



News

# India needs better, survivor-centric laws on image-based sexual abuse

*The cases of sexual abuse against former Karnataka JDS MP Prajwal Revanna and the digital evidence that supports the allegations, underline the necessity for a relook at the legal framework of image-based sexual abuse in India, and for its implementation to be more survivor-centric.*



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Image-based sexual abuse (IBSA), generally known by the misnomer “revenge porn”, includes a broad range of tech-enabled forms of gender-based abuse. Globally, women and LGBTQIA+ individuals are the most likely to become victims of IBSA, making it a tool for targeted abuse. The recent cases of sexual abuse against former Karnataka Janata Dal (Secular) MP Prajwal Revanna and the digital evidence that supports the allegations, underline the necessity for a relook at the legal framework of IBSA in India, and for its implementation to be more survivor-centric. The current laws and procedures are highly fragmented and individualistic, marred by the retraumatisation of survivors and inordinate delays, and the recently implemented [Bharatiya Nyaya Sanhita](#) (BNS) does not do much to change the status quo on IBSA.

## Status quo

The BNS continues the Indian Penal Code’s legacy in addressing IBSA under S 77, which details the crime of voyeurism with the change that now any person, irrespective of their gender, can be charged with the crime. It is a provision that is drafted loosely enough to address a range of gendered sexual abuse, with its additional emphasis on distribution of such material, in the case of non-consensual capture and/or sharing of intimate images.

But this only covers a part of the broad range of IBSA incidents, and S 77 only identifies women as potential victims. There is no protection to men and transgender persons against IBSA under the BNS. The law, however, makes up for this through sections 66E, 67, and 67A of the Information Technology Act, 2000 (IT Act), which is gender-neutral, and criminalises the invasion of privacy by capturing or distributing sexually explicit images. Additionally, victims can initiate civil and criminal proceedings for defamation against the perpetrator. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, also mandates platforms to enable the identification of the originator of a piece of content, which remains a double-edged sword– identification of originators could imply further weakening of end-to-end-encryption, thereby endangering privacy and opening a whole [new can of worms](#).

Section 4 of the Indecent Representation of Women (Prohibition Act), 1986, is also another criminal provision that could be utilised to tackle image-based abuse, but is unfortunately not updated to tackle digital image-

based abuse or distribution through digital media, since it is not applicable to electronic and digital formats of content.

This clearly depicts that fragmented legislation can potentially help survivors take criminal action against the perpetrators, but the poor harmonisation between different legislations against IBSA limits their effectiveness.

The [Bharatiya Nagarik Suraksha Sanhita](#) (BNSS) makes minor changes to the procedure of reporting IBSA, like how the victim may no longer have to go to the police station in person to register a complaint and initiate the process of filing an FIR. It also mandates women officers to record cases under S 75 of the BNS, while such mandates are not applicable to the criminal provisions under the IT Act. However, given the inordinate delays and poor resource allocation that are characteristic of the Indian criminal law apparatus, these changes might not fundamentally change the IBSA survivor's experience of initiating criminal proceedings.

These laws also continue to operate siloed from the technological developments that enable easier distribution of content, such as AI-based tools that automate and accelerate content distribution, contributing to the limits of the applicability of the law. Immediate action is key in these situations, but neither the legal framework nor law enforcement adheres to helpful stipulations in such cases, as can be seen from the [hesitation in filing FIRs](#) to the long-drawn court mediated takedowns.

## **Women's online safety elsewhere**

Mexico enacted the "[Olympia law](#)" in 2021. It recognises digital violence in many forms including sextortion (sexual extortion); non-consensual sharing of images; and identity theft or impersonation. This holistic treatment of digital violence enables the legal framework to be better-equipped to deal with IBSA, as newer forms of IBSA such as deepfake content flood the internet. [Argentina](#) also passed a similar law in 2023, enabling a clearer legal framework for victims of IBSA. The recognition of the socio-political impacts of receding space for women in the digital world can also contribute positively to create a safer environment for [social and political expression](#) by women.

