youtube?hl=en>; H. Bloch-Wehba, *Automation in Moderation* in *Cornell International Law Journal*, 2020, no. 53, pp. 41-96.

or usage policies. The corollary here is that even where there is a report made, and it is acted upon by the relevant platform, no action may be forthcoming because the content reported is almost certainly viewed in isolation, and therefore out of the context in which it was made. This is particularly problematic for nuanced or veiled threats which may form part of a broader chain of posts, but which are not all reported because not all violate the usage policies & acceptable behaviour standards of a particular platform. Even where it is possible to report, for instance, on Twitter, ‘multiple components’ it appears only in respect of ‘Moments’⁸¹, meaning to report a series of tweets, multiple reports are likely required. Where multiple reports are made, they may not be considered together, meaning that again the context may be lost. This in turn creates additional burdens for – especially – automated moderation systems, which are already overwhelmed by the volume of content they are required to contend with, and which also do not accommodate cultural differences, linguistic nuances, and general context⁸².

Platforms are more generally problematic given the fostering of anonymity, which in turns leads to difficulties in tracking down and taking action against the person(s) behind the abusive or misogynistic messages. Campaigns for requiring an end to anonymity are plentiful, and appear on a cyclical basis, usually in response to high-profile incidents or issues. That said, the arguments for ending anonymity are not persuasive enough to suggest that platforms must mandate a ‘real names’ policy, or that such steps could be enforceable. Where platforms *could* act to require lesser anonymity in user accounts, there are disbenefits attached to doing so – for instance, it could reduce the ability of some women – or groups – from using social media platforms to raise awareness, make connections, and fully participate in a democratic society.

Not only do platforms therefore fail to recognise the phenomenon of online misogyny, and gender-based abuse online, but they also fail to allow for the reporting of it. Consequently, while the phenomenon of online misogyny exists it is difficult to gauge the severity and volume across platforms as a whole because there are no recordings or statistics available. The UK Online Safety Bill and the EU’s DSA both introduce annual requirements⁸³ for reporting by social media platforms. Again though, the reporting of online misogyny, or gender-based abuse online is not something which platforms must report on annually. This is not only incredibly disappointing for women and victims of online misogyny and online violence, but is a stark reminder of the ways in which platforms are able to sidestep obligations by choosing to brand themselves as private spaces for users to choose to engage with and in. This is, of course, selective, and arguably is a strategic option used by platform founders to suit liability and law enforcement challenges as and when they arise. It does little to encourage users and victims that platforms are managing the problematic content that appears on their sites. This is exacerbated where platforms are able to self-determine the categories in which content can be reported. While the DSA is not designed to capture all of the potential online harms and illegal behaviours that exist, it is equally disappointing to note that online violence against women, and online misogyny especially has not been factored into the broader discussion as part of a holistic response to the phenomenon at a European Commission level⁸⁴.

What is evident from the disparate and numerous attempts to tackle online hate speech, online misogyny, and internet platform regulation is that there is little joined up thinking⁸⁵. Numerous attempts signal that there is – at the very least – an awareness from governments that something must be done to tackle online content and the challenges it poses. However, the prevailing approach has been to regulate within national jurisdictions, and to adopt different approaches to other countries. While all of the different national legislative mechanisms signal a collective willingness to legislate to control online spaces, it is evident that what is desperately needed is better regulation rather than more. And better regulation must place at its heart mechanisms to address the impact of online content, rather than placing the sole focus on distinguishing between illegal content and harmful but lawful content. To adopt and retain such a focus will continue to mean that online content regulation is hamstrung by having to identify which content can be regulated, rather than how the content itself is tackled, irrespective of its

81 Twitter, *Report Violations: How to report multiple components of a Moment for violations*, 2021 <https://help.twitter.com/en/rules-and-policies/twitter-report-violation>.

