



Research Article

Legal Issues Relating to Revenge Porn and Morphing Crimes Against Women in India

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DOI: <https://doi.org/10.5281/zenodo.21202926>

Abstract

Rapid advancements in the use of digital communication technology have enabled various ways of committing acts of gender-based violence, with non-consensual pornography also known as revenge pornography and the manipulation and morphing of images becoming significant forms of cyber violence against women.

This paper will provide a doctrinal analysis of the legislation of India that addresses these issues. An assessment is being made of the adequacy of the laws of the Information Technology Act, 2000, the Indian Penal Code, 1860, and the newly enacted Bharatiya Nyaya Sanhita, 2023 in responding to the damage committed by these violations. The work will also highlight judicial interpretations on this matter, point out limitations and flaws in current legislation, and put forth India's legal stance in an international context of human rights.

Manuscript Information

- ISSN No: 2583-7397
- Received: 13-03-2026
- Accepted: 27-04-2026
- Published: 30-04-2026
- IJCRM: 5(2); 2026: 1092-1098
- ©2026, All Rights Reserved
- Plagiarism Checked: Yes
- Peer Review Process: Yes

How to Cite this Article

Prahalad, Kumar R, Singh G. Legal issues relating to revenge porn and morphing crimes against women in India. Int J Contemp Res Multidiscip. 2026;5(2):1092-1098.

Access this Article Online



www.multiarticlesjournal.com

KEYWORDS: Non-Consensual Intimate Images, Image Morphing, Cyber Crimes Against Women, Information Technology Act, Digital Sexual Violence

1. INTRODUCTION

Sexual abuse of women in the modern era has developed some aspects that the framers of classical criminal laws were unable to envisage. One of the most dangerous forms of cyber-enabled sexual abuse is the non-consensual dissemination of nude pictures, commonly known as revenge porn, and the manipulation of a woman's picture into something sexually provocative or obscene.¹

In India, the frequency of such crimes has increased sharply with the growth in internet penetration and the adoption of social media platforms. The National Crime Records Bureau reported a significant increase in cybercrimes against women between 2018 and 2022. Offences related to obscene satisfied and inappropriate conduct made up a large portion of filed cases.²

The law on such offenses in India is spread out amongst several pieces of legislation, and has emerged due to successive legislative enactments rather than from any policy-oriented process. It comprises provisions under the Information Technology Act 2000 (henceforth "the IT Act"), Indian Penal Code 1860 (henceforth "the IPC") and their subsequent enactments, along with the Protection of Children from Sexual Offenses Act 2012 where there is a victim below the age of majority.

This paper uses a doctrinal method of study which will involve the analysis of legal provisions, judicial rulings, and the legislative background. The purpose will be to uncover the architecture of the law, point out its failures, and suggest areas for improvement based on the Constitutional principles of dignity and privacy established by the case of Justice K.S. Puttaswamy (Retd.) v. Union of India.³

2. Defining Revenge Porn and Image Morphing

A. Revenge Porn: Conceptual Clarity

In many ways, the phrase 'revenge porn' is a misleading one. The word 'revenge' implies that the act is fuelled by feelings of vengeance, while the word 'pornography' implies that this type of pornography exists within the traditional context. In reality, it is not an act done only out of revenge; such images could also be distributed for extortion, blackmail, money-making, or for the purpose of humiliation. In addition, it is not necessarily pornographic in nature.⁴

The use of language that characterizes the act of non-consensual sharing of private or sexual content has also evolved with the development of laws in this area. McGlynn & Rackley describe the concept of 'image based sexual abuse,' which refers to the

non-consensual sharing and creation of fake pictures, as an act of sexual violence rather than simply a violation of privacy.

The Indian judiciary has been using the expression 'revenge porn' while passing several judgements, even while acknowledging the fact that the crime goes beyond any revenge motive. For the purposes of this essay, the expression 'revenge porn' shall be used to describe the act of non-consensual distribution of images or photos.⁵

B. Image Morphing

Image-morphing refers to the use of digital manipulation software to overlay a victim's face or body components over sexually specific or otherwise offensive pics, using synthetic intelligence and machine learning algorithms to generate hyper-realistic synthetic media that create composites that look real. Such manipulation has become increasingly difficult with the spread of the deepfake era.⁶

The loss due to converted photos is multifaceted. On a character level, victims enjoy severe psychological damage, reputational damage, social exclusion and, in severe cases, economic loss stemming from expert outcomes on a systemic scale, the proliferation of such images reinforces structures of patriarchal manipulation and acts as a deterrent to women's participation in public life.⁷

