

## **Legal Provisions Related to Non- Consensual Sharing of Intimate Images: A Comparative Analysis with Special Emphasis on Indian Cyber Law**

<sup>1</sup>Megha Kiran Patel, <sup>2</sup>Ms. Shivangi Tripathi

<sup>1</sup>Student of LLM IV Semester, <sup>2</sup>Assistant Professor

<sup>1,2</sup>Department of Law, Kalinga University Raipur C.G.

<sup>1</sup>patelmeghakiran@gmail.com, <sup>2</sup>shivangi.tripathi@kalingauniversity.ac.in

### **Abstract**

The exponential growth of digital communication technologies has facilitated new forms of harm, one of the most distressing being the non-consensual sharing of intimate images, commonly referred to as "revenge porn" or more aptly termed image-based sexual abuse (IBSA). This phenomenon, predominantly affecting women, represents a serious infringement of the rights to privacy, dignity, and bodily autonomy, often resulting in lasting psychological, reputational, and socio-economic damage for victims. Despite its increasing prevalence, legal frameworks in many jurisdictions, including India, remain ill-equipped to address the complex and multifaceted nature of this cyber-enabled abuse.

This research undertakes a critical and comparative analysis of existing legal responses to non-consensual pornography (NCP), with a particular focus on Indian cyber law under the Information Technology Act, 2000. The study examines the efficacy, scope, and limitations of India's current legal framework in dealing with image-based abuse, while also drawing parallels with legislative measures adopted in other jurisdictions such as the United States, the United Kingdom, Australia, and Singapore. Key components of these laws, including the definition of offenses (*actus reus*), mental state requirements (*mens rea*), platform liability, and mechanisms for victim redressal, are systematically evaluated to assess their adequacy in addressing the growing challenge posed by NCP.

Furthermore, the study delves into the responsibilities of online platforms and the potential role of artificial intelligence and chatbots in enhancing reporting, content moderation, and takedown procedures. It also explores victim-centered approaches such as therapeutic jurisprudence and restorative justice, which emphasize healing, empowerment, and long-term psychological recovery for survivors.

The research concludes by identifying critical legislative and policy gaps in the Indian legal system and proposes comprehensive reforms. These include the need for dedicated NCP legislation, incorporation of platform-specific duties, strengthening law enforcement and judicial capacity, promoting digital literacy, and enhancing access to victim support services. Through this interdisciplinary and jurisdictional approach, the dissertation aims to offer actionable solutions for effectively combating non-consensual image-based abuse in India, while also contributing to the global discourse on cyber sexual violence and digital rights.

**Keywords:** Non-consensual pornography, revenge porn, image-based sexual abuse, digital privacy, platform liability, therapeutic

## Introduction

Non-Consensual Pornography (NCP), a pervasive issue in the digital age, refers to the distribution of sexually explicit images or videos of individuals without their consent<sup>1</sup>. This act, often motivated by revenge or malice, has a devastating impact on victims, leading to significant psychological, emotional, and social harm. The rise of digital technologies and social media platforms has amplified the reach and severity of NCP, making it a global concern that demands urgent attention and effective legal remedies.

- Defining NCP and its various terminologies (e.g., revenge porn, image-based sexual abuse).

NCP encompasses a range of activities, including the creation, distribution, and possession of intimate images without the consent of the individuals depicted. Various terminologies are used to describe this phenomenon, each with its own nuances. "Revenge porn" is a commonly used term, often referring to the act of sharing intimate images by a former partner to cause harm or humiliation. However, this term is increasingly seen as problematic due to its victim-blaming connotations and its focus on revenge as the primary motive.

Alternative terms, such as "image-based sexual abuse" (IBSA), have emerged to provide a more accurate and sensitive description of the issue. IBSA encompasses a broader range of behaviors and emphasizes the abusive nature of the act, regardless of the perpetrator's motive. This term also recognizes that the harm extends beyond just the act of revenge, encompassing the violation of privacy, autonomy, and dignity experienced by the victim.

- NCP involves the distribution of sexually explicit images without the consent of the depicted individuals.

The core element of NCP is the non-consensual nature of the distribution. This means that the individual depicted in the image or video did not give their explicit, informed, and voluntary consent for the material to be shared or disseminated. The lack of consent is what distinguishes NCP from other forms of online content sharing and what makes it a violation of fundamental rights.

- Alternative terms such as image-based sexual abuse are used to avoid victim-blaming connotations.

