

REVENGE PORN BY TEENS IN THE UNITED STATES AND INDIA: A SOCIO-LEGAL ANALYSIS

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Introduction

Digital communication technology (DCT) and the internet have created a revolution in transforming human behaviour. Both DCT and the internet have helped human beings to express themselves in a better fashion than the pre-digital era. A person's speech and expression has become more easily accessible by others. Such speech and expression includes professional as well as personal speech and expression. Along with the adults, the children of web 2.0 era from the age group of 13 and even below have also started to use the internet and the digital communication medium to express themselves.³ Children own individual Facebook, MySpace profile, email ids and YouTube accounts.⁴ Apart from these

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³ Liz Thomas, "*Quarter of under-13s signed up to social networking sites despite age restrictions*," published on March 27, 2010 in Mail Online. Available @ <http://www.dailymail.co.uk/news/article-1260993/Quarter-13s-signed-social-networking-sites.html>. Accessed on 19.10.11

⁴ Id.

accounts in the virtual space, children often own mobile phones equipped with all modern gadgets like the inbuilt camera, MMS and SMS systems, apart from modern speaking and hearing devices.

Apparently, the kids of the internet era are different from kids of pre internet era. This situation can be attributed to two major factors; viz., (i) Easy availability of the digital gadgets, and (ii) the home atmosphere, wherein almost every child from the middle and upper class families are now accustomed to see their parents, as well as grandparents embracing the digital communication medium and the internet. As such, the maturity level of the children has been highly influenced by this gradual change of social usage of digital communication modes. Children below 18 have taken to SMS texting, emails, internet chatting and cyber socializing for connecting with their school friends and also for dating. This is not an uncommon phenomenon in countries like India where social norms and value system are more orthodox than that of the US.⁵ However, like adults, children could neither escape the perils of digital communications. They present the potential group of victims of the adults, as well as the children of their own age group. In this paper, we emphasize on the abuse of self produced audio-visual clippings and still photo images of the girls by boys for the sake of revenge. We intend to expand the scope of the term “self produced” where it will not only cover sexted⁶ images, but also consented video clippings and images that may have been captured by the teens when in a compromising position, and thereby stored in the electronic devices like the mobile phone, personal computer, ipod etc.

Nowadays, humiliation through revenge porn in the cyber space against ex-girl/boy friends has become rampant. Revenge porn is often adopted by individuals who are ‘dumped’ by their ex-partners. Such individuals could be adults, and also teens. While adult victims can seek justice by regular court process, when both the perpetrator and the victim are children, it becomes quite difficult for the law and justice administration to mete justice to the victim as well as the perpetrator. Revenge porn

⁵ Debarati Halder, & Jaishankar Karuppannan “Cyber Gender Harassment and Secondary Victimization: A Comparative Analysis of the United States, the UK, and India,” *Victims & Offenders*, 6:4, 386-398. (2011):

⁶ *Sexting is self photographing nude body or body parts and sending to others, as well as texting obscene words to known persons (in most cases) using mobile phone.* K. Jaishankar “Sexting: A new form of victimless crime.” *International Journal of Cyber Criminology*, 3(1), January 2009, 21-25. (2009).

stands apart from all other modes of internet harassment as the victim would have participated in the whole malicious cycle through various amorous activities which may be used by the perpetrator to create the harassing audio video clippings. While the accused may get the whole limelight in the course of investigation and prosecution, the victim may go through acute trauma due to the compounded effect of the huge humiliation created due to the revenge porn, breach of trust as well as unwanted ruffling up by the police and the courts.

Revenge porn typically includes two sorts of porn contents; viz., user generated content and user adopted contents. Both sorts of contents may include various other infringements of privacy issues, which aides to fulfil the aim of the perpetrator, viz., severe defamation of the victim. In such case, questions may arise as how far the children can enjoy the protected speech guarantee? Do sexting and consented capturing of compromising scenes open the platform for good defence for distributors of such stored data? We intend to examine this issue on the basis of two judgments, both from the US courts, viz., *NewYork vs. Ferber*⁷ and the 2011 *Kentucky case* involving a 14 year boy for sexting.⁸

Further, this paper expands its discussion on the liability of the web platforms for supposedly encouraging minors to turn into predators. It may be noted that both Google and Facebook allow children from the age group of 13 and above to open accounts with them. Other social networking sites like MySpace also follow this policy. While this gives them an easy platform to vent out their anger and frustration to others, revenge porn through cyber space also raises the question of approachability of adult sites by children under the age of 18. The web platforms are immune by Section 230 of the DMCA. But does this immunity induce the children to become offenders at tender ages?

This paper aims to address number of issues involving privacy, offensive speech, child pornography, the liability of the parents and also the ISPs; and above all, the treatment of the super intelligent minor offenders by the courts. This paper is divided into four parts; the first part will deal with revenge porn by teens. This part will highlight the possible usage of

⁷ *NewYork vs. Ferber* (458 U.S. 747 (1982))

⁸ See Daily Mail Reporter, *Boy of 14 accused of child pornography after convincing girl his age to send him sex text*. Published in Mail Online, on 6th March 2011. Available @ <http://www.dailymail.co.uk/news/article-1363445/Sexting-case-asks-14-year-old-child-pornographer.html>

stored data for online revenge by teens and the typology of revenge porn by teens. The second and third part will deal with the judicial philosophy from the US and Indian perspectives regarding misuse of sexted as well as other data which may have been stored with the consent of the victim. For this, we have taken up two cases, viz., the 2001 case of Airforce Balbharti school boy, who created porn websites with the pictures and information of female students of his class and female teachers of his school; and the 2004 Delhi DPS MMS case. The fourth part deals with the role of Therapeutic Jurisprudence in the management of revenge porn by teens. The paper ends with a conclusion which also provides some recommendations.

PART I: REVENGE PORN BY TEENS

1. Overview

The terms ‘revenge’ and ‘revenge porn’ have been used with reference to cyber victimization mostly to indicate victimization of adult women⁹ in the hands of their dating partners or cyber acquaintances in the forms of creation of untrue, ugly and sexually provocative profiles in the internet. The most common mode of creating revenge porn is to use the personal information and the photo of the victim, which may or may not be doctored, and uploading them in various cyber portals to spread the message that the victim is available for the sexual gratification of men. Even though the original porn sites and various social networking portals including the popular ones like the Facebook etc., strictly transfers the onus on the users to contribute only genuine data which does not harm the rights of the others,¹⁰ various examples of violating this very guide-

