

Silenced Voices. Online Violence Targeting Women as a Threat to Democracy

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In this article I examine from a legal point of view some of the consequences for women, and hence for society in general, of online sexist and misogynist abuse in a Swedish context. I argue that one effect is that women's living space online is demarcated and ultimately, that it threatens women's possibilities to participate in public debate online. An everyday life perspective and the continuum of sexual violence, both part of a feminist legal perspective, are used as a theoretical framework to show how online abuse is silencing women. The situation demands action from the state, in order to safeguard freedom of expression and, consequently, democracy. I argue that in this particular situation, two basic aspects of freedom of expression collide: the one most emphasised, the prohibition of censorship, and the less acknowledged aspect, i.e. a diversity of voices. Deficient ways to handle sexist and misogynist online abuse leads to indirect censorship where women's voices are silenced. Hence, the state must take action not to fail to guarantee justice for all. There are many initiatives addressing problems of online abuse, both internationally and nationally. In this article I seek to capture and examine the Swedish policy and legal regulation (criminal law and freedom of expression) in this area to sketch the legal situation, to highlight ongoing initiatives and pointing out lacunas and obstacles that needs to be dealt with to guarantee a diversity of voices.

Keywords: criminal law, freedom of expression, hate speech, online violence against women, everyday life perspective.

Before reading this article, it is important to be aware that it contains violent material that may be re-traumatising. Abusive words and descriptions of

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painful acts online are discussed and hence reproduced in certain sections of the following text. There is a trigger warning before the examples. The vignette below needs a first [trigger warning]:

Vignette

A young girl sits down in front of her computer, ready to go online but hesitates. Her body is full of inscriptions - words of contempt: 'Cunt'. 'Bitch'. 'Whore'. 'Slut'. 'Ugly'. 'Disgusting'. 'Fuckable'. 'Not fuckable'. 'Bitch'. 'Cunt'. 'Whore'... Contempt of her being a woman. Words imposed on her in her daily life online (as well as offline) - when she spent time on different social media platforms to chat to friends, when she played games with friends and others, or when she discussed societal (political) questions with other people in digital public spaces.² Those words are inscribed into her body and have become part of her. Her body also carries with it the common knowledge and shared memory of other insults to which her friends and other girls have been exposed. The words, the contempt and the shared experience of being a girl are invisible³ to the world: to her friends, to her family and to people she meets on the streets; but to her the words and knowledge are always present and real, more or less in every part of her existence. They make her change her route or avoid certain places, digital as well as physical, at certain times or in certain ways.⁴ They make her hesitate or desist from some situations, conversations and places that pose a risk of being too painful. These words of contempt limit the places where she can live her life in digital space, in the same way as women's freedom of movement is delimited in physical space. And, at the same time, her possibilities of taking part in the democratic procedure are at risk, as the violence is about to silence her voice in public debate.

Introduction⁵

Online abuse targeting women is an urgent and growing societal problem. It is not limited to certain groups or nations but constitutes a considerable part of the violence against women worldwide (UN Broadband Commission

² She has been targeted with the same kind of words in her daily life in physical space too. I use the concepts of place and space, where the former is specific and the latter general. I develop the use of these concepts below; see page 10.

³ Invisible in the sense that they are accepted as natural, as part of women's everyday lives and as something everyone accepts in a way that no one reflects on them or registers their existence.

⁴ The Ministry of Children and Equality in Norway made a film in which a young woman had all the violations she had been exposed to, that she could remember, inscribed on her body and then walked through the city. The aim was to visualise the scars of all the violations of which our bodies are full and that we carry around every day.

⁵ I express my gratitude to my colleagues, family and friends and, especially, the anonymous reviewers and the editors of this journal and special issue for their valuable comments on earlier drafts of this article.

2013; UN Women 2020). It has become part of everyday life and delimits women's living space and possibilities of taking part in public debate.

I take my point of departure in the urgent situation for women due to online abuse, particularly of a sexist kind, varying from sexual molestation to image-based sexual abuse and grave forms of sexual threats and other forms of violent words, such as the ones in the vignette. I will show why the state should recognise sexist online abuse as violence against women and how it delimits women's living space and possibilities of taking part in public debate.

I also argue that the state must take action to safeguard female voices in order to protect women's freedom of expression⁶ and participation in democratic debate. In this particular situation, two basic aspects of freedom of expression collide: the one that is most often emphasised, the prohibition of censorship, and the less acknowledged aspect, i.e. a diversity of voices (Kenyon et al. 2017). The current deficient way of handling sexist and misogynist online abuse leads to indirect censorship in which female voices are silenced (Edström 2016). At the present time, the prohibition of censorship is thus given priority at the expense of female voices. By failing to safeguard women's voices, states are failing to guarantee justice for all.

Hence, the state must take action. There are many initiatives addressing problems of online abuse, at both international and national levels, initiated by states as well as non-governmental organisations (UN Broadband Commission 2013; Bladini 2017).⁷ In this article, I seek to capture and critically examine the Swedish policy and legal regulation in this area, primarily focused on criminal law and freedom of expression.⁸ By the reasons given, the overview of criminal law that addresses online abuse is provided to sketch the current legal situation, highlighting ongoing initiatives and pointing out lacunas and obstacles that need to be dealt with to guarantee a diversity of voices.⁹

⁶ I use the two concepts 'freedom of expression' and 'free speech' synonymously.

⁷ For recent initiatives, see for example <https://webfoundation.org/news/?au=48>.

⁸ Although it may also concern other fields, the measures taken in, for example, compensation law have a reparative focus at individual level and do not aim to prevent the societal problem as such.

⁹ The legal analysis of the way the state deals (or fails to deal) with this problem largely focuses on criminal law. It should therefore be noted that the choice to use criminal law as the primary tool to tackle societal problems and inequalities is problematic for two reasons: criminal law should be the last resort for solving societal problems due to the principle of *ultima ratio* and because of the structural discrimination that comes with the criminal legal institution. The main reason for using criminalisation as a way to deal with the problem, despite these implications, is that: 1) studies show lacunas in the criminalisation of online abuse that give women weaker

Online abuse has become part of people's everyday lives, for both men and women, and it takes various shapes and expressions.¹⁰ Although the exposure to online abuse does not seem to differ between men and women, in general¹¹, there are some crucial differences: *the character of the abuse differs* - women are subjected to sexist and misogynist abuse, i.e. the abuse is personal, whereas men are most often subjected to abuse of a more impersonal character, such as threats and defamation (Edström 2016). This shows how unequal power structures are reproduced online - women are targeted by sexist violence constructing them as objects whereas men are attacked and constructed as (in)competent subjects (Citron 2009; Bladini 2017).¹² Another important difference is that *women participating in public debate* are exposed to online abuse to a much greater extent.¹³ It is also important to highlight that persons participating in public debate, representing minority groups, are often subjected to negative comments due to their bodies, skin colour, ethnicity, religion, et cetera. The few intersectional analyses that have been made show that women from minority groups are exposed to more online abuse than others.¹⁴ I examine the consequences for women, and thus for society as a whole, of sexist and misogynist abuse online in a Swedish context.¹⁵ I argue that one effect of

criminal legal protection, 2) criminal law plays an important symbolic role and is hence fundamental in changing norms, and 3) the Swedish government is pursuing a political strategy to handle societal problems that implies, to a very large extent, an offensive criminal policy. This aspect is interesting when discussing how the Swedish government is dealing with the issues at stake (men's violence against women and women's access to freedom of expression). For a further discussion on the topic, see footnote 48.

¹⁰ Another problematic and hence important aspect of online abuse is that it is often neglected or trivialised due to the argument that 'it was just on the internet', implying that it is not real.

¹¹ Even if the exposure does not differ that much, the personal reactions do. Here is one example: while 16% of men find the last time they were abused online 'upsetting' or 'extremely upsetting' (Pew Research Center 2017) as many as 75% of women experience serious consequences such as sleep disturbances, and over 50% of them have difficulties concentrating for a long period of time (Amnesty International 2017).

¹² The difference between personal and impersonal in this context is described in more depth below, in the section Online Sexist Abuse.

¹³ Hagen 2015; Bladini 2017; Institut for Menneskerettigheder 2017; Eriksson et al. 2017; Posetti et al. 2020.

¹⁴ Citron 2009; Enjolras, Rasmussen and Steen-Johnsen 2014; Espeli 2014; Midtbøen and Steen-Johnsen 2016; European Parliament 2018.

