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Revenge Pornography Legal Framework in India

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ABSTRACT

Non- consensual sharing of images and videos is on rise in India and had been stimulated by the growth of social media and the cloak of anonymity it offers. A sub-type of privacy violation and cyber harassment: non-consensual sexually explicit pictures, videos and any similar kind of data uploaded, by someone, are known as “Revenge Pornography”. It covers images shared on and offline without the subject’s permission with the intent to cause harm. Physical distribution of images will also be covered. It is a terrible abuse of trust, which can leave the victims feeling humiliated and degraded.

With the enhanced potentiality of the Internet coupled with the practice of sharing intimate pictures between lovers has given rise to crimes like “Revenge Porn”. Revenge porn has grabbed the attention of law enforcement agencies and has been in limelight from past few years. As the reports shows the figures of how far revenge pornography has grown along with the gravity of the consequences on the victim and its family.

Keeping all into considerations his research paper emphasizes on the existing legal framework available in India as well as globally, felicitating remedy to the victims, and various challenges that comes in the way of the victim to seek justice. Insufficient laws, lack of awareness and trainings, lack of combatting skills to name a few. This study also seeks to have regard with the psychology of the perpetrators, thereby extracting a possible result to combat revenge pornography.

Keywords- *Revenge Pornography, Legal Framework, Revenge Psychology, Challenges, Combat Strategies, Remedies, obscenity, online abuse.*

I. INTRODUCTION

With the borderless nature of the internet², the scope of state’s interference regarding individuals and their actions has become ever more relevant, as technology has brought about challenges in regard to the jurisdiction and enforcement of the domestic legislations and human rights obligations³. Also, it has undermined the relationship between legally significant online

¹ Author is a Founder at Cyber Law Consulting, India.

² Johnson, David R. and Post, David G. Law and Borders: The Rise of Law in Cyberspace. 48 Stanford Law Reviews 1367.1996.

³ Bjarnadóttir, M., 2021. *Does the Internet Limit Human Rights Protection? The Case of Revenge Porn.* [online]

phenomenon and physical location.

With enhanced scope and no territorial boundaries of the internet, it has brought the possibilities of enhanced distribution but its dark side is: online revenge porn has grabbed more attention as the act can not only shatter the victim but also can cause the serious consequences for the victim.⁴

So these pose a question concerning the state liabilities, as to what extent state's obligation for protection of human rights lie. Whether human rights obligations of state are being upheld in online sphere, or if going online enacts a different standard for states to measure up to.⁵

Revenge porn has already created a challenge in terms of understanding its definition.

According to Citron- the term has been used as an acronym for unconsented distribution of sexual or intimate material, often with personal information linked with an intent to cause harm or damage of reputation of the depicted person.⁶

According to Alyse Dickson- 'the term 'revenge pornography' is often understood exclusively in terms of the *distribution* of intimate images, yet such practices also encompass the *creation* of images without consent which includes -the covert filming, recording or photographing of another person as well as the *threats to distribute* nude, sexual or sexually explicit images.⁷

It is also named as 'image-based sexual exploitation' or 'image-based sexual abuse'. It is possible that the intimate image may have been originally obtained with or without the consent of a victim. Where, Images taken without consent includes images illegally obtained through hidden camera devices and images stolen from a person's online storage, computer or other device.

More recently, new form of image-based sexual abuse known as 'Parasite Porn' and 'morph porn' have been emerged. In these types of examples, harmless social photographs of victims are stolen, copied and uploaded onto pornography sites are known as 'parasite porn'; or a victim's face is copied, cropped and pasted onto the body of another person who is engaging in explicit sexual acts are known as 'morph porn'. It is very important to note revenge is not always the only motive of the perpetrator. Generally, the distribution of intimate pictures will be done by either current or former partner as a form of domestic abuse. In order to prevent

Jipitec.eu. Available at: <<https://www.jipitec.eu/issues/jipitec-7-3-2016/4509>> [Accessed 7 August 2021].

⁴ Citron, D.K. Hate Crimes in Cyberspace 2014. Harvard University Press and Hill. "Cyber-misogyny. Should revenge porn be regulated in Scotland and if so, how? SCRIPTED, 2:12.2015

⁵ María Rún Bjanrnadóttir, Does the Internet Limit Human Rights Protection? The Case of Revenge Porn, <https://www.jipitec.eu/issues/jipitec-7-3-2016/4509/#N1005F>

⁶ *Id.*

⁷ Alyse Dickson, 'REVENGE PORN: A VICTIM FOCUSED RESPONSE, Vol 2 (2016), <https://www.ojs.unisa.edu.au/index.php/uslr/article/view/1357>

their partner from leaving the relationship, partners threaten to publish intimate pictures. ⁸

