

When Justice Backfires:

Criminalization, Gender and Human Rights in the Digital Era

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25 January 2025





Just Futures
Collaborative

An independent feminist initiative
cultivating global cross-movement
strategies for challenging
criminalization, promoting human
rights and protecting democracy.

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Foreword

As a feminist initiative dedicated to challenging criminalization, promoting human rights and protecting democracy, we at Just Futures Collaborative have a vested interest in understanding how our rights are eroded, as well as how our communities are weaponized in efforts to advance regimes of surveillance, censorship and control, in the context of digital technology.

We write this in the hope that this piece will help human rights practitioners of various kinds, across disciplines, across regions, working on diverse issues, to build a formula for their own practices, whereby we can have a more critical engagement with our own advocacy.

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Introduction

We've seen it over and over—feminist and human rights movements, often unintentionally, turn to criminalization in the pursuit of justice and rights protection. Yet punitive approaches can backfire, harming the very communities they aim to support. Laws around digital technologies are no exception—often wielded as tools of control, censorship and surveillance, they shape and restrict rights in ways that both reinforce and reshape power inequalities.

This essay examines two case studies—**Malaysia and Sri Lanka**—where legal crackdowns, framed as protecting social order, have instead deepened harm and failed to address underlying injustices. Our analysis highlights how criminalization is often weaponized against marginalized communities, including in the digital realm, where governments use laws to suppress dissent and control expression.

The digital rights movement has grown significantly over the past 15 years. In the same period we've also seen corporate monopolies, state surveillance and censorship reshape the technology domain. As a feminist initiative committed to challenging criminalization and protecting democracy, Just Futures Collaborative is deeply invested in understanding how these dynamics erode rights—and how movements can resist and push for alternatives that

address harm with humanity.

By sharing these case studies, we hope to encourage critical reflection among feminist, human rights and digital rights practitioners—across disciplines and regions—on the unintended consequences of punitive approaches and the need to build more just, collaborative strategies for just futures.

Case Study 1: Sri Lanka

A Colonial Legacy of Criminalization

Colonial laws were designed to regulate, control and punish native populations. Sri Lanka's legal system is a product of British colonial rule, and therefore no different. Many of these colonial-era laws remain intact in Sri Lanka, including:

The 1841 Vagrants' Ordinance and 1889 Brothels Ordinance, used to criminalize poverty, sex work, and non-normative sexual behavior

The 1883 Penal Code, which includes provisions criminalizing same-sex intimacy, inherited by much of South Asia

The Obscene Publications Ordinance (1927), which laid the foundation for state censorship

Together, these laws criminalize non-normative sexual behaviours and identities, gender diversity, sex work, homelessness and poverty - all of which went against colonial moral codes - and stifle freedom of expression including sexual expression. They can be seen as a singular project to control native bodies and lives, restrict autonomy and suffocate dissent. In effect, they were intended to criminalize resistance to the colonial order. They are tools in the colonizer's "civilizing project".¹

¹Wanniarachchi, S. 2021. "A Tale of Two Obscene Publications Acts — A Brief and Incomplete Contextualisation of Obscenity Laws and Imperial Censorship in Sri Lanka". LSE.

Decades after independence, successive Sri Lankan governments have upheld and expanded them, using legal frameworks to target gender-diverse people, sex workers, activists, poor and homeless person and other marginalized communities.

In this context, Sri Lanka's recent **Online Safety Act** grants sweeping powers to a government-appointed commission to penalize "prohibited statements," weaponizing concerns about disinformation to stifle dissent and restrict free expression. Amnesty International has called it a "major blow to freedom of expression",² a concern echoed by national and international human rights groups.

The Act not only curtails political speech but also deepens restrictions on sexual and gender expression, reinforcing outdated moral and social norms.

²Amnesty International. 2024. "Sri Lanka: Online Safety Act major blow to freedom of expression". Amnesty International.

2017 Case: Surveillance and the Criminalization and Control of Sexuality

In 2017, a young couple in southern Sri Lanka watched a pornographic video in their own home—a private act that should have been beyond state scrutiny. Yet, a neighbor reported the couple to the police, who raided their residence without legal grounds, and detained them.³

A lawyer defending the couple pointed out that Sri Lanka’s Obscene Publications Ordinance only prohibits pornography for sale, distribution, or public display—not private consumption.⁴ However, law enforcement broadly interpreted the law to justify intervention, turning an act of private digital consumption into a criminal offense.

Beyond state overreach, this case highlights how policing and surveillance vis a vis technology can rapidly extend into private life. The blurred lines between public and private digital behavior enable authorities—and even private citizens—to weaponize moral panic and legal loopholes to police and control others.

³Wijesiriwardena, S. 2021. “Porn, sexuality and expression in Sri Lanka: feminist debates and interventions”. *Porn Studies*, 9(3), 400–410.

⁴Ibid

Moreover, the case revealed deep gender biases and harmful assumptions—for example, the woman was forced to take a sexually transmitted disease test, while the man was not. This reflects a broader digital patriarchy at work, where women's and gender-diverse people's sexual behaviour - online and otherwise - as well as their bodies, are more likely to be scrutinized, policed, and punished.