¹⁵ I focus on online violence targeting women. There are other groups that are subjected to online violence with similar effects to which the discussion is also relevant. There are studies that show that women and persons from ethnic minorities who often take part in the public debate are subject to negative comments due to gender and body, colour, ethnicity and religion (Citron 2009; Enjolras et al. 2014; Espeli 2014; Midtbøen and Steen-Johnsen 2016). However, there is a lack of, and hence need for, studies from an intersectional perspective; see for example Bladini (2017). It is not only women who are subjected to abuse related to gender and sexuality. Men who breach the gender and sexuality norms are also exposed to such online hatred. Men who fail to conform to the norm, who do not make heterosexuality clear enough, may become subjected to harassment (Citron 2009). The arguments for the aspect of diversity of voices are as valid for other minority groups targeted by online abuse.

such behaviour is that women develop strategies to avoid certain places and topics and hence demarcate their living space and, ultimately, their possibilities of taking part in public debate online. The theoretical foundation used to show how online abuse targeting women is silencing female voices (by delimiting women's living space) is part of a feminist legal perspective and builds on an *everyday life perspective*, as suggested by Dorothy Smith (1987), and the *continuum of sexual violence* as conceptualised by Liz Kelly (1988), the latter developed in an online context by McGlynn et al. (2017).

The concept of the continuum of sexual violence makes it possible to suggest that sexist online abuse is part of sexual violence. By using the continuum of violence, online abuse can be understood as part of a spectrum that covers a variation of acts and behaviours that must be placed in the overarching gender order of inequality and, as such, serve the function of maintaining and upholding that order.¹⁶ Online abuse should therefore be recognised and addressed as part of sexual violence against women. There are important benefits to addressing online sexist abuse as part of men's violence against women discursively, politically and ultimately materially. Discursively, recognising sexist abuse online as violence and changing the narratives on online abuse hence exposes the seriousness of the harm. As trivialisation of sexist abuse online is two-fold, it risks increasing it. First, sexual assault and sexist abuse have a long tradition of being trivialised and dismissed and, second, online harassment is often trivialised and its seriousness diminished because 'it was just on the internet'.¹⁷ Politically, addressing sexist abuse online as part of men's violence against women would make it a priority issue, i.e. a crucial argument to put the problem on the political agenda. By taking the point of departure in an everyday life perspective, I show how sexist and misogynist online abuse impacts and demarcates women's living space and freedom of expression. This, in turn, shows that the (absence of) legal framework on sexist online abuse today mirrors, maintains and reproduces gendered power structures, in terms of inequalities, also in digital space.

¹⁶ In the article I refer to the gender order as it is used by Wendt Höjer (2002).

¹⁷ Citron 2009; Bladini 2017; McGlynn et al. 2017, 40.

The article is structured as follows. First, I set out the theoretical framework, followed by an overview of (sexist and misogynist) online abuse targeting women who take part in the public debate. This section is divided into two parts: in the first one the online sexist abuse is described in general terms and the second part gives two examples of a common character of online sexist abuse. After that, there is an introduction to policy work, the criminal legal framework in general and some procedural aspects, followed by a discussion on lacunas and challenges related to the two examples in the previous section. Next, a more in-depth discussion on freedom of expression in relation to the effect of silenced voices is presented. The article ends with some final conclusions about the situation and challenges to address.

Theoretical Framework and Key Concepts

Justice, Freedom of Expression and a Diversity of Voices

In this article, the concept of justice is closely linked to the Nordic conception of justice as equality, democracy and welfare (Pylkkänen 2009; Svensson 2020), with a specific focus on equality and democracy in terms of women's possibilities to take part in public debate, i.e. in democratic discourse. As noted in the Introduction to this special issue, it may be fruitful to discuss what injustice is as a way to explore justice. The analysis on online abuse targeting women and its consequences on a societal level serves as an example of injustice, as women being silenced and deprived of their possibilities of using their freedom of expression.

Freedom of expression serves several purposes. The most prominent and in focus here are the democratic and participation rationale. Other important aspects are knowledge development, truth-seeking and strengthening people's self-development and autonomy (Kenyon et al. 2017; Petäjä 2006). Freedom of expression has been important to combat injustice, inequality and marginalisation and is at the core of democracy.

States have an obligation to safeguard and protect this fundamental freedom. How this obligation is performed varies among jurisdictions. While the US state, for example, may generally be understood as restricted in its role and European states as more active, the state plays "a significant

role in shaping the media system in any society” (Hallin and Mancini 2004, 41, 49).

Freedom of expression is usually discussed and debated in relation to *non-censorship*, i.e. the obligation of the state to not censure its citizens, which means that states must allow deeply painful statements and be extraordinarily cautious before prohibiting any of these.¹⁸ If freedom of expression is interpreted only as an obligation of the state to not restrict it, the result will be that it is impossible to do anything about the silencing of certain voices. If, instead, we regard freedom of expression as a freedom for everyone that must be guaranteed by the state, then measures that ensure that no one can silence another person will not be regarded as a demarcation but an extension of freedom of expression. Another aspect at the core of freedom of expression, not noted as often in discussions on the subject but of importance in the context of sexist and misogynist online abuse, is therefore that states have a duty to guarantee *a diversity of voices*. In the Swedish constitution, the democratic rationale and the aspect of diversity of voices are both explicitly addressed in the wording of the Freedom of the Press Act.

The diversity, or multiplicity, of voices is a crucial part of free speech as it represents contradictory ideas in public debate. Different ideas and perspectives are necessary for knowledge and hence democracy, as public debate is closely linked to the political process.¹⁹ Freedom of expression has been crucial in the political process, and of special importance to groups that, historically, have had lesser influence in society, although the interest in a diversity of voices is on behalf of not only those who speak but also the audience and the availability of diverse public speech (Kenyon et al. 2017).

In the context of online sexist and misogynist abuse, the state has to deal with the question of whether it is necessary to censure some voices to protect others. At the centre of the discussions that follow is thus the clash between the two aspects of freedom of expression, i.e. the prohibition of censorship (the negative aspect) and the obligation to guarantee a diversity of voices (the positive aspect). The direct focus of the first aspect is on the obligation for states not to interfere as a precondition for citizens’ freedom to express themselves (Svensson and Edström 2016), and the second

¹⁸ Compare with the case *Handyside. v. United Kingdom*, appl. No 5493/72, 7.12.1976.

¹⁹ Compare Milton, who stated: ‘Without contraries, there is no knowledge’ (Peters 2005:78).

stresses the importance of taking measures to safeguard the multiplicity of voices heard. I argue that the omission to censor some violent voices will be at the expense of other voices and hence a failure to guarantee women their right to freedom of expression. The aspect of diversity of voices as part of freedom of expression is an important argument in a discussion on the implications of sexist and misogynist abuse online. Before that, however, the situation demands a structural analysis of online abuse from a gender perspective, and the point of departure is *an everyday life perspective*, as suggested by Smith (1987).

An Everyday Life Perspective

Today, people live their lives online to a great extent. We do our shopping online, we spend time with friends online, we read, listen and watch news reports online, and we blog, vlog and take part in the public debate online. The analysis starts in women's everyday lives online to explore the nature and consequences of sexist abuse on the Internet.

Taking the starting point from an everyday life perspective has a long tradition within feminist research. Like many feminist researchers, Carol Smith argues that we should “look at any or all aspects of a society from *where we are actually located, embodied, in the local historicity and particularities of our lived worlds*” (Smith 1987, 8).²⁰ It is not about women but knowledge of the world from women's epistemological standpoint. This perspective represents a critique of traditional scientific knowledge and its claim to be objective and universal, yet takes its point of departure in men's knowledge and experiences of the world, making other (women's) perspectives invisible.²¹ An everyday life perspective has been used, especially in social sciences, and the concept has been defined in various ways. A common feature is that they all show everyday life as a fruitful and interesting point of departure in studies of society (Åquist 2001, 259). An everyday life perspective comprises both the individual's activities, marked by the social context, and the time and spatial contexts (Åquist 2001, 260). In legal research, the field of women's law has traditionally taken its point of departure from women's lives and experiences, but ‘everyday life’ as a

²⁰ The concept of an everyday life perspective, used in sociological and feminist research, is often attributed to Carol Smith who argued that research should start from problems in women's everyday lives and not in discourse or texts (Smith 1987; Campbell 2003).