So, it is to be summed up that revenge porn comes under the umbrella of non- consensual pornography⁹, but it is also to note that revenge is not always a key component of non-consensual pornography.¹⁰ The perpetrator sometimes links the images by personal information about the subject including full name, address and links to their social media profiles. The offence applies both to offline and to images, which have been shared electronically or in a more traditional way, including the upload on the Internet, sharing, by messages, e-mail.¹¹

In USA, in the year of 1980, someone at Hustler Magazine had the idea to start Beaver Hunt, a contest that published reader-submitter images of naked women. Beaver Hunt photos were often accompanied by details of women: her hobbies, her sexual fantasies, and sometime her name, sometimes without the consent of the women depicted. The publishing of such photos in the magazine was banned in 1980 when one of the women featured sued the magazine for uncontested publication of her pictures. ¹² Researches have shown that 90% of the victim of non-consensual pornography are women.¹³

There are number of websites which offers users to submit nude photos and encourages users by availing a luring advertisement, which ensures not only anonymity but also 100% untraceable activities. These websites often include forums that allow others to leave derogatory or salacious comments about the women in the photos.

The first revenge porn website—*isanyoneup.com*—was created in 2010 by Hunter Moore. In a 3-month period in 2011, the website received 10,000 photo sub- missions.

The website was eventually shut down after Moore sold the website to an anti-bullying organization for an undisclosed amount, citing “legal hassles” and underage pornography submissions as reasons for selling the website. However, several other nonconsensual

⁸ Ibid 6

⁹ Samantha bates (2016), <https://www.biscmi.org/wp-content/uploads/2016/08/Revenge-Porn-and-Mental-Health-A-Qualitative-Analysis-of-the-Mental-Health-Effects-of-Revenge-Porn-on-Female-Survivors.pdf>

¹⁰ María Rún Bjanrnadóttir, Does the Internet Limit Human Rights Protection? The Case of Revenge Porn, <https://www.jipitec.eu/issues/jipitec-7-3-2016/4509/#N1005F>

¹¹ Assets.publishing.service.gov.uk. 2021. REVENGE PORN: The Facts. [online] Available at: <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/405286/revenge-porn-factsheet.pdf> [Accessed 7 August 2021].

¹² *Lanjuan and Billy Wood vs. Hustler Magazine* 736 F2d 1084 (5th cir.1984) <http://www.ecases.us/case/ca5/c437275/lajuan-and-billy-wood-v-hustler-magazine-inc>.

¹³ According to a survey in 2015 by the Cyber Civil Rights Initiative: <https://www.cybercivilrights.org/wp-content/uploads/2014/12/RPStatistics.pdf>. (NB this survey used a convenience sample of 1,606 respondents).

pornography websites have since been created and have gained a large following.¹⁴

II. REVENGE PSYCHOLOGY

Historically there were two basic schools of thoughts on revenge. The Bible instructs us to give “life for life, eye for an eye, tooth for tooth, hand for hand, foot for foot” to punish an offender. But more than 2000 years later, Martin Luther King Jr., responded, “The old law of “an eye for an eye” leaves everybody blind”.¹⁵

Researchers explores the mental machinery behind revenge, it says that it can turns to be both can be depending on who are where you are. Like if you are a powerful person, revenge can serve to remind others you’re not to be trifled with, if you live in a society where the rule of law is weak, revenge provides a way to keep order.¹⁶

Research have shown that people who are more vengeful tends to be those who are motivated by authority, by power and by desire for the status.

Carlsmith says the reason revenge may stroke anger’s flames may lie in our ruminations, when we don’t get revenge; we are able to minimize the event.

But when we do get revenge we can no longer trivialize the event. So rather than providing closure, it does opposite: it keeps the wound open and fresh.

Researchers having made use combination of behavioral, neurological and pharmacological techniques, shows that serotonin system in humans alters costly punishment decisions by manipulating responses to fairness and retaliation in the striatum. Individuals with depleted serotonin, are more likely to punish those treated them unfairly and were slower to accept exchanges.¹⁷

Neuroimaging data revealed activations in the ventral and dorsal striatum that were associated with fairness and punishment respectively. Thereby, depletion reduced activations in ventral and striatum responses to fairness and increased dorsal striatal serotonin modulates specific retaliation, rather than general norm enforcement: depleted participants are more likely to punish unfair behavior directed towards themselves, but unfair behavior directed towards others.¹⁸

¹⁴ Samantha Bates, *Revenge Porn and Mental Health: A Qualitative Analysis of the Mental Health Effects of Revenge Porn on Female Survivors* <http://journals.sagepub.com/doi/pdf/10.1177/1557085116654565>

¹⁵ Micheal Price, 2009, Vol 40, No. 6, *Revenge And The People who seeks it*. <http://www.apa.org/monitor/2009/06/revenge.aspx>

¹⁶ Supra note 18.

¹⁷ Supra.

