

Protection of Women's Dignity and Development of Laws against Revenge Porn on Women in India: A Comparative Study

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Abstract

Revenge porn, means the unauthorized dissemination of private photographs or videos of a victim in cyberspace, is a newly judicially recognized crime and has an increasing trend in society with the increasing prevalence of technological advancement. This type of non-consensual pornography which is virtual rape, takes place for several reasons, i.e., taking revenge on his ex-partner, sextortion, blackmailing, getting custody of children from a divorced spouse, etc., which causes sexual exploitation, domestic violence, and more. Recent data shows that about 27% of total internet users in between 13-45 age groups were subjected to revenge porn in India. Though cases are being dealt with, with the help of the Indian Penal Code, 1860 and Information Technology Act, 2000 but till now, there are no explicit provisions dealing with this crime where victims can avail themselves of the relief effectively and without any hesitation. Today, no one can think of a life without the use of the Internet, but protecting women's rights is also a significant concern. Using a comparative analysis, the authors of this research paper will attempt to understand the rising concerns of revenge porn and its development and will try to present a solution to the problem.

Keywords: *Women, Revenge Porn, Unauthorised Dissemination, Virtual Rape.*

I. Introduction

'Revenge porn', which is recently termed 'image-based sexual abuse' or 'non-consensual pornography' or 'virtual sexual violence', has emerged in the early

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2000s³ and denotes the dissemination of private photos or videos of a woman, whether taken with or without consent, with all her details including phone number, links of social media⁴ without her consent by her ex-boyfriend, former intimate partner, peers, co-workers, family members or by any strangers⁵ in various social networking sites, any porn sites, slut-shaming sites and in any revenge porn specific porn sites⁶ to cause harm to her personality⁷. Even general photos or selfies taken by the victim and disseminated by the perpetrator with 'mens rea' shall also be the same offence. Though voyeurism⁸ is an independent offence, 'upskirt', 'downblouse', or 'creepshots' may also be included in revenge porn if taken and disseminated maliciously to defame a woman's reputation in society. Feminists contend that the offence is the result of male hegemony or jealousy because a woman is seen as the object and desire of a man. When a woman in a relationship breaks it up, her male partner tries to dominate her by humiliating and slut shaming her. Though this crime is gender-neutral, where males are also the victim of revenge porn⁹, it has been seen that in most cases, women are the victim overwhelmingly¹⁰. Revenge porn, nowadays, is a looming danger for all those women who are in a relationship. In our society, there is a tendency to trivialize the violence against women, which occurs in a private set-up like revenge porn, domestic violence, or sexual exploitation. These prevalent issues of revenge porn warrant us to implement a specific legal framework to explore the problem and ensure the victims get justice.

³Yar M and Drew J, *Image-Based Abuse, Non-Consensual Pornography, Revenge Porn: A Study of Criminalisation and Crime Prevention in Australia and England & Wales*, 13(2), IJCC, 579, (2019).

⁴Citron DK & Franks MA, *Criminalising Revenge Porn*, 49, WFLR, 346, (2017).

⁵ Henry, N., Powell, A. & Flynn, A., Not Just 'Revenge Pornography': Australians' Experiences of Image Based Abuse. A Summary Report. Melbourne: RMIT University (2017).

⁶ *Id.*

⁷There is no uniform definition of revenge porn but around the world scholars have tried very hard to define it for instance; see also *supra* note 3.

⁸Punishable offence u/s 77 of Bharatiya Nyaya Sanghita, 2023 (No 45 of 2023).

⁹Branch K et al, *Revenge Porn Victimisation of College Students in the United States: an Exploratory Analysis*, 11(1), IJCC, 129, (2017).

¹⁰Halder D & Jaishanker K, *Revenge Porn by Teens in the United States and India: A Socio-Legal Analysis*, 51, IAC, 86, (2013).

