



The Law on Image-Based Sexual Abuse Worldwide



Introduction

What is image-based sexual abuse?

Image-based sexual abuse (commonly known as ‘revenge porn’) describes the act of sharing images or videos of an individual (the ‘victim’) that are sexually explicit (displaying nudity or showing the person engaged in a sexual act) **without that person’s consent**.

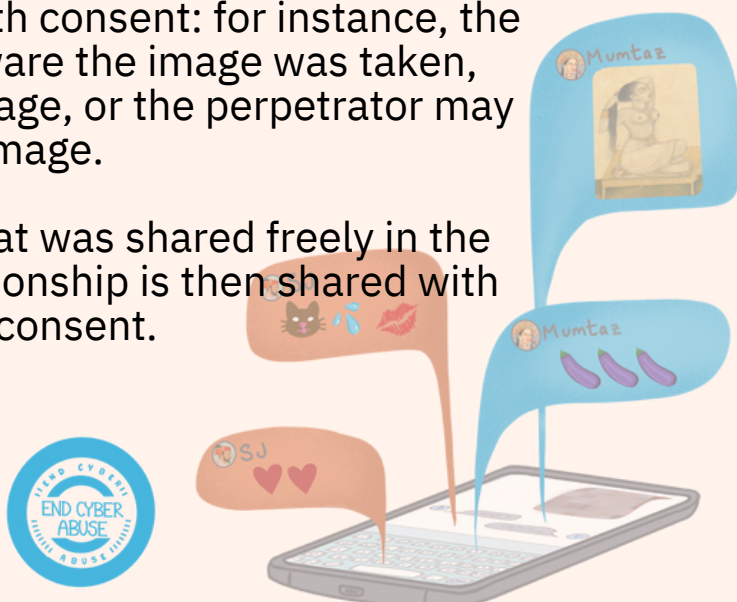
The images or videos may be shared on specialized ‘revenge porn’ websites, on social media, via email, text, or messaging services, or shared with specific individuals, such as the victim’s family or employers.

The images may also be shared offline. Sharing images or videos that have been photoshopped or otherwise altered in any way may also be considered image-based sexual abuse.

Consent is required at two stages: when the image or video is taken and again when it is shared with any third party.

In some cases, the first level of consent is missing, and the images are not obtained with consent: for instance, the victim may have been unaware the image was taken, coerced into sharing the image, or the perpetrator may have stolen or hacked the image.

In other cases, an image that was shared freely in the context of an intimate relationship is then shared with others without the victim’s consent.



Why do we call it image-based sexual abuse?

This form of abuse is widely known as ‘revenge porn,’ often understood in the context of a vengeful ex-partner distributing sexual images or videos of their former partner following the breakdown of their relationship.

However, the term ‘revenge porn’ does not fully reflect the scope, motivation, and nature of the crime, and how it is experienced by victims.

Offenders might be motivated by a **range of factors beyond revenge**: financial gain, the desire for power or control over the victim, the desire to coerce or harass the victim, or the desire for fame, social status, or notoriety.

In addition, the emphasis on ‘revenge’ shifts the focus away from the harm done, using victim-blaming language. Victims of image-based sexual abuse have spoken publicly about the detrimental impact the crime has on their life.

These accounts give an insight into the far-reaching impact of the crime and offer further evidence of the inadequacy of the term ‘revenge porn’.

Sharing sexually explicit images of an individual without that person’s consent is not ‘pornography’ - it is abuse, and should be understood as such.

For that reason, women’s rights campaigners, academics, and others are advocating for new terminology: ‘image-based sexual abuse’. The term ‘image-based sexual abuse’ clearly reflects its nature as a form of gender-based violence (GBV).



