

ARTICLE

Tackling Non-Consensual Dissemination of Intimate Images in India's Contemporary Legal Framework

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Abstract

The rapid proliferation of digital technologies has ushered in a new epoch replete with unprecedented challenges about safeguarding personal privacy and the unauthorized dissemination of intimate images. This article explores the intricate legal landscape encompassing the Indian Penal Code, Information Technology Act, Digital Personal Data Protection Act and the Bharatiya Nyaya Sanhita Bill. This analytical pursuit casts a gaze upon the imperative task of addressing the non-consensual dissemination of intimate images within the contours of the digital milieu. This article comprehensively explores the potential repercussions of digital transgressions, laying bare the seismic impacts on individuals' privacy, inherent dignity and psychological well-being. More than a mere exploration, this paper unfurls a roadmap for conceptualizing a holistic and productive legal framework in India – uniquely attuned to tackling the complex challenge of non-consensual dissemination of intimate images. Embedded within this endeavour are methodically derived recommendations, conceived upon the bedrock of meticulous dissection of pertinent legal provisions, nuanced analysis of case law and astute juxtapositions with international approaches to analogous predicaments. The overarching objective herein is to propel the evolution of a legal edifice that transcends the constraints of the digital epoch by forging a harmonious amalgamation of its principles with the bedrock tenets of human rights. At the heart of this scholarly endeavour lies an unswerving commitment – to secure and uphold individuals' sanctified digital privacy inviolability. The ultimate goal is to erect formidable safeguards that staunchly shield individuals from the consequences concomitant with encroachments upon their digital sanctums. Through this concerted initiative, the pursuit of a legal landscape that is not only equitable and reasonable but also at pace with the dynamic digitalization landscape stands foregrounded. This work is thus a clarion call that echoes the need for continuous refinement in the pursuit of justice within the digital echelons of our society.

Keywords non-consensual dissemination of intimate images; pornography; revenge porn; Data Protection Bill; Bharatiya Nyaya Sanhita; Digital Personal Data Protection Act

INTRODUCTION

“To those who abuse: the sin is yours, the crime is yours, and the shame is yours.”

Flora Jessop

(Jessop and Brown 2008)

The contemporary landscape is indelibly marked by a sweeping technological revolution that has profoundly influenced diverse dimensions of human existence. Among its transformative impacts, the Internet has ushered in an era of unfettered access to an expansive repository of information while remarkably augmenting our capacity to engage in social connectivity. Within this evolving milieu, the legal domain grapples with new challenges stemming from rapid technological advancements, particularly within cybercrimes (Marques 2021). A prime example of this is the issue of non-consensual dissemination of intimate images (NCDII), commonly known as “revenge porn” (Department of Legal Affairs 2002).¹ NCDII is a contemporary concern that intersects some of the most intricate challenges of our twenty-first-century landscape (Klein and Zaleski 2019).

This research is grounded in the aspiration to forge an unequivocal and exhaustive definition that accurately encapsulates this criminal transgression’s intricate attributes and gravity. To this end, the study meticulously scrutinizes the informal moniker “revenge porn”, exposing its inadequacy in capturing the comprehensive essence of the offence. Consequently, the study advocates for embracing the term “NCDII” as the ideal nomenclature while simultaneously supporting establishing a distinct provision that adequately recognizes its distinctive nature.

After this linguistic exploration, the paper thoroughly examines the legal framework operative within India, juxtaposing it against the regulatory paradigms of other jurisdictions. This comparative analysis is paramount in pursuing a nuanced comprehension of the diverse strategies harnessed to combat this criminal activity. This endeavour is fortified by a holistic consideration of the digital triad, a construct encompassing the right to privacy,² the right to be forgotten³ and the contours of NCDII.

This paper pivots towards dissecting many factors necessitating meticulous examination in formulating a tailored provision addressing NCDII. Central to this exploration is embracing a victim-centric perspective, an approach that resonates

¹Image-based sexual abuse, commonly called revenge porn, involves the unauthorized dissemination of sexually explicit images and videos through online platforms. This reprehensible practice entails the unethical act of sharing or publicizing explicit visual content of individuals without their consent, intending to intimidate or demean them. This offence is gender-neutral, posing a threat to anyone, regardless of gender.

²The recognition of the right to privacy originated as an inherent element of the right to life and personal liberty outlined in Article 21 of the Indian Constitution. However, on 24 August 2017, the Supreme Court of India, in the pivotal case of *Justice K. S. Puttaswamy v. Union of India*, affirmed that the right to privacy is an independent fundamental right within the Constitution. This encompassing right encompasses dimensions like informational privacy, bodily integrity and decisional autonomy.

³The right to be forgotten concept entails an individual’s request to delete specific data, rendering it untraceable by third parties. This right diverges from the right to privacy, which encompasses non-public information. Unlike the right to privacy, the right to be forgotten pertains to erasing publicly known data from a specific period and preventing further access by third parties.

throughout the paper. The crux of this research resides in augmenting awareness and ardently advocating for an imperative restructuring of the criminal justice apparatus, one adeptly poised to confront and neutralize the perils of NCDII, with particular attention directed towards the adult demographic (Kemp 2021).

RECONSIDERING THE PHENOMENON OF REVENGE PORNOGRAPHY

Opponents of the phenomenon commonly referred to as “revenge porn” assert that the prevailing terminology falls short in its inclusivity and fails to comprehensively encapsulate the intricate nature and gravity of the issue that it endeavours to address. To attain a comprehensive grasp of the intricacies embedded within this discourse, it is imperative to deconstruct the term “revenge porn” under scrutiny (Iyengar 2011b).

The term “revenge porn” gained prominence in the early 2010s as an informal descriptor for the non-consensual dissemination of sexually explicit images or videos, often intending to inflict harm upon the depicted individual. This digital transgression, marked by its demeaning essence, wields the potential to inflict profound repercussions upon the targeted individual (Bates 2017). These consequences encompass psychological distress, tarnished public image, and the conceivable detriment to professional prospects and personal relationships (Brown 2018).

However, there exists a faction contending that the application of “revenge porn” may inadvertently diminish the gravity of the issue, potentially fostering an inflated representation that perpetuates the misconception that this form of abuse solely revolves around retribution. The fixation on revenge might inadvertently divert attention away from underlying intricacies, including power dynamics, gender-based violence and breaches of trust.

Furthermore, it is imperative to recognize that the term “revenge porn” might be misleading, as it insinuates that the primary impetus behind such actions is solely rooted in a desire for retaliation. In reality, motivations for engaging in such acts can exhibit substantial diversity, encompassing objectives such as asserting control and dominance over the targeted individual and subjecting them to humiliation, degradation or harassment.

Advocates who dissent against NCDII seek to foster a more nuanced comprehension of this phenomenon by utilizing a more intricate lexicon (McGlynn 2023), as opposed to the prevalent term “revenge porn” (Powell and Henry 2017b). Various alternative terminologies have been proposed, including “non-consensual intimate image sharing”, “intimate image abuse” and “image-based sexual abuse”. The primary intention behind adopting these alternatives is to shift the focus away from the concept of revenge and towards the violation of consent, as well as the broader context of digital sexual harassment and exploitation (The Hindu 2021).

Critics of this proposed alteration contend that “revenge porn” has permeated the realms of law, media and society, and altering this terminology could potentially introduce ambiguity or hinder ongoing efforts to combat this issue. Conversely, proponents maintain that linguistic precision and accuracy are pivotal when addressing intricate societal challenges, particularly when constructing appropriate legal frameworks and support systems for those adversely affected by these matters.

In essence, “revenge porn” has undeniably played a pivotal role in raising awareness about the problem of non-consensual dissemination of private and intimate images. Nevertheless, as our understanding of the subject evolves, it becomes evident that this label falls short of encapsulating the complete scope and significance of the issue. Adopting a more refined and precise lexicon can be viewed as an indispensable stride towards cultivating a more empathetic and productive approach to addressing instances of digital sexual abuse. This approach concurrently contributes to fostering a culture that esteems consent and respect within the milieu of online interactions.⁴

CHALLENGING THE PERCEPTION OF “REVENGE”

Using the term “revenge” in the context of non-consensual intimate image (NCII) dissemination implies an implicit assumption that the individual subjected to this act has committed some transgression, thus providing a rationale for retaliatory actions in the form of public exposure. However, this assumption often needs more empirical evidence, as the underlying motivations behind these actions can be much more complex and diverse than mere retribution. Intentionally distributing explicit images without consent can be driven by various factors, including the desire for financial gain, voyeuristic tendencies, or the aim to assert power and control over the victimized individual (Iyengar 2011c).

