

PROSECUTING REVENGE PORN IN INDIA

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Revenge Porn also referred to as “non-consensual pornography”¹ or “image-based sexual abuse”,² constitutes a form of gender-based violence (GBV)³ and consists of the dissemination of private sexual photographs or videos of an individual on an online platform without the necessary consent. While, in certain cases, the victim is unaware that the picture or video has been taken, or the victim is forced into sharing it, or the picture is hacked, there are other cases where the picture is freely shared within an intimate relationship but then shared with third parties without consent. Consent is, therefore, necessary both when the photo or video is taken and even when it is shared with other people.⁴

Whereas the term “revenge porn” might be understood as a form of vengeance, often connected to the closure of an intimate relationship where a vindictive ex-partner distributes sexual photographs or videos of the previous partner, such an expression does not entirely express the different scopes and motivations which might lie behind this phenomenon. Notably, the practice of sharing sexual images or videos without consent might also be justified by financial reasons or different desires – e.g., the desire to exercise control over the victim, the desire to harass the victim, or the desire to gain a sort of notoriety or to access to more sexualised material.⁵

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Since the photographs are sexual and the abuse and harassment are, thus, sexualised, revenge porn is a form of sexual assault which cause harm to the victim’s sexual freedom and autonomy. It also adversely impacts the psychological sphere of the victim, which often

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¹ Mary Anne Franks, ‘Combating Non-Consensual Pornography: A Working Paper’ (7 September 2014), <<https://ssrn.com/abstract=2336537>> accessed 11 April 2022.

² Clare McGlynn, Erika Rackley, ‘Not “revenge porn”, but abuse: let’s call it image-based sexual abuse’ (9 March 2016), <<http://everydayvictimblaming.com/media-complaints/not-revenge-porn-but-abuse-lets-call-it-image-based-sexual-abuse-by-%E2%80%8Fmcglynnclare-erikarackley/>> accessed 11 April 2022.

³ The UN Committee on the Elimination of Discrimination Against Women (CEDAW), in its General Recommendation No. 19 on Violence against women define gender-based violence as “violence that is directed against a woman because she is a woman or that affects woman disproportionately”. <<https://www.refworld.org/docid/52d920c54.html>> last accessed 11 April 2022.

⁴ End Cyber Abuse, ‘Image-based Sexual Abuse: An Introduction’ <<https://endcyberabuse.org/law-intro/>> last accessed 11 April 2022.

⁵ Jin Ree Lee, Steven Downing, ‘An Exploratory Perception Analysis of Consensual and Nonconsensual Image Sharing’ 2(2) (2019) *International Journal of Cybersecurity Intelligence and Cybercrime* 23, 26.

experience post-traumatic stress disorder, anxiety, and severe emotional distress.⁶ Victims of revenge porn might not only lose their jobs but might also be ostracised from their families or their community. In particular, considering the Indian cultural panorama, where sex is still a taboo subject, victims can easily be disowned by society for having done or sent those pictures in the first place. The stigma and shame faced by victims of revenge porn are extremely high.

Nevertheless, India has experienced a considerable increase in the phenomenon during the last decade. According to India's National Crime Record Bureau (NCRB), between 2012 and 2014, the country experienced an increase of over 100 percent in the volume of obscene content shared electronically. While only 35 percent of women reported their victimisation, approximately 18 percent were not even aware of the facts.⁷

INDIAN LEGAL FRAMEWORK

India does not have a specific legislative framework to deal with cases of revenge porn. Nevertheless, the offence of revenge porn might be covered by legal provisions contained in other statutes. Since revenge porn is an act that constitutes an invasion of privacy, Section 66E of the Information and Technology Act of 2000, introduced through an amendment that occurred in 2009, which punishes violations of privacy, is relevant in this context. Specifically, the provision states that any person who “intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent” commits a violation of privacy, punishable with imprisonment up to three years and/or a fine up to two lakhs.⁸ In addition, Section 67A of the same act, which deals with electronic material containing sexually explicit acts or conducts, punishes the publication or transmission of such material with imprisonment of up to five years and a fine of up to ten lakh rupees, in case of the first conviction.⁹

⁶ PESI, ‘The Impact of Revenge Porn’ (7 July 2021) <<https://www.pesi.co.uk/blog/2021/july/the-impact-of-revenge-porn>> accessed 11 April 2022.

⁷ The New Indian Express, ‘Revenge porn: Man shares intimate videos of ex-fiancée, held’ (18 February 2021) <<https://www.newindianexpress.com/cities/chennai/2021/feb/18/revenge-porn-man-shares-intimate-videos-of-ex-fiancee-held-2265512.html>> accessed 28 April 2022.