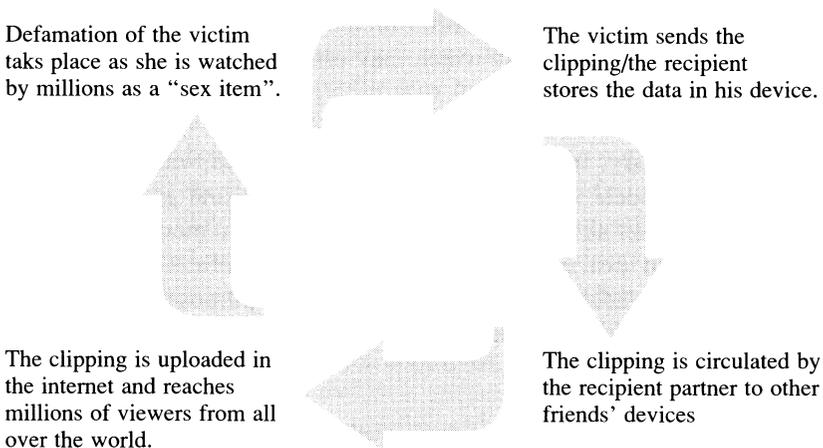
⁹ See pgs 24, 27, 32, 42, 47, 48 in Debarati Halder and Jaishankar Karuppannan “*Cyber crime and the Victimization of Women: Laws, Rights, and Regulations*”. Hershey, PA, USA: IGI Global. ISBN: 978-1-60960-830-9 (2011); also see Mary Anne Franks, “*Unwilling Avatars: Idealism and Discrimination in Cyberspace*.” *Columbia Journal of Gender and Law*, Vol. 20, p. 224, (2011). Available at SSRN: <http://ssrn.com/abstract=1374533>; Ann Bartow, «*Pornography, Coercion, and Copyright Law 2.0*» *Vanderbilt Journal of Entertainment and Technology Law* 10.4: 101-142. (2008). Available @ http://works.bepress.com/cgi/viewcontent.cgi?article=1030&context=ann_bartow

¹⁰ See Facebook rules regarding safety, available @ <https://www.facebook.com/terms.php>

line are available in the internet.¹¹ However, it would be wrong to say that only adult women fall as victim to revenge porn. Children, especially teenage girls in the age group of 14 to 19 are equally vulnerable in this case. Nonetheless, there are many valuable scholarly write ups, court proceedings and media reports on the issues on cyber bullying, online child pornography by adults, child grooming and even sexting related cases; however, we have rarely come across serious researches and court sentences on teen revenge porn which is hugely aided by sexted messages and / or consented captured images. In this regard it must be mentioned that there had been researches on sexting and approaches of US Courts to the problem from the perspective of child pornography laws, but the issue has not been addressed properly from the perspective of revenge porn by teens.

2. Characteristics of online revenge porn

Online revenge porn differs from the traditional concept of cyber porn in the sense that the perpetrator intentionally misuses the information about the victim to bring in emotional distress to her. Revenge porn aided by sexting and other non sexted victim aided stuff, is also a perfect way to create huge defamation for the victim. In cases of defamation resulting from sexting the whole cycle can be expressed by the diagram below:



¹¹ See *Barnes v. Yahoo!*, available @ <http://www.ca9.uscourts.gov/datastore/opinions/2009/05/07/05-36189.pdf>

As the diagram above suggests, the whole cycle involves four major steps; viz.

1. the victim captures her nude / semi nude picture in her mobile phone or consents for capturing her compromising position with the partner through mobile phone camera or webcam and sends it to her chosen partner and the partner stores the image/clipping in his device;
2. The partner may transfer the clipping to his friend(s) because he wants to humiliate the girlfriend as a revenge taking measure.
3. The partner himself or the friends, who are the secondary recipients, may then upload the clippings in the internet.
4. The clipping rapidly captures millions of viewer's attention, who may have watched the clipping, and the original creator may become a 'sex item' and her reputation is severely damaged.

Depending on these basic characteristics, we define online revenge porn as follows:

It is an act whereby the perpetrator satisfies his anger and frustration for a broken relationship through publicizing false, sexually provocative portrayal of his / her victim, by misusing the information that he may have known naturally and that he may have stored in his personal computer, or may have been conveyed to his electronic device by the victim herself, or may have been stored in the device with the consent of the victim herself; and which may essentially have been done to publicly defame the victim.

On the contrary, traditional cyber porn is created with the help of professional models who perform for the visual sexual gratification of viewers. The chief aim of traditional cyber porn lies in monetary gain for the creator and distributor.¹² The scope of this definition can cover revenge porn by adults as well. However, for the purpose of this paper, we are limiting the scope of this definition to revenge porn by teens only.

¹² See Ann Bartow, "Pornography, Coercion, and Copyright Law 2.0" *Vanderbilt Journal of Entertainment and Technology Law* 10.4: 101-142. (2008). Available @ http://works.bepress.com/cgi/viewcontent.cgi?article=1030&context=ann_bartow

3. Patterns of revenge porn

Revenge porn in the cyber space can be divided into two main types, viz., (i) camouflaged porn; (ii) teen porn.

(i) *Camouflaged porn:*

Such sorts of porn images may contain user generated¹³ and also user adopted contents. The first category of contents may include storing visual images of the victim, which may have been supplied by the victim to the perpetrator. These contents could be sexted messages, email photo attachments, stored pictures which are captured from online video chat sessions, or even victim consented pictures which are taken by the perpetrator of the victim. User adopted content category may include doctored pictures of the victim, stolen images of the victim etc. Such content may be uploaded in popular social networking sites like Facebook, Orkut, Myspace, Bebo etc.

These typical camouflaged porn's could be created by teenage boys in the above mentioned social networking sites (SNSs') in the regular fashion as other profiles are created. However, the difference remains in the originality of the information provided therein and the motive behind the creation of the same profile. The profile may thus contain a profile picture which belongs to the victim; the profile name which may depict the victim; it may contain album which may contain the sexted, as well as non-sexted captured pictures which may depict the victim in semi nude or scantily clad dress. The profile may hugely impersonate the victim as a girl ready for soliciting men of different age group. We term it as 'camouflaged porn' because such profiles apparently do not violate the rules and policies of these social networking sites prima-facie, as are in cases the regarding child pornography and they are camouflaged under the disguise of first amendment protection. It must be noted that all the SNSs' emphasize on the issue of child pornography from the perspective of child abuse and grooming the child for either offline abuse or online sexual gratification.¹⁴ Of late Facebook has turned the highlight towards

¹³ George, Carlisle E. and Scerri, Jackie, Web 2.0 and User-Generated Content: Legal Challenges in the New Frontier. *Journal of Information, Law and Technology*, Vol. 2, 2007. Available at SSRN: <http://ssrn.com/abstract=1290715>

¹⁴ See the Facebook terms on Safety @ <https://www.facebook.com/terms.php?ref=pf> Also see Justin, You Received a "Sext," Now What? Advice for Teens, February 22, 2011, <http://cyberbullying.us/blog/you-received-a-sext-now-what-advice-for-teens.html>

sexted messages from the perspective of bullying.¹⁵ But few have highlighted the issue of using of sexted messages or stored messages for creating impersonated profiles which present the characteristics of camouflaged porn.