Characterisation of morphed pictures becomes challenging owing to the fabrication of the entire scenario involved. While revenge pornography deals with the release of private pictures, morphed pictures are about making up fake images. The difference is very important when it comes to laws governing the offences. For one, non-consensual release will fall under privacy infringement and obscene distribution, while the morphing element will be associated with defamation and identity theft.⁸ Morphing crimes against women in India cannot be viewed in isolation. They are a direct and devastating manifestation of the broader landscape of cyber threats. Understanding this connection is essential for several key reasons is available⁹.

3. The Statutory Framework

a. The Information Technology Act 2000

• Section 66E: Violation of Privacy

According to Section 66 E of the IT Act, inserted by Information Technology (Amendment) Act, 2008, it is an offense when somebody knowingly captures, publishes or

⁵ Akhil Kumar v State (NCT of Delhi), Bail Appl No 2377/2018 (Delhi High Court, 5 July 2018).

⁶ Anurag Bana, 'Artificial Intelligence, Deepfakes and the Law' (2020) 32(3) National Law School of India Review 101, 109.

⁷ Amnesty International, Toxic Twitter: A Toxic Place for Women (Amnesty International 2018) 5.

⁸ Anupama Kumar, 'Morphed Images and the Law: Examining the Lacunae in India's Cyber Crime Regime' (2019) 11(2) NUJS Law Review 45, 48.

⁹ Dr. Ravinder Kumar, Navigating Intellectual Property Challenges in Cross-Border Data Transfer. (2024). American Journal of Public Diplomacy and International Studies (2993-2157), 2(7), 151-160.

<https://grnjournal.us/index.php/AJPDIS/article/view/5549>

¹ Mary Anne Franks, 'Unwilling Avatars: Idealism and Discrimination in Cyberspace' (2011) 20 Columbia Journal of Gender and Law 224, 226.

² National Crime Records Bureau, Crime in India 2022 (Ministry of Home Affairs, Government of India 2023) ch 5, Table 5.1.

³ Justice K.S. Puttaswamy (Retd) v Union of India (2017) 10 SCC 1, para 125.

⁴ Clare McGlynn and Erika Rackley, 'Image-Based Sexual Abuse' (2017) 37(3) Oxford Journal of Legal Studies 534, 537.

transmits the image of any part of a person's body which is in private without the consent of that particular person, thereby breaching the privacy of such person. There is a penalty of imprisonment for up to three years or a fine of two lakhs.¹⁰

There are some flaws in the interpretation of the rule. Firstly, the definition of the term "private part" includes only genitalia either uncovered or covered by underwear, pubic area, buttocks, and female breasts; hence, intimate photos that don't include those parts are not considered as illegal. Secondly, the necessity to have 'circumstances violating the privacy' implies a certain degree of context, which may result in ambiguity when prosecuting cases where the original photo was willingly provided by the intimate couple. Thirdly, there are no mentions of photoshopped or morphed pictures, as they are not 'captures' of the real private part.

• Sections 67, 67A, and 67B: Obscenity Provisions

The sections 67, 67A, and 67B of the Information Technology Act establish a graduated framework of offences with regard to the publishing or transmission of obscene material through a computer resource. The first one, 67, concerns itself with obscene material which is lascivious or appeals to prurient interest or tends to deprave and corrupt persons while section 67A refers to sexually explicit act.¹¹

Obscenity as the core of the provisions in question is based on a moral model wherein societal values outweigh the rights and autonomy of the individual. In terms of the law, what is significant is that provisions like Section 67 and 67A are not victim-centric in the sense that no specific individual needs to be identified as having been wronged. Thus, prosecution under the provisions does not actually address the problem for the sake of the victim, but for society's morals, which has been criticized by feminists.¹²

The legal definition of obscenity under the Indian law, prior to the case of *Aveek Sarkar v State of West Bengal*, relied on the English common law test known as the Hicklin test, which judged the obscenity of the content based on its tendency to deprave and corrupt individuals who are susceptible to immorality. With the advent of the new judicial opinion in the above-mentioned case, the community standards test was favored because it judges the content according to the present social standards. Yet, the legislative provisions of sections 67 and 67A still hold on to the old test.¹³

b. The Indian Penal Code 1860

• Section 354C: Voyeurism

Section 354C of the IPC, added through the Criminal Law (Amendment) Act 2013, imposes punishment on any male person who witnesses or records the private activity of a woman in situations where there should be reasonable expectations of not being watched or recorded, or when the image is

disseminated. On a first-time offense, the punishment ranges from one to three years of imprisonment; for a second offense, the punishment is three to seven years of imprisonment.

