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**REVENGE PORN AND ITS SOCIO LEGAL ANALYSIS**

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**REVENGE PORN: A SOCIO LEGAL ANALYSIS**

**INTRODUCTION**

In order to start off with the work, one important aspect needs to be covered. What distinguishes cyber-crime from traditional criminal activity? The difference basically comes to the picture as cyber-crime takes place when a criminal uses a digital computer or a network. In this case, it determines that technology is the only distinguishing factor when it comes to cyber-crimes. Various kinds of criminal activities have been pertaining in the society since time immemorial. But with cyberspace, new kinds of criminal activities have come to light. Violating someone's privacy, infringing intellectual property rights, child pornography or revenge pornography have started to exist in the recent times. It can be said that cyber-crime is an extension to traditional criminal activities.

Would anybody ever like to see their nude or semi-nude pictures on their favourite social networking websites or other lascivious websites without their consent where there is a never ending audience? The answer to this would be 'no' for any sane person who's in their right mind. This is like the worst nightmare one can expect.

It may begin with sexting by the victim herself; she may send her nude, semi-nude image to her partner or boyfriend. It may also be the case whereby she may gain confidence to send her private images to the concerned 'partner'. The phone or any other device acts as a weapon against the victim when the perpetrator decides to take revenge.

''Technological progress is like an axe in the hands of a pathological criminal.'' So, said Albert Einstein. Internet has become integral to modern lives and but unfortunately, it’s also become a haven for harassment. It has gained a major significance in the work life and now it has been making its way in the personal life as well. The internet age has given us various avenues to discover new things. It has become way too easy to express ourselves. But the misuse of this technology is no less. It has become a habit to document everything what you do in a day and post it on social media. We save our credit card number to social website passwords, never even giving it a thought about the fact whether the information might get leaked or abused. This results in different problems which creep in complex ways.

Many websites have now become a centre stage for couples to enter a new form of online abuse. Most of the time it shows the uglier side of relationships when breakups are less than cordial. Posting explicit and uncensored content on social media when one needs to get back at their partner has become a major trend in the country. The content can include pictures and videos which had been taken when a couple shared their private moments and all of this boils down to a point when rage enters the picture. This is how ‘Revenge Porn’ comes to light. Although this kind of harassment has been persistent in the society since a long time but this term has been coined recently. Online revenge porn basically means when there are breakups which happen, and then either of the party puts nude or semi-nude pictures of the other of their intimate moments on social media websites and blogs without their consent to humiliate them.

Revenge Porn is a trend that has taken over the cyberspace and has become a platform for jilted lovers to get back at each other. The one who commit these heinous acts are most of the time the people who are closest to us. Those private moments that one shared at one point of time enter the public domain when one partner decides to dump the other one.

Several cases of revenge porn have been reported in the media in the last few months. In March, a man was arrested in Ranchi for creating a fake account of his ex-girlfriend and posting explicit pictures of her along with her phone number on a social networking website. The victim had a horrifying experience when the man tagged her as a sex worker and posted intimate clippings of her following which she received dozens of calls from strange men and was forced to switch off her phone.

In another incident, a college student from Udupi was blackmailed by her boyfriend who posted pictures of them in compromising positions on social media and pornographic websites. This happened in 2014, she was horrified when she saw her pictures online.

On June 2, a man was surfing the internet when he stumbled upon a video of his friend’s sister wherein the girl was completely naked. She lived in Mumbai and it was allegedly shot by the woman’s estranged husband. He had uploaded it on an X rated site from a cyber café in Vasai. She became aware of this fact just when her brother’s friend had called. It was a complete case of Revenge Porn as it was posted after the breakdown of their marriage. Although the girl was shocked, she still reported the matter to the police. The police when arrested the man, he said he had planted a camera in the bedroom and hence made the video.

The subject matter of privacy has become so dubious in the mind of an ordinary human being because one may never even come to know when he/she is being watched. [[1]](#footnote-1)

It is better if you do not photograph yourself in such a way wherein you never want to be seen by the world. Even if you do not share the said picture or video with others, your computer can be hacked and the pictures can be extracted from there itself. Even if you allow that content to be created, ask your partner to immediately delete it.

Also, it is advised to keep your computer and laptop turned off when not in use. Hackers can be hired to activate your computer camera and capture pictures of you that you would not want leaked. If you get to know that the content has been leaked, then do not hesitate to go to the police and report it. The delay can make the pictures go viral in no time and also, then it becomes tougher to retrieve the images.

Even though the government and many international organisations are working hard in making cyber-crime a bare minimum, the question of privacy enters the arena and it is very tough to regulate the same.

