

# INTRICACIES OF REVENGE PORN: AN ANALYSIS OF LEGAL PROVISIONS

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## ABSTRACT

Now a days it is very well-known fact that online platforms like YouTube, WhatsApp and Google are used by people to share contents of sexual nature. These sexually explicit contents are used to influence, manipulate and shame a person. Here, people are more interested in knowing what is going in other person's life. People, with utmost interest, look into the intimate relationship of others. This is the dark truth of the society that videos of sexual harassment and other intimate clips are intensely browsed by people. It is a source of great pleasure for them. There is even a very big market for these kinds of images and videos. Quite often, girls of even tender age fall in traps of these bad guys whose only aim is to satisfy their sexual desires. Also nowadays, it has become essential to share nudes to prove love and affection to the partner. Often, the victim is not able to raise her voice against this injustice happening to them.

Today's time when internet has become lifeline for every human, this act has drastically increase ed. This has also resulted in a sudden rise of Revenge pornography. Revenge Pornography is rapidly growing in India. Battling against internet disgracing is anything but something straightforward maybe a solid fight. The casualty faces disgrace deeply and it is a reasonable and careful issue to manage.

**KEYWORDS:** *Porn, Revenge, Online, Harassment, Sexual-Harassment.*

## PART I: INTRODUCTION

“Sexually explicit images of a person posted online without that person’s consent especially as a form of revenge or harassment is Revenge Porn.”<sup>2</sup>

Revenge pornography is the appropriation of explicitly seen sexual pictures or recordings of people without their consent. The sexually explicit pictures or video might be made by an accomplice in a close connection with the information and assent of the subject at that point, or it very well might be made without their insight. Not inconsistently the person in question (male or female) has been exposed to sexual brutality, frequently encouraged by opiates (rape drugs) which likewise cause a decreased feeling of agony, inclusion in the devolved sexual demonstration, dissociative impacts and amnesia. The ownership of the material might be utilized by the culprits to extort the subjects into performing other sex acts, to force them into proceeding with the relationship or to rebuff them for cutting off the association (in the event of relationship), to quiet them, to annihilate their standing, and additionally for monetary benefit.

The expression "Revenge Pornography" for the most part alludes to the transferring of this explicitly sexual material to embarrass and scare the subject, who has severed the relationship. The pictures are generally joined by adequate data to identify the imagined individual, normally names and areas, and can incorporate racy declarations, connections to web-based media profiles, street numbers and workplaces. Victims, whose pictures open them to work environment separation, digital following or actual assault, can have their lives destroyed subsequently. Given the training by certain organizations of looking for possible wellsprings of terrible exposure, numerous survivors of revenge pornography have lost their positions and got themselves viably unhirable. Some scholastics contend that the expression "revenge pornography" ought not to be utilized, and rather that it ought to be alluded to as "picture based sexual abuse."

Many a times, sexual images or video clips without displaying any kind of revenge can be seen. This is different from revenge porn. The most important component for revenge porn is the motive to take revenge. Also, distributing these images and clips not just means to circulate them among a few people, but involves posting it on web. Just uncovering one's semi-nudes or a swimming outfit picture doesn't cover this region. The printed picture or the online flowed pictures should contain the victim's privates, anus or whatever other private organ which isn't intended to be appeared at any expense to anybody.

The main reason behind the videos and images of revenge porn is to take revenge. A person may make use of the method for various reasons like to coerce the victim to get involved in more sexual activities, to punish them for breaking out of relationship, or to force them to continue the love affair, to demand monetary benefits, to shame or take revenge from them for leaving the relationship. Or it may be just for fun that a person uploads the images and videos of his ex- lover.

In recent times, with the covid-19 virus and continuous lockdowns across the world, various new problems and challenges are arising with the passing days. When looking specifically at the condition of women, they are facing extreme hardship. Their conditions are getting bad every day. They are facing trouble in every aspect be it economically, physically, mentally or emotionally. The working women are now burdened with the dual responsibility of managing children as well as performing their office work at home. Many women are facing domestic violence. They are being beaten, sexually molested or forced to certain tasks which they may not want to. In certain cases, they are being treated as animals. They are even being trafficked as sex slaves or for their organs.

Apart from all this, a very less known issue is that of 'Revenge Porn'<sup>5</sup>. During lockdowns, it was not possible for lovers to meet each other. This gave rise of various new practices, which were considered as a test of love. It was seen a way

to prove love and affection toward one's partner. This practice was of sharing nudes across net. Earlier, it was common mostly across celebrities. But now most of the young women and girls are struggling from this issue.