¹⁸ Crockett, 2013 Feb, *Serotonin modulates striatal responses to fairness and retaliation in humans*, <https://www.ncbi.nlm.nih.gov/pubmed/23426678>

Revenge porn generally includes an ex-partner uploading naked photos that were shared in a romantic relationship through electronic means. According to Samimi & Alderson, individuals who are in committed and romantic relationships are more likely to share sexts than individuals who are not in relationships.¹⁹

Sharing, or threatening to share intimate pictures or videos of someone without their consent causes devastating harm to victims and it is absolutely right that the law should reflect this.

Research shows revenge is not the only motive, which always persists. However, there are some other objectives, which pave the way. Hacking into phones of women to obtain nude photos and then extort them by pressuring to pay a fee to have their photos removed.²⁰

In order to reduce the emotional impacts of non-consensual pornography, some women tend to delete their social media accounts, prevent them from the society. And it often leads to separation of women from positive social connections with friends and family.

Research on this showed that most victims of this crime suffered long term anxiety, and some mentioned feelings of self-harm and suicide because their intimate images were shared without their consent.

"The fear and anxiety it creates can creep into every corner of a victim's life and relationships. It's absolutely unacceptable and it is never the victim's fault"²¹

Research indicates that revenge pornography occurs in the context of relationship breakdowns, which leads to the situation where one individual may upload private, sexually explicit images online causing distress to victim²².

III. STATES STATUTES OF REVENGE PORN

Before Information Technology (Amendment) Act, 2008 section 67 was the only provision available which prohibited the publications of obscene material including pornography and obscenity. However, after the 2008 amendment-

“Intermediary liabilities under Information Technology (Intermediary Guidelines) Rules 2011” has been notified on April 11, 2011²³ that prescribe, amongst other things, guidelines for

¹⁹ Samimi, P., & Alderson, K. (2014). Sexting Among undergraduate students Computers in Human Behavior, 31, 230-241.

²⁰ Samantha bates, 2016, <https://www.biscmi.org/wp-content/uploads/2016/08/Revenge-Porn-and-Mental-Health-A-Qualitative-Analysis-of-the-Mental-Health-Effects-of-Revenge-Porn-on-Female-Survivors.pdf>

²¹ BBC News. 2021. *New 'revenge porn' law comes into force in Scotland*. [online] Available at: <<https://www.bbc.com/news/uk-scotland-40473912>> [Accessed 7 August 2021].

²² Keep Calm Talk Law. 2021. *Preventing Revenge Porn | Keep Calm Talk Law*. [online] Available at: <<http://www.keepcalmtalklaw.co.uk/preventing-revenge-porn/>> [Accessed 7 August 2021].

²³ Intermediary liabilities under Information Technology (Intermediary Guidelines) Rules 2011, Available at

administration of takedown by intermediaries.

Under “Section 2(w) of Information Technology Act, 2000” intermediary is defined- "intermediary" with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message;

“Section 79 of the IT, Act 2000”²⁴ is read as- For the removal of doubts, it is hereby declared that no person providing any service as a network service provider shall be liable under this Act, rules or regulations made thereunder for any third party information or data made available by him if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention.

However, they may be held responsible if then “select or modify” the information contained.

“Under Intermediary liabilities under Information Technology (Intermediary Guidelines) Rules 2011, by Rule 3 “an intermediary has not only to publish the rules and regulations, privacy policy and user agreement for access or usage of the intermediary's computer resource but he has also to inform all users of the various matters set out in Rule 3(2).

It is to be noted, India is signatory to the Convention on the Right of the Child (CRC) and ratify the optional protocol on the state of children, child prostitution and child pornography. Therefore, section 67-B was added to the IT Act, 2000. Section 67-B criminalizes every type of pornography.²⁵

Under section 69-A of Information Technology Act, 2000 and the Rules under Section 69A, where Central Government or its officer appointed can issue directions to other government agencies and intermediaries to block such information for public access if it is in the interest of the State.

Section 67A and 67B are the only sections which are “non- bailable” as per section 77B of the Act, whereas others are bailable.

In the case of *State of West Bengal VS Animesh Boxi @ Ani Boxi @ Ani Bokshi*²⁶ -The crime took place in Tamluk, East Midnapore, where the girl, a first year college student, and her male

<http://www.wipo.int/edocs/lexdocs/laws/en/in/in099en.pdf>

²⁴ The Information Technology Act, 2000, Available at: http://meity.gov.in/writereaddata/ta/files/it_amendment_act2008%20%281%29_0.pdf

²⁵ Chauhan, S., 2021. *Combating cyber obscenity in india and united states of america: a comparative analysis*. [online] Available at: <http://docs.manupatra.in/newslines/articles/Upload/0F834309-331E-4716-BE09-B2CC64317972.%20Combating%20Cyber_%20cyber%20law.pdf> [Accessed 7 August 2021].