82 H. Bloch-Weba, *ivi* 80.

83 The Digital Services Act will require for instance, online platforms to comply with transparency reporting obligations (see DSA 2020, Articles 13, 15, 23 and 33). The Online Safety Bill meanwhile also incorporates transparency reporting requirements which will be imposed on platform providers, requiring annual reporting of the steps they are each taking to tackle online harms (Online Safety Bill 2020, s49).

84 K. Barker & O. Jurasz, *ivi* 52.

85 *Ibid.*

harm – being lawful and harmful, or being unlawful and harmful. A different approach is long overdue, and one that places the regulation of systems at the heart⁸⁶, rather than the regulation of selected aspects.

6. Responses to Online Misogyny: Hope, not Hate?

Thus far, the legal responses to regulating online misogyny in the UK have been limited. The UK Online Harms White Paper mentions online misogyny⁸⁷ but it does not elaborate on the harms arising from it nor strategies to tackle it. In fact, the document does not recognise gender-based abuse online more generally (nor its harmful impact), despite the declared commitment to tackle a range of abusive behaviours online. It also prioritises image-based forms of online abuse⁸⁸, which, as we argue previously⁸⁹, represents a flawed and limited thinking about the realities of online abuse and harms arising from them.

Similarly, the hate crime law reform proposals across England & Wales, Scotland, and Northern Ireland⁹⁰ – whilst engaging to an extent with the question of whether, and if so, how, to capture misogyny under hate crime provisions – have not done so in a systematic manner. In Scotland, gender has not been added as a protected characteristic nor an aggravator, with a subsequent move to convene a Scottish Government Working Group on Misogyny and Criminal Justice in Scotland⁹¹, prompted by an innovative yet problematic⁹² proposal to create a separate offence of misogynistic harassment. Meanwhile, the Law Commission in England & Wales and the Independent Review of Hate Crime Legislation in Northern Ireland considered misogynistic violence and harassment, including its online forms, as part of their consultation papers⁹³ – yet, the question on whether and how to capture misogyny in hate crime reform proposals has not been incorporated into the consultation questions.

Addressing online misogyny requires a comprehensive, multilayer, and multiactor response. The law can, and should, address online misogyny through appropriate and modern laws. To facilitate this, meaningful reform capturing online abusive behaviours is needed, alongside the proposed amendment of gender as i) a protected characteristic and ii) as an aggravating factor, to the hate crime frameworks across the respective devolved jurisdictions in the UK. A reformed approach towards communication offences is needed, with appropriate capturing of online behaviours which are not only harmful and ought to be made illegal. At the moment, there are a number of gaps in the current communications provisions, especially given that this framework does not adequately address online violence, online text-based abuse, nor in particular, online violence against women and girls. As such, there is a pressing need to offer realistic and meaningful opportunities to tackle online text-based abuses which would comprehensively capture broad range of harms arising from gender-based abuse online, and not just limit those to emotional or psychological harms⁹⁴. As the communications provisions apply UK-wide, it is important to bear in mind that any new / reformed communication offences would likely interact

86 Such as the need to regulate moderation systems, as advocated for by Keller: D. Keller, *Systemic Duties of Care and Intermediary Liability* in *CIS Blog*, 28 May 2020 <http://cyberlaw.stanford.edu/blog/2020/05/systemic-duties-care-and-intermediary-liability>.

87 DCMS, *Online Harms White Paper*, April 2019, pp. 16; 69.

88 DCMS, *Online Harms White Paper*, April 2019, p. 20.

89 K. Barker & O. Jurasz, *ivi* 21, pp.250-251; K. Barker & O. Jurasz, *Gender-based abuse online: An assessment of law, policy and reform in England and Wales in Palgrave Handbook on Gender, Violence and Technology*, A. Powell, A. Flynn & L. Sugiura (ed), Palgrave, 2022 forthcoming).