Revenge porn, as earlier said, is the uploading of nudes in the form of image or video without the consent of the victim. The motive behind doing this is to take revenge. In covid-19, because of prolonged distance, there was a spike in breakups. Not just because of distance, but also because of long time couples were spending together, they are not able to adjust, and result is breakups or divorce.

But the focus is on long distance relations. To fulfil their wants and desires, couples engage in sharing their nudes. These nudes get saved in their devices. But if the relationship doesn't work and breaking up seems to be the last resort, these images and videos become a means to punish the partner for breaking up, or for money, or to shame the person or for just fun. Mostly the women become victim of this crime i.e. Revenge Porn. Their videos and images get uploaded by their partner in porn sites with their name and some other basic information through which they could be found. This is purely done to take revenge.

This crime was present from a long time but due to this pandemic the intensity of it has increased. The crime has just become more apparent and people have become easy predators this sexual abuse and exploitation. It is very important to address this issue as it has long lasting impacts on the lives of the victim.

## PART II: REVENGE PORN: TRACING HISTORY

During the 1980s, Hustler magazine started a month to month highlight of peruses submitted pictures of exposed ladies called "Beaver Hunt". Beaver Hunt photos were frequently joined by insights concerning the lady, similar to her side interests, her sexual dreams, and now and then her name. Not the entirety of the ladies included in Beaver Hunt presented their own pictures and a few ladies sued the

magazine for distributing their photos without their authorization, or without checking data on manufactured assent forms.

After twenty years, Italian scientist Sergio Messina distinguished "realcore sexual entertainment", another class comprising of pictures and recordings of exes disseminated through Usenet groups. In 2008, novice pornography aggregator XTube started accepting grievances that obscene substance had been posted without subjects' assent. A few destinations started arranging consensual porn to take after vindicates pornography, just as facilitating "real" client submitted content.

Retribution pornography started gathering global media consideration when Hunter Moore dispatched the site Is Anyone Up in 2010. The site highlighted client submitted pornography, and was one of the primary destinations to embrace the model started by Beaver Hunt: Is Anyone Up regularly included recognizing data, like the subjects' names, bosses, delivers and connections to long range informal communication profiles. Activist Charlotte Laws was the principal individual to stand up against Moore and one of the main individuals to openly uphold vengeance pornography casualties.

Not much incidents could be seen relating to revenge pornography in the 20th century. Its craze was very low in the beginning of 2000s. But in the millennium year, revenge porn took a completely new form. The YouTube, Red Tube and other pornographic websites only became popular after 2005. It was only in the next decade that people got unlimited access to internet and data services. There was a drastic increase in the level of porn viewers in the 2016 when internet became free.

PART III: PORNOGRAPHY AND REVENGE PORNOGRAPHY: A DIIFERENT APPROACH

It is many a times seen that people consider porn videos and revenge porn videos the same. But this is not so. Both, revenge pornography and pornography differ a lot. Now the question arises what actually is the difference between the two.

The main difference between the two is the purpose of the video.<sup>4</sup> The videos oriented specifically towards pornography are specially made to upload on internet. While in the case of revenge pornography, the motive to take revenge is the driving force behind uploading these videos.

Next, the objective behind uploading these videos and pictures differ. The motto behind uploading porn videos is to build the position of the pornography stars, to make profits, to set up a name and popularity in the pornography business and so forth. Revenge pornography is transferred for the reasons like offending the person in question, making the video viral, for retribution and some even do this with no assumptions except for the sake of entertainment.

Consent may or may not have been given by the victim in the case of revenge pornography, but in pornography, the subject gives his/her consent wholeheartedly. Mostly, revenge porn involves stalking. Hidden cameras may have been placed in bathrooms, bedrooms or trail room to record intimate content. But in pornography, the whole content is recorded by using high revolution cameras with the permission of the subject matter.

Videos of revenge porn seem very realistic as they are very personal and there is no story line in it. It is the leaked clips of an individual. On the other hand, porn films overstate. They have a story line which is specially made for the public. It has no individuality. Pornography gives them benefit and gains, yet revenge pornography gives them disgrace and despondency. The normal

age time of the victims of revenge porn is around 11-25. By and large, youngsters and grown-ups are the ones who fall into this sinkhole. Pornography has neither

age bar nor limitations. The pornography universe has an assortment of individuals in their particular age category.