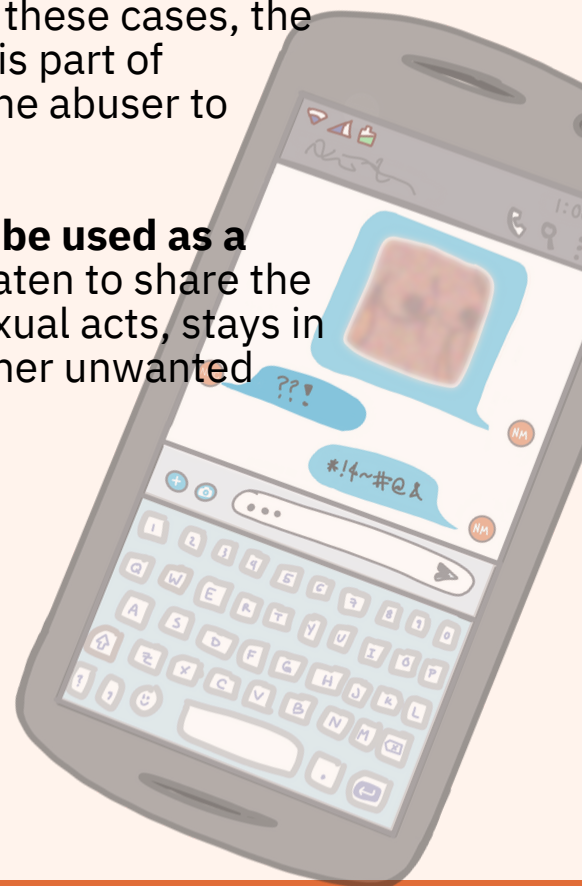
How is image-based sexual abuse a form of GBV?

GBV is defined as *violence that is directed against a someone because of their gender or that affects women and people of marginalised genders disproportionately*. Violence in this context is defined in its broadest sense, as a means of exerting oppression and control, whether through an overtly physical act or through psychological pressure, coercion, intimidation, or harassment.

There are a number of reasons why we would consider image-based abuse as a type of GBV:

1. Perpetrators of image-based sexual abuse are usually men and their victims are usually women.
2. **Image-based sexual abuse can often take place in the context of an abusive relationship.** In these cases, the release or the threat to release images is part of a pattern of domestic abuse, allowing the abuser to maintain control over the victim.

The threat to release the images may be used as a blackmail tool: a perpetrator may threaten to share the images unless the victim engages in sexual acts, stays in the relationship, or engages in some other unwanted behavior.



How is image-based sexual abuse a form of GBV?

3. While image-based sexual abuse often involves a perpetrator sharing images that were initially created consensually in the context of an intimate relationship, this is not always the case.

A perpetrator may obtain an image by coercion, secret recording, hacking, deception, online by webcam, in public through 'upskirting' or 'downblousing,' or by a trafficker or rapist without the victim's consent.

The perpetrator may or may not be known to the victim. They may, in some cases, be involved in an exploitative and non-consensual relationship.



What impact does image-based sexual abuse have on its victims?

Victims of image-based sexual abuse report serious and sustained psychological distress as a result of the crime, including post-traumatic stress disorder, anxiety, and depression. When an image is shared without consent, victims experience a sense of violation and feel a loss of control. Victims can no longer control who views their body and as such, their bodily autonomy is compromised. In this sense, the mental health effects of image-based sexual abuse are similar to those reported by survivors of sexual assault.

Victims of image-based sexual abuse may also experience harassment which can have far-reaching personal and professional consequences. In the United States, research by the Cyber Civil Rights Initiative found that **over 50% of victims reported that their photograph appeared next to their full name and a social network profile, while over 20% stated the photograph appeared next to their email address and telephone numbers.** Victims may fear physical attack, a fear that increases where personal data is shared alongside the image and where comments are posted online encourage further violence. Victims of image-based sexual abuse can lose their jobs, homes, and be ostracised from their families, or their cultural or religious communities. Any or all of these contribute to a victim's loss of identity.



Introduction

What impact does image-based sexual abuse have on its victims?

As with other forms of GBV, victims of image-based sexual abuse may be held partially or wholly responsible for the crime, referred to as ‘victim blaming’. The psychological impact of victim-blaming is well documented, with the experience described as like a ‘second assault’ or ‘secondary victimization’. Where victim’s experience blame from professional support services, this may lead to the victim questioning the efficacy of those services.

Victim blaming results in silencing - survivors fear being blamed and therefore do seek out the services and support that they need.