²⁶ State of West Bengal v. Animesh Boxi @ Ani Boxi @ Ani Bokshi 2018, cal. (India)

neighbor, a B.Tech student, shared a relationship. Where the victim was in the relation with the Animesh (accused) for three years, victim developed trust and love for Animesh, so sent him personal pictures when asked by him. Also, he used to ask her out and had access of her phone and unlocked password, which he got from her diary. After Later on, when she denied giving him pictures, he threatened her to upload her pictures on the Internet. She realized that the guy is not good and stopped contacting him. The guy uploaded her personal photographs on the Internet, as a revenge of anger as she denied him to send her photographs. That the accused namely Animesh Boxi @ Ani Boxi @ Ani Bokshi is found guilty of the offence u/s 354A/354C/354D/509 of Indian Penal Code and under sections 66E/66C/67/67A Information Technology Act, 2000 (Amendment 2008) and thereby convicted under the provisions of section 248 (2) of Cr. PC. Animesh Boxi, has been sentenced to five years' imprisonment and Rs 9,000 fine. "The girl is also eligible for state compensation, as is the norm in rape cases. This might be the first case in India where the target of a virtual crime is getting such a compensation," he added.

In this particular case, the judgment was pronounced within six months and it is first such case of conviction by the state for cybercrime against women. It is a progressive step that Indian judiciary has started dealing with such cases efficiently and also focusing on its speedy disposal. In India revenge porn is crime, punishable with between 3-7 years' imprisonment and a fine upto 10 lakhs under the IT Act, 2000 and Indian Penal code, 1860.

So long as the content was published without consent, it is punishable under Sections 66E, 67, 67A of the IT Act and Section 354C of the IPC.²⁷The same apply to images captured without consent.

Apart from the above, there is a parallel set of obligations for network service providers, which has its genesis under the Indian Telegraph Act, 1885 ("Telegraph Act").

The Telegraph Act empowers Central Government to mandate and issue licenses for operating of telegraph services (which includes providing internet access). Such a license is not required in the case of online platforms or similar services, or any intermediary, which does not provide Internet access. The licenses under which network providers operate, namely the Internet Service Providers License and the

United License, ("Telecom Licenses") also govern intermediary liability for hosting third party

²⁷ Asheeta Regidi, New laws for revenge porn to be introduced: We have a look at some of the required changes, June 03, 2017 at 11:48 AM IST, <https://www.firstpost.com/tech/news-analysis/new-laws-for-revenge-porn-to-be-introduced-we-have-a-look-at-some-of-the-required-changes-3703905.html>

content, The Telecom Licenses, inter alia, also allow the government to issue directions for content restriction.²⁸

The precise relation between the different intermediary liability rules is still vague. While Section 79 provides for an umbrella safe harbour provision from civil and criminal legal liability, the license conditions are contractual and breach of the same could entail the termination or revocation of the ISP's license by the Department of Telecommunications.

Further, the relationship between liability for copyright infringement and the liability under the IT Act is also unclear. The Delhi High Court in the case of *Myspace vs. Super Cassettes*,²⁹ held that the "safe harbour provisions are applicable to intermediaries in the case of copyright infringement, however, the court decision still leaves the applicable standards for intermediary liability under copyright law unclear, as will be discussed subsequently".

IV. CIVIL AND CRIMINAL LAWS

Civil damages are one of the remedies available to the victims of sexual assault. Other remedies available are under criminal laws, torts, copyright law and human rights. Victims tend to use harassment, privacy and stalking laws to punish perpetrators and get images removed. However, tort law is ill equipped and insufficient to address and to deal with such crimes in a proper way.

Using civil laws, victim can get an order of injunction from court, thereby preventing an uploader to further spread/ upload the content. But yet, victim is not solely looking for injunctions, monetary damages or other civil penalties, which are availed under civil laws. Instead, the victims are seeking to get images removed or taken down immediately, as a priority. However, there is no such legislation passed by any country, which provides radical solutions.

Although there are various others civil and criminal laws apply to revenge porn, some scholars argue that those laws are often insufficient and are hindered by law enforcement agencies- suggests that specific legislation is required to curb this crime.

Yet many countries have adopted specific laws to curb revenge porn.

New jersey was the first state in 2003 to adopt a criminal invasion of privacy statute,³⁰ making

²⁸ Rishabh Dara, *Intermediary Liability in India: Chilling Effects on Free Expression on the Internet* (2011), <https://cis-india.org/internet-governance/intermediary-liability-in-india.pdf/view>

²⁹ *My Space Inc. vs. Super Cassettes Industries Ltd.* On 23 Dec., 2016 Available at: <https://indiankanoon.org/doc/12972852/>

³⁰ Paul Larkin, *Revenge Porn State Law, and Free Speech*, 48 *Loy. L.A.L.Rev.*57 (2014), Available at: https://www.researchgate.net/publication/272246825_%27Revenge_Porn%27_State_Law_and_Free_Speech

it a felony to disclose a person's nude videos/ images even after knowing that he or she does not have the permission to do so. It targets specially at video voyeurs, people who secretly videotape others naked or having sex without the consent.