II. Historical Background of Revenge Porn as an Offence

Before the 1980s, individuals, couples, and erotic subcultures started creating and spreading amateur pornographic photos and videos¹¹. One of the earliest recorded instances of revenge porn was a pornographic home video created by the then-married 'Blacksploitation' actors Jayne Kennedy and Leon Isaac Kennedy where the objectionable videotape was only made public after Jayne divorced Leon. It has been alleged that Leon published the footage as a form of revenge for her leaving him. Several of these photographs were provided without authorization, resulting in legal action. However, except for some odd instances, before the technological revolution in the world, there were no such options to make someone publicize in a single click. Suppose someone had disseminated nude or private photos but remained in some little hands¹². However, with modernization, technology progressed so that cyberspace blurred the line of privacy between public and private life. The ever-shrinking gap between what is private and what is public has had significant ramifications in developing crimes such as revenge porn, domestic violence, etc., against live-in partners¹³. In a TV interview,¹⁴ a lady named Jane disclosed the fact that during a strong relationship, she consented to her boyfriend to take her nude picture based on trust that he would not disseminate or leak it, but, after the relationship ended, the perpetrator leaked her nude photos on the internet without her consent which was a violation

¹¹ Ed Halter, "Secrets and Thighs: A History of Celebrity Sex Tapes, Real and Fake, from Joan Crawford to Paris Hilton," Village Voice, <http://www.villagevoice.com/2003-12-02/news/secrets-and-thighs> (last visited on April 27 2023),

¹²A man in 2007, who had made secretly several video recordings of their physically intimated moments and when the relationship got dissolved, disseminated several copies of those DVDs in public including all her personal details due to which she was continuously started to receive phone calls and messages and also physically harassed and stalked (Citron DK & Franks MA, *Criminalising Revenge Porn*, Vol. 49, WFLR, pp 345-391, 2017).

¹³ Josephine Moulds, The Truth Behind The Rise In Online Date Rape, THE TELEGRAPH, <https://www.telegraph.co.uk/women/life/met-rapist-tinder-truth-behind-rise-online-date-rape> (last visited April 23, 2023).

¹⁴ Danielle Keats Citron, "Revenge Porn" Should Be a Crime in U.S., CNN, <https://www.cnn.com/2013/08/29/opinion/citron-revenge-porn/index.html> (last visited on May 1, 2023).

of breach of trust and privacy. After that, Jane started to receive calls and messages from strangers approaching her for sex¹⁵. Alleging her ex-boyfriend, she approached the police, but the officer denied giving her relief. The officer said that pictures were taken with consent that impliedly permits dissemination, and even the accused had never solicited her nor stalked her. The accused was not held liable because no law in the US imposes liability for such an act. The prosecution of Hunter Moore by Charlotte Laws is one of the most well-known cases of website creation purposely made for revenge porn. In 2014, the case sparked a great uproar over the matter, prompting the establishment of a vengeance movement¹⁶. Many states in the United States have passed revenge pornographic legislation. Some countries have followed suit since then¹⁷. However, there has been a patchy response. In India, a study conducted by an NGO, Cyber and Law Foundation stated that about 27% of internet users got affected by revenge porn¹⁸. In India, though there is no specific provision for prosecuting the accused of revenge porn, 'voyeurism' has been made a punishable offence u/s 354C of the Indian Penal Code, 1860 (now u/s 77 of Bharatiya Nyaya Sanghita, 2023).

III. Comparative Study of the Legal Development

A. United States America

Before 2000, though, several cases were recorded for revenge porn or non-consensual pornography, yet no such legislation was made to address the problem. After a few years, when it became a widespread problem for the first

¹⁵*Id.*

¹⁶Cyber Civil Rights Initiative, Revenge Porn Laws In Us, <https://mcolaw.com/for-individuals/online-reputation-and-privacy/revenge-porn-laws-united-states> (last visited April 27, 2023).

¹⁷ Countries like US, UK, Australia, Canada, Philippines, Israel and Japan have legislations addressing revenge porn. See Revenge Porn Laws across the World, The Centre for Internet and Society, <https://cis-india.org/internet-governance/blog/revenge-porn-laws-across-the-world> (last visited April 27, 2023).

