

Applying the Law to Tackle the Menace of Revenge Porn in Nigeria: Lessons from the United Kingdom

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Abstract: *The use of the internet and social media in the modern era is wide spread across the globe. By the mere click of a mouse or the push of a button on computers, mobile phone devices or electronic tablets messages or information could be sent across the entire universe whether as emails, status upload or message broadcast. While the use of the internet and social media platforms are now in vogue in terms of the dissemination of messages and also as an avenue for keeping in-touch with friends, colleagues and loved ones, these tools have become handy for jilted lovers or blackmailers to cause distress to others in the form of revenge porn. While the UK government has acted swiftly to delineate the crime by passing a new law to check the crime in April 2015, their Nigerian counterpart is yet to specifically define revenge porn. This paper argues that the punishment for the crime in the UK is not deterring enough. It also calls on individuals to desist from keeping their nude photos or videos. The paper concludes by recommending that Nigeria should learn from the UK and delineate the crime of revenge porn urgently in order to check the spread of the menace. However, the paper notes that the punishment for revenge porn should not be less than the current prescribed punishment provided for under extant laws in the country.*

KeyWords: *Revenge Porn; Crime; Internet; Social Media; Deterrence; Punishment*

I. Introduction

With the advent of the internet and the social media, it has become relatively easy to disseminate messages, information, news and pictures (which could be still or moving). The wide reach of the internet globally is such that whichever material is uploaded on it can be viewed or listened to across the entire continents of the world simply by the click of a computer mouse or by the use of devices such as mobile phones or tablets. In contemporary times, the internet has served as a tool for faster reach to targeted recipients of messages especially social media channels that allow for broadcast.

Social media channels and the internet are tools that could be utilised to play both positive and negative roles in the society. While the internet and the social media are not necessarily bad, they could become a means of perpetrating evil by an aggrieved lover or a blackmailer. The broadcast channels of social media have been used to warn people of danger; to broadcast breaking news; send out updates; communicate work related information. For example, company staff using applications like WhatsApp or the blackberry messenger to exchange or file reports.

The effect of the social media and internet on social life has been the subject of interesting discussions. According to Bargh and McKenna:

“It is a mass medium: Like radio and television (and unlike the telephone or telegraph), content and advertising can reach millions of people at the same time. It has been vilified as a powerful new tool for the devil, awash in pornography, causing users to be addicted to hours each day of “surfing” ---hours during which they are away from their family and friends, resulting in depression and loneliness for the individual user, and further weakening neighborhood and community ties. It has been hailed by two U.S. presidents as the ultimate weapon in the battle against totalitarianism and tyranny, and credited by Federal Reserve Board Chairman Alan Greenspan with creating a “new economy.” It was denounced by the head of the Miss France committee as “an uncontrolled medium where rumormongers, pedophiles, prostitutes, and criminals could go about their business with impunity” after it facilitated the worldwide spread of rumors that the reigning Miss France was, in fact, a man (Reuters 2001)”¹

Tyler posits that the usage of the internet could potentially lead to weaker social ties in the sense that people may have no need to leave their homes to meet with friends or family. It would just be enough to be on

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¹JA Bargh & KYA McKenna, ‘The Internet and Social Life’ available at <<http://www.yale.edu/acmelab/articles/Internet_and_Social_Life.pdf>> accessed 22 September 2015.

their own as people can work on the internet, conduct their banking transactions online, exchange messages and have no need for face-to-face meetings.² It is worthy to note that as at the time Tyler made this assertion, the use of social media forms which include *inter alia* face book, twitter, WhatsApp and 2go had not come in place. Again, it is submitted, contrary to Tyler's assertion that the social media or the internet does not necessarily bring about weaker social ties. This is because there are indeed many who have become friends with persons they met online.

On the positive note, people use the social media and the internet to meet the need for interaction and communication. It is so easy in modern times to connect with long lost friends, classmates, school mates and colleagues via social media platform and the internet.³ Some of the social media platforms like Facebook, the Blackberry Messenger and WhatsApp allow for groupings to be formed with some of the members acting as administrators to the groups.

Despite the advantages of the internet and social media, both platforms have become easy tools for revenge porn. This paper examines the role of the law in checking the continued use of the internet and the social media to perpetrate revenge porn in Nigeria. Lessons from UK jurisprudence and practice would be drawn from in order to make recommendations for the fight against the crime of revenge porn in Nigeria.

II. What Is Revenge Porn?

Revenge porn has been defined as follows:

"It is the sharing of private, sexual materials, either photos or videos, of another person without their consent and with the purpose of causing embarrassment or distress. The images are sometimes accompanied by personal information about the subject, including their full name, address and links to their social media profiles.