However, s. 230 of communication decency act, provides immunity to the internet service providers and says that ISPS'S and websites cannot be treated as publishers for any information provided by another information content provider. So with little or no legal recourse, the victims are oftently left helpless and humiliated.

V. COPYRIGHT LAWS

Copyright is a powerful tort. There is a continuous debates and struggle by scholars to figure out what all laws will be best suited as a remedy seeking to curb down the revenge porn. Technology today makes it easier to destroy someone's life with a single button or with a single tap of the mouse. However, its consequences are very much devastating which leads to emotional distress, tear apart families, and end of career and in worst case it has led to suicide.

What is even more awful that many predators have acknowledge gleefully that victims do not have any resort fight back to³¹. Unfortunately, that's true, the law in this area is still insufficient, "said Elisa D'Amico, lawyer who specializes in Internet privacy and abuse.

With the increase of revenge porn, legal theorists have been researching and opined on the potential legal remedies that may be used to combat it. With each remedy, strengths to combat with it have been increased and the amount of exploitation by abuse has been reduced. 80% of the revenge porn images are selfies. So majority of the authors have the copyright for their content. Copyrights protect the original work of the author, which includes photographs.³² So, the recourse of copyright is available to the depicted person or a victim.

Section 2 (c) of the copyright Act, 1957 – Photographs has been included under the subject matter of artistic work³³and they're by subject matter of copyright by virtue of cascading effect of section 13(a) of the copyright act, 1957. However, remedies available against copyright infringement include civil, criminal and administrative remedies. Under section (54-62)³⁴injunction, damages, and delivering of infringing copies are given. Under section (63-66)

³¹ Congresswoman Jackie Speier. 2021. *Rep Speier and Sens Harris, Burr, and Klobuchar Introduce Bipartisan Bill to Address Online Exploitation of Private Images*. [online] Available at: <<https://speier.house.gov/media-center/press-releases/rep-speier-and-sens-harris-burr-and-klobuchar-introduce-bipartisan-bill>> [Accessed 7 August 2021].

³² Wipo.int. 2021. *WIPO Lex*. [online] Available at: <http://www.wipo.int/wipolex/en/text.jsp?File_id=208015#LinkTarget_1034> [Accessed 7 August 2021].

³³ Section 2(c), Indian Copyright Act, 1957, http://mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/CprAct.pdf

³⁴ Chapter XII, Indian Copyright Act, 1957, http://mhrd.gov.in/sites/upload_files/mhrd/files/upload_docume

³⁵deals with imprisonment of accused person or imposition of fine or both, seizure of infringing copies is given. Administrative remedies ³⁶consists of moving the Registrar of Copyrights to ban the imports of infringing copies into India and delivery of infringing copies confiscated to the owner of the copyright.

The California case one of the first cases filed by cyber civil rights legal project, to litigate against online harassment and un-consensual posting of sexual explicit photographs. The federal court held that the sexually explicit images are infringement of copyrights because she took them herself. The accused was held guilty and was fined \$ 450,000 for online copyright infringement, \$ 3 million for other damages including stalking and online impersonation with intent to cause harm.³⁷

So if an image is a “selfie” or self-portrait, the victim owns the copyright automatically. Without registering it, he or she can approach for takedown notice to the website’s operator under the DMCA. It doesn’t necessarily require lawyer’s help or court’s order, which makes it an instant remedy.

VI. STATUES IN OTHER STATES

The English courts have moved toward recognition of a distinct tort, which are capable of responding to advanced technology, which gives a possibility for intrusion into the personal lives of private individuals.³⁸

Due to the borderless nature of the Internet, crimes like revenge porn crosses international boundaries. And to combat with these crimes many countries have adopted revenge porn laws. Although there was no specific law for the protection of revenge porn. There are various acts, which could be used to provide protection in some cases. The protection from harassment Act, 1997 ³⁹prohibits a course of conduct, which requires that the harassment took place on one or more occasions.

nt/CprAct.pdf

³⁵ Chapter XIII, Indian Copyright Act, 1957, http://mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/CprAct.pdf

³⁶ Chapter XV, Indian Copyright Act, 1957, http://mhrd.gov.in/sites/upload_files/mhrd/files/upload_document/CprAct.pdf

³⁷ Nytimes.com. 2021. *\$6.4 Million Judgment in Revenge Porn Case Is Among Largest Ever (Published 2018)*. [online] Available at: <<https://www.nytimes.com/2018/04/11/us/revenge-porn-california.html>> [Accessed 7 August 2021].

³⁸ Paula Giliker, A Common Law Tort of Privacy, (2015) 27 SAclJ, <http://journalonline.academypublishing.org.sg/Journals/Singapore-Academy-of-Law-Journal-Special-Issue/e-Archive/ctl/eFirstSALPDFJournalView/mid/513/ArticleId/1070/Citation/JournalsOnlinePDF>

³⁹ Legislation.gov.uk. 2021. *Protection from Harassment Act 1997*. [online] Available at: <<https://www.legislation.gov.uk/ukpga/1997/40>> [Accessed 7 August 2021].