90 K. Barker & O. Jurasz, *Reform of Hate Crime Laws - Consultation Response to the Law Commission*, 2020, <http://oro.open.ac.uk/75090/>; K. Barker & O. Jurasz, *ivi* 23; K. Barker & O. Jurasz, *Expert Response to One Scotland Consultation on Amending Scottish Hate Crime Legislation*, 2019 <http://oro.open.ac.uk/66207/>.

91 Scottish Government, *Misogyny and Criminal Justice in Scotland Working Group*, 2020-2021, <https://www.gov.scot/groups/misogyny-and-criminal-justice-in-scotland-working-group/>.

92 K. Barker & O. Jurasz, *Scots Hate Crime Bill: A Missed (Gender) Opportunity?* in *Stirling Public Policy Blog*, 1 May 2020 <https://policyblog.stir.ac.uk/2020/05/01/scots-hate-crime-bill-a-missed-gender-opportunity/>; K. Barker & O. Jurasz, *ivi* 24.

93 *Hate Crime Legislation in Northern Ireland. Consultation Paper*, February 2020, <https://www.hatecrimereviewni.org.uk/sites/hcr/files/media-files/Consultation%20Paper%20Feb%202020.pdf>; Law Commission, *ivi* 23.

94 K. Barker & O. Jurasz, *Reform of the Communications Offences - Consultation Response to the Law Commission*, December 2020, <http://oro.open.ac.uk/75091/>.

with hate crime frameworks in devolved jurisdictions, including cases where acts such as online misogynistic abuse are concerned.

However, there are limitations on what the law – however modern and appropriate – can achieve with regard to addressing online misogyny, especially in relation to preventing its occurrence. Given that misogyny is deeply rooted in structural gender inequality, discrimination of women, and patriarchy, addressing this harmful phenomenon requires a change of social attitudes, which are deeply embedded in our social fabric. Whilst international obligations of state parties to CEDAW⁹⁵ include taking measures to prevent and combat discrimination against women as well as the elimination of gender stereotypes⁹⁶, in practice this is a Herculean task – and one that requires long-term, targeted interventions. As a starting point, it ought to include education – of both children and adults – about the harmfulness of gender stereotypes, gender-based violence, and about how to behave responsibly online.

Further limitations of the law lie in its administrative (in)ability to deal with likely high volumes of reported cases involving online misogyny. As such, alternative ways of individuals seeking remedies, e.g., by enforcing information rights or by submitting privacy requests to platforms to delist content which features misogynistic abuse of the given individual. Whilst these measures do not *per se* remedy online misogyny by eradicating it, they make it possible to limit the visibility of such content or the amplification of abuse through likely reposting of it. Platform providers have also a greater role to play when it comes to capturing and responding to gendered harms resulting from abusive and misogynistic content posted on their sites.

Furthermore, the UK experience thus far demonstrates a limited impact of recording misogyny as hate crime. The initiative of flagging misogyny as hate crime by the police has originated in Nottingham, following the Citizens UK campaign advocating for better action from Nottinghamshire Police on misogynistic harassment of women. It has subsequently been adopted by several other police forces across England⁹⁷, albeit with slight variations in the type of abuse recorded – for instance, Avon and Somerset Police record instances of gender hate crimes instead of misogyny⁹⁸. The impact of this policy change is however questionable – not least due to the fact that flagging misogyny as hate crime does not have any grounding in the current legal framework of England & Wales, Scotland or Northern Ireland. Whilst it may be helpful in gathering data on *perceptions* of motivations concerning reported hate crime incidents, flagging does not result in any specific avenue of redress being offered⁹⁹. Given that misogyny is not a protected characteristic nor an aggravating factor under any of the hate crime frameworks in the devolved nations of the UK (nor, as we have argued¹⁰⁰, should it be) and neither is currently¹⁰¹ sex nor gender, a perpetrator cannot be held accountable for committing an alleged hate ‘crime’ motivated by misogyny. As a result, committing a hate crime or being sentenced after trial cannot include consideration of misogyny as there is no legal basis to consider it as part of the hate crime landscape.