'In most of the cases, the woman is the victim, though I have also dealt with cases where the man was victimised', says Pavan Duggal, Supreme Court advocate and cyber law specialist. 'What's worse, the victim is stigmatised by her family, friends and society for being a part of it. Somewhere, she too feels guilty of having allowed it.' says Suneel Vatsyayan, relationship counsellor and chairman, Nada India Foundation that works on women and child issues.[[2]](#footnote-2)

The category of crime listed as 'transmission of obscene content in electronic form' witnesses a shoot up in the number of cases with a 104.2 per cent increase from the year 2012 to 2013. The real could be in multiple figures as most of the victims don't come to the main picture as they face shame and embarrassment.

This particular offence has gone up almost five times, with the help of affordable spycams, smartphones and webcams. A higher number of cases are being reported from smaller cities where it is easier to defame a person. 'Many consenting adults in these cities are not aware of the ramifications of such content when they voluntarily engage in it', says Pavan Duggal, a cyber-expert. According to CNN, a survey of 864 individuals by Cyber Civil Rights Initiative, estimated that 80 percent of revenge porn victims shot their own pictures and videos. Even couples are okay to share their passwords which can also allow unauthorised access to intimate pictures, cautions cyber law specialist Na Vijayshankar.

**OBJECTIVE:**

The purpose of the research can be categorised as a way to gain an in depth knowledge in the area of cyber laws and particularly about the menace of revenge porn incidents. The researcher has opted for a method of using secondary sources which consists of newspapers, web sources, journals etc.

**LEGAL ASPECTS:**

The IT Act (Amended) 2008, criminalizes hosting and transmitting of obscene content.

India has no revenge porn laws of its own; it entirely depends on Information Technology Act which has Sections 67, 67A and 66A that makes online publication of inappropriate material a punishable offence. Section 66E of the same act deals with punishment for violation of privacy, and explicitly forbids capturing, publishing or transmitting 'the image of a private area of any person without his or her consent.'

Section 67 of IT Act reads as:

[ 67 Punishment for publishing or transmitting obscene material in electronic form. -Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees. ][[3]](#footnote-3)

Computer alteration of images and the potential for creating computer generated pornography pose irrecoverable challenges for courts throughout the world.

Section 66A reads: "Any person who sends by any means of a computer resource any information that is grossly offensive or has a menacing character; or any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult shall be punishable with imprisonment for a term which may extend to three years and with fine."[[4]](#footnote-4)

The Supreme Court quashed Section 66A of the Information Technology Act 2000 in 2015 which provides the government the power to arrest a person for posting allegedly ''offensive'' content on websites. This section has been misused by police in various areas to arrest innocent people for posting critical comments about social and political issues and about political leaders on social networking websites. The Supreme Court also gave its verdict that Section 66A is violative of Article 19(1)(a) of the Constitution guaranteeing freedom of speech and expression. The court also asked the government to block websites if their contents had the potential to create social disorder or communal disturbance. The problem arose where the vagueness started. What is offensive for one is not offensive for the other. Thus, it started to come up as a very vague term. The court said terms like 'annoying' and 'inconvenient' which are not very particular as it is difficult for the law enforcement agency to know the ingredients of the offence.

Section 354C of Chapter XVI of Indian penal Code defines Voyeurism as ''Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.''[[5]](#footnote-5) This is offered through the Criminal Amendment Act, 2013.

Voyeurism also talks about the infringement of basic right to privacy. With this act, people hinder into the lives of other people and captures moments which the other person would not want them to see.

Also, victims can book cases of defamation under Section 500 and 506 of Indian Penal Code. Their reputation is shattered when those private and inappropriate images leave their private space and enter the public zone. Criminal charges can be filed under 504 too which says ''Intentional insult with intent to provoke breach of the peace.—Whoever intentionally insults, and thereby gives provoca­tion to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.'' The privacy (protection) bill, 2013 deals with storage, collection, destruction, processing and disclosure of personal data. The bill bars interception of any kind of communication of another person except in accordance with an order by Chief Privacy Commissioner, in which case the person whose communication has been intercepted is duly notified. The reason is given out for the same in the manner prescribed. It puts restrictions on surveillance by state except for the matters of national security and investigation reasons.

All these provisions have helped victims to take some action against the issue of revenge porn. However, the IT act does not carry any provisions in order for the victims to take down obscene content from the internet that has been posted as a way of revenge.

The Copyright Act, 1957 that has been labelled as a possible source of relief is a remedy in cases of revenge porn. The Copyright Act ultimately provides protection to any original literary, musical and artistic works and sound recordings. It might seem like a good option, as far is this menace is concerned; it does not provide any solid remedy to the victim.