⁸ The Information Technology Act, 2000, Section 66E <<https://indiankanoon.org/doc/112223967/>> accessed 26 April 2022.

⁹ Ibid, Section 67A <<https://indiankanoon.org/doc/15057582/>> accessed 26 April 2022.

In addition, the Indian Penal Code of 1860 contains several provisions which might be relevant in a situation of revenge porn. Section 292 of the Penal Code punishes the circulation and distribution of obscene material,¹⁰ and Section 345C on “voyeurism” states that those men who watch and capture images of women engaged in private acts, in a situation where the victim “would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator”, must be punished with imprisonment up to three years and a fine, in case of first conviction.¹¹ Moreover, it has been observed that, even where the victims consented to the capture of the image but did not consent to its dissemination to third persons, the dissemination is punishable under the same terms.¹² Lastly, article 509 of the Indian Penal Code punishes all the acts intended to outrage the modesty of a woman.¹³

STATUS OF JURISPRUDENCE IN THE COUNTRY

In *State of West Bengal v Boxi*, the Judicial Magistrate for the Tamuk District Court in West Bengal found the accused, Animeshi Boxi, guilty of uploading intimate pictures and videos of his former girlfriend, under her real name, on a pornographic website without her consent. The accused was sentenced to five years imprisonment, along with a fine of nine thousand rupees. The case is a landmark in the country, as it constitutes the first conviction for a revenge porn case, with the accused charged under several provisions of the Indian Penal Code and the Information and Technology act.¹⁴ Despite the lack of physical injury to the victims, the Court considered the victim a rape survivor and ordered compensation in favour of the victim.¹⁵ Moreover, in *Subhranshu Rout v State of Odisha*, the High Court of Orissa highlighted that “allowing objectionable photos and videos to remain on a social media platform, without the consent of a woman, is a direct affront on a woman's modesty and, more importantly, her right to privacy”.¹⁶

¹⁰ The Indian Penal Code, 1860, Section 292 <<https://indiankanoon.org/doc/1704109/>> accessed 27 April 2022.

¹¹ The Indian Penal Code, 1860, Section 345C <<https://devgan.in/ipc/section/354C/>> accessed 27 April 2022.

¹² Ibid.

¹³ The Indian Penal Code, 1860, Section 509 <<https://indiankanoon.org/doc/68146/>> accessed 27 April 2022.

¹⁴ The accused was convicted under section 354A (Sexual Harassment), section 354C (Voyeurism), Section 354D (stalking) and Section 509 (Criminal Intimidation) of Indian Penal Code (1860) and Section 66C (Identity Theft), Section 66E (Violation of Privacy) and Section 67/67A (Transmitting obscene material online) of Information Technology Act, 2000.

¹⁵ *State of West Bengal v Boxi*, CRM N. 11806 (2017),

<<https://globalfreedomofexpression.columbia.edu/cases/state-of-west-bengal-v-boxi/>> accessed 28 April 2022.

¹⁶ *Subhranshu Rout v State of Odisha* (23 November 2020), 2020 SCC OnLine Ori 878

<<https://indiankanoon.org/doc/6266786/>> accessed 28 April 2022.

COMPARISON WITH OTHER COUNTRIES

It might be helpful to assess the Indian legislative framework on Revenge Porn through comparison with the approaches followed by other countries. Several countries have recently criminalised revenge porn by enacting specific regulations, with the Philippines becoming the first country to criminalise such an act in 2009 with a punishment of three years imprisonment.¹⁷ Other countries – in particular, Japan, New Zealand, Israel, and Canada – followed the road, adopting specific legislation to deal with the non-consensual sharing of intimate images.¹⁸ The approach followed by India seems, therefore, still one step behind, as no specific legislation on the matter has been enacted to date.

CONCLUSION

Although both the Indian Penal Code and the Information and Technology Act contain provisions that may protect victims from Revenge Porn, it seems timely to introduce specific legislation recognising and punishing the offence in the country, following the example of the Philippines and several other countries. This is extremely relevant, in particular considering the increase in similar cases occurring during the last decade and the need for a legislative framework to speed justice when sexually explicit images of a person have been shared without consent.

¹⁷ Republic of the Philippines, Act No. 9995 defining and penalizing the crime of photo and video voyeurism, prescribing penalties therefor, and for other purposes (27 July 2009)

<https://lawphil.net/statutes/repacts/ra2010/ra_9995_2010.html> accessed 5 May 2022.

¹⁸ IPleaders, 'Revenge pornography: harms associated with it and options of redressal' (n 20).