While this provision focuses on the crime of voyeurism – the act of watching or recording the victim privately without her knowledge or consent – its application to cases of revenge porn is inevitably stretched because in the typical case of revenge porn, the victim consents to having her private activity photographed or videoed. The lack of consent comes in the act of sharing the intimate picture. The High Courts have tried to address this issue by interpreting the dissemination portion of Section 354C liberally, but the statutory basis for this interpretation remains questionable.¹⁴

• Sections 499, 500, 503, and 506: Defamation and Criminal Intimidation

Where the images are employed for damaging the reputation of a female, then section 499 and 500, which constitute the crime of defamation, can be used. Defamation under Indian law has one criterion: The imputation must be false; thus, if the image being shown is authentic, then a complaint for defamation is not valid even if there is the same amount of harm to her reputation. Criminal intimidation under section 503 and 506 can also be used if the intimate or morphed images have been employed as an instrument of threat by the offender. For instance, he can threaten to publish such images if she refuses to comply with his demands. This kind of act is referred to as 'sextortion'.¹⁵

• Section 509: Words or Gestures Intended to Insult the Modesty of a Woman

During its authentic codification in 1860, Section 509 IPC punishes any speech, sound or gesture intended to insult a woman's modesty. Courts have occasionally applied this provision to cyber harassment related to pornographic images. The provision suffers from the dilemma that it uses the outdated idea of 'humility', which has been criticized through feminist jurisprudence as focusing crime on respect for the victim rather than infringing on the autonomy and dignity of the victims.¹⁶

c. The Protection of Children from Sexual Offences Act 2012

Where the individual victimized by either revenge porn or morphed images happens to be below the age of majority, then Sections 13 and 14 of the Protection of Children from Sexual Offences Act, 2012 (amended in 2019), take effect. Under Section 13, it shall be an offence to use a child in the production of any kind of pornographic content, and under Section 14, there will be severe consequences for the offense. There have been major amendments to the punishments in respect to child porn in POC SO (Amendment) Act, 2019.¹⁷

¹⁰ Information Technology Act 2000, s 66E (as amended by the Information Technology (Amendment) Act 2008).

¹¹ Information Technology Act 2000, s 67 and s 67A.

¹² Naina Kapur, 'Recognising Non-Consensual Intimate Image Sharing as Sexual Abuse: A Feminist Legal Analysis' (2021) 3(1) Indian Law Review 22, 31.

¹³ *Aveek Sarkar v State of West Bengal* (2014) 4 SCC 257.

¹⁴ Indian Penal Code 1860, s 354C.

¹⁵ Indian Penal Code 1860, s 503 and s 506.

¹⁶ Indian Penal Code 1860, s 509.

¹⁷ Protection of Children from Sexual Offences Act 2012, s 13 and s 14.

3. Intermediary Liability

a. The Safe Harbour Framework Under Section 79

An important consideration with regard to the use of law to deal with online revenge porn and morphing is that of intermediary liability on the part of the platforms being used for the same. The section 79 of the IT Act offers intermediaries immunity from liability insofar as any user-generated content goes provided certain conditions under the section are satisfied.¹⁸

In *Shreya Singhal v. Union of India*, the Supreme Court interpreted Section 79(3)(b) of the IT Act, according to which the immunity would be lost by the intermediary if he had 'actual knowledge' of the content being illegal, only after the intermediary received an order from the court or any official notification from the government, and not merely a private complaint. Though the purpose of such an interpretation was to safeguard the freedom of speech against vague complaints, its unexpected result is that it becomes tough for the affected individuals to remove the defamatory material.¹⁹

b. The Intermediary Guidelines and Digital Media Ethics Code Rules 2021

These new rules put greater duties on intermediaries, especially significant social media intermediaries. Rule 3(1)(b)(xi) states that intermediaries should remove or disable access to content depicting anyone in full or partial nudity or in sexual activities or in cases of impersonation if there are complaints received by the intermediary within 24 hours.

In addition, Rule 4(2) obligates significant social media intermediaries to employ a grievance officer to handle user complaints and respond to them within 24 hours and resolve the complaints within 15 days. This provision marks a step forward in regulating non-consensual intimate image sharing through digital means.

