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REVENGE PORN AS AN OFFENCE IN INDIA

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ABSTRACT

Science and Technology, have become advanced in modern age. And it has been boon for human beings but also there are some issues emerging from it. It also helped criminals to evolve new methods to commit crime. Offence committed via virtual means is termed as cyber crime. And revenge porn is new emerged cyber crime. It is not recognised by many countries as specific offence yet. And India is also belong to that country. Despite this there are some provisions in IPC and IT Act which implicitly touch to offence of revenge porn. In this paper author tries to throw light on the new emerged offence revenge porn, its meaning and its dimension with fundamental right of privacy and consent of victims. Later author analyses the existing provisions in IPC and IT Act which deal with the revenge offence. In last author tries to answer whether these provisions are sufficient to prevent and to give justice to victims or need recognised it as new offence.

INTRODUCTION

As new technologies are being invented, Human beings are becoming become more civilized. Advanced technologies like Artificial Intelligence have made human life so easy and relaxed. It gave many positive results. But there are two sides in a coin. With the help of new inventions, criminal activities have also become advanced. Criminal activities have been increased on the internet. And crime committed in internet is called cybercrime. And revenge porn is one of the emerging cybercrime in the world. Cambridge Dictionary defines Revenge Porn as Private sexual image or film or videos of a person put in the internet by his or her former partner as an attempt to punish him or her.¹ This definition is gender neutral either male or female can be victim of this offence. But generally, it has been seen that this type of offence is often committed against woman. In India revenge porn is emerging new cyber offence. A survey conducted by Cyber and Law Foundation an NGO states that 27% of internet users age from 15 to 40 years are subjected to

¹ Dictionary, o., 2016. *Revenge porn Meaning In The Cambridge English Dictionary*. [online] Dictionary.cambridge.org. Available at: <<http://dictionary.cambridge.org/dictionary/english/occupation>> [Accessed 10 May 20206]

offence of revenge porn.² Despite emerging of revenge porn as offence, there is no explicit provisions in Indian Penal Code 1860 that deals with revenge porn.

REVENGE PORN AND PRIVACY

Right to privacy has not only been recognised as fundamental right in India but also in other countries as well. And United Nation Declaration of Human Rights also states that no person shall be subjected to arbitrary interference of his privacy.³ Indian Supreme Court also gave wide interpretation of Article 21 (Right to life and liberty) and adopted privacy as fundamental Right.⁴ Justice Chandrachud wrote in his judgment that privacy includes at its core personal intricacies, the sanctity of family, marriage, home, and sexual orientation. Privacy gives vital aspect to protect his personal life. And it has been reasonable expectation at the time of capturing pictures or shooting videos that privacy of these things will be maintained by person who captured or recorded the video. Distribution of intimate images shall attract the violation of right to privacy.⁵ And life without dignity and reputation is nothing but merely resemblance of animal life. Distribution of private images or videos degrades the reputation and dignity in the eyes of society. And once the images come in internet, then they become uncontrolled. Uploaders of images or videos may delete, but other person who have downloaded may again upload them. Therefore right to privacy not violated by single person but many persons. And it has been in the cases of revenge porn, offender not only uploads images or video but address and contact number of victims also. In this way right to privacy which is inherited, unalienable right of victims is violated by offenders.

² Aditya Krishna, *REVENGE PORN: Prosecution Under Current Indian legal System*, CRIMINAL LAW BLOG OF NLUJ (April 13, 2020) <https://criminallawstudiesnluj.wordpress.com/2020/04/13/revenge-porn-prosecution-under-the-current-indian-legal-system>

³ Article 12, UNDHR 1948.

⁴ Justice Puttaswamy v. Union of India. (2017) 10 SCC 1.

⁵ Moira Aikenhead, *Revenge porn' is more than a privacy violation*, UNIVERSITY OF BRITISH COLUMBIA, (May 1 , 2018) <https://news.ubc.ca/2018/05/01/revenge-porn-is-more-than-a-privacy-violation/>

REVENGE PORN AND CONSENT OF VICTIMS

When someone gives permission to do something or makes an agreement to do something, it is often called as consent. And principles of criminal law recognized consent as defence to the accused because victims know the risk involved in the action of accused. In the cases of revenge porn victims also give their consent to capture and record, pictures or videos respectively. But they do not have any knowledge at time of capturing images that that private images videos would be upload on such platform that diminish dignity and reputation in the society. Hence it does not mean that consent is given for uploading in the social internet platform. Therefore in the cases of revenge porn, this defence of consent cannot be taken. Consent is not for pornography material, the couples agrees for some other things but Later used by either partner to pornography substance to take revenge, not only breach another partner's privacy but also used his consent in different aspects. Therefore it cannot be said that consent is given by victims of revenge porn.