The concept of “outing logic” is a particularly detrimental incentive that underlies the dissemination of NCII (Kyong Chun 2017). Within this specific framework, it is observed that individuals who engage in criminal activities employ the digital realm as a mechanism to assert control and superiority over their victims. They do so by coercion, leveraging the possibility of disseminating their targets’ images or videos to a broader public audience. The current power dynamics enable perpetrators to manipulate and exploit individuals who have been victimized, utilizing the potential for public humiliation and disgrace to exert control (Starr and Lavis 2019).

Using the term “revenge” to describe the process of disseminating NCII obscures the underlying objectives and consequences associated with these efforts. Misconceptions can emerge, implying that individuals who have experienced harm are accountable for the negative impacts they face due to their perceived wrongdoings. Misplaced blame is observed to be significantly prevalent in cases involving women (Branch et al. 2017), thereby cultivating a climate that permits and promotes individuals to publicly reveal personal information without experiencing remorse or facing accountability for their behaviour.

The adverse effects experienced by victims in terms of their physical, psychological and economic well-being are intensified in a permissive environment. The act of making private images available to the general public can have detrimental effects on individuals’ psychological well-being (Matsui 2015), often leading to intense emotional distress, increased levels of anxiety and symptoms of depression. Moreover, individuals

⁴United Nations General Assembly, “Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Dubravka Šimonović: Intersection between the Coronavirus Disease (COVID-19) Pandemic and the Pandemic of Gender-Based Violence against Women, with a Focus on Domestic Violence and the ‘Peace in the Home’ Initiative” (24 July 2020), UN Doc. A/75/144.

subjected to victimization may encounter social ostracism, reduced employment opportunities and strained interpersonal connections, thereby perpetuating the cycle of harm arising from the dissemination of NCII (Nanjappa 2008).

To adequately address this consequential issue, it is crucial to shed light on the diverse motivations that drive the spread of NCDII. Acknowledging that revenge is just one of several potential motivations allows for a more comprehensive approach to dealing with digital abuse. It is crucial for legal systems to undergo advancements to recognize the complex nature of these offences, abstaining from embracing narratives that blame the victims and instead prioritizing the imposition of accountability on the offenders for their actions.

Moreover, it is imperative to cultivate a cultural environment that prioritizes consent and respect in the digital domain as a proactive measure to address instances of NCII sharing. The potential of public awareness campaigns, educational initiatives and discourse on digital ethics lies in their ability to manage harmful social norms and foster a secure digital environment that promotes empathy.

In brief, applying the term “revenge” to describe sharing intimate images without consent oversimplifies the complex motivations driving such actions. Perpetrators possess the capacity to manipulate power dynamics, voyeuristic tendencies or financial incentives, which they mask by claiming to seek retribution. To effectively address the issue of NCDII, it is imperative to implement measures that involve eradicating victim-blaming narratives and promoting a culture that prioritizes consent and accountability (Bates 2017). The implementation of these procedural measures is imperative to establish a digital environment that is more secure and advantageous for all parties involved.

DISENTANGLING THE INACCURACY IN TERMINOLOGY – “PORNOGRAPHY”

The utilization of the term “pornography” within the context of “non-consensual creation, distribution, and consumption” (Mathur 2023) of private visual material raises substantial concerns that warrant thorough examination (Powell and Henry 2017a). Applying the label of “pornography” to this form of digital exploitation poses potential problems and could lead to misunderstandings that require careful consideration. Classifying these reprehensible actions as “pornography” might inadvertently normalize and legitimize them, thus diverting attention from the true nature of consensual adult content. Additionally, this approach could potentially unfairly associate all forms of pornography with non-consensual acts, which could undermine the recognition of legitimate and ethical adult content (Powell and Henry 2017a).

The merging of personal and intimate visual material with publicly accessible adult content creates a precarious blending of reality and fiction for viewers. Individuals consuming illicit material may struggle distinguishing between genuine, consensual adult content and non-consensual explicit imagery. This lack of distinction perpetuates the harmful consumption of non-consensual content and intensifies the suffering experienced by victims whose privacy and trust have been grossly violated.

A concerning consequence of using the term “porn” to describe non-consensual intimate imagery is inadvertently endorsing its consumption. As legal scholar Mary Anne Franks (2017) points out, this could contribute to the emergence of a voyeuristic culture in which individuals consume voyeuristic content without fully considering the consent of those depicted. Associating the term “pornography” with non-consensual intimate imagery risks legitimizing the invasion of privacy and exploitation of vulnerability for personal gratification.

Differentiating between consensual adult content and non-consensual imagery is of paramount importance. The global recognition of the pornography industry and its ethics hinges on creating and consuming consensual, legally compliant content that involves informed consent from participating adults (World Population Review 2023). Distinguishing this content from the unethical and harmful practice of non-consensual intimate imagery is essential, as the latter violates the fundamental rights and dignity of those involved.

To comprehensively address this issue, it is crucial to discard the misleading “porn” label regarding non-consensual intimate imagery and adopt accurate and distinct terminology instead. Using terms like “non-consensual intimate imagery”, “intimate image abuse” or “image-based sexual abuse” enhances communication about these actions’ severity and negative consequences without downplaying the offence or unfairly implicating lawful adult content industries (Franklin 2014:1308–9).

Furthermore, promoting awareness around consent, digital ethics and privacy is pivotal in combating the unauthorized distribution of intimate imagery. Educational efforts and advocacy for public awareness can effectively enhance individuals’ comprehension of the ethical implications of their actions. This approach contributes to cultivating a societal atmosphere that prioritizes principles of respect and consent in digital interactions.

In summary, applying the term “porn” to non-consensual intimate imagery is misleading and troubling. It risks endorsing, normalizing and blurring the distinction between voluntary and non-voluntary actions, potentially perpetuating victim harm and negatively affecting legitimate adult content industries (Fairbairn 2015). By using precise terminology and promoting digital ethics and consent, society can make substantial strides in eradicating harmful cultures associated with the unauthorized sharing of intimate images. This approach safeguards individuals’ dignity, integrity and confidentiality in the digital age.

REVEALING THE ENDURING EFFECTS OF LANGUAGE: EXPLORING IMPLICATIONS FOR VICTIMS

The misclassification and erroneous categorization of the non-consensual distribution of intimate images have practical implications beyond theoretical debates, leading to substantial and meaningful repercussions for the victims of this reprehensible offence.

Incorporating the term “revenge” in the context of NCDII has a discernible influence on the mindset of law enforcement agencies, prompting them to embrace a punitive stance that inadvertently assigns blame to the victims. The existence of victim-blaming attitudes can yield adverse outcomes for survivors, exacerbating

their trauma and deterring them from pursuing legal recourse and seeking assistance. The mainstream media often perpetuate narratives that blame victims, employing insensitive language and contributing to a societal climate where victims are held responsible for their victimization.

Public awareness campaigns that perpetuate victim-blaming narratives contribute to the reinforcement of harmful societal beliefs. Consequently, these campaigns often provide misguided recommendations that suggest women should refrain from sharing intimate content to prevent victimization. Despite its seemingly protective nature, this guidance burdens potential victims rather than ensuring that perpetrators are held accountable for their abusive actions. Consequently, a considerable proportion of individuals experience a sense of obligation to restrict their online engagements due to apprehensions surrounding potential exploitation, thereby substantially hindering their ability to engage in digital contexts actively (Hall and Hearn 2018:124–31).

The matter under consideration has been unduly oversimplified by adopting the term “revenge porn”, leading “to the creation of narrow legislation that focuses exclusively on the vengeful motives of the perpetrator rather than the issue of consent” (Mathur 2023). The legislative approach exhibits a restricted scope, failing to sufficiently recognize the extensive array of adverse outcomes endured by victims. These consequences include psychological distress, damage to one’s reputation, and personal privacy and dignity violations. Consequently, this hinders the progress of creating all-encompassing legal remedies that can adequately protect and support individuals who have been victimized (Dash 2020).

The impact of language on the development of public perception and understanding of complex subjects is substantial. Using the term “revenge porn” in cases involving the non-consensual sharing of intimate images has impeded a thorough comprehension of the diverse harms suffered by individuals affected, resulting in inadequate legal and societal responses to this form of digital abuse. To foster a more empathetic and effective approach, it is essential to adopt a vocabulary that reflects a nuanced comprehension of the complex nature of this transgression, with a specific focus on the notion of consent (Dash 2020).