Image-based sexual abuse is a violation of women’s human rights to live free from GBV and discrimination, and to enjoy privacy. Image-based sexual abuse must be criminalized, and allegations must be investigated and, where appropriate, prosecuted. If not responded to appropriately, gross violations of this kind harm society by normalizing violence against women.



Are there any laws that respond to image-based sexual abuse?

The nature and scope of laws that address image-based sexual abuse vary from country to country.

Some countries, such as Canada and France, have introduced specific legislation to criminalize image-based sexual abuse. In other countries, such as India, image-based sexual abuse is criminalized under existing laws on voyeurism, privacy, and information technology.

In many contexts, such as in Bangladesh, pornography, in general, is banned, bringing image-based sexual abuse under the ambit of those laws, but potentially resulting in negative repercussions for survivors who consensually share images that the state deems ‘pornographic.’

In some countries, image-based sexual abuse is also a civil offence, for example under the tort of privacy or civil defamation, and victims may be entitled to compensation or damages for the harms suffered.

To better understand the legislative framework around image-based sexual abuse, **we have compiled country-specific factsheets which set out the criminal and civil legal remedies available to victims and what gaps exist in those laws and their implementation.**



Criminal law on image-based sexual abuse

There are a variety of criminal laws that can address image-based sexual abuse, including laws on telecommunications and voyeurism, such as India's Information Technology Act 2000 and the Philippines' Anti-Photo and Video Voyeurism Act 2009, respectively. However, a robust legal response to image-based sexual abuse requires clear and comprehensive criminal legislation designed to specifically tackle the issue.

Images or videos of a sexual nature

- The law should **specifically define and prohibit the sharing and dissemination of an image or video** of a sexual nature without the consent of the person depicted. For instance, in Canada, it is an offence to knowingly disseminate an intimate image of a person, knowing that the victim did not give consent or with recklessness as to the lack of consent.
- The law should be drafted to **ensure that a broad range of sexually explicit images or videos** potentially fall within its remit. Sexually explicit images or videos should be defined to show partial or full nudity, or images showing the victim engaged in sexual activity (even if they are fully clothed).
- Whether an image or video is sexually explicit should be determined by reference to what a **reasonable person would consider to be sexual**.



Legislation - Core Elements

- 'Selfies' should be covered by any criminal law, as should an image or video that has been **photoshopped or altered**.
- However, in countries where pornography is banned altogether, victims are unlikely to come forward, fearing they may face arrest for consensually sharing an image deemed 'pornographic.' Banning pornography completely is not a viable solution to protecting victims' rights in the face of image-based sexual abuse.

Shared without consent

- A key component of the offence of image-based sexual abuse is that the victim has not consented to the distribution of the images or videos. The law should provide that the perpetrator knowingly or intentionally shared the image or video without the victim's consent.
- A strong law also criminalizes the sharing of images or videos **created consensually but shared without the victim's consent**.
 - For instance, in Germany, it is an offence to knowingly distribute an image that was privately created with consent, but where disclosure to a third party is not authorised.
 - In France, the law requires that the victim's consent to disclosure is specific, i.e. she must consent for the image(s) in question to be shared.



Legislation - Core Elements

Intent, motivation, and threats to share

- There should be **no requirement for proof that the perpetrator had a specific intent**, such as to cause the victim harm or distress. Such 'intent' can be difficult to prove and may limit the success of criminal prosecution. For example, in Japan, the Act on Preventing Non-Consensual Porn criminalizes the spreading of intimate images to a large group of people without consent -- but does not require a showing that the perpetrator has intended to harass or harm the victim.
- The law should also **hold accountable corporations** such as internet service providers or website operators that fail to promptly remove such images, such as the law in France. The failure of such corporations to take swift actions in cases of image-based sexual abuse can lead to images going viral and an escalation in the harassment and harm suffered by the victim.
- The law should also criminalize the threat to share a sexual image or video without consent, such as the law in Arizona (USA).

Gender-based violence

- Image-based sexual abuse is a form of gender-based violence and it is important that legal and policy responses address it as such to ensure connections are made between this and other forms of gender-based violence, and that responses meet the complex needs of victims.



Legislation - Core Elements

- The law should make clear that image-based sexual abuse is a form of gender-based violence and not a communication offence.