¹⁸ Aditya Krishna, Revenge Porn: Prosecution Under Current Indian Legal System, <https://criminallawstudiesnluj.wordpress.com/2020/04/13/revenge-porn-prosecution-under-the-current-indian-legal-system> (last visited on May 1, 2023).

time in New Jersey, in 2004, a Code was enacted where it was made a felony if someone tried to invade a person's privacy by disclosing a person's private or semi-private photos of the victim without her consent¹⁹. After that, similar measures were taken by several states of the USA like Alaska and California. Forty-eight states, including Washington DC and two other territories, have enacted laws relating to revenge porn²⁰. For example, New Jersey law prohibits taking or distributing sexually explicit photos or films without the person's consent²¹. In California, the significant thing is that it is made clear that only distributing nude or semi-nude photos is not enough to prosecute an accused. However, the same must be done to cause harm to her personality. The victim had to suffer the harm, out of which the maximum punishment was six years. However, there were civil remedies available for the victim to be compensated²².

B. England and Wales

In England and Wales, the Criminal Justice and Courts Act, 2015 provided specific provisions (Ss.33-35) to criminalize the dissemination of "private sexual materials"²³. But it is worth noting that the Act provides the interpretation of the term material broadly²⁴. This appears to allow for incorporating sexually provocative but non-nude photos in theory. Furthermore, the Act, like the California law, may be criticized on the ground that the dissemination of pictures is done "with the goal of causing that person's anguish." According to this Act, if a person commits such a crime, he shall be punished for up to two years with a fine. On the other hand, campaigners and victims' advocates have attacked the Act because the provisions of this Act are generally applied in those cases where only the pictures or videos in question have been disseminated. According to

¹⁹Section 2C: 14-9 of New Jersey Criminal Code, 2004.

²⁰ Supra note 16

²¹ New Jersey General Assembly. "N.J.S.A. 2C:14-9(b)", Statutes of New Jersey, New Jersey.

²²Martinez C, *An Argument For States To Outlaw 'Revenge Porn' And For Congress To Amend 47 USC S 230: How Our Current Laws Do Little To Protect Victims*, 14(2), PJTLP, 239, (2014).

²³Before the implementation of this Act, revenge porn cases were tried under other Act, i.e., the Protection from Harassment Act (1997 and the Malicious Communications Act (1988).

²⁴Section 35 of Criminal Justice and Courts Act, 2015.

them, the fear of such revelation causes significant anguish and injury to targeted people, regardless of whether the offenders follow through on their promise in the end²⁵.

C. Australia

To combat revenge pornography, state and federal legislation has been introduced in Australia. New South Wales was the country's first state to provide laws that specifically penalize the Act of distributing personal images, altered photographs, and threatening to provide drugs without permission included clearly in its criminal definitions of revenge porn. Altered body modifications or facial adjustments are examples of picture manipulation²⁶. Excluding Tasmania, in every state of Australia, there is a specific legal framework to address the problem of revenge porn. The government of Australia amended the federal law governing revenge porn in 2018. In 2018, the Enhancing Online Safety (Non-consensual Sharing of Intimate Photos) Act 2018 (EOSA) changed the existing Act of 2015 and the Criminal Code Act of 1995 to make it illegal to disseminate "intimate images" without consent. The Act provides punishment for those people who deal with the internet and social networking sites and refuse to remove those photos and videos which are offensive for up to seven years. It is important to note that the concept of "intimate photos" includes every nude and semi-nude photo in cases of "upskirting," whether the picture which has been taken was bare or covered does not raise any problem to punish the perpetrator²⁷.

Excluding these countries, the Philippines also made revenge porn a punishable offence bypassing the Anti-photo and Video Voyeurism Act of 2019, where a maximum of 7 years of punishment has been provided. Subsequently, several other countries like Israel, Canada, Japan, and New Zealand have enacted laws making revenge porn a punishable offence.