Camouflaged porn can be created further by circulating the stored data to others through emails or SMSs. This is the most common form of creating revenge porn by teens. Even though this deviant behaviour has been highlighted by many scholars from the perspective of infringement of privacy and it is not dealt from the perspective of creation of teen porn.

(ii) *Teen porn:*

Such sorts of porn are generally found as one of the various categories of porn that are exhibited in adult websites. Nonetheless, these websites showcase safety shields to be protected by the immunity clause of Section 230 of the Communication Decency Act, codified at 47 USC, which provides immunity for all types of materials that may attract liability of the website¹⁶ through the routine announcement that the porn models are professional models who have consented for such performances; the viewers must certify that they are above 18 and therefore legally eligible for viewing the sites; and by the immunity clause provided by Title 512 of the Digital Millennium Copyright Act¹⁷ which states that the contributors must not violate other's rights by infringing the copyrights and privacy of others etc. But the minute analysis of the policies as well as the mode of execution of these sites may present a different picture. Such sites present a possible platform for the teens to execute revenge over split affairs with the help of stored data like the sexted messages, and pictures. Such porn differs from camouflaged porn especially because the contributor openly declares his intention to tag the clipping as a porn clipping and showcase the victim as a true porn model.

¹⁵ See <https://www.facebook.com/safety/tools/>

¹⁶ See in general Digital Media Law Project, Immunity for online publishers under the Communication Decency Act. Available @ <http://www.dmlp.org/legal-guide/immunity-online-publishers-under-communications-decency-act>

¹⁷ Section 512 to the Copyright Act was added by Title II of The Digital Millennium Copyright Act, 1998 to create four limitations on liability for copyright infringement by online service providers on four categories of conduct by a service provider. For more, see <http://www.copyright.gov/legislation/dmca.pdf>

PART II: LEGAL PARADIGMS IN THE US

Issues of privacy, confidentiality and individual liability

Bartow¹⁸ has addressed the issue of revenge porn from the perspective of copyright violations; even though Bartow has made a crucial observation in this reference in regard to revenge porn involving women, her observation stands right for teen victims as well. However, we argue that revenge porn by teens must also be seen from the perspective of individual liability of the perpetrator as well as the victim. As we have mentioned above, revenge porn can involve sexted messages, captured pictures of the victim, as well as self attached non-sexed pictures of the victim. A couple of years back, when the US federal and the provincial governments started addressing sexting as a new form of self created child pornography¹⁹ scholars including us researched on the possible alternative resolution to the issue other than criminally prosecuting the creator-sender and the recipient as well.²⁰ But it must be remembered that the courts only executed the inherent philosophy of child pornography prevention laws in cases where both the deviant teens were prosecuted. The courts basically wanted to show that the creation and distribution of any material which depicts children in any fashion that creates erotica, must be prohibited to safeguard the interest of the children and this has to be carried out even when the act is done as a part of self sexual gratification by adolescent teens. Arguably, this approach of the US courts could be criticized as many have rightly pointed out that laws meant for protection of children are being used to punish the children for modern age adolescent behaviour.

Notably, the courts' understanding of the subject stands right when the image or clipping meant for private viewing, are distributed to third party for public viewing. But the details of almost all these cases would show that the secondary 'distributor', who is the primary recipient, did not distribute the data for taking revenge. Therefore the motive was not

¹⁸ See Id @ 10

¹⁹ See pg 491 in Mary Leary, "Sexting or Self-Produced Child Pornography? The Dialogue Continues – Structured Prosecutorial Discretion within a Multidisciplinary Response." *Virginia Journal of Social Policy and the Law*, Vol. 17, No. 3, Spring 2010; CUA Columbus School of Law Legal Studies Research Paper No. 2010-31. Available at SSRN: <http://ssrn.com/abstract=1657007>

²⁰ Debarati Halder, & Jaishankar Karuppunnan. "Sexting among Teens: An analysis on the Questions of Legalties and Illegalities." Unpublished paper in the personal file.

criminal, but purely adolescent fun. However, in revenge porn the motive is essentially to defame the victim and therefore it is criminal. Now the question is; could a 'child' be prosecuted for harbouring a criminal intention and executing the same by a law which is meant for matured people? The question could be analyzed in the light of two famous cases, namely, Ferber's case and the ongoing Kentucky sexting case. It must be noted that none of these cases deal with revenge porn by teens. But we will apply the philosophy of these judgments to analyze whether execution of the anger with the help of the victim aided materials can claim the protected speech guarantee under the first amendment guarantees, and whether the laws meant for protecting the child, can be used to prevent the child from performing such acts which will harm another minor.

The stand of Ferber's: The Ferber's case dealt with the question as whether the decision in Miller case²¹ can be stretched to cover child pornography. Ferber's case established the fact that child pornography will not fall under the protected speech guarantee even when the principles of contemporary communal standards are applied as had been the case with the test of obscenity.²² But it must be noted that Ferber has addressed child pornography only from the perspective of child sexual exploitation and child abuse by adults. Further, the case essentially dealt with five core aspects of child pornography, viz.

- sexual exploitation of children;
- sexual abuse of children through the visual depiction of children performing sexual acts;
- individual liability in causing the sexual exploitation of children by creating the child pornography;
- individual liability in causing sexual abuse of children by distributing it to public;
- Promoting child pornography for monetary gain.

If compared with the present situation, in 1982, the level of sexual maturity of minors in the US was comparatively lower than that of today. Hence the court had rightly decided that child pornography must be

²¹ Miller vs. California, 413 U.S. 15 (1973)

²² Antonio Morte Haynes. "The Age of Consent: When is Sexting No Longer Speech Incident to Criminal Activity" Cornell Law Review, Vol. 97, No. 2, 2012. Available at SSRN: <http://ssrn.com/abstract=1744648>

banned as it raises ample assumptions of abuse and exploitation of children by adults only for the prurient interest of adults. However, after 2007; the maturity level of the children has grown more than before.²³ This is apparent in teens' sexual behaviours, especially through sexting and self created pornography.²⁴ Ironically, when the issue of sexting became rampant after 2007, the courts approached the issue in the light of either or all of these five core issues.²⁵ But after a few experiments, a new academic principle was born.²⁶

This declared that even though sexting may present similar nuances like child pornography, this behaviour cannot be termed as an offence under the true meaning of Para 8 of 18USC§2256 which defines child pornography as any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where—(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; (B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.²⁷

This had further influenced the law makers to create laws which exclude sexting from the purview of offences as child pornography law does.²⁸ This is apparent from the fact that a New Jersey Bill (s-2700)²⁹ has established that an educational program, to be developed by the Attorney general in consultation with the administrative officer of the court, would be an alternative to the judicial prosecution for juveniles

²³ McLaughlin Julia Halloran. "Crime and Punishment: Teen Sexting in Context", (2010). Available at: http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=julia_mclaughlin

²⁴ Id @ 18

²⁵ Id.