Further protection can be found under section 1 of the Malicious Communications Act 1988⁴⁰, which outlaws communications by way of letter, electronic communication or articles of any description which are grossly indecent or offensive, obscene or convey a false threat, provided there is an intention to cause distress or anxiety to the victim.

Additionally, s. 127 of the Communications Act 2003⁴¹ outlaws communications sent by means of a public electronic communications network, which includes messages that are indecent or grossly offensive, obscene or menacing, or false, for the purpose of causing annoyance, inconvenience or needless anxiety to another. There is every reason to treat the images involved with revenge porn as indecent and sent for the purpose of causing annoyance and needless anxiety.⁴²

However, the concern is existing legal framework does not specifically provide the required protection to crimes like revenge porn.

Currently New Jersey, Alaska and California have passed legislations – specifically addressing distribution of sexually explicit images without the consent of the individual and other 13 states are considering similar legislations. However, under various other laws also- abuser/ offender may be held accountable. Stalking, harassment, hacking, illegal surveillance, image theft, defamation, violation of privacy and confidentially are some laws which can be made use of depending upon the details of the case.⁴³

Scottish government comes up *The Abusive Behavior and Sexual Harm Act*, which now make it possible to prosecute revenge porn easily. The new legislation in Scotland makes it an offence to “disclose or, threaten to disclose, an intimate photograph or film without the consent.”⁴⁴ Under the new law, the offenders can be jailed up to 5 years.

In 2014 the UK Crown Prosecution service issued guidelines on how to prosecute cases of revenge porn. It states that such acts could fall within the scope of existing legislations even if there is not a specific existing legislation to criminalize revenge porn.⁴⁵

⁴⁰ Legislation.gov.uk. 2021. *Malicious Communications Act 1988*. [online] Available at: <<https://www.legislation.gov.uk/ukpga/1988/27/contents>> [Accessed 7 August 2021].

⁴¹ Legislation.gov.uk. 2021. *Communications Act 2003*. [online] Available at: <<https://www.legislation.gov.uk/ukpga/2003/21/section/127>> [Accessed 7 August 2021].

⁴² Keep Calm Talk Law. 2021. *Preventing Revenge Porn | Keep Calm Talk Law*. [online] Available at: <<http://www.keepcalmtalklaw.co.uk/preventing-revenge-porn/>> [Accessed 7 August 2021].

⁴³ NNEDV. 2021. *Images, Consent, and Abuse - NNEDV*. [online] Available at: <<https://nnedv.org/mdocs-posts/images-consent-abuse/>> [Accessed 7 August 2021].

⁴⁴ Legislation.gov.uk. 2021. *The Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (Commencement No. 1 and Transitional Provision) Regulations 2017*. [online] Available at: <<http://www.legislation.gov.uk/ssi/2017/93/made>> [Accessed 7 August 2021].

⁴⁵ Bjarnadóttir, M., 2021. *Does the Internet Limit Human Rights Protection? The Case of Revenge Porn*. [online] Jipitec.eu. Available at: <<https://www.jipitec.eu/issues/jipitec-7-3-2016/4509>> [Accessed 7 August 2021].

England and Wales also come up with the new legislation. Under the new legislation, it will soon be easier to prosecute instances of revenge porn. Those found guilty, can be sentenced upto 2 years in prison or fine.

The Ministry of Justice is launching a campaign named as Be Aware B4 You Shate aimed at raising awareness of the new legislation Surrounding Revenge Porn. This campaign aims making it clear to the potential perpetrators that sharing of explicit images, without consent is a crime and will be prosecuted. It also advise victims to report the crime to the police.⁴⁶

VII. SUGGESTIONS

There are various websites and forums that give services to get services removed. Recourse available to remove content is to fill a DMCA form or is generally known as the take down notice.

Google also provides support to remove content⁴⁷, so if the content is removed or deleted from a particular website but it still shows in Google search result. Request may be made to Google to remove outdated content or the content which has been removed from the website.

Facebook⁴⁸, Twitter⁴⁹, Instagram⁵⁰ provides forum to report violation of community guidelines well as report for harassment or bullying.

In exercise of the provisions of Section 67 and Section 88 of the Information Technology Act, 2000 (21 of 2000), the Central Government, after consultation with the Cyber Regulations Advisory Committee, hereby prescribes the following procedure for blocking of websites: -

1. Computer Emergency Response Team -

India (CERT-IND) shall be the single authority for issue of instructions in the context of blocking of websites. CERT-IND, after verifying the authenticity of the complaint and after satisfying that action of blocking of website is absolutely essential, shall instruct Department of Telecommunications (DOT) - (LR Cell) to block the website. DOT, under whose control the Internet Service Providers (ISPs) are functioning will ensure the blocking of websites and inform CERT-IND accordingly.