The shift towards using terms like "image-based sexual abuse" reflects a growing awareness of the need to avoid language that places blame or responsibility on the victim. The term "revenge porn" can inadvertently suggest that the victim somehow provoked or deserved the abuse, which is a harmful and inaccurate representation of the issue. By using terms that focus on the abusive nature of the act, it is possible to shift the focus away from the victim and towards the perpetrator's behavior.

- Highlighting the global rise and impact of NCP on victims.

The proliferation of digital technologies and social media platforms has contributed to a significant increase in the incidence of NCP worldwide. The ease with which intimate images

can be created, shared, and disseminated online has made it easier for perpetrators to engage in this form of abuse, while also making it more difficult to control and prevent. The global reach of the internet means that victims can experience the harm of NCP regardless of their location, and the images can persist online indefinitely, causing ongoing distress and harm.

The impact of NCP on victims is profound and far-reaching. Victims often experience severe psychological distress, including anxiety, depression, shame, and suicidal ideation. They may also suffer social and reputational harm, leading to isolation, stigmatization, and difficulty in forming relationships. The economic consequences of NCP can also be significant, as victims may lose their jobs, face difficulty in finding new employment, or experience damage to their professional reputations.

- The rise of NCP has led to severe consequences for victims, including psychological and social harm.

The psychological harm inflicted by NCP can be particularly severe, as victims often experience a sense of violation, betrayal, and loss of control over their own image and identity. The knowledge that intimate images are circulating online without their consent can lead to constant anxiety and fear, as well as feelings of shame and embarrassment. Socially, victims may experience isolation and stigmatization, as others may judge or blame them for the situation.

- Immediate and effective reactions are crucial for successful takedown procedures and investigations<sup>2</sup>.

Given the rapid dissemination of images online, immediate and effective action is crucial to minimize the harm to victims. This includes prompt takedown of the offending images from online platforms, as well as thorough investigations to identify and prosecute the perpetrators. Delays in responding to NCP cases can exacerbate the harm to victims and allow the images to spread further, making it more difficult to contain the damage.

- Scope and objectives of the comparative legal analysis.

This comparative legal analysis aims to examine the various legal frameworks that have been developed to address NCP in different jurisdictions. By comparing the approaches taken in different countries, it is possible to identify best practices and areas for improvement in the legal response to NCP. The analysis will focus on key elements of NCP laws, including the definition of the offense, the required mental state, the responsibilities of online platforms, and the available remedies for victims.

- This analysis aims to compare legal frameworks addressing NCP across different jurisdictions<sup>3</sup>.

The comparative approach allows for a comprehensive understanding of the strengths and weaknesses of different legal strategies. By examining how different jurisdictions have approached the issue of NCP, it is possible to identify the most effective ways to protect victims and hold perpetrators accountable. This comparison can also inform the development of new laws and policies to address NCP in jurisdictions where the legal framework is lacking.

- The focus includes actus reus, mens rea, platform liability, victim protection, remedies,

and penalties.

The analysis will focus on key legal elements, including:

- **Actus reus:** The prohibited conduct, or the specific actions that constitute the offense.
- **Mens rea:** The required mental state of the perpetrator, such as intent to harm or recklessness.
- **Platform liability:** The responsibilities of online platforms in preventing and responding to NCP.
- **Victim protection:** Measures to protect the privacy, safety, and well-being of victims.
- **Remedies:** The legal options available to victims, such as compensation and injunctive relief.
- **Penalties:** The sanctions imposed on perpetrators, such as fines and imprisonment.

### **International Legal Frameworks: An Overview**

Addressing Non-Consensual Pornography (NCP) requires a multifaceted approach that includes robust legal frameworks. Different countries have adopted varying strategies to combat NCP, reflecting diverse legal traditions, cultural values, and technological landscapes. This section provides an overview of the legal frameworks in the United States, the United Kingdom, and Australia, highlighting their key features and limitations.

- **Examination of laws in the United States.**

The United States has a complex legal landscape concerning NCP, with laws varying significantly from state to state. While some states have enacted specific criminal laws addressing revenge porn, there is no federal law that directly prohibits the non-consensual sharing of intimate images. This patchwork approach creates challenges for victims, as the availability of legal remedies depends on where the offense occurred.

Furthermore, Section 230 of the Communications Decency Act (CDA) provides broad immunity to Internet Service Providers (ISPs) and platform hosts, shielding them from liability for content posted by users. This immunity makes it difficult to hold online platforms accountable for the dissemination of NCP, as they are generally not considered publishers of the content.

- US laws exhibit limited scopes and special immunities to Internet Service Providers (ISPs) and platform hosts, posing challenges in combating NCP.