²¹ This argument could be related to Donna Haraway's embodied knowledge from 1988 (Haraway 1988).

theoretical concept in a Swedish context was introduced by Wanna Svedberg in 2013 showing how an everyday life perspective can be used in legal research. Svedberg points out the usefulness of this, as argued in the field of law and gender, also in legal research where it becomes possible to demand that the legal regulation should take its starting point in people's living conditions in order to obtain equality (Svedberg 2013, 54-55). Andreas Pettersson has also used everyday life as a theoretical perspective in his research (Pettersson 2015).

I use the perspective of women's everyday lives as a tool to highlight and explain how sexist and misogynist online abuse impacts the everyday activities of women, especially in regard to their decisions on where to go and when to speak online. Through the lens of an everyday life perspective, it is possible to show that women develop strategies to avoid certain places and topics due to online abuse and that this, in effect, demarcates their living space and their possibilities to take part in public debate online. The analysis is based on a general picture of sexist and misogynist online abuse targeting women that builds on previous research. To elucidate the effects on women's private as well as professional lives I take my point of departure in two examples of specific events that build on situations that are common in women's everyday lives online.

By starting with women's everyday lives online I am able to examine the consequences for women and, hence, society in general of sexist and misogynist online abuse. Additionally, the continuum of sexual violence takes its point of departure in an everyday context of the lives and experiences of women and girls all over the world.

The Continuum of Sexual Violence

The concept of the *continuum of sexual violence* makes an important basis for the argument that online sexist and misogynist abuse should be recognised as part of men's sexual violence against women. This is helpful in the further analysis, as the recognition of sexist online abuse as part of men's violence against women opens up for a discussion based on international regulation and the obligation of states to take the problem seriously. The concept of the continuum of sexual violence developed by Liz Kelly (Kelly 1988) is relevant also in an online context. The theoretical conceptualisation has been used in an online context in previous work,

explored in relation to image-based sexual abuse online (McGlynn et al. 2017). In this analysis, the scope of sexual abuse online includes images, but it is broader than that and also comprises other forms of sexist abuse, such as sexually aggressive and abusive words.

The online abuse illustrated by the initial story could and should be recognised as part of violence against women, and the concept of the continuum of sexual violence allows us to do so. The awareness of the risk of being targeted by sexual violence has been addressed in feminist work for decades.²² The constant fear that women carry with them through life of being sexually assaulted in a public space makes them plan and prepare, sometimes avoiding certain places or simply refraining from doing certain things (Wendt Höjer 2002). This safety awareness must not be a conscious or constant part of women's lives but more of an unconscious automatic behaviour. Wendt Höjer (2002) adds that "the fear of getting frightened" is in itself structuring and sets limits for women's lives. These precautionary everyday life arrangements can be understood as "a silent oppression, an unspoken expectation of being a woman", as argued by Elisabeth Stanko (1990). This understanding of violence against women draws on Liz Kelly's (1988) work on the continuum of sexual violence. Research shows how the fear that accompanies women and restricts their lives in physical space also accompanies and delimits women's lives in digital space (Bladini 2017; Citron 2009; Amnesty International 2017).²³

The continuum of sexual violence builds on an understanding of sexual violence against women as normative and functional. Sexual assault is part of a spectrum of attitudes, acts and behaviours that may be recognised as part of the overarching gender order of inequality and has a function to maintain that order. It is important to recognise the internal connections and commonalities as forms of assault, coercion and abuse used to constrain and limit the lives of women (Kelly 1988; Lundgren et al. 2001). The sexist abuse against women online reflects, upholds and reproduces unequal

²² Twenty years ago, Maud Eduards wrote that there is "[...] one thought - but maybe just one - that I dare to say unites all women: 'what if I get raped'" (Eduards 1997, 21) [author's own translation of quote originally in Swedish].

²³ As an example, one of the studies, from Amnesty International, shows that 76% of the women exposed to abuse or harassment on a social media platform changed the ways they used it, and 32% stopped posting content that expressed their opinion on certain issues (Amnesty International 2017).

gender systems also in digital space.²⁴ Online abuse targeting women, characterised by sexism and misogyny, could and should therefore be recognised as part of men's violence against women.

Let us go back to the initial story, the young girl with her body full of inscriptions, words of contempt [trigger warning]: 'Cunt'. 'Bitch'. 'Whore'. 'Slut'. They are all part of the spectrum of acts and behaviours that maintain the overarching order of gender inequality. However, she is carrying not only her own experiences of contempt but also a shared memory and knowledge of insults that other women have experienced.

Online Sexist Abuse

In this section, the scope of online abuse in general is presented followed by two examples of common types of online sexist abuse targeting women and situations that trigger more sexist abuse than others. The section is structured around the argument of how this kind of online abuse can be understood as sexual violence and how it demarcates women's paths and opportunity to take part in the public debate online.

First, a reminder that even though online abuse targets women and men to similar extents, in general, the extent and intensity of abuse targeting women who participate in public debate is more comprehensive than for men who participate in public debate, and the abuse targeting women (in public debate and in general) is often characterised by being sexist and misogynist.²⁵

Online Violence in General and the Scope of Online Violence

Abuse of a sexist, misogynist or racist character is especially problematic because it is personal; it goes under the skin and has a deeper effect than other kinds of (online) abuse by undermining people's autonomy, identity and wellbeing.²⁶ The amplitude of online sexist abuse varies from molestations and offensive words of contempt to rape, and a wide range of acts in between. This is briefly summarised by examples, with the aim of not reproducing the abusive character more than necessary. Some parts of

²⁴ It could also be underlined that misogyny and sexism lead to a continuum of sexual violence that is manifested both online and offline, sometimes simultaneously.

²⁵ Brottsförebyggande rådet 2015; Eggebø et al. 2016; Hagen 2015; Nadim and Fladmoe 2016; Citron 2009.

²⁶ Eggebø et al. 2016; NOU 2015:2; Citron 2009.

the abuse may be regarded as minor molestations, especially if taken on their own as single acts outside of their context.²⁷ An example could be a female journalist who takes an active part in public debate. Someone starts contacting her by sending her compliments and virtual flowers via e-mail. He then starts texting her on Instagram and Facebook, and finally starts contacting her on her mobile. If the acts are looked upon as singular entities they may even be regarded as friendly gestures. For the journalist, however, they have become threatening, and she is worried about how to avoid the harassment.²⁸ Often the sexist abuse following women in public debate consists of abusive words of contempt, as in the vignette. Certain topics generate more intense abuse, such as gender equality, migration and feminism (Kurvinen 2015; Hagen 2015; Institut for Menneskerettigheder 2017). Additionally, women who participate in public debate in their professions as, for example, journalists, politicians, artists and researchers are subject to more online sexist abuse than others (Hagen 2015; Bladini 2017; Institut for Menneskerettigheder 2017; CoE 2016a; Posetti et al. 2020). This shows how female bodies acting in democratic spaces are targeted by violence to a greater extent. Other forms of sexist abuse online that target women include various types of offensive comments on sexual habits or the body, such as those described in the vignette or online image-based sexual abuse²⁹, grooming and rape (Bladini 2017; Citron 2009). All these variations of sexist online abuse are part of the continuum of sexual violence and should hence be recognised as such.

²⁷ A related phenomenon is doxxing, where different persons collect and publish personal details online about a female public person in an environment that encourages intimidation. The information can then be used by others in campaigns of harassment, threats and pranks.

²⁸ Such behaviour could also trigger a fear of being targeted in physical space. A recent example in Sweden is a case in which a man was prosecuted and convicted for sexual molestation. A female public debater was subjected to 84 e-mails from a man and a visit at home on Christmas Eve (Helsingborgs tingsrätt, case no. B 3192-20). This provides another dimension to the transmitting character of online/offline abuse. Additionally, this public debater has been subject to a large number of threats and sexual molestations. Some of the assaults have led to convictions. Again a warning on possible traumatising content [trigger warning]: In May 2020 a man was convicted of sexual molestation after having sent the woman a so-called 'dick pic' with the comment: "here is something to write about, you compulsive liar" to her account on Instagram where she shows sexual abuse and online hate. To his defence he argued that it was a response to her as a public debater, but the court found that to be an aggravating circumstance, leading to a more severe sentence (Södertörns tingsrätt, case no. B 6424-20).

²⁹ Image-based sexual abuse is often referred to as revenge porn or non-consensual pornography in public debate. These terms are not used here as the concepts are problematic: the first (revenge porn) implies that the victim has done something wrong and deserves revenge, while the second (non-consensual pornography) implies that regular pornography would always be consensual, which is not the case.