**JURISDICTION:**

When it's the question of cyber-crime such as revenge porn, the jurisdiction issues are humongous. Criminal activities could occur in jurisdictions separated by vast distances. This poses a drift in law enforcement as since previously, more or less local crimes require international cooperation.

The jurisdictional principle of IPC based on nationality and territoriality has been enhanced by the IT Act, 2000.

**ANALYSIS:**

The above-mentioned data only gives rise to multiple number of questions popping in one’s mind about the competency of Indian Information Technology and other cyber laws. In the era of internet, one thing is clear that it is tough to remove what once has been posted on the internet. Because of the unique nature of the internet medium, it is difficult if not impossible to completely obliterate something posted on the internet. So even if you can get one website to take down certain images that are defamatory in nature, there is a high possibility that other websites have already copied and posted them.

There is a major misunderstanding that our activities on the web are secure to the only people exchanging information. When a person is using the internet, the user's actions are no longer in his or her physical home; in fact, he or she is not acting in private space at all. The user is usually accessing the internet with a network account and computer storage owned by an ISP like Comcast or NetZero. All materials stored online, whether they are e-mails or remotely stored documents, are physically stored on servers owned by an ISP. When we send an e-mail from the comfort of our own homes to a friend across town the message travels from our computer to computers owned by a third party, the ISP, before being delivered to the intended recipient. Thus, the 'private' information is being held by third party private companies.

We are now used to hearing the celebrity nude leaks and also about the escape of private photos of people without their consent. They make their way into the pool of internet where the other person doesn't even get to know about it when it's been happening behind their back.

Of what has been observed, it can result in a big blunder when people's emotions and technology make their way together. In most of the instances, it takes an ugly turn. The legal remedies may not be the most powerful weapon because of its slow implementation. Thus, most of the times, the victim may seek for immediate relief which would help them to recover from the trauma that they have suffered. This immediate relief comes from non-conventional alternatives because till the time the existing statutes start to function, the victim's reputation already goes down the drain.

The most worrisome question arises that how those intimate and private pictures did leave its safe place? The legit answer is because someone already had it. Either you gave it to the perpetrator yourself or somebody close to you handed it over to them or you are under constant watch.

The feeling of vengeance is the most intense feeling one can have. Because this feeling makes them do things that they would never do otherwise. This extreme feeling can only come from people who are closest to us and because of unsuitable circumstances, some kind of hostility creeps in. There are various other ways how lawbreakers can break into your personal lives and extract those intimate pictures which were never supposed to go public. In our society which is extremely critical about how people should function does not react to obscene stuff in the same way as it prohibits offline. [[6]](#footnote-6)

The number of voyeuristic websites is limitless and it is very tough to operate it. The visuals portrayed are most of the time copied and replicated across these multiple porn sites. So even if you plan to take down one image which is defamatory in nature from one site, there is a higher possibility that it's already been existing on the other websites. The present colossal status of social media makes it impossible for certain websites to wipe of digital prints. The consequences of this are shame and shock for the victim which takes a prolonged period to recover. The next possible effect is the social stigmatization and blame game which comes to the question. All things boil down to one common thing which is questioning their character. Instead, this is the time when victims need support and not criticism because the level of trauma they've already suffered is beyond a particular limit.

The problem which creeps in does not belong to one gender or caste but society as a whole. To what extent can regulating the internet be useful when restraining orders cannot be implemented or when employers can fire their employees only on the grounds that they've been sexualized on the internet? This kind of question would always remain unanswered till the time we attain bold backing from the higher authorities.

Privacy is becoming one of those subjects which needs to be given utmost heed in this present era. Now there's even greater need as users have been multiplying every year. The way to avoid being a victim is not to get into such situations. It doesn't matter from where you belong (it was an important question in the Indian society back then) or what you do, if somebody posts an obscene picture of you without your consent, you do have a legal remedy to counter that effect.

Many cases which come before the courts like the famous case of Fatima Riswana v. State Rep. by ACP., Chennai and others (AIR 2005 712), the victim's misery starts from the time the matter is disclosed before the court and proceeding carried on. The case had to transfer from one side to the other and later, diverted to a fast track court because of the embarrassment felt by victim.

In other scandals, the victim's plight becomes completely insufferable as the matter comes in the public domain and further prolonged before the accused is taken into custody like in the notorious case of Jawaharlal Nehru University (JNU) MMS scandal where it took a hell lot of time for the police to arrest the culprit.