²⁶ Id.

²⁷ Available @ http://www.law.cornell.edu/uscode/18/usc_sec_18_00002256----000-.html

²⁸ Tom SR Hester. "N.J. law makes juvenile 'sexting' an educational issue, not a crime".NEWJERSEYNEWSROOM.COM on 27th September, 2011.

<http://www.newjerseynewsroom.com/state/nj-law-makes-juvenile-sexting-an-educational-issue-not-a-crime>

²⁹ See SENATE, No. 2700, State of New Jersey 214th Legislature, introduced February 17, 2011. Available @ http://www.njleg.state.nj.us/2010/Bills/S3000/2700_I1.HTM

who are charged for the first time with criminal offence for posting sexted messages. Understandably through this legislation, both the creator-sender as well as the recipient in teen sexting case would be spared from harsh punishments which may term the teens as sex offenders. However when the recipient teen, or the one who has private pictures stored in his device, breaks the innocence³⁰ and circulates it for fulfilling his revenge, he may not get the privilege as this forthcoming law proposes.

Kentucky case: The changed judicial approach post Ferber's: The Kentucky sexting case involving a 14 year old boy needs a mention here. This case does not involve revenge taking through victim aided stuff. The accused, a 14 year old boy had allegedly distributed a sexting video clipping, which the creator-sender alleged, was made under coercion of the accused. The victim's lawyers pressed for the application of Para 8 of 18USC§2256 to charge the accused guilty of child pornography. When the defence pressed on the fact that the accused is a minor and that the accused has violated no law, the judge stated that the said law applies to 'all' irrespective of their age. It was further highlighted that children of this age group can also step in the shoes of child sexual exploiters especially when the victim was coerced and induced to make the sexting video.³¹

Both Ferber and the Kentucky case therefore established the fact that when the substance presents a situation which cannot have any social value, it may not claim the protection of the first amendment guarantee. Understandably, publishing with an ill motive, of a still image, or audio visual clipping of the sexual performance of a teen, which was meant strictly for private viewing of the recipient, therefore do not protect the wrongdoer from the category of unprotected speech. It must be noted that in the earlier convictions in the sexting cases, the prosecution proved that the wrongdoer teen circulated the sexted image among his friends with no ulterior motive or intention or even knowledge that it may create permanent reputation damage for the original creator-sender of the sexted message.³² However, revenge porn largely differs from this. The wrong doer knowingly circulates the sexted message or the stored images of his victim by breaking the promise of confidentiality to create harm to the

³⁰ By the term "innocence" we aim to denote the absence of prior knowledge of future harm of the sender.

³¹ See Id @ 6

³² Id @18

victim. Probably this is the core reason that revenge porn by teens aided by victim supported material needs a special legal treatment which may stand apart from regular sexting cases or even child pornography cases; and in such cases, we refuse to accept the US trend of categorizing the offending teen as a “sex offender”³³ as has been done in previous cases where teens got involved in creating or distributing images showing sexual organs or performing sexual activities. The issue needs to be dealt with from the perspective of privacy and confidentiality and the responsibility of the teens in upholding the inherent philosophy of the fourteenth amendment essentially, coupled with abuse of First Amendment Guarantees. This is especially so because US may set a universal trend to deal with such cases which are generally followed by other countries including India.

PART III: LEGAL PARADIGMS IN INDIA

1. Overview

In India the very first reported case of teen revenge in the cyber space came out in 2001³⁴ when a 16 year Delhi school boy created a porn website and posted porn images of girls of his own class and of the teachers with lewd remarks, publishing in detail about their sexual preferences. The reports suggest that he did this as revenge to these girls who used to taunt him. The boy was arrested under Section 67 of the erstwhile Information Technology Act³⁵ for charges of obscenity in the cyber space and

³³ See *Id* @ 21

³⁴ See *TIMES INTERNET NETWORK* Confusion prevails over tackling cyber crime, May 22, 2001 <http://timesofindia.indiatimes.com/city/pune/Confusion-prevails-over-tackling-cyber-crime/articleshow/409953300.cms>

³⁵ This provision stated that “Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.” The adjacent part of the provision prescribed punishment which would be imprisonment for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees. However, the Information Technology Act was subsequently amended and the amended version came into life in the later part of 2009. The amended version deals with child pornography under section 67B. The Act can be found in http://www.cyberpolicebangalore.nic.in/pdf/it_amendment_act2008.pdf

later was released on bail by the juvenile court. The extreme punishment came when he was allegedly rusticated from the school. This case drew huge attention of the media, the public, the law researchers and also the police as this was the first ever case of teen revenge through cyberspace in India. The generation of web 2.0 had literally outsmarted the older generation and created this peculiar trend which was later followed by many adults to execute their revenge. This is evident from the search results in the internet with key words as 'revenge porn', 'Porn India', 'India teen porn' etc. The numerous results may also include various porn websites created under categories such as 'Indian Desi Girl', 'South Indian Mallu' etc, apart from YouTube videos with similar tag words. Nonetheless, the case sets precedence for many other teens to execute their revenge through various websites which can be accessed by teens below 16 years, predominantly by the popular social networking sites. However, before discussing the legal treatment of these issues, an analysis on the Indian socio-economic condition with regard to sexting is essential here.

Sexting or consensually digital capturing of the private moments of two teens of different sexes, or sending pictures of oneself with scanty attires through video chats etc are new age behaviours for Indian teens. The social culture of average Indian societies predominantly barred the parents to allow the children to wear revealing "western dresses" which may show too much of the skin. However, the situation rapidly changed since the introduction of new age movies,³⁶ huge display of usage of electronic devices like mobile phones, desktop as well laptop computers in the popular movies and TV serials meant for teens and young adults, and the gradual lowering of the prices and easy availability of these devices for household purposes and easily available broadband services. The web 2.0 era children are now used to see both the parents occupied with their digital devices for their own professional as well as personal purposes. The internet accessibility changed the orthodox mindset of Indians and this resulted in change in formal dress code to exclusive teen hangouts, to even the approach towards the sex education at homes and

³⁶ This was suggested by one anonymous individual who made a comment to the lead author's blog "Be aware of online mischief mongers", can be found @ <http://debaraticy-berspace.blogspot.com/2011/10/be-aware-of-online-mischief-mongers.html#comments>).

also at schools.³⁷ This had further encouraged the younger generation to ape the western culture to dress “sexily” to attract the opposite sex and even conveying self captured images to impress internet savvy high school sweethearts and dating partners, and also consensual capturing of the sexual performances (excluding penetration) with the partner by the partner himself or by automatic devices that would finally store the ‘moments’ in the partner’s device.³⁸ Even though this new teen sexual behaviour has gained a highlight due to the infamous Delhi DPS school case, where a 16 year old boy allegedly circulated a video clipping of his sexual acts along with his classmate, another 16 year old girl,³⁹ we could find no single Indian study with reference to the usage of such clipping for teen revenge and legal treatment of the same from the perspective of pornography and privacy laws. The reason could be highly attributed to the stringent juvenile justice laws prevailing in India which prevents detailed publishing of ongoing cases involving minors as offenders and confused state of laws when it comes to victim aided offences in the cyber space like that of Delhi DPS school case.