By embracing a linguistic framework that recognizes the complex dynamics involved in NCDII and prioritizes the concept of consent, society can foster an increased awareness, empathy and support for individuals impacted by these actions. To adequately meet the needs of survivors and cultivate a more secure digital environment, it is crucial to develop a comprehensive understanding of the far-reaching consequences of this illicit behaviour. This comprehension will establish the basis for formulating significant legal modifications, social interventions and support structures.

UNVEILING THE COMPLEXITY OF “REVENGE PORN”: A CALL FOR A PRECISE LEXICAL SHIFT

This paper posits the necessity of reassessing the terminology employed to depict the phenomenon commonly referred to as “revenge porn” to encapsulate its semantic intricacies more effectively. The proposal recommends the utilization of

more specific and inclusive terminology, specifically “non-consensual dissemination of intimate images”, focusing particularly on adult individuals who have experienced victimization (Dash 2020).

The term “NCDII” offers a more nuanced and precise depiction of the criminal act, enabling a comprehensive understanding of the substantial consequences endured by victims. Distinct attributes distinguish NCDII from the contentious concept of “revenge porn”, making it a more suitable alternative.

Including the term “non-consensual” in NCDII emphasizes that the primary issue lies in the absence of consent rather than the particular attributes of the content. Through the utilization of this specific language, the previously mentioned terminology successfully avoids stigmatizing and attributing blame to individuals who have decided to share their personal and private visual material. As a result, this fosters an environment characterized by increased empathy and support (Farrell et al. 2019).

Moreover, in the framework of NCDII, the concept of “dissemination” encompasses a broader range of negative actions. These actions encompass, but are not restricted to, the publishing, transmission, transfer, or public disclosure of an individual’s intimate image or video without obtaining their explicit consent (Mathur 2023). This broadened viewpoint acknowledges the various mechanisms by which the violation occurs, thus providing a more accurate depiction of the transgression.

The term “intimate images”, employed in NCDII, is deliberately inclusive, encompassing diverse visual content captured in private and public settings and acknowledging the intricate and heterogeneous nature of the offence, manifested through many technological methods and platforms.

The establishment and utilization of the term NCDII signifies a significant advancement in the “legal and social understanding, providing a more accurate and comprehensive way to address the harms experienced by survivors of this crime” (Mathur 2023). By utilizing this vocabulary, lawmakers and policymakers can develop legislation and regulations that are more all-encompassing and effective in addressing, punishing and resolving instances of NCDII. Moreover, the employment of language that emphasizes the importance of consent and privacy helps to reduce the stigmatization and inclination to hold victims responsible, which has historically been associated with the distribution of NCII.

AN ANALYSIS OF THE LEGAL FRAMEWORK IN INDIA

The current legal framework in India concerning NCDII reveals significant areas for improvement within the existing legislation. Therefore, it is crucial to conduct a comprehensive evaluation to ensure the proper protection of victims’ rights and the preservation of their dignity.

Indian Penal Code

Section 292⁵ of the Indian Penal Code (IPC) encompasses the statutory provision regulating obscenity and distributing offensive materials. However, this specific provision needs to address the electronic means of distribution, leading to a

⁵Indian Penal Code, 1860 (Act No. 45 of 1860) (IPC), Section 292.

loophole in regulating NCDII cases. Furthermore, the section mentioned above primarily focuses on offensive content, failing to explicitly recognize the violation of privacy and self-esteem experienced by the victims. This aspect remains a vital element of NCDII.

Section 354C⁶ of the IPC precisely addresses “voyeurism”, encompassing “private acts” that reveal private body parts of the victim. Nevertheless, it does not overtly mention the dissemination, alteration or transmission of images of women – key components of NCDII. Additionally, Section 354C is gender-specific, focusing on “male offenders and female victims”, akin to Sections 4 and 6⁷ of the Indecent Representation of Women (Prohibition) Act⁸ which aims to prevent the “indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or incidental thereto”.

Section 499⁹ of the IPC delineates defamation as an act where an individual intends to or has reason to believe it could harm someone’s reputation. Defamation centres on the damage inflicted on a person’s social repute. Nonetheless, the harm stemming from NCDII extends beyond reputational harm, encompassing emotional anguish, privacy violation, and detriment to personal and professional associations (Walker and Sleath 2017).

Section 509 of the IPC addresses “insulting a woman’s modesty through words, gestures, objects, or privacy intrusion”.¹⁰ Nonetheless, NCDII encompasses the “unauthorized creation, distribution, or publication of private images”, surpassing the confines of modesty insults (Marques 2021). Furthermore, Section 509’s applicability is gender-specific, mainly “involving women as victims”, while NCDII can impact individuals of any gender (Marques 2021).

Bharatiya Nyaya Sanhita

The Bharatiya Nyaya Sanhita¹¹ was presented in the Lower House of the Indian Parliament on 11 August 2023. The purpose of this bill is to replace the existing IPC. While the bill retains certain parts of the IPC, it also introduces significant changes to the criminal legal framework in India. One of the notable aspects of the bill is the inclusion of provisions related to organized crime and terrorism offences. This suggests modernizing the criminal law to address the country’s emerging challenges and threats. The bill also proposes enhancements in penalties for specific offences that already exist in the IPC.

⁶*Ibid.*, Section 354C.

⁷The penalty is defined under this section: “... shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees.”

⁸Indecent Representation of Women (Prohibition) Act, 1986 (Act No. 60 of 1986).

⁹IPC, Section 499.

¹⁰IPC, Section 509.

¹¹Bharatiya Nyaya Sanhita, 2023 (Bill No. 121 of 2023).

Additionally, introducing community service as a punishment in the bill for certain petty offences is noteworthy. This aligns with the trend in criminal justice systems worldwide to explore alternative forms of punishment beyond traditional incarceration. The bill also considers judicial decisions by omitting certain offences from the IPC that have been struck down or read down by the courts. This reflects an effort to align the criminal code with the evolving legal interpretations and protect individuals' rights. However, the bill has been entrusted to the Parliamentary Standing Committee on Home Affairs for review and report submission (The Hindu 2023). This Committee will assess the bill's provisions, potential implications and feasibility before presenting a report on its findings.

Clause 292(1)¹² of the Bharatiya Nyaya Sanhita 2023 introduces the phrase "including the display of any content in electronic form", which addresses the deficiency in Section 292 of the IPC concerning electronic dissemination. However, it remains inadequate in fully addressing the issue of violating the victim's privacy and dignity.

Likewise, Clause 76¹³ which pertains to the offence of voyeurism, falls short of explicitly encompassing critical aspects of NCDII. However, it does introduce the term "Whoever" at the outset of the clause, thereby addressing the gender exclusivity inherent in the previous Section 354C of the IPC.

Much like Section 499 of the IPC, Clause 354¹⁴ of the Nyaya Sanhita, which pertains to the crime of defamation, falls short in accounting for the consequences of NCDII on the victim.

Similar to the intention of replacing Section 509 of the IPC, Clause 78¹⁵ of the Nyaya Sanhita addressing the offence of insulting the modesty of a woman also falls short of comprehensively encompassing the complexities of NCDII. Moreover, it retains the gender-specific nature of the law, similar to Section 509 of the IPC.

Information Technology Act

Regarding the Information Technology Act,¹⁶ it is noteworthy that Section 66E¹⁷ of this legislation entails sanctions for the act of disseminating visual representations that depict the private anatomical regions of an individual. As mentioned earlier, the provision encompasses all genders and pertains to certain aspects of NCDII. However, its narrow interpretation of "private areas" may restrict its applicability in scenarios where the "victim is portrayed in intimate poses without explicitly exposing those regions".¹⁸

Similarly, the dissemination or communication of sexually explicit content in digital format is liable to sanctions as stipulated in Section 67A¹⁹ of the Information Technology Act. While the provision mentioned above has the potential to penalize

¹²*Ibid.*, Clause 292(1).

¹³*Ibid.*, Clause 76.

¹⁴*Ibid.*, Clause 354.

¹⁵*Ibid.*, Clause 78.

¹⁶Information Technology Act, 2000 (Act No. 21 of 2000).

¹⁷*Ibid.*, Section 66E.