However, the 2021 Rules have faced criticism from different perspectives. Firstly, the categorization of 'significant social media intermediary' based on user count may exclude small social media intermediaries that may contain harmful information but are not classified as significant. Secondly, the success of the grievance system is largely dependent on the ability and willingness of platform grievance officers to handle grievances, which is not uniform among all social media intermediaries. Finally, the Rules do not explicitly require the use of proactive content moderation measures, such as perceptual hashing technology used to detect previously identified non-consensual intimate images.²⁰

5. Constitutional Dimensions: Privacy, Dignity, And Equality

However, non-consensual dissemination of the private photographs and the transformation of the photograph of a woman into a vulgar picture raise issues about the fundamental rights enshrined in the Constitution of India 1950, which includes the right to privacy, dignity, and equality.

In *Justice K.S. Puttaswamy (Retd) v Union of India*, the Supreme Court declared privacy as a fundamental right vested in every individual because of his/her human identity as provided for under Article 21 of the Constitution of India 1950. It further held that informational privacy – i.e., the right to control the dissemination of personal information – is an essential part of privacy. In the context of non-consensual dissemination of the private photographs, informational privacy can be considered violated since the private information was shared with unauthorized people.

Dignity, which is a basic value of all fundamental rights, is directly related to the case. In *Indra Sarma v V.K.V. Sarma*, the Supreme Court held that the principle of dignity should prevail while interpreting the provisions of laws concerning sexual offenses and violation of privacy, where it should be construed in such a manner that it respects the intrinsic worth of the aggrieved party.²¹

In addition to that, the rights to equality enshrined in Article 14 and non-discrimination on grounds of sex enshrined in Article 15(1) are also brought into the picture since the offenses of revenge porn and morphing are committed largely against women. The Indian Supreme Court, in the case of *Vishaka v State of Rajasthan*, acknowledged the constitutional duty of protecting women from sexual harassment, which can equally apply to technology-enabled sexual offenses.

From a constitutional perspective, the State is thus placed under an affirmative obligation not only to abstain from infringing the rights to privacy and dignity but also to undertake measures for safeguarding such rights from infringement by non-state actors.²²

6. Evidentiary Challenges in Prosecution

The prosecution of revenge porn cases and conversion crimes faces extensive evidentiary challenges that can be common to every cybercrime case and precise to the nature of these crimes. These challenges generally account for the low conviction charges observed in cybercrime cases.²³

Authentication and admissibility of electronic documents form the essential evidence provision in any criminal proceeding relating to electronic content. Section 65B of the Indian Evidence Act, 1872 (now re-enacted in section 57 of the *Bharatiya Sakshya Adhiniyam*, 2023) stipulates that an electronic document must be supported by a certificate executed by the person in charge of the electronic device from which such electronic document has been derived, attesting to the document's authenticity and storage conditions.²⁴

In practice, the requirements of section 65B have presented a significant obstacle to prosecution. Victims will not have preserved unique metadata for photos or messages; Structures can also resist or postpone compliance with information update requests; And forensic information to interpret digital evidence

²¹ *Indra Sarma v V.K.V. Sarma* (2013) 15 SCC 755, para 53.

²² *Vishaka v State of Rajasthan* AIR 1997 SC 3011.

²³ Prashant Iyengar, 'Evidence and Proof in Cyber Crime Cases in India' (2016) 28(2) National Law School of India Review 55, 68.

²⁴ *Bharatiya Sakshya Adhiniyam* 2023, s 57.

¹⁸ Information Technology Act 2000, s 79(3)(b).

¹⁹ *Shreya Singhal v Union of India* AIR 2015 SC 1523.

²⁰ Apar Gupta, 'Platform Liability and Revenge Pornography: Rethinking Section 79 of the Information Technology Act' (2018) 9(1) NUJS Law Review 1, 12.

is largely absent within police groups conducting investigations.²⁵

Another problem is associated with the identification of the person responsible for the transmission of such content. In light of offenders' ability to remain anonymous by using anonymous accounts, VPNs, and proxy servers, tracking the origin of a digital communication may be a cumbersome task which involves the participation of several parties in the communication chain, namely, Internet Service Providers, social media services, and even foreign law enforcement authorities where the case is international in nature. The third technical problem relates to detecting the presence of morphing, especially in the form of deepfakes. Even though forensic software exists which is capable of detecting deepfakes, it works on probability rather than certainty and could therefore be contested in an adversarial process. In India, no guidelines concerning the evidentiary use of deepfake detection evidence have been established. An institutional problem that contributes to all the above-mentioned difficulties lies in secondary victimisation which follows from the obligation of the complainant to introduce intimate imagery into evidence.