EXISTING LAWS

Cases of revenge porn are coming after digitalisation revolution in India or any other part of world. Before there was no such means by which this type of offence could be committed. And Indian Penal Code was enacted in the year of 1860. Therefore it is obvious that there is no such specific provision for offence of revenge porn in Indian Penal Code. But there are some provisions in IPC which can address revenge porn implicitly. They are follow as -

Section 292- Distribution or Circulation of obscene material

Section 354C- Capturing or Dissemination of pictures of woman engaged in a private act without her consent.

Section 499- Act done by person intending to harm or having reason to believe the same would harm individual reputation or character.

Section 509- Act intended to insult the modesty of a woman.

When the internet, come in India, the parliament of India passed Information Technology Act in the year of 2000 to regulate the transaction or exchange through electronic means. And to prevent

and to combat cyber crimes in India. The IT Act 2000 also not having explicit provision for Revenge Porn. But some sections of Act can address revenge porn. They are follow as

Section 66E – Violation of privacy ; publishing or transmitting obscene material in electronic form.

Section 67- Publishing or transmitting of material containing sexually explicit act via electronic form.

Section 67A - Publishing electronic material containing sexually explicit act.

Other than these provisions, there is act called Indecent Representation of Woman (Prohibition) Act 1986 which prohibits the indecent representation of woman through advertisements, publication, writings, paintings, figures and any other means.

DRAWBACKS IN EXISTING LAWS

There are enough numbers of provisions in the IPC and Information Technology Act to deal with revenge porn. But there are some drawbacks while addressing the revenge porn. The section 354C is added in the year of 2013. And it was for protection of woman. The section started with *any man who watches or capture...* It means by virtue of this section only man can be accused and woman can only be victims. But what if woman captures video or pictures of another woman, then this section does not apply. The similar aspect of with section 509 of IPC which only talksthe about the protection of modesty of woman from man.⁶

The Information Technology Act does not face similar issues. Notwithstanding it suffers from other issues which is also loopholes while addressing the offence of revenge porn. Section 67A states that whoever publish sexual explicit act shall be liable to punishment. Text of this section is not clear. Prima facie reading of this section suggests that consented partner along with the main culprit can also be prosecuted. Therefore by this section victim of this crime also be liable for punishment. The same problem is with section 67 of aforesaid Act.⁷

⁶ Supra Note 2

⁷ Supra note 2

IRWA 1986, does not fit in the context of today environment. At the passing of that time, there was no social media platform like WhatsApp, twitter, Facebook etc. It has not wide scope to deal with revenge porn. In 2012 ministry of child and women development, proposed amendment in the said Act. And this was referred to standing committee of parliament. Standing Committee and National Commission for Woman suggested that after enactment of IRWA 1986 technology have become so advanced. Therefore it is need to widen the scope definition of Distribution, Publication and Environment in the said act.

NEED FOR RECOGNISED AS NEW OFFENCE

The West Bengal session court in the case of West Bengal v. Animesh baxi⁸ convicted person for uploading private images of girl in the internet. The court convicted accused for five years of imprisonment along with 10000 Rs fine. In this case, the court highlighted the importance of recognition of revenge porn as an offence. Another great thing in the judgment was that the court suggested that victims of revenge porn must be treated as a rape survivor. And they must get compensation. Since IPC does not have provisions for revenge porn, but some provision might get punishment but victims will not get compensation. Therefore there should be provision for Revenge porn in IPC or IT Act.

In the year of 2014, United kingdom recognized revenge porn as specific offence under section 33 of Criminal Justice Act 2015. Punishment for this offence is imprisonment of two years and there are many successful prosecutions by this section. There are other countries like Israel, Germany, Canada and 40 states of America have laws for offence of revenge porn. India should think in this direction to have a defined offence of revenge porn.

Since there is no single provision which deals with revenge porn, therefore it creates difficulties for prosecution to proof cases because of plurality of sections. Since requirements of sections are different so it becomes complicated to the prosecution. While if there is single provision which defines what is revenge porn and what is requirement to proof, then it will be quite easy for prosecution to proof the cases in the court of law.

⁸ State of West Bengal v AnimeshBoxi, C.R.M. No. 11806 of 2017, GR/1587/2017.

And above mentioned loopholes can also be addressed by inserting section in IPC or IT Act or by bring new legislation for revenge porn.

CONCLUSION

Revenge porn have become a common offence in our society after technology has become so advanced. Law minister of our country, Mr. Ravi Shankar Prasad , had already expressed his concern in this regard in an interview. It is well known that today's time, trolling someone has also become a fashion either by making memes or by photos. And these things promote revenge porn. It is very difficult to prevent the spreading of intimate or private images because if senders delete it but other receivers download it and send it again so it becomes quite difficult. And the victims face criticism from the society. Society does not consider victims as such victims but people think that victims are accused. So victims have to face societal stigmatisation and societal pressure. And there are not adequate provisions in the Indian legal system to address the offence of revenge porn. But the courts have tried to address the issues with existing laws. Therefore it is needed that the legislature must think about these issues and make laws in this regard.