¹⁸*Ibid.*

¹⁹*Ibid.*, Section 67A.

individuals involved in the dissemination of NCIIs, it also raises a valid concern regarding the potential prosecution of the victims themselves, particularly in cases where the victim willingly shared intimate images with their partner. This paradox within the legal framework poses a significant barrier to the effective resolution of NCDII cases, as it carries the potential to perpetuate harm against survivors actively seeking legal redress.

Digital Personal Data Protection Act

In 2017, the central government established a Committee of Experts on Data Protection, led by Justice B. N. Srikrishna, to examine national data protection issues (Garg et al. 2021). The Committee's report was submitted in July 2018. Following its recommendations, the Personal Data Protection Bill, 2019 was presented in the Lok Sabha (Lower House of Parliament) in December 2019.²⁰ This bill underwent scrutiny by a Joint Parliamentary Committee, which furnished its report in December 2021. However, the bill was withdrawn from Parliament in August 2022. Subsequently, a Draft Bill was unveiled for public input in November 2022²¹ leading to the introduction of the Digital Personal Data Protection Bill, 2023, in Parliament in August 2023. It was enacted on 11 August 2023 after receiving the President's assent.

The Act provides exemptions for State data processing, citing reasons such as national security, which could result in data collection, processing and retention beyond necessity, potentially infringing upon the fundamental right to privacy.²² It lacks provisions to manage risks associated with personal data processing. Additionally, the Act does not confer data portability rights and the right to be forgotten to data principals.²³ The Act permits personal data transfer outside India, except to nations notified by the central government. However, this mechanism might not ensure a thorough assessment of data protection standards in allowed data transfer destinations.

Undertaking a comprehensive analysis and revision of existing laws in the IPC, the Information Technology Act and the Digital Personal Data Protection Act is imperative to bridge the current gaps and effectively confront the intricate challenges associated with NCDII. Moreover, the anticipated replacement of the IPC by the Bharatiya Nyay Sanhita also lacks provisions to criminalize NCDII. India possesses the potential to enhance the safeguarding of victims' rights and dignity while cultivating a more secure digital realm for everyone through the refinement of its legal framework with more encompassing and precise language (Iyengar 2011a).

²⁰Personal Data Protection Bill, 2019 (Bill No. 373 of 2019).

²¹Draft Digital Personal Data Protection Bill, 2022.

²²Digital Personal Data Protection Act, 2023 (Act No. 22 of 2023).

²³*Ibid.*, Section 2(j): "Data Principal" means the individual to whom the personal data relates and where such individual is—

(i) a child, includes the parents or lawful guardian of such a child;
(ii) a person with disability, including her lawful guardian, acting on her behalf;"

RELEVANT CASE LAW

A noticeable void exists in research regarding NCDII, particularly within the context of India. This lack of scholarly exploration is not surprising, given the inherent scarcity of documented cases and subsequently reported instances in this domain.

The case of *State of West Bengal v. Animesh Boxi*²⁴ signifies a significant advancement in the legal framework of India concerning the matter of NCDII. In this case, Animesh Boxi was found “guilty of distributing explicit images and videos of his former partner without her consent following the end of their romantic relationship”.²⁵ Boxi was convicted and sentenced to a term of imprisonment by the Court. This judicial decision was made in light of the severity of the offence committed by Boxi and the significant harm it caused to the victim. Using the term “rape survivor” by the Court underscores the notable impact of NCDII on the victim’s welfare and sense of self-worth.²⁶ This notable legal case drew attention to the pressing need for an approach to NCDII that places importance on the needs and viewpoints of the victims, akin to the approach utilized in cases of sexual violence. The Court’s use of the term “rape survivor” in its efforts to secure appropriate compensation also brought attention to the inherent limitations of this approach and sparked calls for a more “comprehensive legal framework” to address the complexities of cases involving NCDII effectively.²⁷

In *Raj Kishore Jha v. State of Bihar*²⁸ the accused orchestrated the creation of a fraudulent Facebook account and uploaded personal and intimate images of the victim without her explicit consent. In this case, the judicial adjudication posited that such an egregious act constitutes an offence stipulated under Section 354C of the IPC. This section pertains to the capturing or disseminating of images portraying a woman’s private anatomical features, executed without her informed consent. In its verdict, the Court substantiated that the platform of Facebook assumes the legal classification of an intermediary entity. It underscored that the platform would not incur liability, except when a substantiated demonstration could be made that it harboured direct knowledge of the illicit actions and neglected to remove the offending content expeditiously.

The case of *Subhranshu Rout @ Gugul v. The State of Odisha*²⁹ involved the refusal to grant bail to a defendant charged with NCDII.³⁰ The Court firmly asserted that permitting objectionable content to persist on social media platforms without the victim’s consent infringes upon a woman’s moral standards and her right to privacy (Dekker et al. 2019). This ruling emphasized the importance of safeguarding an individual’s privacy rights and acknowledged the “right to be forgotten” concept in the digital realm (Mahapatra 2020). The Court underscored the paramount significance of the permanent erasure of photographs from servers to protect the

²⁴*State of West Bengal v. Animesh Boxi*, 2018 SCC OnLine Cal 31.

²⁵*Ibid.*

²⁶*Ibid.*

²⁷*Ibid.*

²⁸*Raj Kishore Jha v. State of Bihar* (2003) 11 SCC 519.

²⁹*Subhranshu Rout @ Gugul v. State of Odisha*, 2020 SCC OnLine Ori 878.

³⁰*Ibid.*

privacy and dignity of victims affected by the unauthorized dissemination of intimate images without their consent.

The legal framework in India incorporates provisions that have the potential to address certain aspects of NCDII. However, upon closer analysis of the cases mentioned earlier, it becomes evident that these provisions are inadequate in offering comprehensive protection to victims of this reprehensible offence. The existing legal framework requires further refinement and restructuring to establish a victim-centred approach that effectively addresses the complexities and harmful consequences of NCDII. India has the potential to strengthen the protection of victims' rights and dignity, foster a safer digital environment, and establish mechanisms for holding perpetrators accountable by reinforcing existing legislation and adopting a more comprehensive and empathetic approach (Eikren and Ingram-Waters 2016).

PRIVACY, ERASURE AND IMAGE DISSEMINATION: UNRAVELLING THE COMPLEX WEB OF RIGHTS

The case of *KS Puttuswamy v. Union of India*³¹ marked a significant milestone in affirming and preserving the fundamental right to privacy, as determined by the Supreme Court of India. The Court recognized that the ability of individuals to exert authority over their data is a fundamental element of their entitlement to lead a life marked by dignity, even in the digital age. The aforementioned legal ruling "laid the foundation for the emergence of the Right to be Forgotten", acknowledging the inherent right of individuals to exert control over the distribution of publicly available information concerning their private affairs (Dalmia 2022). The explicit recognition and acceptance of the right to be forgotten in India is not supported by specific legislation. However, judicial precedent set by the Court has established the recognition and acceptance of this right.³²

Notably, the Digital Personal Data Protection Act,³³ which has been discussed above, has been enacted by the Indian Parliament to grant citizens enhanced control and authority over their personal data. The main purpose of this legislation is to provide individuals with enhanced authority and autonomy in the management of their personal data in accordance with the fundamental principles underlying the European Union's General Data Protection Regulation (GDPR.eu 2022). This legislation seeks to establish a comprehensive framework for protecting personal data, which includes provisions for the right to be forgotten and enhances individuals' control over their online identity, but more is needed to do so.

The intersection between the right to privacy and the right to be forgotten is evident within the context of NCDII. NCIIs are a grave violation of an individual's inherent entitlement to privacy and autonomy. This transgression arises when an individual's intimate images are disseminated and circulated without explicit consent, exposing their personal moments to public scrutiny. Recognizing the "Right to Privacy as a fundamental right in India has opened avenues" (Panday 2017) for individuals

³¹*KS Puttuswamy v. Union of India* (2017) 10 SCC 1.

³²*X v. Hospital 'Z'* (1998) 8 SCC 296.

³³Digital Personal Data Protection Act, 2023.

impacted by NCDII to seek legal recourse and compensation for the substantial harm caused to their personal and emotional well-being.