The limited scope of many state laws and the immunities provided to ISPs and platform hosts create significant challenges for victims of NCP in the United States. The lack of a federal law means that there is no consistent legal standard across the country, and the immunities afforded to online platforms make it difficult to remove offending images and hold those responsible accountable.

- Some states have criminalized revenge porn, but federal law is lacking.

While many states have taken action to criminalize revenge porn, the absence of a federal law leaves a significant gap in protection. A federal law would provide a uniform standard across the country and could potentially overcome some of the limitations imposed by Section 230 of the CDA.

- Analysis of laws in the United Kingdom.

The United Kingdom has also taken steps to address NCP, primarily through the enactment of the Criminal Justice and Courts Act 2015. This Act criminalizes the disclosure of private sexual photographs and films without consent, with the intent to cause distress. However, the scope of this law is relatively limited, as it requires proof of intent to cause distress, which can be difficult to establish in some cases.

The UK's legal framework also addresses image-based abuse in the context of domestic violence and abuse. The Domestic Abuse Act 2021 recognizes image-based sexual abuse as a form of domestic abuse, providing additional protections and remedies for victims in these situations.

- The UK exhibits a more limited scope in its legal frameworks regarding NCP compared to other jurisdictions.

Compared to some other jurisdictions, the UK's legal framework for addressing NCP is relatively narrow. The requirement to prove intent to cause distress can be a significant hurdle for victims, and the law does not explicitly address all forms of image-based abuse.

- The legal framework in the UK aims to address the harm caused by image-based abuse, particularly in domestic violence cases <sup>4</sup>.

While the UK's legal framework may be limited in scope, it does recognize the serious harm caused by image-based abuse, particularly in the context of domestic violence. The Domestic Abuse Act 2021 provides important protections for victims in these situations, acknowledging that image-based abuse can be a form of coercive control and a means of perpetrating harm.

- Review of laws in Australia.

Australia has implemented a comprehensive approach to regulating the non-consensual sharing of intimate images, primarily through the Enhancing Online Safety (Non-Consensual Sharing of Intimate Images) Act 2018 (Cth). This Act establishes a civil penalties regime, allowing the eSafety Commissioner to issue removal notices, infringement notices, and fines to individuals and online platforms that share intimate images without consent.

The Australian legal framework also includes criminal laws at the state and territory level, which address more serious cases of NCP. These laws often carry significant penalties, including imprisonment.

- Australia has implemented legislative reforms to regulate the non-consensual sharing of intimate images via civil penalties.

The Australian approach, which combines civil penalties with criminal laws, provides a



comprehensive framework for addressing NCP. The civil penalties regime allows for swift action to remove offending images and hold individuals and platforms accountable, while the criminal laws address the most serious cases of abuse.

- These reforms aim to protect and empower victims by enhancing online safety <sup>5</sup>.

The Australian reforms are specifically designed to protect and empower victims of NCP by enhancing online safety. The eSafety Commissioner has a mandate to provide support and assistance to victims, as well as to educate the public about the risks and harms of NCP.

### Key Legal Elements in NCP Laws

Effective legal frameworks addressing Non-Consensual Pornography (NCP) must clearly define the prohibited conduct, establish the required mental state for offenders, and address the responsibilities of online platforms. This section examines the key legal elements that are commonly found in NCP laws, including *actus reus*, *mens rea*, and platform liability.

- Actus reus: Defining the prohibited conduct.

*Actus reus* refers to the prohibited conduct, or the specific actions that constitute the offense. In the context of NCP, the *actus reus* generally involves the non-consensual distribution of intimate images or videos. However, the specific elements of the prohibited conduct may vary across jurisdictions.

Some laws define "intimate images" broadly, encompassing any image or video that depicts a person in a state of nudity or engaged in sexual activity. Other laws may have a narrower definition, focusing on images that were taken in circumstances where the person had a reasonable expectation of privacy.

- Actus reus in NCP laws generally involves the non-consensual distribution of intimate images.

The core element of the *actus reus* is the non-consensual nature of the distribution. This means that the individual depicted in the image or video did not give their explicit, informed, and voluntary consent for the material to be shared or disseminated.

- The specific elements of the prohibited conduct may vary across jurisdictions.

While the non-consensual nature of the distribution is a common element, the specific details of the prohibited conduct may vary. For example, some laws may only apply to cases where the image was obtained with the person's consent, but later distributed without their consent. Other laws may also cover cases where the image was obtained without consent, such as through hacking or surreptitious recording.

- Mens rea: Examining the required mental state.