⁴⁶ Ibid

⁴⁷ Support.google.com. 2021. *Remove outdated content - Google Search Help*. [online] Available at: <<https://support.google.com/websearch/answer/6349986?hl=en>> [Accessed 7 August 2021].

⁴⁸ Facebook.com. 2021. *Reporting Abuse | Facebook Help Centre*. [online] Available at: <https://www.facebook.com/help/1753719584844061?helpref=hc_global_nav> [Accessed 7 August 2021].

⁴⁹ Help.twitter.com. 2021. *DMCA*. [online] Available at: <<https://help.twitter.com/forms/dmca>> [Accessed 7 August 2021].

⁵⁰ Help.instagram.com. 2021. *Instagram Help Centre*. [online] Available at: <https://help.instagram.com/contact/383679321740945?helpref=faq_content> [Accessed 7 August 2021].

2. CERT could be approached by the -

- i. Secretary, National Security Council Secretariat (NSCS).
- ii. Secretary, Ministry of Home Affairs, Government of India.
- iii. Foreign Secretary in the Department of External Affairs or a representative not below the rank of Joint Secretary.
- iv. Secretaries, Departments of Home Affairs of each of the States and of the Union Territories.
- v. Central Bureau of Investigation (CBI), Intelligence Bureau (IB), Director General of Police of all the States and such other enforcement agencies.
- vi. Secretaries of Heads of all the Information Technology Departments of all the States and Union Territories not below the rank of Joint Secretary of Central Government.
- vii. Chairman of the National Human Rights Commission or Minorities Commission or Scheduled Castes or Scheduled Tribes Commission or National Women Commission.
- viii. The directives of the Courts.
- ix. The Government may specify any others as.

Under section 69-A of the Information Technology Act 2000, the central government has power to issue directions for blocking for public access of any information through any computer resource. In other words, it allows the government to block any websites under certain grounds.

The Government has notified rules laying down the procedure for blocking access online under the Procedure and Safeguards for Blocking for Access of Information by Public Rules, 2009.

To be read with rule 3 of The Information Technology (Procedure and Safeguards For Blocking For Access of Information By Public) Rules, 2009,

Central Government authorizes and designates the Group coordinator (being an officer of the Central Government not below the rank of Joint Secretary), cyberlaw Division in the Department of Information Technology, Ministry of communication and Information Technology, Ministry of Communication and Information Technology, Government of India as the designated officer for the purpose of said rules.⁵¹

Under section 6 of the Information Technology (Procedure and Safeguards For Blocking For

⁵¹Available at: http://meity.gov.in/writereaddata/files/Designated%20officer_69A_IT_Act.pdf

Access of Information By Public) Rules, 2009,⁵² any person may approach the Nodal Officer of the concerned organization and request blocking, alternatively, Nodal Officer may also raise a blocking request.

After the organization is of the respective agency is satisfied of the validity of the request they forward it to the Nodal officer.

Request when not sent through Nodal officer of the organization, must be approved by chief secretary of the state or Union Territory or the advisor to the administrator of the Union Territory before sent to the designated officer.

Rule 9 outlines the procedure of blocking of information in the cases of emergency- after Designated officer has established the necessity and expediency to block alleged information, submits recommendations in writing to the secretary, Deity.

If the secretary is satisfied by the justification for and necessity of and expediency to block information may issue blocking directions as an interim measure and must record the reason for doing so in writing.

Rule 10 outlines the process when the courts in India issue an order. The designated officer upon receipt of the court order for blocking of information submits it to the secretary, Deity and initiates action as directed by the courts.⁵³

VIII. LIMITATIONS

Like an elephant, the Internet never forgets. Information that is stored in cloud potentially lives forever. Internet images have the half-life of Tellurium-128. It would probably good, if you are looking for an obscure video or film, but it would not be good rather horrible if your ex-boyfriend posts a compromising picture of you. Once the data is stored in the Internet, it would be impossible to delete it from the Internet, even with the consent of person who uploaded it. It is because the zeros and ones may exist in a cache owned by search engine such as Google, Yahoo, and Mozilla Fox.

So, it means once the photo is posted online, it is challenging or say next to impossible to completely remove it from the internet, which shall be interpreted as the harmful consequences

⁵²Available at: <http://meity.gov.in/writereaddata/files/Information%20Technology%20%28%20Procedure%20and%20safeguards%20for%20blocking%20for%20access%20of%20information%20by%20public%29%20Rules%2C%202009.pdf>

⁵³<https://cis-india.org/internet-governance/resources/information-technology-procedure-and-safeguards-for-blocking-for-access-of-information-by-public-rules-2009>

are continuous and long lasting⁵⁴.