The trauma for the victim doesn't fade away. A 24 year old New Jersey resident who finally gathered the courage to speak out after a few years after she became a victim of revenge porn had her pictures posted on over 200 websites. She said ‘I have had people show up at my door, have had people recognize me in public. I struggled everyday wondering if I am going to find a job or are they going to give me a hard time a simple Google search might be able to pull out the pictures that were posted without my permission.’

In case a person is victimised, the first priority of that person is to remove those images or videos permanently from the public domain. Thus, requests are delivered to the websites which are hosting the material to remove the explicit content. The websites also follows a strict system of following certain restrictions and are subject to a number of laws. Websites which offer to take down photos ask for money in return and thus engage themselves in the business of extortion. It is illegal to pursue this. The knowledge of cyber law is much appreciated. On June 19, 2015 Google search published a policy stating that they would bow down to the requests made by the victims of 'revenge porn' and remove nude or sexually explicit images shared without their consent on the Google search results.

If we do a comparative analysis, it can be seen that in United Kingdom, there is a law which is on its way to prevent Revenge Porn. The new criminal Justice and Courts Bill has an amendment regarding this certain practice. The amendment will cover images sent on Facebook, Twitter and other social networks. It will also include those sent by text message.

"This type of behaviour can be extremely distressing for its victims causing them significant psychological harm," said Adam Pemberton, assistant chief executive for charity Victim Support. Those convicted will face a maximum sentence of 2 years in prison. Twelve men and one woman have so far been convicted under the new legislation, and sentences have ranged from a 12-month community order to 12 weeks in jail. The crime is punishable by up to two years in prison plus a fine.

Unlike victims who go through other sexual offences, people who get hit by revenge porn attacks are not granted anonymity for a lifetime under the present law. It is a matter of embarrassment and disclosing names in the court publically. This is the loophole faced by victims when they hear their names in the court of law.

Several steps have been taken by the International groups wherein nations like the United States is hoping to bring in a federal law against revenge porn following the legal provisions already constituted by the states of California and New Jersey against this issue. Israel has also brought in a specific anti Revenge Porn Law.

There was an incident reported in Maryland of a female wherein her boyfriend posted inappropriate pictures of her to her employer and also to the teacher of her son's kindergarten school. She had been horrified and thought to end her life in order to get out of this nightmare. At that time revenge porn was not illegal in her state. In fact, only 23 states have passed laws specifically against revenge porn. In other 27, it's one of those things that should be explicitly illegal. If you're stuck in these 27 states, your options are limited and you can try to pursue stalking or harassment charges but those laws may not always apply or you can file a civil suit against the person who did it. In the US, you can sue but in order to do that you've got to register the copyright which brings one to the cold hard truth and in the most extreme cases you need to send pictures of your naked body to the copyright office that's in Washington.

This is a horrific law wherein to prevent yourself from people looking at your naked body, you need to send more pictures of your naked body to more number of strangers.

Ultimately the victims are always told that they were the ones who shared the pictures. So now it's up to them to bear the consequences.

**CONCLUSION:**

The emergence of this new and shocking form of abuse on porn websites as well as on those social networking websites needs a better construction of legal provisions to effectively combat the negatively which has been creeping in the society.

The already shy Indian society feels as if it's a taboo to have a conversation about sex. It is next to impossible for the victims of this attack to regain a respectable place in the society. The victims face social alienation which is irreparable.

It is not only important for India to look at this as a serious threat to the people attacked but it also raises a question on how can one be careful in a relationship or even in a marriage. Because even the people closest to you can destroy you in front of the world. It seems as if the world is becoming a dangerous place to live and we are running out of way to fix some damages by our own people.

In India we definitely need separate and comprehensive revenge porn laws along with an efficient judicial mechanism to deal with the offences in shorter period of time. Many countries also have a National Redressal Cell which takes action in accordance before the video goes viral. A similar cell should be set up in India too. [[7]](#footnote-7)

1. http://www.sify.com/finance/what-is-revenge-porn-and-how-to-protect-yourself-from-it-news-default-oiciNFeefdhda.html&grqid=qP\_I-kX3&hl=en-IN [↑](#footnote-ref-1)
2. Ibid [↑](#footnote-ref-2)
3. Vakul Sharma, Information Technology 197 (Third Edition) [↑](#footnote-ref-3)
4. Vakul Sharma, Information Technology 194 (Third Edition) [↑](#footnote-ref-4)
5. The Indian Penal Code (45 of 1860) 116 [↑](#footnote-ref-5)
6. Justice Yatindra Singh, Cyber Laws 22 (Fifth Edition) [↑](#footnote-ref-6)
7. https://blog.ipleaders.in/online-revenge-porn-recourse-for-victims-under-cyber-laws/amp/ [↑](#footnote-ref-7)