The fact that women in public debate are exposed to harassment, most often of a sexist and misogynist character, twice as often as men in the same situation³⁰, implies that women who participate in public debate online have to take greater risks. This knowledge constitutes grounds for fear that demarcate women's possibilities to be part of the democratic process.

Below, I present two examples from everyday life online of violence targeting women. The examples are frequently experienced in everyday life online and not necessarily covered by criminal legal protection. The question of criminal legal protection is discussed in more depth in the next section. The examples represent two different situations: the first is online sexist abuse that women suffer when participating in public debate in their profession and the second serves as an example of a young girl's everyday life online. Again, it should be underlined that the examples used below are violent and may trigger trauma [trigger warning]:

Online Abuse/Violence at Work

Example no 1

A young female journalist wrote a chronicle on gender equality published on an online news page in Sweden a few years ago. It attracted many offensive comments in the comment field, some of them so grave that the young journalist decided to report them to the police, and this led to a trial. One of the comments from the prosecuted person read as follows:

For me, gender equality is to finger a sexist feminist whore in the vagina, with a big knife. The best thing you can do for gender equality in Sweden is to go out with a baseball bat and beat a sexist feminist scum to death.³¹

The quote is authentic and illustrates the very abusive nature of online violence against women that takes place all over the world today.³² The

³⁰ Brottsförebyggande rådet 2015; Eggebø et al. 2016; Hagen 2015; Nadim and Fladmoe 2016; Citron 2009.

³¹ Judgment in a case from Svea hovrätt B 9461-14. The quote comes from a comment field following a Swedish chronicle on gender equality. The quote is abusive and may cause the reader to be offended. Further serious and abusive quotes may appear in the article, and I am aware that the violence is reproduced. The reason for the reproduction of these violent comments is to make visible the highly abusive and violent nature of these types of comments that are part of women's everyday lives all over the world today and to discuss how online hatred works and is (not) dealt with in criminal law.

³² The severity of the comment and the long-lasting effect are proven by the fact that the journalist still bursts into tears when she talks about it in a seminar four years later.

situation serves as an example of a common type of sexual or sexist abuse about women's looks, or threats of sexual harassment, or as in this case sexual violence. A male journalist who writes an article that triggers many angry responses is more likely to hear that he 'is a lousy journalist' or be subjected to threats. The pattern of constructing women as objects and men as (in)competent subjects can be regarded as control of women and their bodies connected to an expectation of how they should behave (Lander 2003). Online abuse thereby reflects and reproduces the gender order. This particular type of online abuse could and should be viewed as part of men's violence against women because it reflects the unequal gender order in which violence and the threat of violence lead to the subordination of women (Wendt Höjer 2002), and with that, states are obliged to take action to prevent it, as a prioritised political area. How the court dealt with the case is discussed below in the section *Criminal Legal Protection Against Online Sexist Abuse*. The reader should be prepared for yet another violent example of online abuse below that may be traumatising [trigger warning]:

Online Abuse at Home

Example no 2

A young girl is getting a lift with her mother; she is going to school, and as they sit next to each other in the front seat she goes online on her mobile to check out Instagram.³³ There is a red circle with a number in it, showing that there is a new message in her inbox. She clicks on it to open the attachment and her screen is covered with a screenshot from YouTube with a picture of her in an intimate situation with the comment: "you are all over the world, bitch!". She puts away her phone quickly, her heart beating hard in her chest and she can hardly breathe. She is in shock and she glances at her mother to see if she saw the message. She starts to cry and tells her mother about the screenshot and that the picture was taken a long time ago and that back then she sent it to her boyfriend, now her ex-boyfriend. The other day she was participating in a discussion on immigration on a classmate's profile page on Facebook. Someone called her a slut, someone else told her to "shut the fuck up, bitch!". Her ex-boyfriend also participated, and he threatened her with posting pictures of her "to show what a whore she really is", but she did not take his threats seriously,

³³ This example is a general description of what women may experience online. It is a mix of several real stories.

though she should have. The girl and her mother decide to contact the police, but they came back to them a week later telling them they would close the case due to a lack of evidence. The girl is out of school for a few weeks and she knows that this image might have been downloaded by several people and thus could appear anytime and anywhere. From that day the young girl is very careful with when and how she uses her phone and reads messages on social media. There is always the fear of the image being there somewhere on social media, so she avoids some platforms, especially YouTube, and she does not participate in political discussions online anymore.

This example constitutes what is referred to as image-based sexual abuse and is a common form of online abuse targeting young women.³⁴ The abuse has been argued to be part of the continuum of sexual violence in an international context (McGlynn et al. 2017). This is a particularly serious form of online abuse since it may be downloaded and can therefore be uploaded repeatedly, and a consequence of this is lifelong abuse (Sunde 2016). Additionally, the experience of sexist or sexual abuse when participating in online debates that the young girl has, now holds her back. Not only does she avoid spaces but also certain places where discussions on political or societal matters are held. Her voice is silenced, together with that of many other women who hesitate before they take part in public debate due to personal or common knowledge of others' experiences of online sexist violence.

International Law and Policy on Violence Against Women

The policy on violence against women online is addressed in both international and national policy and regulation. The international definition of violence against women and the state obligation to prevent it are found in several documents at UN as well as EU level. This section starts with an overview of how online sexist abuse is addressed and the obligations that follow at international level. The General Assembly of the UN is

[...] concerned that violence against women is an obstacle to the achievement of equality, development and peace. [...] Affirming that

³⁴ See, for example, Brottsförebyggande rådet 2015; Þorvaldsdóttir 2015; Friðriksdóttir 2016.

violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the longstanding failure to protect and promote those rights and freedoms in the case of violence against women.³⁵

Violence against women was recognised as a societal and democratic problem decades ago. The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) was adopted by the UN General Assembly in 1979 and has been an important starting point for strengthening women's rights. The Convention does not address men's violence against women explicitly, but both the UN Commission on the Status of Women and the Committee on the Elimination of Violence Against Women have made it clear that the prohibition of discrimination against women includes the prohibition of violence against women (Nussbaum 2016). The UN has also adopted the 1993 Declaration on the Elimination of Violence Against Women and has defined sexual harassment as part of the violence against women (Art. 2(b)). In international criminal law, acts without any physical abuse have been identified as sexual violence. Both the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY) have used a definition of sexual violence that does not require physical contact (de Brouwer 2005; Citron 2009). In the Akayesu case, the ICTR stated that “[s]exual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration *or even physical contact*.”³⁶ The ICTY came to a similar conclusion in the Furundzija case.³⁷

In a European context, the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) is important as the most comprehensive legally binding document. It entered into force in 2014 and aims to prevent violence and it impose an obligation on the member states to prevent and punish violence and protect victims.

³⁵ The quote comes from the 1993 UN Declaration on the Elimination of Violence Against Women, and the declaration further defines violence against women as “physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation...” in Article 2(b).

³⁶ Prosecutor v Akayesu, Case No. ICTR-96-4-T, Judgment 688 (Int'l Crim. Trib. for Rwanda 2 Sept. 1998).

³⁷ Prosecutor v Furundzija, Case No. IT-95-17/1-T, Judgment 186 (Int'l Crim. Trib. for the Former Yugoslavia 10 Dec. 1998).

Article 7 prescribes an obligation to adopt and carry out a policy that comprises measures to prevent and combat all forms of violence against women. Article 12 prescribes that all states take the necessary steps to change women's and men's social and cultural behaviour for the purpose of extinguishing prejudices, customs, traditions and other practices that build on the idea of the subordination of women as well as stereotypical roles for men and women. States are obliged to criminalise domestic violence, stalking and sexual harassment; see Articles 34 and 40. In Article 17, the private sector and media are encouraged to prevent violence against women.³⁸

It can be noted that the European Commission against Racism and Intolerance General Policy Recommendation No. 15 on combating hate speech from 2015 includes sex and gender as part of the definition of hate speech for the first time. The Council of Europe has also recognised sexist abuse online as an urgent issue underlining that it is fundamentally linked to the unequal power relations between men and women and is a form of violence against women that should be addressed as sexist hate speech. The Council of Europe urges both knowledge and policy action at all levels to be developed to combat sexist hate speech. Sexist hate speech is defined by the Council of Europe as:

[...] one of the expressions of sexism, which can be defined as any supposition, belief, assertion, gesture or act that is aimed at expressing contempt towards a person, based on her or his sex or gender, or to consider that person as inferior or essentially reduced to her or his sexual dimension. Sexist hate speech includes expressions which spread, incite, promote or justify hatred based on sex.³⁹

The Council of Europe also comments on the fact that the real extent of sexist hate speech is partly invisible due to the fact that many women who are targeted do not report it. Furthermore, the forms of sexist hate speech are exemplified (both online and offline) as 'slut-shaming'; 'body-shaming';

³⁸ The media sector and sexist hate speech have been investigated by Edström; see for example Edström 2016.