2. Judicial approach towards teen revenge porn in India

In this context, we need to analyze the general law in reference to the approach towards this issue in India. In 2001 when the 16 year old student of AirForce Bal Bharti School created a porn website with the pictures of his female classmates and teachers, unlike the US, the police did not arrest the accused.⁴⁰ The case was handled by the juvenile welfare board after the father of one of the minor female victims lodged a complaint to the police. Even though the Indian parliament had passed the Information Technology Bill, 2000 which was heavily influenced by the model Law on electronic commerce adopted by the United Nations Commission on International Trade Law; adopted by the United Nations by

³⁷ We have discussed about the issue of sex education in schools in India in the later part of this paper.

³⁸ From the personal experiences as Directors of the Centre for Cyber victim Counseling (www.cybervictims.org), we have seen that this tendency is growing among the Indian teens.

³⁹ Express News Service “Sex scandal: Boy who shot MMS clip held”. Express India. December 19,2004. Available @ <http://www.expressindia.com/news/fullstory.php?newsid=39787>

⁴⁰ Basharat Peer, Student accused in porn website case secures Bail. Published on April 30,2001 in <http://www.rediff.com/news/2001/apr/30porn.htm>

resolution A/RES/ 51/162, dated 30th January 1997; the police was left much in awe of the nature of the crime as that was the first of its kind in India. The boy was released on bail by the Juvenile court, Delhi.⁴¹ Justice Sanjay Agarwal, who granted bail to the accused, noted that this is an “example of tech –graffiti” and it should “not be taken seriously”.⁴² But he was proved very much wrong. Next, when the students of Delhi Public School were caught circulating the compromising position of their two classmates in 2004 by the school authorities, and the clipping was even found on the internet for a larger audience, the police immediately applied Section 67 of the Information technology act along with sections 292 of the Indian Penal Code to arrest the key person, a boy of 17, who had allegedly captured the sexual act along with the girl. The arrest was made after two more high profile arrests, involving the CEO of Baze.com, Avinash Bajaj, who allegedly bought the clipping to circulate it through the website, and one Raviraj, a student of Indian Institute of Technology, Kharagpur, who allegedly sold the clippings to Baze.com, an auction site. While section 67 of the erstwhile Information Technology Act, 2000 dealt with publishing, transmitting, causing to be published any obscene material in the electronic form; section 292 of the Indian Penal Code prescribes punishment for selling, publishing, distributing, importing or exporting, making a monetary profit of, or advertising for obscene materials,⁴³ section 294 prescribes punishment for obscene acts and songs in public.⁴⁴ Even though the CEO of Baze.com (which was later sold to eBay) challenged the Delhi High court judgment⁴⁵ that quashed the Penal code provision against him, but permitted prosecution under the Provisions of Information Technology Act, on the ground of lack of clarity of

⁴¹ Presently Juvenile court is substituted by Juvenile Justice Board after coming into effect of the Juvenile Justice (Care and Protection) Act, 2000. for more details see http://delhicourts.nic.in/JUVENILE_JUSTICE_BOARD.htm

⁴² These comments were published in the news report that covered the hearing. See Id @ 37

⁴³ Section 292 (2), Indian Penal Code prescribes punishment with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.

⁴⁴ Sections 294 of the Indian Penal Code, 1860, prescribe punishment with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

⁴⁵ See Avinash Bajaj v. State, available @ <http://www.indiankanoon.org/doc/309722/>

section 67 in reference to his case and due diligence of the website;⁴⁶ there were no further news about the prosecution or the post prosecution treatment of the main accused, the 17 year old student, except that he was suspended from the school.

As it could be seen, in both these cases, and especially in the latter case, the court highlighted the monetary gain for adults out of the clipping that was made depicting private sexual moments of two adolescent teens; and later focused its attention more on the issue of distributing pornography by an adult, i.e. Bajaj. In the earlier case, the judge waived off any 'seriousness' to the issue of the motive of the wrongdoer. Predominantly that may have affected the legal treatment of the offender teen in the later case. This can be largely attributed to the traditional Indian mindset towards the offence that could be done by the children, treatment of child offenders⁴⁷ and lack of constitutional guarantees towards privacy rights of the children. Since the independence, the Indian parliament has been busy in safeguarding the rights of the children in relation to basic education, food and shelter and health.⁴⁸ Through Juvenile Justice (Care and Protection) Act, 2000, this right has been broadened to cover abuse of children. Accordingly, the Indian laws have started to see the offences done by children more from the perspective of how and why they are being used for the criminal gratifications of the adults. Misuse of digital knowledge by children had remained largely ignored by lawmakers until the implementation of the Information Technology Act, 2000(as amended in 2008) and later the Protection of Children from Sexual Offences Act, 2012. But neither these novel law

⁴⁶ See DPS MMS scandal: SC stays proceedings against eBay, its chief, Press Trust Of India / New Delhi August 26, 2008, <http://www.business-standard.com/india/news/dps-mms-scandal-sc-stays-proceedings-against-ebay-its-chief/332573/>

⁴⁷ The Juvenile Justice Act, 2000, which was subsequently amended in 2006, divided the category of children that could fall under two heads; namely, "children in conflict with law", which is dealt by chapter II of the Act, and "children in need of care and protection", which is dealt by Chapter III of the Act. Chapter II does not clarify separately as how the juvenile offender charged with offences under Indian Information Technology Act, can be dealt with. The chapter however highlights the treatment of juvenile victims who may have been abused by adults by way of engaging the child for begging, employing the child for hazardous work, withholding the child's earnings etc, or by negligence, abundance, or by giving intoxicating objects or psychotropic substances etc, and the punishment of the adults who do these.

⁴⁸ National Commission for Protection of Child Rights (NCPCR), The Commissions for Protection of Child Rights Act, 2005 (No.4 Of 2006), The Right of Children to Free and Compulsory Education Act, 2009 (No.35 of 2009) are the glaring examples.

specifically focuses on the issue of revenge porn created and published by children.⁴⁹ Further, the Indian Constitution has expanded the scope of right to life⁵⁰ to right to privacy through the famous case *Kharak Singh vs. State of UP*.⁵¹ But this right has not been tested in reference to digital privacy of adults as well as children, other than hacking related cases.⁵²

3. Law's approach to adolescent normal and aggressive sexual behaviour through DCT

Further, in India, unlike the US, rarely any legal highlight has been focused on adolescent teen's sexual behaviours. Adolescent sexual behaviours like self sexual gratification,⁵³ kissing or even dating opposite sex partners are considered as a taboo, still now in many parts of India. However, at the same time, teens are turning to the internet for such apparently normal sexual habits at an alarming rate. This could be largely attributed to two factors; (i) in the internet, there is hardly any parental supervision, especially when teens use popular social networking sites;⁵⁴ and (ii) the sites that teens favour to frequent, like the Facebook, Orkut etc, have lowered the minimum age criteria to 13,⁵⁵ which encourages elder teens to experience something which in reality is forbidden. However, measures have been taken by the state governments to curb children's usage of digital devices, especially the mobile phones inside the school premises since 2007 on the ground of health hazards and the supposed "nuisances in the classrooms"⁵⁶ that may be created by the mobile

⁴⁹ This point will be elaborated later.