Sentencing powers

- The seriousness of the offence and its impact on victims should be reflected in the sentencing power afforded to judges, with jail time available in addition to the power to fine a perpetrator. For instance, in Idaho (USA), image-based sexual abuse is a felony, with a minimum five-year sentence and a fine of up to USD 10,000.
- Sentences may also be increased where there is an aggravating factor, for example where a perpetrator publishes a victim's personal information alongside the image, or when it is a repeat offence, such as in Florida (USA).



Civil law on image-based sexual abuse

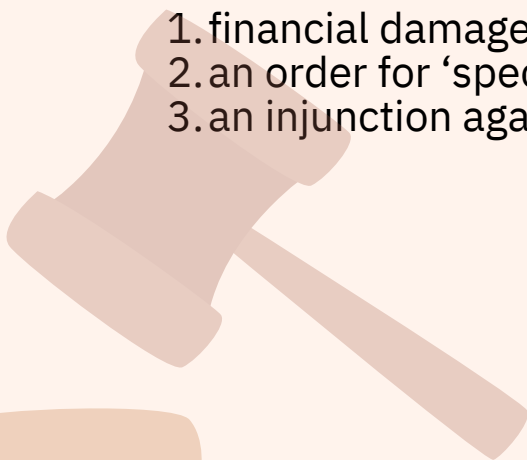
Civil law versus criminal law

In addition to laws that criminalize image-based sexual abuse, it is a best practice for victims to also have recourse through the civil courts. This is important because the standard of proof in a criminal action is higher than that in a civil action. In a criminal case, the prosecution must generally show 'beyond a reasonable doubt', that the defendant committed the offence. In a civil claim, the claimant generally need only show 'on the balance of probabilities' that the defendant committed the offence. Also important for a victim is that a criminal case seeks punishment, whereas a civil case, through its remedies, seeks redress.

Remedies

Generally, the victim in a civil case (the claimant) should be able to request

1. financial damages;
2. an order for 'specific performance'; or
3. an injunction against a defendant.



Legislation - Core Elements

The alleged perpetrator (the defendant) may be either an individual or a corporation, such as an internet service provider or website operator. While not all jurisdictions have such laws, these remedies are a good practice for victims' access to justice.

1. **Financial damages:** depending upon the jurisdiction, a civil court may order a defendant pays financial compensatory damages or punitive damages. Compensatory damages are measured in relation to the actual or potential harm the defendant's actions have caused the claimant. For instance, if a victim is fired after a boss receives a sexually explicit image of them, they experience actual harm and a judge might award compensation for loss of earnings. Punitive damages, on the other hand, are awarded to punish the defendant and deter others from committing the offence. They are more common when a defendant's conduct has been shown to be particularly outrageous.
2. **Specific performance:** the court may order a defendant to carry out a stated action, for example, that a website operator remove images from its platform.
3. **Injunction:** the court may order a defendant to refrain from certain actions, for example, that the defendant refrains from contacting the claimant, or stop posting sexual images online. Similarly, in some jurisdictions, the victim can obtain a restraining order against the perpetrator.



Creating a survivor-centered justice response to image-based sexual abuse

Access to legal and social services

A strong legislative response to image-based sexual abuse requires laws and policies that facilitate victims' access to legal and social services. This might include the provision of free legal services for victims of gender-based violence who lack the means to retain their own legal counsel, including victims of image-based sexual abuse.

Additionally, governments should allocate funding for necessary social services, such as counseling for the trauma experienced by victims; assistance in finding employment; housing, and safe shelter; and accompaniment in navigating parallel justice systems, such as religious or customary legal systems, or justice systems within educational and employment institutions (e.g. a sexual harassment process in the workplace, where a victim may need to report the violation).

Training for law enforcement officers and court staff

A best practice justice system would also provide training for law enforcement officers and court staff on investigating and prosecuting cases of image-based sexual abuse. Training will help to mitigate the risk of victim-blaming questions from officers, and that victims of image-based sexual abuse are retraumatized by engaging in the



Legislation - The Way Forward

justice system. Training can also ensure that officers treat sensitive images or videos shared by the victim with the sensitivity and privacy they deserve.