²⁵Robinson Ben & Dowling Nicola, *Revenge porn laws 'not working' says victim group*, BBC NEWS, <https://www.bbc.com/news/uk-48309752> (last visited on May 1 2023).

²⁶ Crimes Amendment (Intimate Images) Act 2017 N0 29 - (NSW), Australia.

²⁷ The Enhancing Online Safety (Non-consensual Sharing of Intimate Photos) Act, 2018 (EOSA), Section 24.

D. India

There are two legislations governing the offence of revenge porn in India, the Information Technology Act of 2000 and the Bharatiya Nyaya Sanhita of 2023. By amending Chapter XI comprising crimes in the Information Technology Act of 2000, in 2008, Section 66E was added. The Section stipulates that a violation of privacy is punishable. It deals with the purposeful or unintentional publication or transmission, or dissemination of private pictures of a person under conditions that violate that person's privacy. The meanings of the phrases 'transmit' 'capture' 'private region,' 'publish,' and 'under conditions infringing privacy' are given in the Section's explanation. In terms of both the offender and the victim of the crime, the offence is gender-neutral in its phrasing. For committing such a crime provided under this Act, an offender shall be punished for up to three years with 2 lack rupees fine or both.

Another legislation governing punishment for voyeurism provided 354C of the Indian Penal Code, 1860 (now u/s 77 of the Bharatiya Nyaya Sanhita of 2023) which has been added by the Criminal Law Amendment Act of 2013, in response to the demonstrations following the gang rape case in Delhi. The crime of voyeurism is built in a gender-specific way. This is an offence that can only be committed by a man against a woman. The offender, according to this Section, shall be punished if he views or captures photos of a woman when she is engaged in her activity where she can presume not to be seen by any other person and distribute the same in public. The clause establishes a gradation of the penalty based on the number of times a person has been convicted. The right to privacy is emphasized in the definition of 'private act' supplied under explanation 1. While explanation 2 tacitly addresses the issue of revenge pornography when the sufferer gives her consent to collect photos, not with the intention of dissemination to third parties, such dissemination is responsible. Although there is considerable overlap between the two parts, India lacks a focused statute that addresses the problem of revenge porn.

IV. Inadequacy of the Existing Legal Framework to Criminalise Revenge Porn

Firstly, to begin with, there is no clear distinction between 'publishing' and 'transmitting' a photograph obtained as defined by the Information

Technology Act, 2000, and the phrase 'dissemination' as defined by the Bharatiya Nyaya Sanhita of 2023.

Secondly, nothing in the preceding sections mentions the precise motivation for the image's distribution, which is 'revenge' or causing humiliation.

Thirdly, neither part addresses situations in which a criminal creates a digitally doctored/ digitally generated/ morphed photograph and then distributes it for the goal of vengeance. In common parlance, these pictures are referred to as DeepFakes²⁸.

Fourthly, the offence of revenge porn mostly occurs in a relationship committed by the male partner after the breakup or end of such a relationship. Before, they trusted each other. Whether voluntarily or involuntarily, the victim or offender took private pictures or videos but did not disseminate these contents. Now, though pictures or videos may be taken with consent, the dissemination takes place without the intention of the victim to cause her harm. The existing legal framework fails to address this trust-based betrayal that runs a woman's life.

Fifthly, by using a simple picture of a woman, if disseminated with all details mentioning her to be a slut or prostitute, the offence of revenge porn can be done, which is absent in the preceding Section.

The victim might pursue a collective accusation under Sections 78²⁹, 77³⁰, 356³¹, of the Bharatiya Nyaya Sanhita of 2023, and Sections 67A³², 67³³,

²⁸ Drew Harwell, Fake-porn videos are being weaponized to harass and humiliate women: 'Everybody is a potential target,' THE WASHINGTON POST, <https://www.washingtonpost.com/technology/2018/12/30/fake-porn-videos-are-being-weaponized-harass-humiliate-women-everybody-is-potential-target/> (last visited on May 1, 2023).

²⁹ Under the Bharatiya Nyaya Sanghita, 2023, section 78 provides punishment for Stalking.

