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**“THE CRIME OF PRIVACY INVASION-AN
INTRICATE ANALYSIS.”**

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I. INTRODUCTION:

Trust, honesty, faith, belief and love are such words which are often used but are not meant in its true sense. These words are used by people merely to escape from a circumstance or to get things done. These values are the glue that holds a relationship together. Once mutually established, these values will retreat into the background of a stable relationship where it continues to support the couple, offering comfort and stability, allowing each person to take the risks necessary for meaningful, emotional, sexual expression and connection. When the glue loses its cohesiveness, the relationship sunders and that is when the concept of “revenge” comes into play. One such example of taking revenge is using pornographic images, videos and other such materials of the partner with an intention to degrade his/her dignity. Merriam Webster defined pornography as ‘the depiction of erotic behaviour (as in pictures or writing) intended to cause sexual excitement.

“Pornography is widely prevalent for the sole reason for satisfying an individual’s sexual desires/lust”. Nowadays people perform such acts for their daily bread making it commercial. For example; Playboy, Penthouse, Pornhub etc. Pornography, from the viewer’s point of view, can be categorised into two, hardcore and softcore that revolves around nudity and obscenity. From a legal perspective “consent” is given more importance, thus classifying it as

consensual and non-consensual. Consensual pornography is more like a “business” whereas non-consensual pornography is something that happens against a person’s will and must be focussed upon as the dignity and reputation of an individual is at stake. Generally, non-consensual pornography is considered to be an accurate example of revenge pornography.

Publicising an individual’s sexually explicit images or videos without his or her interest/permission is revenge pornography in layman terms. Child pornography, deep-fake pornography are the most common types of revenge pornography.

II. TECHNOLOGY AND MEDIA:

The tremendous growth of technology over the past decades has made the retrieval of personal information and data simple. Even though it makes the work of the investigators and the police officials easy, the same is also used by those who want to fulfil their individual desires. One such example for this is morphing images, creating obscene videos, hacking into one’s personal information through the internet and various social media websites and publicising them with the intention of destroying and hurting their feelings, reputation and dignity. Nowadays, every other website displays obscenity and nudity in the form of advertisements which tempts an individual to view more of it.

Not only certain websites but also movies, TV series and also videos portray such inappropriate content and there might also be scenes where the revenge taken by the lead is in the form of capturing nude photos, videos and blackmailing the victims that the content will be publicised if their orders are not followed. This creates an impact on the viewers and it provokes them to perform such acts. Idolising heroes and actors in real life should be done and not fictional characters. Blindly following such staunch heroism is like setting bait for his own life. The above-mentioned examples also play a crucial role in the increase in the crime rate over the past few years. The Indian Penal code also criminalises such acts which are mentioned in Section 354C.

III. REVENGE PORNOGRAPHY:

Miriam Webster defines pornography as “sexually explicit images of a person posted online without that person's consent especially as a form of revenge or harassment.” Revenge pornography can also be termed as non-consensual pornography. Non-consensual pornography is when very intimate moments of the victim is publicised without their consent. A more precise definition for this could be the distribution of sexually graphic images of individuals without their consent. This includes both images originally procured without the consent of the victim (e.g. by using hidden cameras, hacking phones and other gadgets etc) and images or videos obtained through and with the consent of the victim (e.g. by being a part of a romantic and intimate/physical relationship).

There are different kinds of non-consensual pornography;

Firstly, uninvolved pornography is a kind of pornography where neither the victim nor the person to whom the content was entrusted to had given consent or had caused the publication of the material. This type only involves various crimes such as hacking, computer theft, cybercrimes etc. Uninvolved pornography is not solely done for the purpose of revenge but instead is used as a means to blackmail people and obtain anything they want from the concerned persons or victims. Hacking and having illegal access to other's personal information is one of the very important reasons for non-consensual pornography and this must be seriously taken up and addressed. Uninvolved pornography also gives rise to cyberbullying where the hacker could use the information to bully or to embarrass one in any platform. Making memes is one such example where people can be made fun of or criticized. It is made casually but has a huge impact that can hurt a lot of sentiments. Similarly, a lot of personal videos that are being retrieved by hackers are being made accessible by the public and is shared through social media websites like WhatsApp, Instagram etc. Victims are taking on 'revenge porn' websites for posting photos they didn't consent to.¹ Similarly non-voluntary pornography is one such type of non-consensual pornography. This term, however,