Anonymity

Victims of image-based sexual abuse should be given anonymity from the moment they make a complaint. This does not prevent them from being identified in other contexts, and the courts should be empowered to lift the anonymity in certain limited circumstances.

Data

It is crucial that justice systems gather and make public relevant disaggregated data on image-based sexual abuse, including how frequently it is reported, the number of successful prosecutions, and the sentence or remedy awarded in such cases.

Collecting data on image-based sexual abuse is important for a number of reasons:

- It can be used to support advocacy for law and policy reform.
- It can support efforts to keep justice sector actors accountable.
- Understanding more about perpetrators can inform prevention programs.
- Data on image-based sexual abuse, and gender-based violence more generally, can empower survivors.



Legislation - The Way Forward

Knowing that image-based sexual abuse is an issue that impacts individuals all over the world can help victims understand that they are not alone, and may encourage survivors to report their cases and access essential services.

Conclusion

Gendered violence in online spaces has increased in prevalence in recent years with advances in technology and the widespread use of social media tools, smartphones, and the Internet. It is crucial that the law keeps pace with these new forms of sexual harassment and abuse. A robust legal response to image-based sexual abuse requires clear, comprehensive and targeted criminal and civil legislation.



Criminal law

With the growing use of technology, the number of cases of image-based sexual abuse have risen rapidly across the globe. However, countries are still coming to terms with how to effectively tackle this issue through the law. The research we conducted, together with local law firms and partners, found that some countries have no legislation to address this issue, while others have laws that do little to attend to the needs of the victims. We will discuss some of the gaps identified both in the law itself and in its implementation in the context of image-based sexual abuse.

Gaps in the Law

- Out of the 10 countries that were reviewed for this project, 2 countries (i.e. Bangladesh and India) have no standalone legislation and 1 country (USA) has no federal legislation to criminalize image-based sexual abuse.
- Of the countries that had a standalone law to deal with this issue, at least 2 (i.e. Japan, Germany), along with some States in the US either have laws that characterize the offence as a “misdemeanor” or impose weak penalties on the perpetrator of the crime.
- Of the remaining others, 2 countries (England and Wales, and Pakistan) and some US states have laws that impose an onerous requirement on the victim to prove the intent of the perpetrator to commit the crime, or to cause harm or to harass the victim, which oftentimes results in a “chilling effect” on victims who seek to report the crime.



Gaps & Challenges - A Summary

Gaps in the Law

- The law in Canada is one of the best on paper but is yet to be tested out in practice.
- Many countries do not grant the option of anonymity to the victim when she makes a complaint or when the case goes to trial.
- Several nuanced issues associated with this crime are not captured under most of the laws that were reviewed. For instance:
 - A person who records and publicly distributes the voice of the victim but does not record an image or a video is generally not punished for his/her conduct.
 - If a person makes a threat to disseminate images/videos of the victim electronically, his/her conduct is most often not punishable.
 - The act of spoofing, defined as the uploading of photoshopped or altered images of the victim (e.g. the victim's face superimposed on a naked body), is also not a criminal offense in most jurisdictions.
 - There are also instances of cross-border publication of content relating to the victim (e.g. where the image is published online using a foreign server), which is difficult to stop due to limitations in national laws and the lack of easy cross-border collaboration to counter image-based sexual abuse.



Gaps in Implementation

- Among many of the countries we reviewed, advocates commented on the widespread victim-blaming by police officers when it comes to the issue of image-based sexual abuse. In many countries, law enforcement lacks sufficient training on tackling this issue and therefore can be ignorant and even callous towards the victim and her complaint. This is especially true for certain categories of victims, such as sex workers and LGBTQI+ individuals.
- Often, police officers are unaware of the methodology they ought to follow to investigate a crime like image-based sexual abuse.
- While several countries have cyber-crimes units, which have the expertise and can investigate crimes of this nature, such units tend to prioritize their attention on other issues, such as money laundering.
- Several countries do not provide adequate training to all police officers who may be the first responders to an image-based sexual abuse complaint.
- Certain laws can be misused to target the victim and have him/her prosecuted for what happened to him/her.
 - For instance, the child porn laws in the Philippines are so broad that they could result in the prosecution of children who share selfies of themselves with others.