The United Kingdom recently passed the much-debated Online Safety Act, 2023. The framework focuses on [content takedown](#), including active takedown by platforms as well as easing the notice-and-takedown

mechanisms enabled by platforms. It also criminalises pornographic deepfakes. Australia, on the other hand, looks to address online safety through its three-pillared approach of 'Prevention, Protection, and Proactive and Systemic Change'. The Australian e-Safety Commissioner is an empowered regulator, with adequate resources to enable compliance from a range of online platforms to limit violence and an alternate mechanism to report cyber abuse, including IBSA.

## **Formulating an IBSA framework in India**

The poor standard of discourse around IBSA in India is extremely unfortunate, to the extent that popular media resorted to calling the Prajwal Revanna case as a "sex scandal." This emphasises that IBSA, and gender-based violence in general, is not a challenge that can be addressed merely by force of the law, but one that demands concerted action at a social level.

However, procedural, and systemic support to the survivors is long overdue. Time and again, responses to IBSA from various stakeholders including police, platforms, and media have been insensitive and poor. It is imperative that the new government take adequate steps to remedy the ill of image based sexual abuse at the earliest. Taking cues from global developments, remedial measures should be designed from a socio-legal lens. It should include a range of steps, from sensitisation to action against perpetrators within the system, such as police officers, who several groups working to address IBSA say further distribute abusive content. This proves that the point of distribution becomes crucial in tackling and abating the effects of such abuse.

A detailed study on the state of tech-facilitated violence in India by the Law Commission can give clarity on the extent of the loopholes in the system. This could form the basis to harmonise legal provisions across legislations, and potentially also look at the interplay between legal concepts such as the right to be forgotten and the right to deletion in the case of IBSA. The right to erasure of data under S.12 of the Digital Personal Data Protection Act, 2023 achieves the right to deletion. It could be interpreted as an obligation on the data fiduciary that is limited to the erasure of the data that resides with it, but does not extend to ensure the removal of such data from being part of further processing. This falls short of the protection that must be guaranteed to a victim of IBSA. Hence, the law should take the route of recognising the right to be forgotten, whereby

a data fiduciary must be obligated to prevent both the continuing disclosure and processing of her personal data and all further processing associated with data to protect her. It is essential that it results in criminal laws that are drafted gender-neutrally to ensure protection to victims who are not just women, but also men and gender queer persons.

There are multiple amendments that can improve the legislative framework on IBSA. Firstly, IBSA should be explicitly recognised as under 66E IT Act, making it a non-bailable offence. It should also include AI-generated nude or sexually explicit images within its ambit, and criminalise any threats to perpetrate IBSA. S 67A should also be amended to decriminalise people taking their own images, to ensure that there is no chilling effect against the victims coming forward to complain against non-consensual sharing of intimate images. Amendments should be made to the Indecent Representation of Women Act, 1986 to include digital content within its purview, and making the offences under the Act non-bailable.

Research and development of technical tools forms an active part of combating IBSA at a social level. The Ministry of Home Affairs took a step ahead in addressing this while allocating funds for research and development through the Cybercrime Prevention Against Women and Children Scheme. This could be augmented with collaborations with up-and-coming start-ups, platforms, and academic institutions to achieve better results. Large amounts under the [Nirbhaya funds](#) could be reallocated to the purpose of addressing IBSA, for proper management of funds and to prevent it from lapsing.

At this juncture, it is critical to recognise that digital governance is a sector with a multiplicity of governance actors beyond the legislature, judiciary, regulator, and police. As platforms become a critical governance actor, the policy ecosystem should actively identify them as accountable actors beyond a mere conduit, through mandates for compliance and disclosures. The Ministry of Women and Child Development and the Ministry of Electronics and Information Technology should work together to build consensus and urge technology companies to act better, especially on tackling the distribution front.

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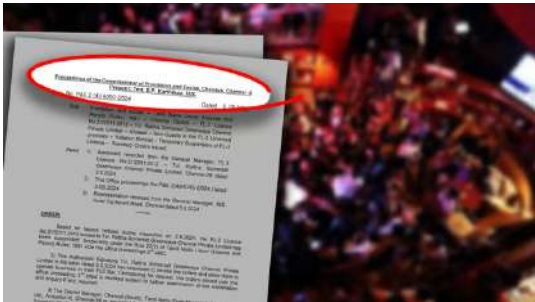
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