The importance of comprehensive data protection laws in protecting individuals from digital exploitation and harm is underscored by the interconnectedness of the right to privacy and the right to be forgotten. By conferring individuals with the autonomy to oversee their data and ascertain the degree of information that can be obtained regarding their identity, it becomes feasible to establish a digital milieu that is concurrently more secure and considerate. The amalgamation of these three entitlements, specifically the “right to privacy”, “right to be forgotten” and safeguard against NCDII, establishes a fundamental framework for establishing a digital milieu that prioritizes individual autonomy, privacy and dignity. In the contemporary digital era, it is crucial to achieve a balanced coexistence between technological advancements and the safeguarding of fundamental human rights. Establishing this equilibrium is paramount in preserving the digital sphere as a realm that promotes empowerment rather than exploitation.³⁴

WORLDWIDE PERSPECTIVE: INTERNATIONAL LEGAL FRAMEWORKS TO ADDRESS NCDII

Numerous nations worldwide are tackling the rise of NCDII (Harasgama and Munasinghe 2021) and have implemented various measures to tackle the widespread issue of NCDII by making amendments to the existing framework or by enacting specialized legislation to combat this form of digital abuse.

United Kingdom

The enactment of the Criminal Justice and Courts Act 2015³⁵ in the United Kingdom, encompassing England, Wales and Northern Ireland, signifies a significant legal development aimed at addressing the non-consensual disclosure of private sexual photographs and films. This legislation introduces novel provisions within the criminal justice system that specifically target the act of disseminating private sexual images and videos with the intent to cause distress to the victim (Budde, Witz, and Böhm 2022).

Key to this legislative reform is establishing a legal framework that delineates the parameters of private sexual photographs and films. Such media depict aspects not typically exposed in public, including but not limited to “genitals and the pubic region, or content that a reasonable person would consider sexual in nature or context” (Budde et al. 2022). This definition serves as a basis for identifying the material that falls within the purview of the legislation.

The legislation renders it a criminal offence to disclose private sexual images without the requisite consent, whether through online or offline means. This encompasses the act of sharing such images on digital platforms as well as through traditional forms of communication. This provision intends to curtail the

³⁴Zulfiqar Ahman Khan v. Quintillion Business Media (P) Ltd., 2019 (175) DRJ 660.

³⁵Criminal Justice and Courts Act 2015.

unauthorized distribution of such intimate content and provide legal protections for individuals in the digital age.

An important element of the legislation is incorporating intent as a crucial factor in determining criminal liability. Specifically, for an action to be classified as a crime under this provision, an intention must exist to cause harm to the victim. This intent to inflict distress or harm distinguishes acts meant to cause genuine harm from those that may involve disseminating private images without malicious intent.³⁶

The legislation's inclusion of the requirement for intent acts as a safeguard against potential overreach, ensuring that only actions with harmful intent are subjected to criminal liability. This approach aligns with principles of justice and proportionality within the legal framework, promoting a balanced response to the issue of non-consensual disclosure.

New Zealand

The introduction of the 2015 Harmful Digital Communication Act (HDCA)³⁷ marked a significant step forward in addressing the challenges posed by digital communication in New Zealand. This legislation introduced a range of new principles and criminal offences while amending existing laws to better address harmful digital communication.

One of the key aspects of the HDCA is the recognition of the impact of digital communication on individuals' well-being and rights. The Act established a new criminal offence to address the harm caused by digital communications. Notably, this offence encompasses various forms of harmful communication, including the "dissemination of intimate images and recordings without consent".³⁸ By recognizing the potential harm arising from such actions, the HDCA seeks to provide a legal framework to address and deter these behaviours in the digital realm.

Additionally, the HDCA includes provisions that extend beyond criminal penalties to provide civil remedies for addressing the consequences of harmful digital communication. These civil remedies include measures such as "takedown orders" and "cease and desist orders",³⁹ aimed at containing the damage caused by disseminating intimate images and other harmful content. This approach recognizes the need to provide victims with practical tools to mitigate the impact of such actions and seek recourse.

³⁶Certain authors have criticized the concept of intention, arguing that it can potentially hinder efforts to safeguard the well-being of victims. In a recent case in the United States, for example, a young woman experienced the dissemination of her photographs on the social media platform Tumblr after the unauthorized access of her boyfriend's Dropbox account. It is challenging to definitively assert that the individuals who disseminated the photograph possessed the explicit intention of causing harm to the woman. This circumstance may impede the possibility of pursuing legal action against those who shared the content. Furthermore, individuals who are less cautious in safeguarding intimate images and engage in unauthorized access of files or databases may potentially evade liability for the non-consensual dissemination. See Evans (2017).

³⁷Harmful Digital Communications Act 2015.

³⁸*Ibid.*

³⁹*Ibid.*

By amending existing laws like the Harassment Act,⁴⁰ Human Rights Act,⁴¹ Crimes Act⁴² and Privacy Act,⁴³ the HDCA reflects a holistic approach to addressing harmful digital communication. This legislative effort acknowledges the interconnectedness of various legal domains and seeks to ensure that the legal framework is well-equipped to address digital harm comprehensively. The 2015 HDCA represents New Zealand's commitment to addressing the unique challenges posed by digital communication and providing individuals with effective legal tools to protect their rights, privacy and well-being in the digital age.

Scotland

The enactment of the Abusive Behaviour and Sexual Harm Act⁴⁴ by the Scottish Legislature in July 2017 represents a significant legal response to the issue of NCDII. This legislation is designed to address threatening or disclosing media that depict a person in an intimate situation without their consent, commonly known as the “disclosure of an intimate image or film”.⁴⁵ The law encompasses a range of scenarios where such images are revealed with the “intent to harm”, or individuals display recklessness towards the potential for “causing intense suffering through the broadcasting of such images”.⁴⁶

This legislation highlights a comprehensive approach by addressing intentional harm and negligence. This means that individuals who actively intend to cause harm through the dissemination of intimate images and those who show indifference or recklessness about the consequences of their actions can be held accountable under the law.⁴⁷ By adopting this approach, the legislation acknowledges the potential severity of emotional and psychological harm resulting from non-consensual disclosure.

The Abusive Behaviour and Sexual Harm Act also considers the dynamics of abusive relationships, particularly partner or ex-partner relationships. It provides enhanced penalties for abusive behaviour directed towards partners or ex-partners, recognizing the potential power imbalances and vulnerabilities within these relationships.

In defining the term “intimate situation”, the law offers clarity by outlining specific criteria that characterize such situations.⁴⁸ These criteria encompass actions that a “reasonable person would consider sexual”, are not typically public, and involve exposure of an individual's “genitals, buttocks, or breasts, either exposed or covered only by underwear”.⁴⁹ This definition provides a clear framework for identifying instances falling within the scope of the legislation.

⁴⁰Harassment Act 1997.

⁴¹Human Rights Act 1993.

⁴²Crimes Act 1961.

⁴³Privacy Act 1993.

⁴⁴Abusive Behaviour and Sexual Harm Act 2016.

⁴⁵*Ibid.*

⁴⁶*Ibid.*

⁴⁷*Ibid.*, Section 2.

⁴⁸*Ibid.*, Section 3.

⁴⁹*Ibid.*

Furthermore, the government's launch of campaigns to promote awareness and understanding of the legislation underscores the commitment to address the issue effectively. These campaigns are crucial in educating the public, potential victims and potential offenders about the legal consequences and ethical considerations related to NCII.

South Africa

In South Africa, the criminalization of revenge pornography has been addressed through legislative measures, specifically under the Films and Publications Amendment Act, 2019.⁵⁰ This legal framework aims to combat the dissemination of revenge pornography by imposing penalties, including fines and imprisonment, upon individuals found guilty of committing this offence.

The Films and Publications Amendment Act, 2019 serves as a legislative response to the growing concern of revenge pornography, which involves the unauthorized sharing of explicit images or videos with the intent to harm or humiliate the depicted individuals. By enacting this amendment, South African authorities acknowledge the need to address the serious harm caused by such acts and to establish legal consequences for those who engage in them.

Central to this legislative framework is imposing penalties, including fines and imprisonment, for individuals convicted of disseminating revenge pornography. Substantial penalties aim to deter potential perpetrators from engaging in this harmful behaviour, thereby preventing such offences and protecting potential victims.

This amendment's enactment underscores South African legal systems' commitment to safeguarding the dignity and rights of individuals, especially in the context of digital interactions and the dissemination of explicit content without consent. By criminalizing revenge pornography, the legislative authorities clearly state that such actions are unacceptable and subject to legal consequences.

Israel

In January 2014, the Knesset (Israeli Parliament) introduced a significant legislative amendment to the Prevention of Sexual Harassment Law.⁵¹ This pivotal amendment marked a crucial step in addressing the non-consensual distribution of intimate images within Israel's legal framework.