Gaps & Challenges - A Summary

- Similarly, the Pornography Control Act of Bangladesh criminalizes the sharing of any sexually explicit content that is 'pornographic', thereby allowing for the victim to be prosecuted for sharing a video or a photo of themselves consensually.
- The laws of countries, such as England and Wales, Pakistan, along some States in the US impose an onerous burden on the victim to prove the intent of the perpetrator to cause harm to the victim, which is difficult to establish especially in cases involving companies and websites.
 - Given the difficulty in proving intent, image-based sexual abuse cases are often unlikely to ever be prosecuted.
 - This serves as one of the biggest impediments in getting victims to come forward and believe that they would, in fact, get justice for what happened to them.



Civil law

Gaps in Law

- Activists express concern about how, under the pretext of helping victims, laws are being passed that could be used to crack down on web content and limit free speech. For instance, Germany's Network Enforcement Act places several requirements on social media sites, which could result in "over-blocking" of content.
- In many jurisdictions, victims do not have the option of staying anonymous when filing a complaint.
- In a number of jurisdictions, civil remedies altogether are very limited and scarce, leaving only the route of criminal prosecution available to victims.

Gaps in implementation

- While victims in some jurisdictions have access to civil remedies that require a lower burden of proof than that for a crime, most victims are unable to afford the expenses associated with a civil suit, which could go on for years. Not only that, civil lawsuits will result in no practical compensation to victims unless perpetrators are wealthy enough to pay damages; this limits recourse to only a few victims.

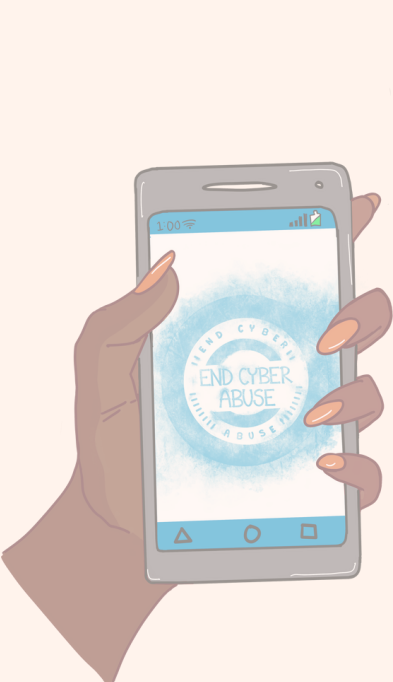


Gaps & Challenges - A Summary

- There is little or no counseling or mental support that is freely available to victims of image-based sexual abuse in most countries. Due to this, it is likely that victims suffer from isolation, withdraw from society, or in the worst-case scenario, take their own life. Several practitioners interviewed for this project felt that little was being done to alleviate this situation.

These gaps point to the dire need to revise the laws that tackle image-based sexual abuse across the globe.

**To read individual country factsheets see:
endcyberabuse.org/country-factsheets.**



Acknowledgements

Thank you to the Thomson Reuters Foundation for supporting the initial stage of research for this project. Thank you as well to the following law firms for conducting comparative law research for our project:

- Hogan Lovells (Germany)
- Dentons LLP (England & Wales)
- Mayer Brown International LLP (USA)
- Chowdhury and Ullah (Bangladesh)
- Chambers of Amir Arsiwala (India)
- Khadija Ali (Pakistan)
- Puyat Jacinto & Santos (Philippines)
- Dechert LLP (France)
- White & Case (Canada, Japan)

We'd also like to thank the following organizations for taking the time to speak with us, complete our survey, provide information on access to justice for survivors of image-based sexual abuse in their jurisdictions, and review our fact sheets.

Canada

- The Citizen Lab

England and Wales

- Revenge Porn Helpline
- Queen Mary Legal Advice Center

India

- Centre for Cyber Victim Counselling



Acknowledgements

Japan

- People Against Pornography and Sexual Violence (PAPS)
- Tokyo Public Law Office

Pakistan

- Digital Rights Foundation
- Musawi

Philippines

- Foundation for Media Alternatives
- Women's Legal and Human Rights Bureau

USA

- Cyber Civil Rights Initiative
- National Network to End Domestic Violence