⁵⁰ Right to life has been guaranteed vide Article 21 of the Indian Constitution which states "No person shall be deprived of his life or personal liberty except according to procedure established by law."

⁵¹ *Kharak Singh vs. State of UP* ((1964) 1 SCR 332)

⁵² See *Vinod Kaushik & another vs. Madhvika Joshi & Others*, Appeal no. 2 of 2010, CDJ.2011.Cyber At001, Retrieved from http://catindia.gov.in/pdfFiles/Appeal_No_2.pdf on 23.10.2011. Even though this present case does not primarily emphasize on right to privacy in the digital space, it has highlighted the privacy factor through hacking and related issues.

⁵³ Which may include masturbation, viewing adult porn sites, adult movies, reading adult sex stories etc.

⁵⁴ See Halder & Jaishankar 2011, pg 5 & 6.

⁵⁵ See additional terms of service for Orkut, available @ <http://www.orkut.co.in/html/en-US/additionalterms.orkut.html>, Registration and account security for Facebook @ <http://www.facebook.com/terms.php?ref=pf>

⁵⁶ Special correspondent, "Karnataka bans mobiles for those under 16s", September, 12, 2007. Available @ <http://www.hindu.com/2007/09/12/stories/2007091262261200.htm>

phones. Following this governmental policy, the States of Maharashtra⁵⁷ and Gujarat⁵⁸ governments also issued orders to restrict mobile phones by minors under the age of 16. But, the most effective result could be seen in the notice issued by the Central Board of Secondary education (CBSE) of India,⁵⁹ where in CBSE had noted as follows:

The use of Mobile Phones definitely needs to be restricted in school environments. The Board is of the opinion that all stakeholders connected with school education such as students, parents, teachers and heads of institutes need to arrive at a consensus on the use of mobile phones in their schools and restricting its entry in the school campus. This is because mobile phones can be a serious cause of distraction, lack of concentration, anxiety, fear and sometimes even misuse. Even if the mobiles are in silent mode they can be a source of disturbance within the classroom as students can make use of Short Messaging Service (SMS) during the class or even during an assignment. The cameras which are a common feature now in most mobile phones can also be misused. There have been enough lessons that have been learnt in the past regarding the use of mobile phones and the Board strongly recommends that students should be convinced about not carrying mobile phones to the school.

Presently, this order is effective in almost all the schools in India, and predominantly, this is the only measure to curb revengeful activities through digital devices by school going teens. As the news reports suggest if a teen is caught violating this rule, he could be severely warned, or fined or even rusticated depending upon the school's internal policies. We argue that this cannot be the solution for this problem. Since India has witnessed two incidents which probably had created huge effects on the teens, it cannot be ruled out that adolescent students will not fall upon safer platforms like that of the internet communication systems, including social networking sites. This is more so because these web platforms are guided by US laws, which may help the child from India to execute his anger, frustration and revenge swiftly and not be caught under the legal

⁵⁷ Agencies, "Mobile phones banned in schools in Maha", Feb 21, 2009 Available @ <http://www.expressindia.com/latest-news/Mobile-phones-banned-in-schools-in-Maha/426462/>

⁵⁸ PTI, "Gujarat government bans mobile phones in schools, colleges". August, 2, 2010 Available @ http://articles.timesofindia.indiatimes.com/2010-08-02/india/28287399_1_mobile-phones-colleges-gujarat-government

⁵⁹ See CBSE circular of 2009 "Restriction in the use of Mobile Phones in Schools." Available @ <http://cbse.nic.in/welcome.htm>

tangle immediately unless the authorities frame proper charges as per Indian standards.

US had set a tradition until the mid of 2011 to punish the wrongdoer teens by categorizing them as ‘sex offenders’.⁶⁰ Even though the term is grave for teens who may have exercised normal adolescent sexual behaviour, it must be noted that internet era teens have now become matured enough to abuse their rights of speech and expression. In India, Section 67B of the Information Technology Act (As amended in 2008) briefly touches on this issue. This provision extensively deals with online sexual crimes targeting children and it includes prohibitory measures against creation, publication or causing to be published any material depicting child in sexually explicit conduct, collecting, seeking, browsing, advertising for material depicting children in obscene, indecent or sexually explicit act, online grooming of children for such purposes, facilitates abuse of children online, or records own abuse or other’s abuse pertaining to sexually explicit act with children through five sub-clauses.⁶¹

The provision expands its scope with the opening words “whoever-” thus bringing the offending teens under its purview as well. Further, the 2012 regulation Protection of children from sexual harassment Act, 2012 also braces the issue quite in the same line as Section 67B of the Information technology Act 2000(amended in 2008) did. It does not focus on revenge porn created by children or sexting aided by children exclusively. However, it addresses online sexual harassment and in S.11, it makes ‘any person’ guilty of sexual harassment if that person irrespective of gender makes the child show the body parts so that it can be seen by him/her or by others,⁶² or shows material to child for pornographic purposes,⁶³ or threatens to use in any form of media the real or fabricated depiction through any electronic, film or digital or any other mode, the child’s body parts or the involvement of the child in sexual acts that may be already stored with such person,⁶⁴ As it could be seen, this last provision briefly touches the issue of sexting and resultant revenge pornography. The law through S.12 also prescribes punishment for such types of sexual harassment which may include imprisonment for a term extended

⁶⁰ See Id @ 17

⁶¹ See S.67B of the Information Technology Act,2000(amended in 2008), available in http://www.cyberpolicebangalore.nic.in/pdf/it_amendment_act2008.pdf

⁶² See S.11(ii) of the Protection of Children from Sexual Offences Act, 2012.

⁶³ See S.11(iii), Id.

⁶⁴ See S.11(v) Id.

to three years, as well as pecuniary fines. But neither these provisions are properly used against any offending teen still now. As it could be seen, lawmakers may not have been ready yet to confer such serious punishment as has happened in the US, for wrong doer teens, but time has definitely ripened to think about punitive steps for wrong doer children which may safeguard the inherent essence of digital privacy and reputation of the victim, and at the same time upholding the constitution's core value to protect child rights, including sexual rights of adolescent teens.