7. The Bharatiya Nyaya Sanhita 2023 And the New Legal Landscape

However, the implementation of the Bharatiya Nyaya Sanhita 2023, the Bharatiya Nagarik Suraksha Sanhita 2023, and the Bharatiya Sakshya Adhinyam 2023, effective from 1 July 2024, in place of the Indian Penal Code 1860, the Code of Criminal Procedure 1973, and the Indian Evidence Act 1872 respectively, calls into question the extent to which the new legislation constitutes an advancement in relation to the issue of revenge porn and morphing.²⁶

The BNS reiterates the relevant sections of the IPC. While the BNS section 77 mirrors section 354C of the IPC (voyeurism), the BNS section 78 is similar to section 354D IPC (stalking). The penalties have slightly improved. However, the BNS does not define a distinct offence concerning the non-consensual dissemination of intimate images, which would account for all cases of image-sharing behaviour not included under the voyeurism provision. Similarly, the morphing of the images has not been provided for in a separate provision.

The Bharatiya Sakshya Adhinyam 2023 amends the rules surrounding the use of electronic evidence. It seeks to clarify certain aspects of the interpretation of the certification under the section 65B due to the confusion caused by a large number of conflicting rulings delivered over the years. According to the new legislation, an electronic record retrieved from a device which was consistently used in the regular course of activity may be accepted into evidence if the court is satisfied about its authenticity.

It appears that in the new legislations, the same fragmented strategy has not been abandoned, thus failing to utilise the legislative moment to address specific harm related to technology-enabled sexual offences. A standalone legislative instrument, specifically designed to address non-consensual

intimate imagery and morphing, would have been a more responsive solution.

8. Comparative Perspectives

Comparative examination of legal regulations regarding non-consensual sharing and morphing of intimate images indicates several approaches that could prove useful to India as an example to emulate.

Firstly, the UK legislation – Online Safety Act 2023 – established crimes such as non-consensual distribution of intimate material and threats of distributing such material. This legislative document relies on the consent-based approach and does not require demonstrating intent to harm or a certain moral nature of content since the victim is at the centre of this issue.

Also, under the EU's Digital Services Act 2022, platforms with a very large user base need to have effective systems in place to ensure quick and efficient removal of illegal content, including non-consensual sharing of intimate images. These platforms cannot rely exclusively on complaints but need to have proactive risk management systems installed in order to prevent any illegal content from appearing.

In the United States, although there has been extensive debate in Congress regarding federal legislation on revenge porn for over ten years now, there has not been any legislation passed, but over forty states have introduced specific laws on revenge porn. In the Cyber Civil Rights Initiative's model legislation on revenge porn, it was adopted from a legal perspective that recognizes the sharing of intimate photos without consent as a sexual violation of autonomy.

The Online Safety Act 2021 in Australia introduced a regulatory authority with the powers to direct platform operators to remove material. The law also provides for civil sanctions for failure to comply with the order. There is a specific regime under the law for the non-consensual sharing of intimate images. This is a good example that illustrates how effective such laws can be with a regulatory authority with enforcement powers.²⁷

Comparative surveys show a converging international trend towards enforcing precise law addressing the well-known non-consensual underlying image, combined with regulatory duties in systems to facilitate rapid clearance India's current framework, based on provisions of broadly preferred software, falls short of its growing worldwide popularity.

9. Lacunae in the law and proposals for reform

a. Absence of a Specific Offence of Non-Consensual Intimate Image Sharing

The primary gap within Indian law lies in the lack of an independent crime of non-consensual sharing of intimate images based on consent. Current provisions criminalize actions which are similar to, but do not fully encompass, the act of non-consensual disclosure of intimate images. This necessitates strained interpretations of the statute and prosecution of crimes through unsuitable provisions.

²⁵ Pavan Duggal, *Cyber Law: The Indian Perspective* (3rd edn, Saakshar Law Publications 2017) 214-215.

²⁶ Bharatiya Nyaya Sanhita 2023, s 77 and s 78.

²⁷ United Nations Special Rapporteur on Violence Against Women, *Report on Online Violence Against Women and Girls* (A/HRC/38/47, 2018) para 23.