Under this amendment, the "act of disseminating images of an individual with a focus on their sexuality without obtaining their consent" was criminalized.⁵² This provision is particularly aimed at instances where such publicizing has the potential to degrade or humiliate the person depicted. Beyond its classification as sexual harassment, this offence is also recognized as a breach of privacy, in line with Section 5 of the Protection of Privacy Law.

⁵⁰Films and Publications Amendment Act, 2019 (Act No. 11 of 2019).

⁵¹Amendment 10 to the Prevention of Sexual Harassment Law, 5758-1998 (The Video Law) (2014).

⁵²*Ibid.*

Consequently, the “non-consensual distribution of intimate images becomes subject to civil and criminal repercussions”.⁵³ Offenders could face legal action on both fronts, reflecting the severity of this offence and the multifaceted harm it can inflict upon victims. The amendment also incorporates provisions that offer potential defences for individuals accused of committing this crime. Notably, disclosing an image for reasons of public interest is acknowledged as a possible defence, thereby introducing a nuanced perspective that considers a broader societal context.

Philippines

In 2009, the Philippines introduced the Anti-Photo and Voyeurism Act,⁵⁴ a pioneering legal enactment aimed at addressing privacy infringements related to the recording and disseminating of intimate images. This act effectively criminalizes “capturing, recording, and broadcasting an individual’s image in a sexual context or capturing images of a person’s private areas without their consent”, particularly when the person has a “reasonable expectation of privacy”.⁵⁵ This legislation is the earliest explicit law among the countries examined in this context.

Moreover, the Philippines has instituted additional legislation to combat related issues. The 2009 Anti-Child Pornography Act is dedicated to addressing the depiction of minors in explicit content. In 2012, the Philippines introduced the Cybercrime Prevention Act,⁵⁶ which encompasses provisions targeting various cybercrimes, including “cybersex”. This law criminalizes the lascivious exhibition of sexual organs or sexual activity through a computer system, particularly when done for favour or consideration.

An important legal query arose concerning whether this legislation would inadvertently criminalize consensual virtual sexual activities. The Supreme Court of the Philippines responded to this concern, clarifying that the illegality of cybersex would only be applicable in cases involving commercial transactions⁵⁷ or a lack of

⁵³*Ibid.*

⁵⁴Anti-Photo and Video Voyeurism Act 2009.

⁵⁵*Ibid.*, Section 4.

⁵⁶The constitutionality of the Anti-Photo and Voyeurism Act in the Philippines underwent scrutiny in the Philippine Supreme Court due to concerns about its impact on freedom of speech. The debate centred on the interpretation of criminal defamation and implications for expressing opinions. In 2014, the Supreme Court ruled certain provisions constitutional, including Section 5 on cybercrime incentives and Sections 4(c)(3), 7, 12 and 19 concerning data traffic and restrictions. This ruling highlighted the need to balance privacy and security with free speech. It aimed to ensure that laws targeting cybercrimes, like non-consensual image sharing, respect the Constitution and individual rights. See the Cybercrime Prevention Act of 2012, retrieved 20 September 2023 (https://lawphil.net/statutes/repacts/ra2012/ra_10175_2012.html).

⁵⁷“But the deliberations of the Bicameral Committee of Congress deliberations on this section of the Cybercrime Prevention Act give a proper perspective on the issue. These deliberations show a lack of intent to penalize a ‘private showing x x x between and among two private persons x x x, although that may be a form of obscenity to some.’ The understanding of those who drew up the cybercrime law is that ‘engaging in a business’ is necessary to constitute illegal cybersex. The Act seeks to punish cyber prostitution, the white slave trade, and pornography for favor and consideration. This includes interactive prostitution and pornography, i.e., by webcam.” Philippines Supreme Court, *Disini v. The Secretary of Justice*, 11 February 2014, retrieved 20 September 2023 (https://www.lawphil.net/judjuris/juri2014/feb2014/gr_203335_2014.html).

consent.⁵⁸ In other words, if the “exchange of intimate content occurs consensually between two individuals without a commercial motive”, this law does not apply.⁵⁹

It is noteworthy to highlight that the Philippines does not have a blanket prohibition against pornography. The legal framework primarily addresses non-consensual and exploitative instances of intimate content dissemination, particularly those involving minors or commercial transactions.

Spain

Since July 2015, Spain has taken significant steps to address the issue of unauthorized dissemination of private images through a reform of the Spanish Criminal Code.⁶⁰ This reform criminalized the act of sharing images that were created in private settings with third parties without proper authorization. Including this crime in the Criminal Code’s section dealing with discovering and revealing secrets highlights the importance of protecting individuals’ privacy and personal information.

The reform of the Criminal Code also reflected a heightened focus on addressing the concerns related to “child pornography” and the age at which a “minor is legally able to consent to sexual relations”.⁶¹ This indicates the Spanish authorities’ commitment to safeguarding minors from exploitation and ensuring that the legal framework aligns with contemporary understandings of consent and protecting vulnerable individuals.

By addressing the unauthorized dissemination of private images and related issues, Spain’s legal reforms reflect the evolving nature of technological advancements and their impact on individual rights and privacy. These changes underscore the need for legal systems to adapt and provide effective mechanisms for preventing and addressing harm in the digital age.

Japan

In 2014, following the revelation that a “young woman, murdered by her boyfriend, had her private intimate images circulated online” (Matsui 2015), the Japanese Legislature swiftly enacted the Revenge Porn Victimization Prevention Act.⁶² The purpose was to make the unauthorized sharing of private intimate images, which could disrupt individuals’ peace, a criminal offence. Additionally, the law streamlined the removal of online content. Previously, intermediaries had seven days to remove content, but the new law reduced it to two days. The law excludes cases involving images of minors.

Canada

In 2016, the province of Manitoba enacted the Intimate Image Protection Act,⁶³ a significant legal development in addressing the non-consensual distribution of

⁵⁸One illustrative instance pertains to the sexual exploitation of individuals who have fallen victim to human trafficking.

⁵⁹*Ibid.*

⁶⁰Criminal Code 1995.

⁶¹*Ibid.*

⁶²Revenge Porn Victimization Prevention Act (Law No. 126 of 2014).

⁶³Intimate Image Protection Act 2016.

intimate images. This legislation empowers victims of such acts to seek indemnity from the perpetrator who unlawfully disseminates the images without consent, establishing a legal framework that recognizes the gravity of this offence as a tort.⁶⁴ Furthermore, the law encompasses a comprehensive array of assistance and support measures, administered by the State, to aid the victims.⁶⁵ These provisions include removing the offending material from online platforms or any other visible medium, facilitating conflict resolution with the individual who possesses the images, and providing legal guidance to navigate the situation's complexities.

The Intimate Image Protection Act mandates the government to ensure the availability of appropriate support systems for individuals who have fallen victim to non-consensual image sharing or those who anticipate the impending dissemination of their private images without consent. The support mechanisms outlined in Section 3⁶⁶ of the Act encompass various forms of aid, including removing images from the online sphere and providing information regarding legal remedies and protective measures for individuals concerned about the potential distribution of their intimate images. In the context of these provisions, the responsibility of offering this support has been designated to the Canadian Centre for Child Protection, a regulatory agency entrusted with this vital task. This legislative framework reflects a proactive approach by the government of Manitoba to address the intricate challenges posed by NCII sharing while ensuring that those affected receive necessary assistance and protection.

Reflecting in Comparison to India

The present increase in legislative actions on a global scale reflects a shared commitment to addressing the issue of NCDII in its diverse forms. To effectively address this issue in India, it is crucial to establish a meticulous and unambiguous definition of NCII and amend current legislation to align with this definition. Implementing a comprehensive and inclusive legal framework will provide prosecutors with the essential tools to develop strong arguments against offenders, thereby increasing the likelihood of achieving favourable judgments. India has the potential to effectively address the complexities of NCDII, a form of digital abuse, and mitigate the distinct harms it inflicts on victims. By prioritizing justice, privacy protection and the preservation of affected individuals' dignity, India can establish a legal framework that adequately addresses these concerns.

Furthermore, it is equally crucial to augment public consciousness regarding the implementation of NCDII and its associated consequences. Promoting knowledge and understanding among individuals about the importance of consent, digital ethics and safeguarding privacy can be an effective proactive approach to addressing and reducing such violations. The effective empowerment of individuals to recognize the indicators of NCDII and promptly report any instances they encounter can be achieved by implementing public awareness campaigns and

⁶⁴*Ibid.*, Section 11.