¹Victims are taking on 'revenge porn' websites for posting photos they didn't consent to, By Lorelei Laird, Nov 1 2013.

refers to the circumstances in which intimate, private and sexually explicit images or films were taken or made without the consent of the depicted individual and disclosed without the consent of the individual. Victims, in this case, are completely unaware of the fact that they are being photographed or watched. Unnecessary consequences are undergone by these individuals after it is posted on the web. Further, there are edited portrayals where a different person's body is matched with a different individual's head or face this is termed as morphing and when done with mala fide intentions leads to non-consensual pornography. It is considered to be a crime that is often gone unnoticed. Last but not the least there is another form of revenge pornography in which fall the perpetrators who are ex-boyfriends/ex-girlfriends, ex-lovers performing this for the above-mentioned purpose. Here the reason for publicising such information might be of a serious nature, although illegal. These materials are usually provided by the victim while acting intimate or close with their partners.

In the Animesh Boxi², incident, the victim had been in a relationship with the defendant for three years and during the course of this time, the defendant had asked for private and nude pictures from the victim. The victim being emotional had sent the pictures. Later, the defendant started using those pictures to blackmail her to go out with him. The victim disagreed and the defendant uploaded the pictures and videos on porn sites and with this India sets a precedent case for revenge pornography.

However, here arises a very important research question, of whether the victim is to be blamed or not?

III.I VICTIM BLAMING:

The common society's perception is that the victims are the wrongdoers in such cases and cannot hold the party publicising it responsible, since the victims were the ones who provided/ sent their personal, information in the very first place or gave consent to being photographed or taped. However, it is to be noted that the information was shared with the

² *State of West Bengal V Animesh Boxi*, (2018) GR:1587/17 (In the Court of The Judicial Magistrate, 1st Class, 3rd Court Tamluk, Purba Medinipur.)

other as an act of intimacy. There are a lot of trusts involved and disclosing of this information to the open, constitutes a breach of trust. Thus, it is a normal tendency for a person in a romantic relationship to share such content with his/her partner and cannot be questioned as it is considered to be an act of love. The victims in such cases cannot be held liable. Similarly, another common notion is that females are the only ones affected or are the only gender that goes through this kind of abuse and torture. It is generally believed that the people who suffer and the who are targeted are females. But it is to be duly noted that male genders are also victimised, used and targeted by society. Men are more likely than women to report being victims of this online privacy invasion. (McAfee)³.

Thus, the researchers might explore whether efforts to frame the issue as one that affects both men and women would enhance the development of statutes aimed at curbing revenge porn. Ellie Melaugh was said to be the first woman to have been found guilty of a crime under revenge porn legislation in the UK. This is just one of the rare cases that seem to have come out. Men in different parts of the world go through this kind of abuse, insult, mental agony and pain as well and this rising issue must be given more attention in order to prevent such crimes from happening.

III.II IS REVENGE PORNOGRAPHY THAT SERIOUS A CRIME?

Revenge pornography is indeed an extremely crucial and a rising issue. Revenge pornography, also known as non-consensual pornography, is a subtype of cyber harassment/cyberstalking, and a serious problem facing society in the Internet age⁴. It gives rise to a multitude of problems. It puts an individual's life, health and reputation in stake. Victims lose their name in society and sometimes even the will to live. They tend to take rash decisions like ending their life. Further, it also puts an end to their future endeavours. The victims of such cases are also bullied by co- peers, colleagues, strangers etc making their

³ American psychological association : the criminalisation of revenge porn . By Cinthia J Najdowski PHD and Megan M Hildebrand, University at Albany, state university of New York Jan 2014, vol 45, no.1 .