#### PART IV: LAW AND LEGAL PROVISIONS: A COMPERATIVE STUDY

Laws against ‘revenge porn’ are emerging slowly. With the sudden increase in the cases of ‘Revenge Pornography’, there has been felt a need for a proper law against it. Many nations of the world have come up with laws dealing specifically with this issue. Recent nations include South Africa and Singapore, who passed laws against it in 2019. The Films and Publications Amendment Act<sup>6</sup>, 2019 of South Africa, it is a crime to proliferate the sexual photographs or films of the hidden parts of an individual, which is shared without their consent and with the sole aim of harming them. The punishment for the same is Rs. 150000 with or without imprisonment up to 2 years; and this punishment gets doubled up with the victims is identified in the image or video. The court even asks the state government to treat the victim as a rape survivor and provide adequate compensation and care.

Similarly, in Singapore, the Criminal Law Reform Act<sup>7</sup> was passed on 6 May, 2019 and took effect on 1 January 2020. The Act criminalizes Revenge Porn, with a punishment of jail term of maximum 5 years with fines and caning as a sentencing option. And if the person has committed a crime against the victims who is less than 14 years, jail term is mandatory in that case.

Now looking at the case of our country, no such law has been passed. There are no laws in our country which specifically criminalizes ‘Revenge Porn’. In any case, different sections of Indian Penal Code, 1860 (IPC) and Information Technology Act, 2000 (IT) are made in use to punish the culprit for the crime. In IT Act, Section 66E, 67 and 67A deal with it. On the other hand, in IPC, the accused is punishable under Sections of 292, 499, 500, 504, 506,509, 354, 354A, 354C and 354D. Imprisonment and fine may vary according to the intensity of the crime. Usually,

the imprisonment may not increase more than 3 years but there are exceptions when it increased up to 5 years. A good thing about filling complaint in case of Revenge Porn is that, it is not

mandatory for the victim to be present at the police station to file the complaint. Anyone can file it on her behalf. Even the victim can ask for a female constable to register the complaint, though there are no official provisions relating to this.

The culprit is punishable under Indian Penal Code 1860 under the following sections:

- Section 292: “Distribution or circulation of obscene material”<sup>1</sup>.
- Section 499: “Act done by a person intending to harm or having a reason to believe the same would harm an individual’s reputation or character”<sup>2</sup>.
- Section 500: “Defaming the concerned persons”<sup>3</sup>.
- Section 504: “Intentional insult with intent to provoke breach of the peace.”<sup>4</sup>
- Section 506: “Punishment for criminal intimidation”<sup>5</sup>.
- Section 509: “Word, gesture or act intended to insult the modesty of a woman”<sup>6</sup>.
- Section 354: “Outraging the modesty of a woman”<sup>7</sup>.

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<sup>1</sup> S 292, Indian Penal Code 1860

<sup>2</sup> S499, *Id.*

<sup>3</sup> S 500, *Id.*

<sup>4</sup> S 504, *Id.*

<sup>5</sup> S 506, *Id.*

<sup>6</sup> S 509, *Id.*

<sup>7</sup> S 354, *Id.*

- Section 354A: “Sexual harassment and punishment for sexual harassment”<sup>8</sup>.
- Section 354C: “Voyeurism (Capturing or dissemination of pictures of a woman engaged in a private act without her consent)”<sup>9</sup>.
- Section 354D: “Stalking”<sup>10</sup>

The Culprit, under the Information Technology Act is punished under the following Sections:

- Section 66E: “Intentionally capturing and publishing the private area of a person or violating the privacy of a person.”
- Section 67: “Transmitting the private media in the electronic form, any material which is lascivious or appeals to the prurient interest or tends to deprave and corrupt.”
- Section 67A: “Stipulated punishment for publishing and transmitting of material containing sexually explicit acts etc., in electronic form.”

Apart from these laws, there are debates over providing the Right to be forgotten to the victim of ‘Revenge Pornography’. It was the very first time that this topic came up in the constitutional court. It talked about the right of social media users to be forgotten, and also showed concern over the silence of law on the remedy for victims whose sexually explicit videos or photos get viral on internet just because of their ex-lover’s motive to take revenge.