*Mens rea* refers to the required mental state of the perpetrator at the time of the offense. In the context of NCP, the *mens rea* requirement can vary significantly across different legal frameworks. Some jurisdictions require proof that the perpetrator intended to cause harm or

distress to the victim, while others may only require proof that the perpetrator acted recklessly or negligently.

The *mens rea* requirement is a crucial element of NCP laws, as it determines the level of culpability required for a conviction. A higher *mens rea* requirement, such as intent to harm, may make it more difficult to prosecute NCP cases, as it can be challenging to prove the perpetrator's state of mind.

- Significant disparities exist in the *mens rea* requirement across different legal frameworks.

The disparities in the *mens rea* requirement reflect different policy choices about the appropriate balance between protecting victims and safeguarding the rights of defendants. Some jurisdictions prioritize the protection of victims, while others place a greater emphasis on ensuring that only those who acted with a culpable mental state are held criminally liable.

- Some jurisdictions require intent to harm, while others may include recklessness.

Jurisdictions that require intent to harm typically argue that this is necessary to ensure that only those who deliberately set out to cause harm are subject to criminal penalties. However, this requirement can be difficult to meet in practice, as it can be challenging to prove the perpetrator's subjective intent. Jurisdictions that include recklessness as a sufficient *mens rea* argue that this provides greater protection for victims, as it captures cases where the perpetrator may not have intended to cause harm, but was aware of the risk and disregarded it.

- Platform liability: Responsibilities of online platforms.

Platform liability refers to the responsibilities of online platforms, such as social media sites and website hosts, in preventing and responding to NCP. The extent of platform liability varies across jurisdictions, with some providing immunities to ISPs and website hosts.

The issue of platform liability is complex, as it involves balancing the need to protect victims of NCP with concerns about free speech and the potential for censorship. Some argue that online platforms should have a greater responsibility to monitor and remove offending content, while others contend that this would be an undue burden on platforms and could lead to the suppression of legitimate expression.

- The extent of platform liability varies, with some jurisdictions providing immunities to ISPs and website hosts.

The immunities provided to ISPs and website hosts, such as those under Section 230 of the Communications Decency Act in the United States, are intended to protect these platforms from liability for content posted by users. The rationale behind these immunities is that online platforms should not be treated as publishers of content, as this would create an incentive for them to censor user-generated content.

- Takedown notification systems and intermediary responsibilities are crucial aspects of platform regulation.

Despite the immunities provided to online platforms, many jurisdictions recognize the need for some level of platform regulation to address NCP. Takedown notification systems, which allow

victims to report offending images and request their removal, are a crucial aspect of this regulation. Intermediary responsibilities, which require platforms to take reasonable steps to prevent the spread of NCP, are also important.

#### **4. Victim Protection and Available Remedies**

A comprehensive approach to combating Non-Consensual Pornography (NCP) requires not only criminalizing the conduct and establishing platform responsibilities, but also providing effective protection and remedies for victims. This section examines the various civil reliefs, penal laws, and support services that are available to victims of NCP.

- Civil reliefs: Compensation and injunctive measures.

Civil reliefs are an essential component of a comprehensive strategy to combat NCP. These reliefs provide victims with the opportunity to seek compensation for the harm they have suffered and to obtain injunctive measures to prevent further dissemination of the offending images.

Compensation can cover a range of damages, including emotional distress, reputational harm, and economic losses. Injunctive measures can include court orders requiring the perpetrator to remove the images from online platforms and to refrain from further distribution.

- Civil reliefs are an essential component of a comprehensive strategy to combat NCP.

Civil reliefs provide victims with a means of seeking redress for the harm they have suffered, even if criminal prosecution is not possible or successful. These reliefs can also serve as a deterrent to potential offenders, as they demonstrate that there are legal consequences for engaging in NCP.

- Victims may seek compensation for damages and injunctive measures to remove the images.

Compensation can help victims to cover the costs of therapy, counseling, and other support services, as well as to offset any economic losses they have incurred as a result of the NCP. Injunctive measures are crucial for preventing further dissemination of the images and for restoring some sense of control to the victim.

- Penal laws: Criminalizing NCP and associated penalties.

Penal laws are necessary to effectively fight NCP and deter potential offenders. Criminalizing NCP sends a clear message that this conduct is unacceptable and will not be tolerated. Penalties for NCP can include imprisonment, fines, and other sanctions, depending on the severity of the offense and the jurisdiction.

The existence of penal laws can also empower victims to come forward and report NCP, as they know that there is a legal framework in place to address the issue. Criminal prosecution can also provide victims with a sense of justice and closure.