³⁰ *Id.*, S. 77 provides punishment for Voyeurism.

³¹ *Id.*, S. 356 provides punishment for defamation.

³² Under the Information Technology Act, 2000, section 67A provides punishment for publishing or transmitting obscene material containing sexually explicit act etc., in electronic form.

³³ *Id.*, S. 67 provides punishment for publishing or transmitting obscene material in electronic form.

and 66E³⁴ of the Information and Technology Act, 2000 rather than pursuing a single accusation for revenge pornography under that specific legislation. It believes that having multiple sections that tackle revenge porn differently will confuse. In India, the first example of revenge porn by a juvenile was recorded in 2001, when a 16-year-old created a porn website with sexual photographs of female classmates and instructors along with pervert comments to seek retribution from them for the teasing³⁵. Before the Juvenile Court, he was charged with obscenity in cyberspace under the IT Act. In Purba Medinipur, West Bengal, a trial court judge recently found a man guilty of revenge porn³⁶ and sentenced him to five years in prison and a fine of Rs. 9000. The defendants were found guilty under sections 354C, 354A, and 354 IPC³⁷ and Sections 66C, 66E, 67, and 67A of the IT Act. The state government was ordered by the court to treat the woman as a rape victim so that she could get compensation. This is a new judicial concept. On the other hand, judges would not aggressively pursue such an approach if there were no explicit provisions. The need for an explicit legal framework to control revenge pornography still exists. In 2018, NGO Prajwala included two clips of rape being shared on the internet in a *suo motu* case³⁸ taken up by the Supreme Court premised on a letter where it has been directed the government to frame guidelines to remove child pornography and gang rape videos from the web. However, due to the absence of specific guidelines and legal frameworks, the problem of revenge porn still subsists. To strengthen our legal system, we should look at nations with a legal structure to prosecute revenge pornography.

V. Conclusion and Suggestions

The present laws in India include several loopholes and flaws. However, compared to other countries revenge porn laws, India fails to address the present

³⁴ *Id.*, S. 66E provides punishment for violation of privacy.

³⁵ Confusion prevails over tackling cybercrimes, TIMES OF INDIA, <https://timesofindia.indiatimes.com/city/pune/confusion-prevails-over-tackling-cyber-crime/articleshow/409953300.cms> (last visited on May 1, 2022).

³⁶ State of West Bengal v. Animesh Boxi, C.R.M. No. 11806 of 2017, GR/1587/2017, (India).

³⁷ The India Penal Code, 1860 has been replaced by the Bharatiya Nyaya Sanhita of 2023.

³⁸ In Re: Prajwala Letter, Dated 18.2.2015 Videos of Sexual Violence and Recommendations, *Suo Moto Writ Petition (Crl) No(S). 3/2015*, order dated 11.12.2018.

demand of the time. The existing legal framework does not directly cover the changed problems. Several sections are applied to punish a perpetrator for addressing the current singular issue. The United States of America, the United Kingdom, and many other countries have amended their criminal laws to tackle the rising issues of revenge porn, including special laws. Therefore, it is necessary to either amend the existing legal provisions that deal with this kind of offence or create a separate offence governing revenge porn. The recent Introduction of the Bharatiya Nyaya Sanhita of 2023 which replaced the Indian Penal Code of 1860 also does not have any specific section dealing with this crime.

The existing problem can be solved by amending Section 354C of the IPC (now Section 77 of the Bharatiya Nyaya Sanhita of 2023) or making revenge porn an independent offence. Section 357 of the Criminal Procedure Code, 1973, (now Section 395 of the Bharatiya Nagrik Suraksha Sanhita of 2023) provides compensation for the victims but is based on the court's discretion. Therefore, the law can be framed to compensate precisely all those victims of revenge porn like the rape victim as directed in the Animesh Boxi case. Provisions regarding the protection of life, liberty, and carrier shall be ensured to all those victims of revenge porn due to the gravity of the consequences suffered through online and offline threats and challenges.