The ‘Right to be Forgotten’ deals with erasing the data when it is no longer of any use or in revocation of the consent of the victim, which is recognized under the

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<sup>8</sup> S 354A, *Id.*

<sup>9</sup> S 354C, *Id.*

<sup>10</sup> S 354D, *Id.*

General Data Protection Regulation (GDPR)<sup>8</sup>, the digital privacy law of Europe. Sadly, this concept is not yet recognized in our country.

Justice Panigrahi raised the concern that even though this Right to be Forgotten is in sync with Right to Privacy, which Supreme Court ruled in the K.S. Puttaswamy case<sup>11</sup> to be core to the Right to life given by our Constitution under Article 21.

“Allowing such objectionable photos or videos to remain on social media platform, without the consent of a woman, is a direct affront on woman’s modesty and, more importantly, on her right to privacy. In such cases, either the victim herself or the prosecution may, if so advised, seek appropriate orders to protect the victim’s fundamental right to privacy, by seeking appropriate orders to have such offensive posts erased from the public platform, irrespective of the ongoing criminal process,”<sup>9</sup> said the Orissa High Court during a recent case which for the first time gave punishment to a person for the crime of revenge porn.

Despite the way that none of the laws entirely address revenge pornography, the current laws additionally experience the ill effects of different other significant downsides. One primary issue seen in the recently executed Section 354C of the IPC is that it is gendered in its application and limits its degree to a male guilty party and female casualty. A similar drawback is depicted by Section 509 of the IPC and Section 4 and 6 of the IRWA<sup>12</sup>. Though the IT Act<sup>13</sup> doesn’t give the issue of gender specificity, it experiences a lot graver issue that lies demonstration of inalienable logical inconsistency predominant in the current overall set of laws intended to vindicate pornography. As can be induced prima facie, certain sections, such as Section 67 of the IT Act<sup>14</sup>, can be used even against the victim. It can be

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<sup>11</sup> Justice K S Puttaswamy (Retd) vs Union of India (2018) 1 1 (SCC)

<sup>12</sup> Indecent Representation of Women Act, 1986

<sup>13</sup> Information Technology Act, 2000

<sup>14</sup> *Id.*

used to prosecute the victim by giving the point that she voluntarily took the image or video and sent it to the accused.

#### PART V: REVENGE PORN: JUDICIAL RESPONSE

These days people used to search the web for much more real and natural sex content. But have we ever thought what that person must have felt like whose private parts have become public to the entire world. How it would have felt when a person's naked body is all over the

internet? The most personal and intimate affairs of an individual are revenged just to satisfy ego! A young lady falls into profound mental injury, despondency and anguish when she comes to realize that she had been disgraced and tormented on the web. She gets embarrassed, humiliated and nervousness hits her significantly harder.

The victim suffers from Post-Traumatic Stress Disorder (PTSD). With our country being extremely judgmental and secular in nature, the victim suffers from extreme depression if she doesn't receive proper guidance. She takes a very long time to come back to her normal life and gather courage to fight back. A very sad part is that not only the society but also her loved ones, her family and friends, treat her as outcast. They don't let her to justify herself and keep doing her character assassination. She feels ashamed and treated like a slut.

Even if she wishes or tries to stand up again and fight for her, every possible force pulls her back and shames her for the incident. Many teenage girls, because of this, drop out of school and college and confine themselves in the four walls as they are afraid of meeting and trusting new people. Neither it is easy nor is it enough for the victim to get back her dignity, respect, freedom and self-esteem back. The society needs to change its views towards the victim. She experiences a life of pain and suffers until she pulls out her strengths back to stand for herself and start her

life back again. There are just a few cases which are actually registered to the police or approached to some women organization for help. In almost all the time, victim can't gather the courage to speak out against it and suffers silently. In the case of State of West Bengal V Animesh Boxi<sup>15</sup> is of great historical importance as it was the first case ever in India when the culprit was convicted for 'Revenge Porn'. It took place in March 2018. The harsh punishment which was given, displays strong message to committers of 'Revenge Pornography'. In this situation, the culprit subsequent to extorting the casualty transferred her offensive pictures on pornography locales. He was charged under Sec 354, 453C, 500, 509 and 44 of the IPC and under Sec 66E, 67, 67A of the IT Act separately. The Court held the accused, 23-year-old, blameworthy for each one of the offenses as charged and condemned him to five years detainment alongside a fine of Rs. 9,000. It additionally requested that the victim be paid remuneration under the state's Victim Compensation Scheme.