At the moment, despite the scale of misogynistic and gender-based abuse online, there is room for improvement in the moderation of content. While platforms such as Facebook and Twitter allow the reporting of ‘objectionable content’, they do not offer the option of specifying the nature of abuse (e.g., gender-based, misogynistic). Therefore, for users experiencing these forms of abuse on Facebook and Twitter, these categories are not adequately recorded nor actioned, leaving users (and victims) without appropriate avenues to report such abuse. There is a need for greater responsibility where platforms moderate content such as that which is misogynistic in nature, or which results in the manifestation of gender-based abuse online. Moderation ought to involve not only sensitivity to gender-based and mi-

95 The UK is a party to CEDAW.

96 CEDAW, Articles 2 and 5a.

97 North Yorkshire Police, *North Yorkshire Police announce misogyny now recognised as hate crime*, 2016, <https://northyorkshire.police.uk/staying-safe/hate-crime/north-yorkshire-police-announce-misogyny-now-recognised-hate-crime/>; C. Cohen & C. Hymas, *Treat misogyny as a hate crime, say MPs, as they lay amendment to change law in The Telegraph*, 10 June 2020 <https://www.telegraph.co.uk/politics/2020/06/10/treat-misogyny-hate-crime-say-mps-lay-amendment-change-law/>.

98 E. Ashcroft, *Cat-calling and wolf-whistling now classed as gender-hate crimes by Avon and Somerset Police in Bristol Post*, 16 October 2017 www.bristolpost.co.uk/news/bristol-news/gender-hate-now-recognised-crime-635194?utm_content=bufferf8757&utm_medium=social&utm_source=twitter.com&utm_ca.

99 K. Barker & O. Jurasz, *ivi* 26.

100 K. Barker & O. Jurasz, *ivi* 6; K. Barker & O. Jurasz, *Reform of Hate Crime Laws - Consultation Response to the Law Commission*, 2020 <http://oro.open.ac.uk/75090/>; K. Barker & O. Jurasz, *Hate Crime Legislation in Northern Ireland – An Independent Review: Consultation Response*, 2020 <http://oro.open.ac.uk/71116/>; K. Barker & O. Jurasz, *Expert Response to One Scotland Consultation on Amending Scottish Hate Crime Legislation*, 2019 <http://oro.open.ac.uk/66207/>; K. Barker & O. Jurasz, *ivi* 26.

101 Information correct at the time of writing (May 2021).

sogynistic abuse, but also an appreciation of the socio-cultural and linguistic factors (especially where abuse is in not in English)¹⁰² which play a significant role in the perpetration of gender-based and/or misogynistic abuse.

Finally, looking further afield, beyond the UK context, it is difficult to identify a consensus that online misogyny – as opposed to gender-based abuse online or online violence against women – ought to be the subject of specific legal regulation. The language of misogyny / online misogyny does not appear in UN policy documents on the subject, and it is rarely mentioned in the European context. Whilst there has been a recognition by the Parliamentary Assembly of the Council of Europe that (online) misogyny can be a form of (online) hate speech, the prevailing approach of European institutions is to address gender-based abuse online through the lens of tackling sexism and gender stereotypes¹⁰³. The latter approach is somewhat understandable as it aligns more clearly with the language of human rights obligations enshrined in treaties at both the European and the UN level – including the Council of Europe Convention on preventing and combatting violence against women and domestic violence 2011 (Istanbul Convention) and CEDAW¹⁰⁴. That said, the inclusion of online misogyny in public debates – even if not leading to specific regulation of this very phenomenon – should be seen a step forward in bringing this issue to the realm of public interest and, possibly, law reform. It is important in a society that is grappling with inequalities to discuss issues that are difficult, and uncomfortable. The risk in doing so is – of course – that further backlash happens, but if that is the ‘cost of doing business’ then it serves to highlight the importance of having the discussion to begin with, discomfort aside.