It is sad to know that revenge porn figures are growing largely. Few statistics shows that the risk of revenge porn is increasing. According to a Survey made by McAfee, approx. 15% of the people has used their mobile phones to share or receive intimate text messages, emails or photos. Also the survey states that approx. 17% of the people have asked their ex to delete or remove the intimate messages that were distribute.⁵⁵

Existing law is not fully equipped to combat with such crimes. Although, states like California and New Jersey and few other states have considered bills that would make posting revenge porn a crime one way or another. But these laws have been criticized as unduly restriction on freedom of speech and expression and it does not have a requirement of actual harm the electronic frontier foundation and the American Civil Liberties Union both opposed arguing that it was unconstitutional.

Although there is a resort under copyright infringement, but researchers have told that foreign websites do not care about DMCA take down notices. Indeed, several sites have reportedly moved to overseas to prevent themselves from legal consequences.

Section 230 of CDA Recently, in *Doe v. MySpace, Inc.*,³ the United States District Court for the Western District of Texas held that the interactive website was not liable for failing to prevent an adult MySpace member from contacting and sexually assaulting a minor user. While the court's holding rightly absolved MySpace of legal responsibilities, its conferral of immunity under § 230 of the Communications Decency Act⁴ (CDA) effectively grants social-networking websites blanket immunity against all negligence claims. Though § 230 is essential to the continued growth and development of the Internet, such a broad application of its immunity provisions goes significantly beyond the legislative intent and frustrates congressional at- tempts to bring this area of the law up to speed with the modern World Wide Web.

The Australian cybercrime online reporting network (ACORN) launched in 2014 ⁵⁶is an online reporting facility that enables the public and small business to securely report cybercrime incidents. The ACORN also accepts reports of online harassment, which includes incidents of non-consensual sharing of Intimate images. The ACORN reports are further forwarded to

⁵⁴ Supra note 32

⁵⁵ Justin Pitcher, *The state of the States: The Continuing Struggle to Criminalize Revenge Porn*, P. 1435, *Love, Relationships & Technology: Don't Get Stung by BadBuzz*, MCAFEE, <http://promos.mcafee.com/offer.aspx?id=605436&culture=en-us&affid=0&cid=140624> (last visited Nov. 17, 2014).

⁵⁶Australian Cybercrime Online Reporting Network, Available at: <https://www.acorn.gov.au/support-and-advice>

federal, state or international law enforcement or regulatory agencies. In 2015, a pilot program, a facebook's initiative to fight against reveng porn, was launched in U.K named as the Revenge Porn Helpline.⁵⁷

The introduction of a helpline for adult victims of non-consensual sharing of intimate images was described as a response that could be investigated in more detail. Crimes involving sexual exploitations require respectful and sensitive handling,

Google's new policy, meanwhile, is unlikely to stir controversy. Unlike requests based on copyright or the "right to be forgotten," which people have used as a pretext to delete information in the public interest, it appears improbable that someone would try to misuse Google's revenge porn policy in similar fashion.

Asking Google to remove a search result for an unauthorized nude pictures will require people to complete a form along with the URL from the offending website. It's unclear if the form, which Google says will become available in coming weeks, can be used only by those who appear in the pictures, or if family or guardians will be able to make such requests as well.

IT Rules under Section 79 also contain provisions that are not directly related to conditions for safe harbour, and include provisions for cyber security reporting, which obligations are not appropriate within the scope of the IT Rules.

Although we have option of take down, but removing content from one website is not the end of the story.⁵⁸

IX. CONCLUSION

Facing the inability to control the flow of electrons across physical borders, some authorities strive to introduce their boundaries into new electronic medium through filtering mechanisms and the establishments to electronic barriers.

Others have asserted the right to shut down the offending web page accessible from within the state.

Government cannot stop electronic communication coming across their borders, even if they want to do. Nor they can claim to regulate the net based on local harms caused by the activities that were originated outside their borders and that travel electronically to many different

⁵⁷ <https://www.firstpost.com/tech/news-analysis/facebook-is-proactively-fighting-revenge-porn-on-its-platform-by-using-specially-trained-professional-reviewers-4204465.html>

⁵⁸ https://www.jstor.org/stable/24596122?read-now=1&refreqid=excelsior%3A699576452c0d0a3a31c55f8fbd05db16&seq=6#page_scan_tab_contents

nations. Therefore, one nation's legal institutions shall not monopolize rule making for the entire net.

So, the local legal authorities must have authority to remedy the problems created in the physical world by those acting on the Net.

Also, it is important of development of laws to criminalize the actions of websites and online forum administrators who uploads intimate image without consent.

The education plays an important role in eliminating victim blames and shifting the situation wherein the victims of revenge porn feel able to come forward to report to police and seek support. Instead of blaming the victim who is not responsible for the actions of the perpetrator, the community must be educated that this is a crime.

So, education is necessary to combat the myths associated with revenge porn.

Law enforcement agencies faces a major challenge in front of them due to insufficient or absence of legislations which enable them to formally pursue complaints and allegations of revenge porn or in some other cases lack of evidence makes Investigations week. The global nature of the Internet, with no territorial control presents jurisdictional challenges and overseas law enforcement agencies may not take an interest, when issues are referred for investigation.