³⁹ The Council of Europe's Gender Equality Strategy 2014-2017 (CoE 2014) states that sexism may be part of hate speech and must be tackled under its strategic objective 1 - combating gender stereotypes and sexism. The quote comes from the Council of Europe 2016:2 (CoE 2016 a).

image-based sexual abuse; brutal and sexualised threats of death, rape and violence; offensive comments on appearance, sexuality, sexual orientation or gender roles; as well as false compliments or supposed jokes, using humour to humiliate the target (CoE 2016a, 3). These examples are part of the acts that are discussed as online sexist abuse here and could hence be addressed as not only men's violence against women but also hate speech. I will come back to the argument on defining sexist online abuse as sexist hate speech. Finally, the Council of Europe Internet Governance Strategy for 2016-2019 states that one objective is "monitoring action taken to protect everyone, in particular women and children, from online abuse, such as cyber-stalking, sexism and threats of sexual violence."⁴⁰

Swedish Policy on and Legal Regulation of Violence Against Women

The Swedish government, self-declared as a feminist government, has a gender equality policy that outlines Swedish politics and cuts across all policy areas. The objective of the Swedish gender equality policy is that women and men shall have the same power to shape society and their own lives, and it consists of six sub-goals. Two of them are of particular interest in the context of online sexist abuse:

Sub-goal 1: aims at gender equal division of power and influence.

[...]

Sub-goal 6: aims at men's violence against women must stop.⁴¹

These sub-goals address issues of democracy and violence against women, two of the most crucial issues in this article. Sub-goal 1 is further explained by the government as: "It is also a question of equal opportunities to participate in and have an impact on the processes that lay the foundation for our ideas, thoughts and notions within media, culture, research,

⁴⁰ The Council of Europe Internet Governance Strategy for 2016-2019 (CoE 2016 b). Another related strategy is the Council of Europe Strategy for the Rights of the Child for 2016-2021 (CoE 2016 c), which includes two priority areas that deal with sexist hate speech: 'A life free from violence for all children' (mentioning girls in particular) and the 'Protection of children in the digital environment'.

⁴¹ Skrivelse 2016/17:10. For an English summary, see <https://www.government.se/government-policy/a-feminist-government/>

popular/public/population education and the education system.”⁴² Sub-goal 6 is further explained as also including harassment, threats and other types of violence online. These two sub-goals for Swedish gender equality policy constitute an important part of the foundations for the following discussion on the state’s obligation to prevent sexist online abuse targeting women.

Due to the national gender equality policy and its cross-border character, the issue of sexist online abuse has been addressed in various ways and in different policy areas but not as a policy in its own right.⁴³ The policy areas can be described as of two different types: one that is necessary for democracy and one that threatens it. I have identified gender equality and free speech/democracy discourse as belonging to the first type and violence against women, online hate and hate crime/hate speech to the second. These policy areas handle the issues in a wide range of action plans, strategies, approaches and efforts involving actors from various fields and levels (governmental authorities, regions and municipalities, private actors, representatives from civil society, et cetera). The policies will be mentioned briefly.

The first part is the *gender equality politics* over the (then 2015) last ten years presented in the report ‘Power, goals and authority - a feminist policy for a gender-equal future’⁴⁴. The report included a set of scientific reports and, in the summary thereof, gender equality in the area of power and influence is only reported in terms of formal representations. The aspect of silencing voices due to hate and threats is not mentioned, although it is noted as part of men’s violence against women that online abuse and threats of violence targeting women and girls are increasing. However, no connection is made between the two in this context. A governmental report on the *national strategy against men’s violence against women and honour-related violence and oppression* (SOU 2015:55) does not include online abuse as part of the national strategy to reach the goal to end men’s violence against women nor as part of the mission to analyse and evaluate the need

⁴² <https://www.regeringen.se/regeringens-politik/delmal-1-en-jamn-fordelning-av-makt-och-inflytande/> [authors translation].

⁴³ I have recently examined the issue of how sexist hate speech online is addressed in policy work in the ongoing research project GENHA, Hate speech, gender, social networks and political parties, funded by the EU’s Rights, Equality and Citizenship Programme. The problematic tendency to not discuss and recognise freedom of expression and gender equality as interconnected has been analysed by Maria Edström (2017).

⁴⁴ SOU series 2015:86.

for structured knowledge development and support for various actors in the field.⁴⁵ Åsa Regnér, at the time the Swedish Minister for Children, the Elderly and Gender Equality, has addressed cyber harassment of women and girls as a matter of *Internet safety*.⁴⁶ There is currently a government mission, as part of the *Strategy to combat men's violence against women*, aimed at strengthening the criminal legal protection against sexual abuse. It includes the task of reviewing the regulation of sexual molestation and sexual crimes online (Direktiv 2020:5).

The question is also closely linked to the *National plan on hate crime, hate speech and racism* (Kulturdepartementet 2016). However, neither the grounds of sex nor of gender are addressed in the plan, even though the Council of Europe has explicitly pointed out that sex and gender should be part of the grounds in policy work to defeat hate crime and hate speech. The national plan mentions gender equality as an overlap, and interaction between sexism and racism is recognised, and it is suggested that it, hence, requires intersectional work. The Swedish Media Council has run the campaign '*No Hate Speech Movement*' aimed at preventing racism, sexism and similar forms of hostility. The initiative works primarily on information directed at children and young people.⁴⁷

Finally, the *Policy on democracy and online hate and threats* addresses the issue of online hate and the risk of silenced voices. A specific action plan to protect certain groups that are particularly important to the democratic and public debate has been drawn up defending free speech - measures to protect journalists, elected representatives and artists from exposure to threats and hatred (Kulturdepartementet 2017). The action plan covers areas that do not specifically deal with sexist online abuse and silenced female voices but addresses wider areas of which the issue of sexist online abuse is or should be part.

My analysis of Swedish policy documents shows a fragmented policy work on online sexist abuse targeting women where it is either recognised as a connected problem, but not in focus in the policy at hand, or just mentioned tangentially, if at all. One effect is that online sexist abuse is not properly

⁴⁵ See the description of the mission on page 18 ff. In the whole report, the internet is mentioned only once as a possible place where violence against women can be carried out, on page 52 in the report.

⁴⁶ <https://www.government.se/opinion-pieces/2016/04/challenging-cyber-harassment-for-women-and-girls-worldwide/>

⁴⁷ Kulturdepartementet 2017:60.

recognised as a crucial part of men's violence against women but addressed in the periphery, which has political consequences by not being part of the prioritised areas. In the same way, sexist online abuse is recognised but not as a threat to democracy in itself. Rather, it is just mentioned in relation to hate and threats, particularly online, in general when addressed as a threat to democracy. The light is turned towards certain professions rather than other aspects, such as, for example, sex/gender or ethnicity. Finally, the policy on hate crime and hate speech mentions sexist hate speech but leaves it at that. So, let us go forward to examine what kind of protection the criminal law offers.

General Issues on Criminal Legal Protection Against Online Sexist Abuse

Criminal law is one of the most intrusive forms of state power and should be used as a last resort. There are important reasons why criminalisation should not be regarded as the one and only solution to societal problems, and the same goes for the problems addressed here.⁴⁸ At the same time, criminal law prohibits violations of privacy and autonomy and entails discursive, political and material effects. On a discursive level, criminalisation of sexist abuse online would change the narratives on online abuse and thereby highlight the seriousness of the harm. On a political and material level, it would contribute to the implementation of gender equality. Hence, the use of criminal law as a tool to deal with sexist and sexual abuse needs urgent discussion.