PART IV: THE ROLE OF THERAPEUTIC JURISPRUDENCE IN THE MANAGEMENT OF REVENGE PORN BY TEENS

1. Overview

Recently, many of the Facebook users had shared a wall post which reads as follows:

A teacher in New York was teaching her class about bullying and gave them the following exercise to perform. She had the children take out a piece of chapter and told them to crumple it up, stomp on it and really mess it up but do not rip it. Then she had them unfold the chapter, smooth it out and look at how scarred and dirty it was. She then told them to tell it they're sorry. Now, even though theysaid they were sorry and tried to fix the chapter, she pointed out all the scars they left behind, and that those scars will never go away no matter how hard they tried to fix it. That is what happens when a child bully's another child, they may say they're sorry, but the scars are there forever. The looks on the faces of the children in the classroom told her the message hit home.⁶⁵

The above post carries a message to the children at large as how bullying can leave another child traumatized for life. But the scope of this message can be expanded to revenge porn by teens as well. In most cases of revenge porn by teens, the victims are left with lifelong image scars. Some victims from the orthodox background prefer to lodge a complaint through the male members of their families, while some are severely blamed. The perpetrators are neither spared. The wrong done by them not only ruin their victim's lives, but create a severe damage to their lives and career as well. While the US judiciary had set a precedence of

⁶⁵ We had received this message on my Facebook wall in mid October, 2011 which was hugely shared by others.

terming such perpetrators as ‘sex offenders’,⁶⁶ which may prevent such teen from rejoining the school,⁶⁷ in India the perpetrator and the victim as well are generally ousted from the school even if they are not tagged with any such words either by the police or the judiciary. Both the treatments actually hamper the future career of young individuals. It has to be noted that the judiciary and the legal fraternity may get ample opportunities to apply Therapeutic Jurisprudence⁶⁸ to deal with the victims as well as the perpetrators. The scope of Therapeutic Jurisprudence is explained by Professor David Wexler, the founder of Therapeutic Jurisprudence School, as follows:

Therapeutic jurisprudence focuses our attention on the traditionally under-appreciated area of the law’s considerable impact on emotional life and psychological well being. Its essential premise is a simple one: that the law is a social force that can produce therapeutic or antitherapeutic consequences. The law consists of legal rules, legal procedures, and the roles and behaviors of legal actors, like lawyers and judges. Therapeutic jurisprudence proposes that we use the tools the behavioural sciences to study the therapeutic and anti therapeutic impact of the law, and that we think creatively about improving the therapeutic functioning of the law without violating other important values, such as Gault-like due process.⁶⁹

We propose Therapeutic Jurisdiction for victim aided revenge porn cases involving teens mainly because this could be the best way to mould the young minds from turning more deviant. McLaughlin (2010) observed that teens stand on the threshold of adulthood.⁷⁰ Given this delicate mindset of young individuals, a feeling of rejection by the chosen girl, by the society, by the school and largely by the judiciary can push the perpetrator teen towards a dangerous end, even if the judiciary sentences him for correctional punishment. The teen can grow either into an insecure man, always fearing the police, law officers and the courts; or can grow into a hard core white collar cyber criminal knowing the loopholes of law and basking in the false glory of monetary power, which could save him from

⁶⁶ Id @ 21

⁶⁷ Id

⁶⁸ Bruce J Winick “Therapeutic Jurisprudence and Victims of Crime. Victim Participation In Justice: A Therapeutic Jurisprudence Perspective”, (2008), Available at SSRN: <http://ssrn.com/abstract=1102350>

⁶⁹ David.B. Wexler (2003), *Judging in a Therapeutic Key*, Therapeutic Jurisprudence and the Courts, edited by Bruce J. Winick and David B. Wexler, (Carolina Academic Press, Durham North Carolina, 2003) p7.

⁷⁰ Id @ 21

anything and everything. It is for this very reason that we reject the proposal of holding parents vicariously liable for the hi-tech offences, like sexting by their teens.⁷¹ Undoubtedly parents are responsible for supplying the devices to the teens and understandably for this core reason, they can be held vicariously liable for teen's misuse of such devices. But in Indian societies, where in average families, male children are still hugely preferred and are treated in comparatively less restricted manner,⁷² this proposal of vicarious liability of the parents can prove destructive for the children. As the penology for online crimes targeting children prescribes pecuniary fines along with the prison terms through Ss.67B of the Information Technology Act, 2000 (amended in 2008) as well S.11 of the Protection of children from sexual offences Act, 2012, the influential parents of the offending teens may set extremely bad examples by releasing the child on huge bonds. This may actually make the child understand that parental influences and monetary strength would protect him from the criminal justice administration always.

2. Therapeutic prosecution for offender teens

This could include proper therapeutic prosecution which makes the offender to realize his mistake and contact the websites asking to remove the offending posts etc. We especially emphasize on this option because once the harming post is floated on the web, it may be impossible to retrieve it back. Due to numerous channels of the web world and speedy network between the users and the websites, the harming post could spread across the world rapidly. Nothing would match the assurance of the offender to the victim to withdraw the offending post and actively executing the same. However, this process has to be supported by the police and also the courts, as the websites may refuse to take down any clipping unless the take down request is accompanied by a judicial order. It has to be noted here that if the circulation includes revenge gratification of the perpetrator and also monetary gain by a third party as had been the case with DPS case, and the first secondary distributor, i.e., the

⁷¹ Terri R. Day. "The New Digital Dating Behavior - Sexting: Teens' Explicit Love Letters: Criminal Justice or Civil Liability", (2010). Available @ http://works.bepress.com/cgi/viewcontent.cgi?article=1005&context=terri_day

⁷² Jaishankar Karuppannan & Kannan C. "Abuse of Children during discipline practices: A Victimological Analysis." Indian Journal of Human Rights and Justice. Volume 1 Issue 2, 2006. Pages 1-15.

perpetrator himself is not involved with it and he may have never thought of such consequences, the court has to apply substantial discretion in awarding the penal as well as a pecuniary sentence for both the primary perpetrator and the secondary perpetrator. The therapeutic process may also include inducing the offender teen for offering a genuine remorseful apology to the victim along with payment of the penalty fees⁷³ by the teen offender through correctional works that may be awarded by court sentences.