As governments expand their digital surveillance and censorship powers, cases like this serve as a warning: without strong digital rights protections, even private online behavior can be criminalized, reinforcing broader systems of control and inequality, and protecting social hierarchies which exclude many.

Case Study 2: Malaysia

Digital Censorship and Gendered Punishment

Malaysia's legal system is shaped by British colonial law and Islamic Sharia courts, reflecting a complex struggle over national identity. Gender and sexual diversity are often framed as threats to national morality, with legal tools used to silence dissent and reinforce patriarchal control.

In recent years, online regulation has intensified, with post-COVID digitization accelerating the introduction of restrictive policies. In 2024 alone, a flurry of new laws were proposed to regulate online content,⁵ reflecting a growing trend of turning to legal action to police digital spaces and silence those whose voices are already suppressed.

⁵Christopher & Lee Ong. 2024. "An Overview of Recent Developments and Upcoming Laws Regulating the TMT Space in Malaysia." Christopher & Lee Ong, Malaysia.

The 2024 Case: Harassment, Suicide, and the Failure of Punitive Laws

In July 2024, a young woman died by suicide after an onslaught of harassment and sexual abuse on Tik Tok. She had received both rape and death threats, and one of the perpetrators broadcasted her photo at a live session, inciting their followers to cause her harm. She had made a police report the day before this incident, naming two perpetrators. They were both arrested and charged following her death.⁶

- The **female perpetrator** was fined **\$23 USD** under Malaysia's Minor Offences Act for using vulgar language.
- The **male perpetrator**, a truck driver, was charged under **the Communications and Multimedia Act** and **the Penal Code**, facing potential jail time. He pleaded for a lighter sentence, on the basis that his wife is a person living with a disability and he has three children for whom he cares. He told the court that he made RM1000 as a monthly wage from driving a lorry and has other health issues.

⁶The Star. 2024. "Cyberbullying: Two plead guilty to communications offences linked to Esha's death". The Star.

The case sparked outrage over Malaysia's failure to address online gender-based violence. In response, lawmakers proposed the "Esha Clause" - named for the victim, Esha - which criminalizes cyberbullying and imposes up to 10 years in prison for cases linked to suicide.

However, punitive laws alone do not prevent harm—they fail to address structural misogyny, law enforcement inaction, conservative social norms and pervasive harmful gender stereotypes which enable and normalize gendered abuse in the first place.

The Bigger Picture:

How Colonial Laws Still Shape Punitive “Justice”

A key thread linking these cases is the long shadow of British colonialism. Across former colonies, colonial-era criminal laws remain central to regulating sexuality, gender and dissent, often used by modern-day governments to reinforce patriarchal and authoritarian control.

Legal scholars⁷ have long argued that colonial legal systems were designed to subjugate native populations, enforce Victorian morality and justify imperial rule. Feminist scholars⁸ further highlight how these laws positioned indigenous men as dangerous and women as helpless, in need of protection.

Finally, feminist digital rights activists and scholars⁹ point out that technologies are not neutral but rather formed by the societies which build them - and therefore that technology is not merely a tool but a domain of life where structural power imbalances and contestations around human rights shape our unique experiences of them.

⁷For example, see Edward Said (*Orientalism*, 1978)

⁸For example, see Gayatri Spivak (*Can the Subaltern Speak?*, 1988)

⁹See Feminist Action Lab's "Feminist Technology":

<https://feministactionlab.restlessdevelopment.org/feminist-technology/>

Beyond Punishment:

Rethinking Criminalization in the Digital Age

For decades, feminist and human rights movements have fought to secure legal protections against gender-based violence, online harassment and digital censorship. Yet, in some instances, calls for justice have led to reliance on punitive measures that ultimately expand state control, rather than dismantling the very systems that create harm in the first place.

As this report argues, we must ask: are state responses truly ensuring justice, or are they deepening carceral logics that disproportionately harm the very people they claim to protect? What is our role in ensuring the state goes beyond punitivism and carceral logic to ensure the protection of human rights? How does our own advocacy either advance or hinder an agenda for justice and accountability?

Both case studies highlight how legal responses to digital harms fail to address root causes:

- In Sri Lanka, vague, sweeping and outdated laws empower law enforcement and dominant social actors to target marginalized communities and police sexual behaviour, under the guise of “protection”
- In Malaysia, criminalization does little to address the role of the state and society in enabling and producing gender-based violence, while reinforcing patriarchal control over women’s bodies and speech

These cases illustrate the false binary between “digital” and “social” realities—just as the old “public/private” divide was used to justify gender inequality and obscure gender-based violence, today’s “online/offline” distinction obscures the real-world power structures that shape digital rights.

Human rights and social justice movements must resist the reflexive turn to criminalization in addressing digital harms. Instead, we must:

- Challenge colonial-era laws that continue to police gender, sexuality and dissent

- Build feminist, intersectional approaches to advancing digital rights
- Foster deeper cross-movement collaboration to address harm in a rights-based manner

The urgent task before us is to ensure that digital technologies serve us and our movements as tools for liberation, not instruments of state and corporate control. By working across movements, we can push back against repressive laws and imagine a future where justice is not rooted in punishment—but in collective care, accountability, and freedom.



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