⁴⁸ Criminal law is not only a tool for the state to cause citizens pain but should also be used as a last resort, due to the fundamental principle of *ultima ratio* (Asp et al. 2013). This is particularly important to keep in mind at a time when criminal law is used for populist purposes. Additionally, criminalisation as a means to achieve gender equality has met with several challenges, such as a collision with the patriarchal structure and character of the criminal legal system (Burman 2010). One example of this is that the criminal legal system has been unable or unwilling to recognise women's justice interests (Vera-Grey and Fileborn 2017; McGlynn 2011), gendered stereotypes that negatively affect women, especially victims of sexual crimes (such as rape myths and secondary victimisation) (Andersson 2004; Finch and Munro 2005; Temkin et al. 2018; Antonsdottir 2018) and discriminatory practices (Burman 2010; Bumiller 2009). On the other hand, criminal law is emphasised as an important tool in the work against men's violence against women (Niemi-Kiesiläinen 2006; Burman 2010). Examples of reforms that have raised awareness of men's violence against women and significantly increased the reported cases and convictions by the Swedish criminal system are the Women's Peace reform in 1998 (Lindström 2005; Nilsson 2004; Burman 2010) and possibly the consent-based rape offence reform from 2018 (Brottsförebyggande rådet 2020; Bladini and Svedberg Andersson 2020). Having the important arguments for being careful in the use of criminalisation in mind, it is urgent to discuss and evaluate the use of criminal law as one tool, among others, to defeat sexist and sexual abuse online.

When criminalisation concerns online abuse, the possible clash with freedom of expression is often raised as an obstacle. This targets the tension between gender equality and freedom of expression (addressed by Edström 2016, among others). The main argument against the use of criminalisation to reduce online abuse at the expense of freedom of expression is anchored in the aspect of non-censorship, i.e. the prohibition of the state to censure voices. This argument must yield in favour of the aspect of a diversity of voices. The state ought to protect women's voices by taking appropriate measures to safeguard the freedom of expression for all.

Previous research on Swedish criminal legislation on online hate and threats shows that the various types of online abuse that constitute online sexist abuse are dealt with in a fragmentary way and are criminalised in different chapters of the Swedish Criminal Code (SCC) (Bladini 2017). This means that the different types of online abuse are addressed as violating different kinds of interests to be protected by the criminal provisions. Chapter 3, for example, protects the right to life and health, whereas Chapter 4 covers acts violating personal liberty and peace. Chapter 5 regulates defamation and Chapter 6 sexual offences. Finally, some acts that constitute sexist abuse online fall outside the scope of criminalisation. An important aim of legal reforms on sexual offences has been to obtain gender equality. However, a shift can be noted from a position in which sexual crimes were formulated as men's violence against women in 1995 to being mentioned but not at the centre of the problem definition in 2001, to not existing in the last reform proposals (2005, 2013 and 2018) on sexual offences (Wegerstad 2015, 186; Bladini and Svedberg Andersson 2020).

Some examples of criminal offences that capture online sexist abuse are *sexual molestation* (SCC 6:10), i.e. addressed as a sexual offence, or *molestation* (SCC 4:7), *unlawful threats* (SCC 4:5), *unlawful coercion* (SCC 4:4) and *unlawful harassment* (SCC 4:4b), all of which are characterised as violating personal liberty and peace, and *defamation* (SCC 5:1) or *insulting behaviour* (SCC 5:3), regulated in the chapter covering defamation. These regulations will be discussed below with examples of such acts and whether they could and should be regulated in other chapters as violating other interests. Some online abuse also constitutes sexual abuse, such as *sexual*

assault (SCC 6:2) and *rape* (SCC 6:1).⁴⁹ During the last years, new criminalisations have been added to the criminal legal system, such as *unlawful identity use* regulated in SCC 4:6 b, *grooming* regulated in SCC 6:10a and *unlawful breach of privacy* in SCC 4:6 c. The latter is designed to criminalise sexist image-based abuse, among others acts that violate a person's privacy or personal integrity.

Research has shown that the online abuse to which men are subjected takes more traditional forms that are recognised by the law as criminal acts. Common examples of such acts are *unlawful threats* "I will kill you" or *defamation* "you are a lousy incompetent journalist", whereas the online sexist abuse to which women are subjected takes various, to the legal system more often unfamiliar, forms.⁵⁰ One example of a threat that until recently fell outside the criminal protection is "I will hijack your account on Instagram and post some nude pictures of you there". This type of threat did not fall under the scope of *unlawful threat* until 1 January 2019. A female journalist would rather be subjected to comments targeting her as a woman (or object) than as a journalist, like [trigger warning]: "you are ugly as hell, feminist cunt", which could possibly constitute the crime of *insulting behaviour*, although this crime does not fall under public but private prosecution. This means that the victim must bring the proceedings all on her own. It should be noted that there is a specific rule in SCC 5:5 that allows public prosecution in cases of *insulting behaviour* and *defamation* when the crime has been carried out with a hate crime motive. However, since gender and sex, as well as sexist motives, do not fall under the scope of hate crimes that rule does not apply.

These examples illustrate both the reproduction of the unequal gender order online and the fragmentary character of the legal protection for women targeted by sexist online abuse. Some of the abuse online targeting women are unfamiliar due to the use of technology. Sexist image-based abuse may serve as an example of online abuse that has been unfamiliar to

⁴⁹ See Prop. 2017/18:177 (see also SOU 2016:60 and the Supreme Court in NJA 2015 s. 501). Examples of other sexual abuses, primarily targeting children are: contact with a child for sexual purposes, i.e. grooming (SCC 6:10 a) and child pornography (SCC 16:10) and exploitation of a child for sexual posing (SCC 6:8).

⁵⁰ The examples are fictional and aim to illustrate the different characters of abuse that target male and female voices in public debate. Male journalists, politicians and other public professions are mainly targeted by more traditional hate and threats about their competence, whereas female professionals are targeted by abuse that is characterised by sexist violations (Brottsförebyggande rådet 2015; Eggebø et al. 2016; Hagen 2015; Nadim and Fladmoe 2016; Bladini 2017).

the criminal legal system, other forms of sexist online abuse might still be surrounded by uncertainty of when and what acts fall under the scope of the law.⁵¹ The consequences are normative, discursive and material - if the acts are not recognised as illegal, they are not regarded as serious enough. This perpetuates the tendency to trivialise these sexist acts of online abuse. However, the effect is also material in the sense that the women targeted by these violations do not have access to criminal legal protection. Going to the police is not an option.

The fact that sexist online abuse falls outside the scope of hate crime legislation is an urgent issue that should be examined thoroughly.⁵² It can be motivated both based on the definition of hate speech by the Council of Europe, which includes sex and gender as two different grounds, and based on the fact that the kind of online abuse discussed here, with a sexist character, reproduces the unequal power structures and hence should be taken seriously. The inclusion of sex and gender in the hate crime regulations would send a clear message that sexism is as threatening and harmful as racism and other similar forms of hostility. Some of the offences that are now private cases would also fall under the scope of public prosecution and in that sense offer the victims better legal protection.

As we can see, the problem of online sexist abuse is both addressed in policy work and handled within the criminal legal system, although it appears to have been dealt with in parts of different kinds of policy work, sometimes just in the periphery, which has led to fragmentary policy work. The same seems to be the case when it comes to the criminal legislation in which sexist online abuse has been dealt with in several different legal reforms. One that has already been mentioned concerning sexual offences is in progress at this moment, and in it the scope of sexual molestation as well as other sexual offences carried out online are examined (Direktiv 2020:5). This inquiry is part of the work to provide comprehensive and clear criminal legal protection against sexual violations. However, the inquiry

⁵¹ An example of a situation that is still tricky in terms of the application of criminal regulation is when an image or movie is manipulated, a so-called deepfake, where someone's face is cut into and intergreted with someone elses body in a sexual situation. Additionally, if the image is of a sexist content, but not clearly targeting someone's sexual life it migh fall outside the scope of unlawful breach of privacy. The construction of the offence is exhaustive in nature instead of being open for similar situations, which makes it narrow.

⁵² The regulation relevant in this part is agitation against a population group in SCC 16:8, unlawful discrimination in SCC 16:9 and the regulation on aggravating circumstances in SCC 29:2 p. 7. This issue of recognising online sexist abuse as a hate crime is discussed in Bladini 2017.

only focuses on Chapter 6 of the Swedish Criminal Code, and the offences regulated in other chapters, such as image-based abuse, fall outside the scope of the inquiry. Another recent reform of importance to mention is the strengthened criminal legal protection offered to elected representatives as a new ground constituting an aggravating circumstance and hence more severe punishment.⁵³ The issue of strengthening criminal protection also for other professions, such as journalists, is currently under investigation (Direktiv 2020:54). Finally, one quite recent reform that should be mentioned is one that aimed at strengthening the criminal protection of personal integrity and resulted in, among other changes, the expansion of the scope of *unlawful threat* in SCC 4:5 to include threats towards personal integrity (for example threats of spreading sexual images) and introduced the new crime *unlawful breach of privacy* in SCC 4:6c (Prop. 2016/17:222). These reforms and ongoing investigations are all related in some sense to the issue of sexist online abuse but deal with the problem from different angles and, hence, have the effect of the subject being dealt with in different chapters. As a consequence, the criminalisation of online sexist abuse has the character of a patchwork quilt arrangement.⁵⁴ A risk of this fragmented criminalisation is that it becomes harder to address and recognise all these various forms of abuse as sexist and hence as part of the prioritised problem of men's violence against women.