3. Therapeutic prosecution for the benefit of the victim

The suicide of Jessica Logan, a victim of her own sexted message which was hugely circulated,⁷⁴ shows the need of therapeutic jurisprudence in cases of sexting and also cases involving victim aided revenge porn. Jessica's case orbited around the fact that the circulation of the sexted message drew huge humiliation to her. Even though this was a case of revenge porn,⁷⁵ the courts looked upon the issue of sexting primarily and not the revenge gratification of the boyfriend, which probably drew secondary importance. If Jessica was handled under therapeutic nature of the law, probably she would have still lived to become an ambassador herself. The primary aim of the therapeutic jurisprudence towards the victim is to encourage her to speak up for the harm that has been caused to her and seek her redressal rights.⁷⁶ In case of revenge porn aided by victim, it is quite natural that the victim would be shattered not because of the sudden portrayal of her as sex item, but essentially because of her own involvement in her own humiliation. Therefore it becomes the primary duty of the police, the attorney and the courts to offer her assistance to regain the mental stability to face the society which would have started looking at her in a humiliating way. Now that the courts in the US have started looking into the problem of sexting as a behavioural problem, which is very different from the distribution of the stored infor-

⁷³ Murat. C. Mungan "Don't Say You're Sorry Unless You Mean it". FSU College of Law, Public Law Research Paper No. 546. (2011), Available at SSRN: <http://ssrn.com/abstract=1917073>

⁷⁴ Id @ 69

⁷⁵ Mike Celizic. "Her teen committed suicide over 'sexting'", Published in ToDay Parenting on 3rd June. Available @ <http://today.msnbc.msn.com/id/29546030/ns/today-parenting/t/her-teen-committed-suicide-over-sexting/#.TrkzSfTDXjM>

⁷⁶ Id @ 66

mation as revenge porno, which is primarily motivated by aggressive revenge taking mentality; the police, attorneys and the courts have to encourage the victim to think like a victim and not as an aide to the perpetrator. Further, this has to be seen that the teen victim does not turn an offender herself by playing similar trick with the information about the perpetrator. Therefore the court needs to restrict the offended child from going back to the virtual life and playing this dangerous game again.

In this regard, it needs to be mentioned that the New Jersey statute on sexting could be taken as a prime example of therapeutic legislation if the scopes are broadened enough to cover issues of revenge porn aided by the victim. The court and the victim's attorney also need to see that the victim is not discriminated in the school or in the society at large. This is especially necessary for cases where there are possibilities that the victim may be told to leave the school as the school authorities may fear that whole incident may damage the reputation of the school. Hence the court has to extend the scope of the restorative judgment to cover the decisions of the school authorities as well. In brief, the court has to apply therapeutic jurisprudence in revenge porn cases to uphold the welfare of the child, be it the perpetrator, or the victim.

Conclusion

This paper offers three general conclusions:

1. Children of web 2.0 era have given a new meaning to internet crimes generated from revenge. They present a tendency to become a potential victim (of sweet 16 hallucinating offline as well as online dating) -turned-offenders (of internet crimes).
2. The ISPs aide the children to fulfil their evil purposes.
3. Courts need to develop different prosecution and post prosecution under custody treatment for these children; hence, along with education and awareness among children and parents, therapeutic jurisprudence may bring down this menace.

When the proposed NJ Bill comes into effect, sexting would no longer be considered as a crime, but an issue to be dealt with by the school counsellors. This may have a huge impact not only in the US, but on other countries like India where children are turning tech-savvy very rapidly. However, this would be a small step towards securing digital

privacy of adolescent teens. The issue of transferring self captured 'sexy' pictures, and consensual capturing of compromising positions with dating partners by teens are to be dealt with school counsellors as had been correctly noted by the NJ lawmakers. For this, we strongly support sex education and related awareness campaigns regarding cyber activity management in the schools. But could this be possible in India? A couple of years back when the question came up on inclusion of sex education in school curriculum, India witnessed a mixed response from the lawmakers, school authorities, parents and even students.⁷⁷ Even though the proposal failed to materialize due to major opposition from the public and also governments, a recent study showed that teens are willing to learn about sex education, even if the parents are opposing the idea.⁷⁸ It has become increasingly essential now for the teens to learn how to safely adopt the US based platforms in Indian value systems. Also, India should adopt sensible laws to identify the teen problems. The US courts are now turning more towards application and also the adoption of substantive laws for preventing the destructive teen mentality through the information super highway. India should also adopt this very approach of the US courts while dealing with underage offenders of digital crimes. Unless the courts set precedence about results of misuse of digital knowledge, the children will remain ever ignorant of the facts and we may get to see more instances of teen revenge porn activities on the net.

SUMMARY

Sexting among teens has become a huge problem in the US as well as in India. This has given birth to numerous issues including issues related to child pornography, exploitation of images by perpetrators and revenge porn. While in the US laws are being created and tested for regulating sexting in relation to revenge porn, the situation is quite different in India. This paper emphasises that there is a lacuna in dealing with adolescent sexual behaviour including revenge taking attitude with the help of sexted images. This paper argues that instead of dealing the issue of revenge porn by teens in the traditional procedural ways as has been laid down in the legal provisions or by way of rustivating the children (including

⁷⁷ Reuters, "Do we need sex education in schools?" 30th April 2009, Available @ <http://blogs.reuters.com/india/2009/04/30/do-we-need-sex-education-in-schools>

⁷⁸ Darshan Chaturvedi "Schools, students keen on studying sex education". July 5, 2010 Published in http://articles.timesofindia.indiatimes.com/2010-07-05/vadodara/28298671_1_school-teachers-education-administrators

the perpetrators and the victim) from the school as has happened in India in several occasions, Therapeutic Jurisprudence approach should be taken up.

Key words: Sexting, Revenge Porn, United States, India, Adolescent Sexual Behaviour.

RÉSUMÉ

La textopornographie entre adolescents est devenue un énorme problème tant aux Etats-Unis qu'en Inde. De nombreuses questions se sont posées à propos de la pédopornographie, de l'exploitation d'images par les auteurs, et de la pornographie de représailles. Tandis qu'aux Etats-Unis on expérimente des législations censées réguler la textopornographie de vengeance, la situation est très différente en Inde. Le présent article met en relief la lacune qui existe dans la manière de gérer le comportement sexuel des adolescents, y compris l'attitude de revanche à l'aide d'images communiquées par SMS. Les auteurs du présent article considèrent que plutôt que de faire appel aux voies traditionnelles de procédure ou d'éloignement de l'école des enfants auteurs ou victimes, comme cela a souvent été le cas en Inde, le choix devrait être fait d'une approche "thérapeutique" du droit, c'est-à-dire d'une pratique du droit prudente, soucieuse de ses effets psychologiques.

RESUMEN

El sexting entre adolescentes se ha convertido en un enorme problema, tanto en los Estados Unidos como en la India. Ello ha dado lugar a numerosas cuestiones, entre ellas, las relacionadas con la pornografía infantil, la explotación de imágenes por los autores y la pornografía de represalias. Mientras que los Estados Unidos han adoptado legislaciones destinadas a regular el sexting de venganza, la situación es muy diferente en India. Este artículo pone de relieve la laguna que existe en la manera de gestionar el comportamiento sexual de los adolescentes, incluyendo la actitud de venganza utilizando imágenes obtenidas por SMS. Los autores del presente artículo consideran que en lugar de utilizar las vías tradicionales de procedimiento o de expulsión de la escuela de los niños autores o víctimas, como ha sido a menudo el caso en la India, debería llevarse a cabo un planteamiento "terapéutico" de la ley, es decir, una práctica del derecho prudente, preocupada por los efectos psicológicos que puede provocar su aplicación.