- Penal laws are necessary to effectively fight NCP and deter potential offenders.



Criminalizing NCP is an important step in changing social norms and attitudes towards this form of abuse. It also provides law enforcement agencies with the tools they need to investigate and prosecute NCP cases.

- Penalties may include imprisonment and fines, varying based on the severity of the offense.

The severity of the penalties for NCP should reflect the seriousness of the harm caused to victims. Imprisonment and fines can serve as a deterrent to potential offenders, while also providing a sense of justice for victims.

- Support services: Counseling and legal aid for victims.

Support services, including counseling and legal aid, are crucial for assisting victims of NCP. Victims of NCP often experience significant psychological distress and may need professional help to cope with the trauma. Legal aid can help victims navigate the legal system and understand their rights and options.

Support services should be readily available and accessible to all victims of NCP, regardless of their location or socio-economic status. These services should be tailored to the specific needs of victims and should be provided in a sensitive and supportive manner.

- Support services, including counseling and legal aid, are crucial for assisting victims of NCP.

Counseling can help victims to process the trauma of NCP and develop coping mechanisms to deal with the emotional distress. Legal aid can help victims to understand their legal rights and options, and to navigate the legal system.

- These services help victims cope with the trauma and navigate the legal system.

The trauma associated with NCP can be long-lasting and can have a significant impact on victims' lives. Support services can help victims to heal and recover from the trauma, and to rebuild their lives. Legal aid can empower victims to take action against the perpetrators and to seek redress for the harm they have suffered.

### **Indian Cyber Law: A Detailed Analysis**

In India, the legal framework addressing cybercrime is primarily governed by the Information Technology Act, 2000 (IT Act). This Act, along with other relevant laws, provides a framework for addressing various forms of cyber offenses, including online harassment and the dissemination of illegal content. However, the IT Act does not specifically address Non-Consensual Pornography (NCP) or revenge porn, leading to challenges in prosecuting these cases effectively.

- Overview of the Information Technology Act, 2000 (IT Act).

The Information Technology Act, 2000 (IT Act), was enacted to provide legal recognition for electronic transactions and to address various cyber offenses. It was India's first comprehensive law dealing with technology-related crimes and aimed to regulate e-commerce, e-governance,

and electronic banking services. The IT Act has been amended over the years to address emerging cyber threats and to strengthen the legal framework for cyber security.

- The IT Act, 2000, was India's first global law to deal with machinery in e-commerce and cyber felonies.

The IT Act marked a significant step in India's efforts to regulate the cyber world and to provide a legal framework for addressing cybercrime. It recognized the growing importance of technology in various aspects of life and aimed to create a secure and reliable environment for electronic transactions.

- Amendments and their relevance to cybercrime need to be considered <sup>6</sup>.

The IT Act has been amended several times to address emerging cyber threats and to strengthen the legal framework for cyber security. These amendments have introduced new offenses and have increased the penalties for existing offenses. It is important to consider these amendments when analyzing the legal framework for cybercrime in India.

- Relevant sections addressing cybercrime and online harassment.

The IT Act contains several sections that are relevant to cybercrime and online harassment, although none of these sections specifically address NCP or revenge porn. Section 66A, which criminalized the sending of offensive messages, was struck down by the Supreme Court in 2015 for violating freedom of speech. However, other sections of the IT Act, such as those dealing with cyber stalking, online defamation, and the dissemination of obscene material, may be applicable to NCP cases.

- Section 66A of the IT Act deals with sending offensive messages, but it has faced scrutiny.

Section 66A of the IT Act criminalized the sending of any information that was grossly offensive or menacing, or that was known to be false but was transmitted to cause annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, or ill will. This section was widely criticized for being vague and for being used to suppress freedom of speech. The Supreme Court struck down Section 66A in 2015, finding that it violated Article 19(1)(a) of the Constitution, which guarantees freedom of speech and expression.

- Cyber stalking and online harassment are addressed through various provisions, though focused laws on revenge porn are lacking.

While the IT Act does not specifically address NCP or revenge porn, other provisions may be applicable to these cases. For example, Section 354 of the Indian Penal Code (IPC) deals with assault or criminal force to a woman with intent to outrage her modesty, and this section may be applicable in cases where NCP is used to harass or intimidate a woman. Section 499 of the IPC deals with defamation, and this section may be applicable in cases where NCP is used to damage a person's reputation.

- Lacunae in addressing NCP and revenge porn specifically.