⁵³ The reform ended up in a change of SCC 29:2 p. 9 (SFS 2020:349).

⁵⁴ There are other challenges following the criminal regulation of online sexist abuse. The main obstacles are procedural, mainly related to the possibility of finding and presenting evidence on the perpetrator's guilt (Brottsofferförebyggande rådet 2015; Sunde 2015). The first problem is often one of identifying the perpetrator because he has an anonymous account, and international aspects of ownership often lead to a situation in which the information on who an account belongs to cannot be handed over to the Swedish authorities (Brottsförebyggande rådet 2015). This is a problem that needs to be handled through international cooperation. Another potential problem is that the person who owns the account from which the abuse was perpetrated says that he was not in front of the computer at that time, so it must have been someone else. As well as the need for international cooperation, the big social media platform companies need to be involved. Many initiatives are under way, for example Facebook and Instagram have introduced tools to prevent the spread of intimate images (Davis 2017) and cooperate with the organisation Cyber Civil Rights Initiative and ConnectSafely to help users obtain information on what to do if they are targeted by online abuse. <https://www.cybercivilrights.org/our-partners/> and <https://www.connectsafely.org/>.

Criminal Legal Protection Discussed in Relation to the Two Examples of Online Abuse

Below I will construct two examples that represents common situations of sexual abuse online. These will be followed by an analysis of the possible criminal legal protection offered by the current legal framework and discuss conflicts between norms and fragmentation that points at a need for another revision of how these kinds of sexual abuse should be criminalised.

Example 1: Online sexist abuse at work

The example above, under the section *Online Abuse/Violence at Work*, described a young journalist who was targeted by a very abusive comment on her chronicle on gender equality. The journalist turned to the police and the offender was prosecuted for the comments under SCC 4:7 regulating the less serious crime *molestation*.⁵⁵ The case was tried in a Swedish District Court as well as in the Court of Appeals, the latter with an acquitting verdict. The Court of Appeals argued that the comment was an isolated event, i.e. not frequent, which mostly is a requirement of this crime, and that the comment followed on a chronicle that aimed to initiate a debate and that offensive responses therefore could be expected. This argument is closely linked to the part of freedom of expression that consists of the prohibition of censorship. Altogether, the Court of Appeals did not find the comment reckless, as required for a charge of criminal offence.⁵⁶ My interpretation is that the application of the case indicates a lack of knowledge on the issue from a structural perspective. Hence, if the judges had had the knowledge of online violence against women and its consequences they might have come to another conclusion.⁵⁷ The statement could not be prosecuted as

⁵⁵ The crime of molestation has a range of punishments from a fine up to imprisonment for a maximum of one year. It should also be noted that criminalisation was old (outdated) at the time of the trial and designed to target physical offences, such as throwing stones or making a loud noise, and the issue of its application to online abuse was unclear. So this was also an issue of the interpretation of the crime.

⁵⁶ Judgment in a case from Svea hovrätt No. B 9461-14. Two things should be noted: 1) Swedish law has undergone some changes since then, and the new construction of the crime of molestation includes molestations carried out online. Nevertheless, the court could still find the situation to be legal due to the same reasons. 2) The court pointed out that the regulation was outdated and should be updated by the legislator.

⁵⁷ In the case mentioned in footnote 28, in which a public debater was sent a so-called 'dick pic' and the perpetrator argued to his defence that the victim was a public debater, the court, in contrast to the example here, found it to be an aggravating circumstance, leading to a more severe sentence (Södertörns tingsrätt, case no. B 6424-20). This may express a change of view on how to handle online abuse targeting persons participating in public debate in their professions, also in line with the ongoing policy work. So far, the legal analysis in these cases do not focus on the gender aspect.

hate speech because it was “just” an expression of sexism and misogyny, i.e. connected to sex. Currently, sex is not covered by the hate speech regulation in Sweden.⁵⁸ To highlight the issue here, the example, as a hypothetical exercise, is changed into a racist one. The violence is reproduced and may be traumatising. My intention with this example is to show the similarities with other forms of hate speech that fall under the category of crimes characterised as hate crimes. If the wording of the comment had been different [trigger warning]: ‘equality’ instead of ‘gender equality’ and ‘fucking immigrant’ instead of ‘sexist feminist whore’ it might have been possible to prosecute the comment as agitation against a population group, i.e. hate speech. By this example, I want to show how similar the situation is to what would be considered hate speech if the comment was racist instead of misogynistic.

Example 2: Online sexist abuse at home

The girl in the example under the section *Online Abuse at Home* above was exposed to sexist image-based abuse online. This form of abuse is very common, especially for young women and girls. It is not a new phenomenon, though it is relatively new from a criminal legal perspective and has thus been unfamiliar to legal regulation as well as legal actors. Research shows that there has been uncertainty over whether these forms of online abuse are criminal or not in a majority of the Nordic countries, irrespective of new or outdated regulation (Bladini 2017). In the case used as an example, the girl was informed that the case was closed due to a lack of evidence. This is a common situation.⁵⁹ Even if the legal situation has become clearer with the new criminalisation *unlawful breach of privacy* in

⁵⁸ Hate speech is regulated in SCC 16:8: A person who, in a statement or other communication that is disseminated, threatens or expresses contempt for a population group by allusion to race, colour, national or ethnic origin, religious belief, sexual orientation or transgender identity or expression is guilty of agitation against a population group and is sentenced to imprisonment for at most two years or, if the offence is minor, to a fine. Hate speech is closely related to what is often referred to as hate crime, which is not a specific crime but a concept used to cover crimes that are motivated by hatred towards a certain group of people (see Granström 2019). In Swedish regulation, the rules related to hate crimes can be divided into two levels: the first is the crimes, including the above-mentioned crime in SCC 16:8, and the crime of unlawful discrimination in SCC 16:9; the second is the regulation on aggravating circumstances that increases the severity of the penalty, which can be found in SCC 29:2, section 7 (Brax 2014; Bladini 2017). The latter is constructed with an opening to include more grounds for discrimination than mentioned, i.e. there is a theoretical possibility of including gender, but in practice there is a restrictive interpretation as well as implementation of the rule. See for example Polismyndighetens Internrevision, 2017 on how the police handles hate crime; and Åklagarmyndighetens Rätts-PM 2016:8, 13 and Granström, Mellgren and Tiby 2016, 59, on a lack of motivation in practice.

⁵⁹ Brottsförebyggande rådet 2015; Bladini 2017.

SCC 4:6 c, the issue of evidence is still a current problem. The fact that images can be downloaded on any digital device and uploaded again anywhere at any time makes this kind of violation especially serious. At this point it is regulated as a violation of privacy in Chapter 4 of the Swedish Criminal Code, not as a sexual crime in Chapter 6. This choice is unfortunate and should be changed, especially in view of the argument of recognising such abuse as part of sexual violence against women.

Comments so Far

I have now argued that sexist online abuse targeting women could and should be recognised as sexual violence against women, especially on the grounds of the theory of continuum of sexual violence. A consequence of such a recognition, strengthens the arguments that it should hence be part of the gender equality policy. Legal as well as other forms of policy documents on a national as well as on an international level address sexist online abuse as a matter of gender equality, and I argue that this obliges the states to prioritise the matter. Although the question is dealt with in several policy areas, it seems to fall out in the periphery and be dealt with in a fragmentary way. In the introduction, I highlighted the effect of online sexist abuse on a societal level, as it silences female voices and hence is a threat to democracy. In the last part, I discussed the criminal legal and also diversified way of dealing with it, the lacunas, especially as it is not part of hate speech, and finally, and so far only touched upon, the collision with freedom of expression and the balance between the interests at stake. This leads to the next section, in which the situation for women due to online sexist abuse will be discussed in relation to freedom of expression for all.

Freedom of Expression

Freedom of expression is a fundamental part of democracy, and states have an obligation to protect and safeguard this fundamental freedom expressed in human rights instruments and constitutions all over the world. As mentioned in the introduction, there are two basic aspects, the ‘negative’ non-censorship and the ‘positive’ diversity of voices, at the core of democratic free speech (Kenyon et al. 2017). The way the obligation to protect freedom of speech is implemented varies among jurisdictions. An

important difference relates to the perceptions of rights as negative or positive and of the role of the state as passive or active (Kenyon et al. 2017).