⁶⁵*Ibid.*, Section 6(1).

⁶⁶*Ibid.*, Section 3.

educational programmes. This approach promotes a collaborative effort to eradicate this harmful practice from society.⁶⁷

India is recommended to adopt a proactive stance in addressing digital abuse by drawing inspiration from nations that have successfully enacted legislation to tackle the NCDII issue and amending its legal framework accordingly. A comprehensive analysis of NCDII, along with effective execution, will promote an improved digital environment characterized by the protection of privacy, acknowledgement of consent and preservation of the inherent value of each person. Through the implementation of coordinated endeavours, legislative reforms and increased awareness within society, India can endeavour to eliminate NCDII and establish a fair and equitable system to address the needs of individuals impacted by this reprehensible transgression.

ADDRESSING THE LEGAL GAP: ESTABLISHING SAFEGUARDS AGAINST NCII SHARING

The development of a provision intended to criminalize the act (Citron and Franks 2014) of NCDII requires careful consideration of multiple factors to establish an effective and fair legal framework (Jacobs 2016):

1. The provision should clearly define the various elements of the offence, emphasizing the intentional distribution of private images without the explicit consent of the affected individual.
2. Attaining scope equilibrium: It is crucial for legislative measures to strike a careful balance, steering clear of both excessive inclusiveness and unwarranted restrictiveness. Furthermore, it is imperative to include provisions that account for particular circumstances that may not warrant the imposition of criminal penalties.
3. The law's universal applicability is crucial to ensure comprehensive protection for all potential victims, irrespective of their relationship status.
4. The inclusion of measures to ensure the prompt removal of NCDII material from online platforms should be considered in the stipulation (Jain 2023).
5. Determining appropriate penalties requires thoroughly examining provisions from various legal systems, which establish the minimum and maximum thresholds for sentences and fines (Centre for Internet & Society 2018).
6. This approach aims to assign accountability to perpetrators while minimizing the utilization of "overly punitive measures that could deter victims from reporting the crime".⁶⁸

Recommending a New Provision to Criminalize NCDII

Given the current status of the Draft Bill of Bharatiya Nyaya Sanhita, 2023, which has been forwarded to the Parliamentary Standing Committee on Home Affairs (The Hindu 2023), there is a critical need to include a fresh provision that pertains to the criminalization of NCDII by the legislative body:

⁶⁷Ibid., Section 2.

⁶⁸Google Spain SL v. Agencia Española de Protección de Datos (AEPD), Case C-131/12 [2014] QB 1022.

- The offence commonly referred to as “non-consensual dissemination of intimate images” encompasses the actions of individuals who participate in the dissemination, transmission, conveyance, or public sharing of intimate images or videos of another individual without obtaining their consent. These actions are executed to inflict harm, and the individual responsible possesses an understanding or belief that such actions are probable to lead to harm.⁶⁹
- Upon conviction, the culprit shall be subject to a custodial term ranging from a minimum of 12 months to a maximum of 36 months and shall be required to remit a monetary penalty of no less than 100,000 rupees. In addition, the perpetrator must provide suitable compensation to the victim who has experienced harm, and there exists a potential requirement for them to participate in community service as a component of their legal penalty.⁷⁰
- In order to streamline the procedure, the investigator assigned to the case will expeditiously establish communication with the relevant platform, seeking the removal of the content upon receipt of notification regarding the offence from the victim or their authorized representative.⁷¹
- There exist specific circumstances in which this provision is not applicable. These exceptions pertain to situations in which photographs are taken in public or commercial settings with the explicit consent of the individuals being photographed. Furthermore, this provision does not apply to disclosures made in the public interest, which include reporting illegal activities, customary practices of law enforcement, criminal reporting, legal proceedings or medical treatment (Dawkins 2015:442).

The following provision can be included in Chapter V (Offences against Women and Children) of the Bharatiya Nyaya Sanhita, 2023, as Clause 78A, right after Clause 78 (Word, gesture or act intended to insult the modesty of a woman):

Whoever disseminates, publishes, transmits, distributes, communicates, conveys, or publicly shares an intimate image or video, through any mode of communication, of an individual without their consent with the intent to cause harm or with knowledge or belief that such action is likely to cause harm shall be guilty of the offence of Non-consensual Dissemination of Intimate Images and shall be punished 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.

Exception— This provision shall not apply to images or videos involving consensual exposure in public or commercial scenarios.

Explanation— For this clause, “disseminates” shall mean when an individual disseminates something to another individual if, through any method, they provide, exhibit, or render it accessible to that person.

⁶⁹Manoj Dattatray Supekar v. State of Maharashtra, 2016 SCC OnLine Bom 15449.

⁷⁰Ibid.

⁷¹State (NCT of Delhi) v. Mahesh, 2017 SCC OnLine Del 7956.

The above-mentioned provision encompasses a comprehensive and robust legal framework that seeks to establish accountability for individuals involved in the abhorrent acts of NCDII in India. The aim is to depict the unique and detrimental attributes of the emergent phenomenon known as cyber harassment and abuse. This provision aims to establish a clear and definitive method for seeking legal remedies to promote an environment characterized by respect, safety and harmony in the digital realm. As a result, this provision establishes the foundation for a society characterized by increased levels of justice, fairness and empathy.

CONCLUSION

Within the contemporary digital technology landscape, the paramount imperative resides in prioritizing justice and fortifying the protection of individuals who have fallen prey to the harrowing act of NCDII. The existing legal framework and lexicon need to be revised to address this offence's multifaceted nature effectively, consequently yielding a compromised dispensation of justice for afflicted individuals. These victims encounter a labyrinth of obstacles as they navigate the convoluted corridors of the criminal justice system. Hence, a pressing exigency emerges to promptly establish secure and reliable avenues that facilitate the lodging of complaints and participation in legal proceedings while placing a premium on safeguarding privacy and welfare.

Numerous nations have taken tangible strides amid global acknowledgement and public outcry regarding the grievous impact of NCII. As we have scrutinized above, they have carved dedicated legislation to grapple specifically with this facet of online harassment (Stroud 2014). This prompts India to emulate this trajectory, implementing rigorous and resolute strategies to shield its populace from the noxious repercussions of NCDII.

The realization of this aspiration pivots on championing human rights and sculpting a digital sphere defined by security and parity, notably spotlighting the combat against NCDII. This metamorphosis necessitates crafting precise and all-encompassing verbiage alongside the recalibration of the Penal Code, engendering a robust legal scaffold that adeptly tackles the multifarious facets of harm stemming from NCDII. Through this paradigm shift, India can poignantly signal its unwavering commitment to upholding its citizens' privacy, dignity and well-being, even amidst the challenges posed by the digital epoch.

Furthermore, a cogent dimension entails orchestrating concerted endeavours to amplify public consciousness about the far-reaching repercussions of NCDII. This should be intertwined with advocating for digital ethics and protecting privacy. Educating individuals on the significance of consent, the sanctity of privacy and the imperative of responsible digital conduct can significantly contribute to forestalling the perpetration of these abhorrent acts.

In summation, India finds itself at a juncture where the exigency and gravity of the issue converge, beckoning decisive action. By casting its lot with the global movement to combat NCDII, India can indelibly shape a safer, more equitable digital realm for its denizens. The chorus of human rights advocacy, coupled with the nurturing of a societal milieu characterized by empathy and awareness, is poised to culminate in a more just and compassionate society – a realm where every

individual's rights and intrinsic worth are inviolably protected across both virtual and tangible realms.