7. Conclusion – Squaring the Equality Circle?

The battle to combat online misogyny has certainly begun: it is being discussed and problematised by women participating online, civil society organisations, and – increasingly so – at governmental and supranational levels. As such, there is a growing awareness of the phenomenon of online misogyny and its harmful effects, and the impact of leaving unaddressed from (in)equality perspectives. Whilst this is certainly a positive development, the accountability structures necessary to redress misogynistic forms of gender-based abuse online are still lacking – where both law and platform regulation are concerned. Experiences from the UK suggest that law and policy makers are likely to consider online misogyny through the lens of hate, and position it within the hate crime framework rather than through the lens of communication offences or online safety. This in itself is indicative of the pattern of fragmentation endemic to law and policy making with regard to – broadly constructed – regulation of online violence against women which we identified in our research¹⁰⁵.

Much has been made of non-law mechanisms, together with lots of (topical) discussion about internet regulation and how to address online safety and online harms – of which misogynistic abuse is not one explicitly listed – but these discussions have led to little in the way of actual legal change. Broader discussions of expectations of platforms when it comes to content regulation of course have a place in the ‘online’ context, there has been very little consideration paid to the gender equality elements, the impact of leaving this phenomenon unchecked – and unregulated – and, of course, the harm caused by intrusive, threatening and sustained volumes of abuse motivated by gender-based abuse online.

There is therefore much scope to improve the responses to online misogynistic abuse. Discussions of hate crime must consider the characteristics which are protected and give due consideration to gender. Similarly, the communications offences frameworks need to be assessed in conjunction with the online safety, online hate speech, and platform regulation provisions to ensure that problematic content is adequately captured within the legal framework. This is a necessity to ensure that online misogyny, and gender-based abuse online falls within its purview and could therefore operate as the required underlying criminal offence should gender be added to the hate crime framework.

102 Lawyers for Justice in Libya, *Online violence against women in Libya*, March 2021, <https://www.libyanjustice.org/news/urgent-action-needed-to-address-shocking-levels-of-online-violence-against-libyan-women>.

103 Council of Europe, *Recommendation on preventing and combating sexism*, 27 March 2019 <https://rm.coe.int/prems-055519-gbr-2573-cmrec-2019-1-web-a5/168093e08c>; Council of Europe, *Gender Equality Strategy 2018-2023*, June 2018 <https://rm.coe.int/prems-093618-gbr-gender-equality-strategy-2023-web-a5/16808b47e1>, para. 44.; Council of Europe, *Combating sexist hate speech* <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680651592>.

104 Article 5 CEDAW; Article 12 Istanbul Convention.

105 K. Barker & O. Jurasz, *ivi* 52.

Moreover, there is broader work to be done at international levels, and within gender equality initiatives. Lip service only takes these agendas and policies so far – action is required to ensure that objectives and SDGs can be met and delivered. These are complimentary aspects that are needed alongside meaningful legal categorisations and reforms, but also broader socio-cultural and educational initiatives. While the issues surrounding online misogyny require an honest debate about the roles and (in) actions of platforms, it is not a phenomenon that platforms alone can address. Whilst platforms do not owe human rights obligations, they are powerful actors in the online sphere – much more powerful and resourceful than some governments. It is therefore legitimate to question the commitment of platforms to values such as freedom of expression, equality of participation, and gender equality – all of which are undermined by the inaction of platforms with regard to misogynistic abuse.

The real challenge facing online platforms now, is the scale and prominence of the misogynistic abuse. Widespread and widely used platforms have become mainstream hosts to such abuse, and inequality. Instead of manifesting the participatory utopia, they uphold and embody the principles that make offline, non-digital contexts similarly exclusionary. In so doing, the design of these platforms, together with their codes of conduct have overlooked one common denominator: gender. In overlooking gender and working on the basis that the online spaces can be different; the founders of social media have been sleepwalking into what resembles a living nightmare for the targets of gender-based abuse online.