Despite the existence of these laws, there are significant lacunae in the legal framework for addressing NCP and revenge porn in India. The lack of a specific law criminalizing these acts

means that prosecutors must rely on existing laws that may not fully capture the unique harms associated with NCP. This can make it difficult to obtain convictions and to provide adequate protection to victims.

Furthermore, there is a lack of awareness among law enforcement agencies and the judiciary about the nature and scope of NCP, which can lead to a lack of effective investigation and prosecution of these cases.

- South Asian countries, including India, lack focused laws on dealing with revenge porn targeting women.

The absence of specific laws addressing NCP is not unique to India. Many South Asian countries lack focused laws on dealing with revenge porn targeting women. This reflects a broader lack of attention to the issue of online violence against women in these countries.

- Socio-economic conditions and fear of reputation damage deter victims from seeking police help <sup>7</sup>.

In addition to the lack of specific laws, socio-economic conditions and fear of reputation damage deter many victims of NCP from seeking police help in India. Victims may fear that reporting the crime will lead to further humiliation and stigmatization, and they may also lack the resources to pursue legal action. This makes it difficult to gather data on the prevalence of NCP and to develop effective strategies for preventing and addressing it.

### **Case Laws and Legal Interpretations in India**

The interpretation and application of existing cyber laws in India to address Non-Consensual Pornography (NCP) cases have been evolving. Due to the absence of specific legislation targeting NCP, courts have had to rely on interpreting existing laws related to obscenity, defamation, and harassment to provide some recourse to victims. However, this approach has faced challenges and limitations, highlighting the need for more explicit legal provisions.

- Analysis of key court decisions related to cybercrime.

Analyzing key court decisions related to cybercrime provides insights into how the judiciary interprets and applies the existing legal framework. These decisions often highlight the challenges in adapting traditional legal concepts to address new forms of cyber offenses.

- Court decisions related to cybercrime and their implications for victims need to be analyzed.

Analyzing court decisions is essential to understand the effectiveness of the current legal framework and to identify areas where reforms are needed. These decisions can also provide guidance to law enforcement agencies and prosecutors on how to investigate and prosecute cybercrime cases.

- These cases highlight the challenges in applying existing laws to address new forms of cyber harassment.

Many cybercrime cases involve novel forms of harassment and abuse that were not contemplated when the existing laws were drafted. This creates challenges for courts in applying these laws to new situations and in ensuring that victims receive adequate protection.

- Interpretation of existing laws to address NCP.

In the absence of specific legislation, courts in India have attempted to interpret existing laws to address NCP cases. For example, Section 67 of the IT Act, which deals with the publication or transmission of obscene material in electronic form, has been invoked in some NCP cases. Similarly, Section 499 of the Indian Penal Code (IPC), which deals with defamation, has been used in cases where NCP is used to damage a person's reputation.

- Existing laws, such as those related to obscenity and defamation, may be interpreted to address NCP<sup>8</sup>.

While these laws can provide some recourse to victims of NCP, they may not fully capture the unique harms associated with this form of abuse. For example, the focus on obscenity may not adequately address the violation of privacy and autonomy that is central to NCP. Similarly, the focus on defamation may not adequately address the emotional distress and psychological harm suffered by victims.

- However, these interpretations may not fully capture the unique harms associated with NCP.

The interpretation of existing laws may not fully address the specific nature of NCP, which involves the non-consensual distribution of intimate images and the violation of privacy and autonomy. This can lead to inadequate legal outcomes for victims and a failure to deter potential offenders.

- Challenges in prosecuting NCP cases under current laws.

Prosecuting NCP cases under current laws in India faces several challenges. One challenge is proving intent to harm, which is often a requirement for obtaining a conviction under existing laws. It can be difficult to establish the perpetrator's state of mind and to prove that they intended to cause harm or distress to the victim.

Another challenge is addressing the cross-jurisdictional nature of online offenses. NCP often involves images being shared across multiple jurisdictions, making it difficult to determine which jurisdiction has the authority to prosecute the case.

- Challenges include proving intent to harm and addressing the cross-jurisdictional nature of online offenses.

Proving intent to harm can be particularly challenging in NCP cases, as the perpetrator may argue that they did not intend to cause harm or that they were simply sharing the images for personal reasons. Addressing the cross-jurisdictional nature of online offenses requires cooperation between law enforcement agencies in different jurisdictions, which can be difficult to achieve.

- The lack of specific laws and awareness among law enforcement agencies also pose significant hurdles.

The lack of specific laws and awareness among law enforcement agencies about NCP can lead to a lack of effective investigation and prosecution of these cases. Law enforcement agencies may not fully understand the nature and scope of NCP, or they may not have the resources or

training to investigate these cases effectively.