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TRANSLATED ABSTRACTS

Abstracto

La rápida proliferación de las tecnologías digitales ha marcado el comienzo de una nueva época repleta de desafíos sin precedentes en materia de salvaguardia de la privacidad personal y la difusión no autorizada de imágenes íntimas. Este artículo explora el intrincado panorama legal que abarca el Código Penal de la India, la Ley de Tecnología de la Información, la Ley de Protección de Datos Personales Digitales y el Proyecto de Ley Bharatiya Nyaya Sanhita. Esta búsqueda analítica arroja una mirada sobre la tarea imperativa de abordar la difusión no consensuada de imágenes íntimas dentro de los contornos del medio digital. Este artículo explora exhaustivamente las posibles repercusiones de las transgresiones digitales, dejando al descubierto los impactos sísmicos en la privacidad, la dignidad inherente y el bienestar psicológico de las personas. Más que una mera exploración, este artículo despliega una hoja de ruta para conceptualizar un marco legal holístico y productivo en la India, singularmente en sintonía con el complejo desafío de la difusión no consensuada de imágenes íntimas. Dentro de este esfuerzo se incluyen recomendaciones derivadas metódicamente, concebidas sobre la base de una meticulosa disección de las disposiciones legales pertinentes, un análisis matizado de la jurisprudencia y astutas yuxtaposiciones con enfoques internacionales para situaciones análogas. El objetivo general aquí es impulsar la evolución de un edificio legal que trascienda las limitaciones de la era digital al forjar una fusión armoniosa de sus principios con los principios fundamentales de los derechos humanos. En el centro de este esfuerzo académico se encuentra un compromiso inquebrantable: asegurar y defender la inviolabilidad de la santificada privacidad digital de las personas. El objetivo final es erigir salvaguardas formidables que protejan firmemente a las personas de las consecuencias concomitantes con las invasiones de sus santuarios digitales. A través de esta iniciativa concertada, se pone en primer plano la búsqueda de un panorama legal que no sólo sea equitativo y razonable, sino también que esté al ritmo del dinámico panorama de la digitalización. Por lo tanto, este trabajo representa un llamado de atención que se hace eco de la necesidad de un refinamiento continuo en la búsqueda de la justicia dentro de los niveles digitales de nuestra sociedad.

Palabras clave difusión no consensuada de imágenes íntimas; pornografía; pornografía de venganza; proyecto de ley de protección de datos; Bharatiya Nyaya Sanhita; ley de protección de datos personales digitales

Abstrait

La prolifération rapide des technologies numériques a marqué le début d'une nouvelle époque remplie de défis sans précédent en matière de protection de la vie privée et de diffusion non autorisée d'images intimes. Cet article explore le paysage juridique complexe englobant le Code pénal indien, la loi sur les technologies de l'information, la loi sur la protection des données personnelles numériques et le projet de loi Bharatiya Nyaya Sanhita. Cette quête analytique jette un regard sur la tâche impérative de s'attaquer à la diffusion non consensuelle d'images intimes dans les contours du milieu numérique. Cet article explore de manière exhaustive les répercussions potentielles des transgressions numériques, mettant à nu les impacts sismiques sur la vie privée, la dignité inhérente et le bien-être psychologique des individus. Plus qu'une simple exploration, cet article dévoile une feuille de route pour conceptualiser un cadre juridique holistique et productif en Inde, particulièrement adapté pour relever le défi complexe de la diffusion non consensuelle d'images intimes. Cet effort intègre des recommandations méthodiquement élaborées, conçues sur la base d'une dissection méticuleuse des dispositions juridiques pertinentes, d'une analyse nuancée de la jurisprudence et de juxtapositions astucieuses avec des approches internationales de situations difficiles analogues. L'objectif primordial ici est de propulser l'évolution d'un édifice juridique qui transcende les contraintes de l'ère numérique en forgeant une fusion harmonieuse de ses principes avec les principes fondamentaux des droits de l'homme. Au cœur de cet effort scientifique se trouve un engagement inébranlable : garantir et maintenir l'inviolabilité de la vie privée numérique sanctifiée des individus. L'objectif ultime est d'ériger de formidables garde-fous qui protègent fermement les individus des conséquences concomitantes des empiètements sur leur sanctuaire numérique. Grâce à cette initiative concertée, la recherche d'un paysage juridique non seulement équitable et raisonnable, mais également en phase avec le paysage dynamique de la numérisation, est au premier plan. Cet ouvrage se présente ainsi comme un appel de clairon qui fait écho à la nécessité d'un perfectionnement continu dans la poursuite de la justice au sein des échelons numériques de notre société.

Mots-clés diffusion non consensuelle d'images intimes; pornographie; vengeance pornographique; projet de loi sur la protection des données; Bharatiya Nyaya Sanhita; loi sur la protection des données personnelles numériques

抽象的

数字技术的快速发展开创了一个新时代，在保护个人隐私和未经授权传播私密图像方面充满了前所未有的挑战。本文探讨了复杂的法律环境，包括《印度刑法》、《信息技术法》、《数字个人数据保护法》和《Bharatiya Nyaya Sanhita 法案》。这种分析追求着眼于解决数字环境中私密图像未经同意传播的紧迫任务。本文全面探讨了数字犯罪的潜在影响，揭示了对个人隐私、固有尊严和心理健康的巨大影响。本文不仅仅是一次探索，还展示了一个路线图，用于概念化印度全面且富有成效的法律框架，特别适合应对未经同意传播亲密图像的复杂挑战。这一努力包含有条不紊地得出的建议，这些建议是在对相关法律条款进行细致剖析、对判例法进行细致入微分析以及解决类似困境的国际方法进行精明并列的基础上提出的。这里的首要目标是通过将其原则与人权的基本原则和谐地融合起来，推动法律大厦的发展，超越数字时代的限制。这项学术努力的核心是坚定不移的承诺——保护和维护个人神圣的数字隐私的不可侵犯性。最终目标是建立强大的保障措施，坚决保护个人免受数字圣所侵犯所带来的后果。通过这一协调一致的举措，追求一个不仅公平合理、而且与动态数字化格局同步的法律格局是很重要的。因此，这项工作就像一个号角，呼应了我们社会的数字梯队中不断完善追求正义的需要。

关键词 未经同意传播亲密图像；色情；复仇色情；数据保护法案；Bharatiya Nyaya Sanhita；数字个人数据保护法

خلاصة

لقد أدى الانتشار السريع للتقنيات الرقمية إلى حقبة جديدة مليئة بالتحديات غير المسبوقة فيما يتعلق بحماية الخصوصية الشخصية والنشر غير المصرح به للصور الحميمة. يستكشف هذا المقال المشهد القانوني المعقد الذي يتضمن قانون العقوبات الهندي، وقانون المعلومات والتكنولوجيا، وقانون حماية البيانات الشخصية الرقمية، ومشروع قانون بهاراتيا نيايا سانهيता. ينظر هذا المسعى التحليلي إلى المهمة الحتمية المتمثلة في معالجة النشر غير التوافقي للصور الحميمة داخل محيط الوسيط الرقمي. يستكشف هذا المقال بشكل شامل التداعيات المحتملة للتجاوزات الرقمية، ويكشف عن التأثيرات الزلزالية على خصوصية الأفراد وكرامتهم المتأصلة ورفاههم النفسي. أكثر من مجرد استكشاف، تكشف هذه الورقة عن خريطة طريق لوضع تصور لإطار قانوني شامل ومثمر في الهند - يتناغم بشكل فريد مع التحدي المعقد المتمثل في النشر غير التوافقي للصور الحميمة. يتضمن هذا المسعى توصيات مستمدة بشكل منهجي، مصممة على أساس التحليل الدقيق للأحكام القانونية ذات الصلة، والتحليل الدقيق للسوابق القضائية، والمقارنة الذكية بين النهج الدولي لمأزق مماثلة. والهدف الشامل هنا هو تعزيز تطور الصرح القانوني بما يتجاوز قيود العصر الرقمي من خلال صياغة دمج متناغم لمبادئه مع المبادئ الأساسية لحقوق الإنسان. وفي قلب هذا المسعى العلمي يكمن التزام لا يتزعزع - لتأمين ودعم قدسية الخصوصية الرقمية المقدسة للأفراد. الهدف النهائي هو إنشاء ضمانات ضخمة تحمي الأفراد بقوة من العواقب المرتبطة بانتهاك خصوصيتهم الرقمية. ومن خلال هذه المبادرة المنسقة، تم التأكيد على السعي إلى إيجاد مشهد قانوني ليس عادلاً ومعتقلاً فحسب، بل يتماشى أيضاً مع مشهد الرقمنة الديناميكي. وبالتالي فإن هذا العمل هو دعوة واضحة تعكس الحاجة إلى التحسين المستمر في السعي لتحقيق العدالة ضمن المستويات الرقمية لمجتمعنا.

الكلمات الدالة: النشر غير التوافقي للصور الحميمة؛ والمواد الإباحية؛ والإباحية الانتقامية؛ ومشروع قانون حماية البيانات؛ بهاراتيا نيايا سانهيता؛ وقانون حماية البيانات الشخصية الرقمية

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