In a Swedish context, when expressions or speech acts of any kind are criminalised, it is often perceived as restrictions of the freedom of expression. Hence, this must be done with utmost caution, not only in the process of deciding what acts to criminalise, but some of the criminal provisions also demand an assessment in each individual case; if the expression is of interest to the public, it falls outside the scope of the regulation and, accordingly, it is legal.⁶⁰

States must allow offensive and painful statements - and it is not until the statements hurt that we discuss freedom of expression and its limits at all. The European Court of Human Rights points in this direction in a case on freedom of expression:

[...] it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.⁶¹

The quote refers to the negative aspect of freedom of expression that relates to the prohibition of censorship, and this is how the fundamental freedom is commonly recognised and understood. When highlighting this aspect of freedom of expression, the individual and her right to express herself come at the centre and the main focus will be not to censure her. This understanding of freedom of expression, with the prohibition of the censorship read from an individual perspective and a lack of structural analysis, fails to guarantee freedom of expression for everyone. If, instead, the freedom of expression is understood as something that must be actively guaranteed, a diversity of voices becomes important. Freedom of expression serves several purposes and has played an important role in combating injustices, inequalities and marginalisation. The democratic and participation rationales are two of the most central aims (Kenyon et al. 2017; Petäjä 2006).

⁶⁰ This is the case when it comes to defamation, for example, but also in some cases of molestation et cetera.

⁶¹ European Court of Human Rights on Freedom of Speech in the case *Handyside. v. United Kingdom*, appl. No 5493/72, 7.12.1976.

The multiplicity of voices enables contradictory ideas and a variation of perspectives, which are necessary for knowledge and a crucial part of public debate, and, by extension, democracy. Historically, freedom of expression has been essential in political processes, especially for those who have been oppressed or for other reasons have had lesser influence in society: not only for those who make their voices heard but also for the audience (Kenyon et al. 2017). From this perspective, the question of freedom of expression online, especially in the context of sexist and misogynist abuse, must be framed and dealt with differently.

The legal situation surrounding online violence against women, which is expressed through various non-physical forms such as pictures, words and videos, is complicated by the emphasis of the aspect of non-censorship. However, the crucial issue of which painful statements must be allowed and which painful opinions the states are obliged to silence should and could be answered in the light of a structural analysis. The analysis deals with research that shows how online sexist abuse is silencing women's voices. With such an analysis as a backdrop, and the fact that we agree that freedom of expression ought to be guaranteed to everyone, a diversity of voices becomes crucial and, hence, the state must take necessary action to safeguard that. The limits of what can be allowed and what the state must defeat then becomes different.

Accordingly, the interpretation of freedom of expression must be discussed in relation to online violence against women. As we have seen above, sexist and misogynist online abuse targeting women hinders them from living their everyday lives as they wish online, demarcates their routes and routines online as they avoid certain spaces and places, and deprives them of their voices online. This can be explained in terms of a common strategy by women to handle the massive amounts of online abuse, i.e. to stop taking part in public debate.

The result of interpreting freedom of expression only as the aspect of non-censorship, the negative aspect, is that the silencing of certain voices is impossible to prevent. If instead we understand freedom of expression as something that must be guaranteed for all, then a measure that safeguards that no one silences anyone else should not be considered a limitation but rather an extension of freedom of speech.

In line with Kenyon et al. (2017), I therefore suggest that we rethink the concept of freedom of expression to not just focus on the negative aspect of it, which is often the case, but rather to see that freedom of expression for all requires an active state that safeguards it for all by restricting the voices that silence others.

Hence, the positive aspect of freedom of expression, i.e. the requirement of a diversity of voices, must be recognised and included in the analysis and assessment of how to deal with online abuse. The analysis must not stop at the individual level but be regarded and discussed at a societal and structural level. Freedom of expression serves several purposes, but the most frequent rationale in law is the democratic aspect, others being developing knowledge, truth-seeking and strengthening people's interest in self-development and autonomy (Kenyon et al. 2017; Petäjä 2006). Swedish constitutional law expresses the democratic rationale containing the idea of diversity of voices (Freedom of the Press Act).⁶² As mentioned initially, if we take these rationales seriously, we must reformulate and adjust the institution of freedom of expression to an online reality in which some voices are prioritised over others. A perception of freedom of expression as (a positive right) safeguarding democracy, including a diversity of voices, rather than restricting the state from intervening in the right of individuals to express themselves (a negative right) facilitates this.

By not dealing with online violence against women in an appropriate way, for example through a lack of proper criminal protection, and thereby letting female voices be silenced, the state fails to safeguard freedom of expression for all, i.e. a diversity of voices.

Conclusion

In the research on online abuse it is clear that women are, to a large extent, the target of abuse of a sexist character and hence, this is a form of violence against women. Not only are women affected by the violence they have been subjected to themselves, but they also share a common memory of sexist abuse that other women have suffered. This has consequences for women

⁶² The protection of freedom of expression in Swedish law is particularly strong and is regulated in Swedish constitutional laws, not only in the Instrument of Government with the right for everyone to express him- or herself in any form (speech, writing, images, et cetera) through thoughts, ideas, opinions or emotions but also in two separate laws: the Freedom of the Press Act and the Fundamental Law on Freedom of Expression.

in everyday life, on an individual level. The violence demarcates women's living space in a similar way, as men's violence against women delimits women's freedom of movement in physical space. To protect herself, she avoids certain places and certain discussions that she knows come with a greater risk of sexist abuse. On a societal level, this means that the online sexist abuse reproduces gendered power structures in terms of inequalities in digital space. When women avoid certain places and discussions online, they are also hindered from participating in some parts of public debate. Voices are silenced by online sexist abuse, which in the end means putting democracy at risk. Research has shown that the extent of online sexist abuse targeting women is greater in certain situations. If the women who participate in public debate do so in their profession, or if the subject discussed is gender equality, migration or feminism, then they are subject to online sexist abuse to a much greater extent than others. The threat is thus even more urgent in these situations, and their voices are even more at risk of becoming silenced, i.e. they have lost their opportunity to exercise their fundamental freedom of expression.

As the article shows, online sexist abuse is already recognised as part of men's violence against women in Swedish gender equality policy. The effect of silenced voices is also addressed in other parts of Swedish policy, although mainly tangentially. Nevertheless, the problem is dealt with fragmentarily, and this is also visible on a criminal legal level. It is also important to note that the issue of men's violence against women in this form is not linked to silenced voices and is therefore not addressed as a connected problem. Perhaps, such a link between the two would help to put the focus on the problem, and maybe the discussion on sex as protected grounds in the legislation on hate speech and hate crime would be more urgent if such structural analyses were made.

A liberal perception of justice in terms of individuality, freedom and privacy goes hand in hand with a formal⁶³ perception of justice in general and of freedom of expression in particular. With such a formal conception of freedom of expression, the individual and her right to express herself in relation to the state comes at the centre, and the main focus will be not to

⁶³ I use the term formal here in contrast to material, with a formal perception of justice corresponding to a formal conception of equality before the law, in which people are treated the same way irrespective of whether it affects them differently. In the same way, a formal perception of freedom of expression corresponds to the negative aspect and the material to the positive aspect.

censure her. This understanding of freedom of expression, with the prohibition of censorship read from an individual perspective and the lack of structural analysis, fails to guarantee justice for all.⁶⁴ This article suggests a perception of justice more closely connected to the equality and democracy ideal, and hence an understanding of freedom of expression that recognises and allows structural analyses. Such an analysis is urgent to address the problem of online abuse against women in terms of a failure to guarantee women a right to raise their voices, i.e. their right to freedom of expression.

In sum, *a diversity of voices* imposes a duty on states to guarantee that multiple groups and ideas are allowed to take part in public debate. This positive aspect of freedom of expression is crucial to fulfil the purposes of freedom of expression, in relation to participation, to knowledge development, to strengthening people's self-development and autonomy, and to democracy itself. If states are not able to guarantee a diversity of voices, they will fail to combat injustice, inequality and marginalisation.

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⁶⁴ Sweden fell from no. 3 to no. 4 in the World Press Freedom Index (Reporters Without Borders) in 2019, due to the volume of hate and threats towards journalists. This could be read in the light of the strong position of freedom of expression in a neoliberal political ideology.

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