### **Comparative Analysis: India vs. Other Jurisdictions**

Comparing India's legal approach to Non-Consensual Pornography (NCP) with that of other jurisdictions, such as the United States, the United Kingdom, Australia, and Singapore, reveals significant differences in the scope and effectiveness of legal frameworks. This comparative analysis highlights the areas where India's legal framework lags behind and identifies potential models for reform.

- Comparing legal approaches in India with those in the US and UK.

The legal approaches to NCP in the United States and the United Kingdom differ significantly from that in India. In the US, the legal landscape is fragmented, with laws varying from state to state and a lack of federal legislation specifically addressing NCP. In the UK, the legal framework is more centralized, but its scope is relatively limited, requiring proof of intent to cause distress.

In contrast, India lacks specific legislation addressing NCP, relying on interpretations of existing laws related to obscenity, defamation, and harassment. This makes it more difficult to prosecute NCP cases and to provide adequate protection to victims.

- The US and UK exhibit different approaches to NCP, with varying scopes and protections for victims.

The US approach is characterized by its decentralized nature and the immunities provided to online platforms, while the UK approach is characterized by its centralized nature and its focus on intent to cause distress. Both approaches have their limitations in terms of providing comprehensive protection to victims of NCP.

- India's legal framework lags behind these jurisdictions in terms of specific legislation and enforcement mechanisms.

India's legal framework lags behind the US and the UK in terms of specific legislation addressing NCP. The absence of a specific law criminalizing NCP makes it more difficult to prosecute these cases and to provide adequate protection to victims. Furthermore, India's enforcement mechanisms for cybercrime are often weak and under-resourced.

- Lessons from Australia and Singapore.

Australia and Singapore offer potential models for India in terms of developing a more comprehensive and effective legal framework for addressing NCP. Australia has implemented a civil penalties regime, allowing the eSafety Commissioner to issue removal notices, infringement notices, and fines to individuals and online platforms that share intimate images without consent. Singapore has a comprehensive legal framework that includes criminal laws, civil remedies, and platform regulations.

- Australia's civil penalties regime and Singapore's comprehensive legal framework offer potential models for India.



Australia's civil penalties regime provides a swift and effective means of removing offending images and holding individuals and platforms accountable. Singapore's comprehensive legal framework provides a multi-faceted approach to addressing NCP, with criminal laws, civil remedies, and platform regulations all playing a role.

- These jurisdictions emphasize both prevention and redress for victims of NCP.

Both Australia and Singapore emphasize the importance of both preventing NCP and providing redress for victims. This includes educating the public about the risks and harms of NCP, providing support and assistance to victims, and holding perpetrators accountable for their actions.

- Adapting international best practices to the Indian context.

Adapting international best practices to the Indian context requires careful consideration of India's unique socio-economic and cultural context. This includes addressing issues of digital literacy, gender inequality, and access to justice. It also requires taking into account the specific challenges faced by law enforcement agencies and the judiciary in India.

- Adapting international best practices requires consideration of India's unique socio-economic and cultural context.

India's socio-economic and cultural context differs significantly from that of the US, the UK, Australia, and Singapore. This means that legal frameworks and enforcement mechanisms that are effective in those countries may not be effective in India.

- This includes addressing issues of digital literacy, gender inequality, and access to justice.

Addressing issues of digital literacy, gender inequality, and access to justice is essential for developing a more effective legal framework for addressing NCP in India. Many victims of NCP lack the digital literacy skills to protect themselves online or to report the crime to law enforcement agencies. Gender inequality can also make it more difficult for women to seek justice in these cases. Furthermore, many victims lack access to legal aid and other support services.

### **The Role of Technology and Social Media Platforms**

Technology plays a dual role in Non-Consensual Pornography (NCP). While it facilitates the creation and dissemination of intimate images, it also offers potential solutions for preventing and addressing NCP. Social media platforms, in particular, have a crucial responsibility to implement measures to prevent the spread of NCP and to provide support to victims.

- Impact of technology in facilitating NCP.

Digital technologies have significantly facilitated the perpetration of violence and abuse, including NCP. The ease with which intimate images can be created, shared, and disseminated online has made it easier for perpetrators to engage in this form of abuse, while also making it more difficult to control and prevent.

The anonymity afforded by the internet can also embolden perpetrators, making them more

likely to engage in NCP. The global reach of the internet means that victims can experience the harm of NCP regardless of their location, and the images can persist online indefinitely, causing ongoing distress and harm.