An independent crime must be defined in terms of consent, wherein the dissemination of an intimate image of someone else without their consent becomes an offense, regardless of whether the image is sexual in nature, what the intent behind disseminating the image is, and whether the image itself was obtained through consent initially.

b. Specific Criminalisation of Digital Morphing

There is no clause in Indian law specifically dealing with the manufacture and distribution of morphed pictures or deepfakes with an intention to harass and humiliate the victim. There is a unique form of wrongdoing committed through the creation of such imagery; that is, the creation of a fake representation of someone in a demeaning way. There needs to be an offence defined by which the manufacture and distribution of morphed digital imagery involving a person in a sexual or other offensive manner without his/her consent can be made criminal.²⁸

c. Mandatory Takedown Obligations and Victim-Centric Relief

In addition to the legislative approach, there is a need for statutory provision that would guarantee rapid removal of harmful content from online platforms, without involving the process of initiating civil claims. In this regard, the Digital Personal Data Protection Act 2023 may serve as a partial starting point, in view of the fact that this legislation recognizes rights with regard to personal data but not intimate imagery.

At the same time, one should think about introducing a dedicated regulatory body, like Australia's eSafety Commissioner, which would have the right to order online platforms to remove harmful content and fine them in case of failure to do so. This body can also maintain a list of non-consensual intimate imagery through perceptual hashing technology.²⁹

d. Evidentiary Reforms and Victim Support

Reforms are necessary in the procedure law to enable the successful prosecution of cyber sexual offenses. The court could opt for in camera hearings as the norm for cases where intimate images are involved; enforcing confidentiality of digital evidence; and establishing fast track courts with specialized personnel for handling cyber offenses. The establishment of the National Cyber Crime Reporting Portal through the CCPWC scheme is a good start to reducing the barriers to reporting; however, there needs to be sufficient support for victims.³⁰

e. Awareness, Training, and Institutional Capacity

Reform is not enough; it must be accompanied by resource allocation towards institutional capability building. It is important that the police, the prosecution, and the judiciary

receive training in matters relating to the technical aspect of cybercrimes, victimology, and laws governing cybercrimes. Due to the lack of knowledge and skills, there is always under-reporting, poor investigations, and wrong verdicts. There is a need for developing a national curriculum on training.

10. CONCLUSION

Legal problems surrounding revenge porn and image morphing cases directed at women in India involve the confluence of criminal law, constitutional law, evidence law, and online platform rules. As far as the current law goes, it is inadequate in many ways since it remains fragmented, consent-agnostic, and fails to recognize the specific harm done to individuals in such situations.

The recognition of the constitutional right to privacy and dignity in the landmark decision of Puttaswamy opens the door for comprehensive legislation in this matter. It appears that judges are inclined towards interpreting relevant laws in such a way that helps victims, yet this approach cannot replace proper statutory language. The introduction of the Bharatiya Nyaya Sanhita 2023 as a completely new compilation of the Indian criminal law code could have been an ideal opportunity to include pertinent offenses and victim-friendly solutions.

India should circulate towards a dedicated legislative framework that criminalizes non-consensual intimate image sharing and digital conversion as autonomous offences; establishes rapid, accessible, and victim-targeted civil remedies; imposes mandatory duties on virtual platforms to prevent, discover and release harmful content material; and builds the institutional capacity needed for powerful enforcement. A worldwide consensus on this factor, reflected in legislative developments across the UK, Australia, the United States and the European Union, gives each consideration and normative criteria.³¹

In the end, how this law addresses revenge pornography and morphing is a test of the commitment of this legal framework to the equality of citizenship for women. By allowing these types of violence, whether through neglect by legislation or prosecution, or through a lack of institutional will, the message being sent is clear: that the bodies and names of women can be subjected to technological abuse. In this sense, reforming this area of law is not simply an exercise in legislative drafting, but rather one of affirming constitutional principles.

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³¹ Supreme Court of India, Report of the E-Committee on Virtual Courts and Cyber Crime Adjudication (2022) 12.

²⁸ Law Commission of India, Consultation Paper on Regulation of Pornography (March 2022) para 3.6.

²⁹ National Commission for Women, Report on Cyber Crimes Against Women (NCW 2021) 33-34.

³⁰ Cyber Crime Prevention Against Women and Children (CCPWC) Scheme, Ministry of Home Affairs, Government of India (2018) para 2.

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