⁴. Journal of the American Academy of Psychiatry and the Law, Online Sept 2016, mudasir kamal and William j newman, 44(3) 359-367

lives more miserable. They get harassed and teased for the same.” The victims are not motivated enough to “move on’ with their lives and they presume that their life has come to an end. They get taunted by it for a lifetime and even when the information/content is no more in circulation or for the public view they have a sense of fear that the content is already viewed by people. This fear makes it hard for them to do anything. It leaves a psychological impact on their lives.⁵

The amplification and permanence of the abuse leave many victims feeling trapped and silenced for fear of identification or further exposure. This not only affects the victim’s life but also the life of the people they are around, like family, friends etc. The victim’s social interaction becomes very minimal due to the fear and they are found in isolation. This behaviour can also be the root cause of other mental illnesses such as depression, PTSD, anxiety. It thus takes an adverse effect on the mental health on the victim and the people around them.

Further, Non-consensual pornography victims face the “fear of intimacy”. Fear of intimacy is when an individual is not able to act intimately with his/ her partner because of the simple fear that he/she might be exposed. Revenge pornography not only scars the victim but also the other people. Individuals are not able to act normal, intimate and close with their romantic partners or spouses.

In fact, people are even scared to involve themselves in relationships and fall in love because of the same. Another major issue of revenge pornography is that since there are no proper laws and statutes for revenge pornography, perpetrators are not actually framed for the crime and are left unnoticed. They tend to perform more of such crimes and get away with it. Fear of prosecution and punishment is missing and that instigates the perpetrators to commit such crimes. So the question is what must be done in order to prevent these crimes from occurring?

⁵ . *More than revenge . addressing the harms of revenge pornography : fighting revenge pornography in the United states , Dr Asher Flynn, Dr Nicola Henry and Dr Anastasia Powell, Monday 22 Feb 2016*

IV. LEGAL PROVISIONS:

New laws or Acts penalising revenge pornography should be promulgated or new sections should be inserted into existing laws to make it more effective and the punishment for the same should also be made severe along with restrictions for granting pre-trial bail. We should also learn from international experience in combating revenge pornography and try to emulate the best practices. Therefore, making stringent legislations alone is not going to suffice. Implementation and the execution must also be done accordingly.

The following legal provisions are used when a man is accused of capturing and distributing sexually explicit images without the persons' consent.

IV.I Provisions In IPC & IT Act:

IPC: 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 the 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.⁶

Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both⁷. IT Act: Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend

⁶ Section 354C of the Indian Penal Code

⁷ Section 509 of the Indian Penal Code

to three years or with fine not exceeding two lakh rupees, or with both⁸. 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 rupees⁹.

Punishment for publishing or transmitting of material containing the sexually explicit act, etc., in electronic form. -Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees¹⁰.

V. PREVENTION AND PROTECTION:

Now that the illegality of this crime and its punishment has been dealt with, what are the after victimisation measures that can be taken for the victims' well-being? Rehabilitation and counselling centres can be set up for victims who have undergone such harassment and abuse. These treatment centres would aid the victims in coming out of the mental state they are in. It can motivate them, inspire them and help them excel in life and other endeavours. These centres play a huge role in protecting these individuals and helping them in dealing

⁸ Section 66 E of IT act.

⁹ Section 67 of IT act.

¹⁰ Section 67A of IT act.

with the emotional and psychological stress that they undergo. Generally, societal norms do not allow people to accept that they need treatment /help and individuals who go to these centres are looked down upon. They are not treated well and this instigates a fear in these individuals to not scale the issue. They do not do anything about it, putting their life in danger. Therefore this notion must be completely eliminated and people must encourage victims and guide them to take up treatment if necessary. Moreover, the statute should incorporate provisions for protecting the identity of the victim. Enquiry team should be enjoined by a female officer and as far as possible a trail should be conducted before a female judicial officer employing in-camera proceedings keeping it out of the prying eyes of the media.

VI. CONCLUSION:

Non-consensual pornography is thus a very burning, rising issue that needs to be given more focus and attention. This article has dealt with all the problems arising out of and relating to revenge pornography. The various legal provisions relating to the same have been discussed and more importantly, suggestions for preventing the crime and protecting the victim have been put forth.