#### PART VI: REVENGE PORN IN THE AGE OF SOCIAL MEDIA: A RELTIVE STUDY

The fastest means to share information these days is through social media. Information spreads like wild fire through social networking sites. This information can either be positive or negative. Thus, it is through these sites that the revenge porn content becomes viral. Directly or indirectly, social media is the first source for these intimate contents. If social media is kept under check, then revenge porn can be eliminated greatly. Now days there are so many social networking sites available like Facebook, Twitter, Instagram, WhatsApp, Telegram, etc.

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<sup>15</sup>C.R.M. No. 11806 of 2017, Decided on 3 January 2018, CLHC

Facebook's founder Mark Zuckerberg solved this problem and made certain solutions for emerging problems.<sup>13</sup> He identified the profiles of those who shared or promoted or encouraged these types of content and ended this issue. Though the problem didn't end completely, but was greatly reduced. He even warned them that they would face legal issue. Twitter too did the same thing. These two are the only networking sites which have reduced the issue of Revenge Porn to a large extent. YouTube doesn't allow access to adult content if the view is under the age of 18. Adult content is also only upto some extent. If it is too sensitive, the owner of that channel is warred and asked to remove the video. Social Networking sites are more misused than used properly. Twitter and Facebook restrict such content to some extent; hence people look out for other platforms to share their information. WhatsApp allows just somewhat. A definitive exchange instrument for recordings under the branch of Revenge erotic entertainment is Telegram. Telegram is a late discovered application which is utilized as an option for WhatsApp. It nearly has each and every fundamental element from WhatsApp and added some additional highlights which in WhatsApp don't exist like downloading documents regardless of the record size and so on. A vast majority of the Telegram users use it for downloading films from pilfered sources and for peeping into the video contents of the vengeance erotic entertainment victims. No matter how large is the file; one can download it from here. Also, telegram is highly encrypted. Not even the developers will know what two people are chatting and sharing in Telegram. This makes the sharing of revenge porn content extremely easy and safe here. Telegram on its own doesn't support such kind of content, but it is misused by its users. To stop this, detectives came up with the solution. A group of 433 detectives got added into certain groups which they found suspicious. They spent a few months in it and identified and dragged some culprits. According to sources, they were 12 in all, who were arrested and sentenced.<sup>14</sup>

With regards to Instagram, one can't straightforwardly transfer the video/photograph in personal Instagram accounts if the substance is excessively touchy. Whenever transferred thus, the video, yet in addition the current ID will become inaccessible for all time.

So, social networking sites can play both positive and negative role in this crime. The developers must be aware about these issues and problems which can arise and should be ready with solutions to combat them.

## PART VII: CONCLUSION

Revenge Porn is such a crime which can never be completely eliminated. Even if it gets removed from the web, how can it be removed from the memories and thinking of the all those people who saw the videos and pictures of the victim. Hence for that, there should be change in mentality of the people. A supportive environment must be established which would encourage the victim to fight against such situations. There is a direct connection between the number of views and the quantity of content posted on web. If the views are kept low, the culprits won't be encouraged to post such contents.

Revenge Porn is such a crime which is less known and very less discussed. The victim doesn't even know that she is becoming a victim of revenge porn. These days it has become very common. Reason being that, with no law in specific to deal with it, the committers of this crime have no fear in their heart and mind. The saddest part of this crime is that it can't be eliminated completely. But, its effect can be minimized at a great extent. It breaks heart just by thinking that a big market is present in our society which encourages these revenge porn videos and images. People even search the web for the same. They don't even think about what the person in that video or image may feel like. Unless the society doesn't start

thinking from their point of view and act against revenge pornography content, this crime can't be controlled.

The very first step towards the elimination or controlling revenge porn is the absence of revenge porn content. This is possible when the victim understands whom to trust and whom not to. Trust is the basis because of which a victim sends the images of her/his private parts. The best part is not to share one's intimate images and photos to anyone.

The law specialists should be simple for the victim to approach and ought not to humiliate her with judgmental contemplations. Numerous victims face whose disgracing particularly in the police headquarters which causes her to feel crushed. The punishment provided to the culprits must be extreme in nature and no kind of delay should be done while dealing with the matter.

the porn web sites having videos and images of the victim of revenge porn should act immediately by removing the content. They should delete all such sexual content which were added in their site without the consent of the person concerned.

Hence, if the watchers begin showing some kindness towards the people in question, the creator will decrease his activities due to low support and no consideration. A definitive control of retribution pornography flow is in the possession of pornography watchers.