- Technology facilitates the perpetration of violence and abuse, including NCP, through various online platforms<sup>9</sup>.

Online platforms, such as social media sites, website hosts, and messaging apps, provide the infrastructure for the creation, sharing, and dissemination of intimate images. These platforms can be used to perpetrate NCP, whether through the direct posting of images or through the sharing of links to images hosted elsewhere.

- The ease of sharing and disseminating intimate images online exacerbates the harm to victims.

The ease with which intimate images can be shared and disseminated online means that victims can quickly lose control over their own images and that the harm can spread rapidly. This can lead to a sense of helplessness and despair among victims.

- Responsibilities of social media platforms in preventing NCP.

Social media platforms have a crucial responsibility to implement measures to prevent the spread of NCP. This includes developing clear policies against NCP, implementing effective reporting mechanisms, and promptly removing offending content. Platforms also have a

- Social media platforms have a responsibility to implement measures to prevent the spread of NCP.

Social media platforms are not simply neutral conduits for user-generated content. They have a responsibility to create a safe and respectful online environment for their users, and this includes taking steps to prevent the spread of NCP.

- This includes developing standardized reporting procedures and promptly removing offending content.

Standardized reporting procedures make it easier for victims to report NCP and to request the removal of offending images. Prompt removal of offending content is essential to minimize the harm to victims and to prevent further dissemination of the images.

- Use of AI and chatbots for reporting and takedown procedures.

Artificial intelligence (AI) and chatbots offer potential solutions for improving reporting and takedown procedures for NCP. Chatbots can provide victims with a user-friendly interface for reporting NCP and can guide them through the reporting process. AI can be used to detect and remove non-consensual intimate images from online platforms, even if they have been altered or re-uploaded.

## **Therapeutic Jurisprudence and Restorative Justice**

### **Application of Therapeutic Jurisprudence (TJ) in NCP Cases**

Therapeutic Jurisprudence (TJ) aims to address the psychological and emotional needs of victims in legal proceedings, creating a more supportive and healing environment. TJ can be applied to create a more supportive and healing legal environment for victims of NCP, recognizing the trauma and emotional distress associated with this crime. By focusing on the well-being of victims, TJ can help to promote healing and recovery.

### **Role of Restorative Justice (RJ) in Victim Empowerment**

Restorative Justice (RJ) focuses on repairing the harm caused by the offense and empowering victims, providing a means for them to regain control and address the underlying causes of NCP. RJ processes can help victims regain control and address the underlying causes of NCP. RJ offers an alternative to traditional punitive measures, emphasizing dialogue, accountability, and healing.

### **Balancing Punishment and Rehabilitation**

Balancing punishment for offenders with rehabilitation and victim support is essential for effective justice, aiming to deter future offenses while addressing the needs of both victims and offenders. This approach recognizes the importance of accountability while also promoting healing and preventing future harm. A balanced approach is crucial for achieving long-term justice and promoting a safer online environment.

### **Recommendations and Conclusion**

#### **Need for Specific Legislation Addressing NCP in India**

Specific legislation is needed to address NCP and provide comprehensive protection to victims in India, filling the current gap in legal protection and ensuring that offenders are held accountable. This legislation should define the offense, establish clear penalties, and outline the responsibilities of online platforms, providing a clear legal framework for addressing NCP. Such legislation is essential for signaling the seriousness of this crime and providing effective recourse for victims.

#### **Enhancing Digital Literacy and Awareness**

Enhancing digital literacy and awareness is crucial for preventing NCP and protecting individuals online, empowering them to make informed decisions about their online behavior and protect their privacy. Education programs should focus on promoting responsible online behavior and respecting privacy, helping to prevent the non-consensual sharing of intimate images and fostering a safer online environment. Digital literacy is a key component of preventing NCP and protecting individuals online.

#### **Strengthening Law Enforcement and Judicial Capacity**

Strengthening law enforcement and judicial capacity is essential for effectively prosecuting

NCP cases, ensuring that offenders are brought to justice and victims receive the support and protection they need. This includes providing training on cybercrime investigation and ensuring access to specialized resources, enabling law enforcement and judicial officials to effectively address the challenges of NCP. Investing in law enforcement and judicial capacity is crucial for ensuring that NCP is effectively addressed in India.

By implementing these recommendations, India can create a more comprehensive and effective legal framework for addressing NCP, protecting victims, and promoting a safer online environment. This requires a multi-faceted approach that includes legal reform, public awareness campaigns, and investment in law enforcement and judicial capacity. Only through a concerted effort can NCP be effectively combatted and victims be provided with the support and justice they deserve.

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