The offence applies both online and offline and to images which are shared electronically or in a more traditional way so includes the uploading of images on the internet, sharing by text and e-mail, or showing someone a physical or electronic image."⁴

By virtue of this wide definition, any dissemination of the nude pictures of another person with intent to embarrass or cause such a person distress is tantamount to revenge porn. This definition seems to suggest that revenge porn can only be established when there is evidence to show intention to cause distress or embarrassment. Thus, the question now arises, what happens when the perpetrator causes the victim distress but did not actually intend to do so? Furthermore, this writer is of the opinion that revenge porn has been narrowed down by the word 'revenge' to only include an offence of which the perpetrator seeks out to have a pound of flesh against the victim. The question remains, where the motive is only meant to make fun and not to cause distress should the law not also deal with the matter in the same way like when the motive is to cause distress or embarrassment? Again, should the offence not be broader with another word replacing "revenge?"

Another narrow definition offered in the UK is the one by the Parliament. According to the UK Parliament "revenge porn—usually following the breakup of a couple, the electronic publication or distribution of sexually explicit material (principally images) of one or both of the couple, the material having originally been provided consensually for private use."⁵

Nigerian law as at the time of writing does not define revenge porn. However, the offence of revenge porn is known to the law in Nigeria under a different heading. Under Section 233 D (1) of the Criminal Code Act⁶ any person who, whether for gain or not, distributes or projects any article deemed to be obscene for the purposes of this Chapter, commits an offence punishable on conviction by a fine not exceeding four hundred naira or by imprisonment for a term not exceeding three years or by both.

Going back to the times before the advent of the internet and the social media, the extent of the distress one could cause a victim of revenge porn could be less damaging than can be done in this modern era. For instance, in 1983, Vanessa Williams, an African American woman was crowned Miss America. She made history as the first black lady to achieve that feat. Regrettably her reign was cut short barely after 10 months. This was caused by the publication of her nude photos by the Penthouse Magazine. The photographs were taken by a photographer, Tom Chapel. At the time the shots were taken Miss Williams was only 19 years old and was a naive teenager. Chapel had convinced her that the photos were meant for an experiment he was undertaking. Chapel sold the photographs to Penthouse who allegedly made a windfall of \$14 million. Miss Williams sued

²TR Tyler, 'Is the Internet Changing Social Life? It Seems the More Things Change, the More They Stay the Same' Journal of Social Issues Vol. 58, No. 1, 2002, p.195.

³R Sawyer, 'The Impact of New Social Media on Intercultural Adaptation' available at <<<http://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1230&context=srhonorsprog>>> accessed 22 September 2015.

⁴See <<(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/405286/revenge-porn-factsheet.pdf n.d.)>> accessed 22 September 2015.

⁵See <<(Agary 2014)>> accessed 22 September 2015

⁶The Criminal Code Act applies in the Southern States of the country. There is a similar provision under the Penal Code Act that applies in the Northern States including the Federal Capital Territory Abuja.

the magazine but later dropped the suit preferring to move on with her life.⁷ It is pertinent to note that the reach of that publication was only limited to the number of those who could obtain physical copies of the Penthouse at that time in history. A publication of that sort in contemporary times would be nothing short in global reach within minutes of the photographs appearing online.

III. Cases Of Revenge Porn In Nigeria

For the sake of the privacy of those involved, this writer will refer to the individuals not by their real names:

1.1. The Case of Miss P

Miss P a Ugandan citizen started a relationship with Mr. X, a Nigerian citizen in Uganda. Their relationship later turned awry. Eventually they broke up the relationship at the instance of Miss P. Mr. X feeling jilted, uploaded nude photos of Miss P on Facebook and tagging Miss P and her friends even though Mr X had done so with a fake account he created. Mr. X was subsequently arrested and was charged to court.

1.2. The Case of Ms J

Ms J is an actress and is a known face in the country. She had a brief relationship with Mr. Y. She met another person, a foreigner, fell in love and got married to him. Mr. Y uploads her nude pictures on the social media. Ms J decided not to bring criminal charges against Mr Y. The nude pictures are still available on the internet.

1.3. The Case of Miss T

Two young men Mr. V and Mr. C forcefully had unprotected sex with Miss T after luring her to the house of one of the perpetrators. While in the act, they took both still and moving pictures and threatened to expose the nude photos and video if Miss T reported the rape to the police. Upon the arrest of Mr. V and Mr. C, they were only charged for the offences of rape and indecent assault.⁸

The above are a few of some of the many revenge porn cases that have been reported by media sources in the country. A lot more have not been reported as a result of fear of social stigma on the part of the victims who prefer to suffer in silence as they consider reporting the matter to the police may mean press coverage and more publicity.

IV. Revenge Porn In The United Kingdom

A worrying number of victims have come forward in the UK to report cases of revenge porn. Perhaps as a result of the sophistication of the British society, even though victims are embarrassed, they are not too ashamed to report the crime. Among the victims who have come forward to report the crimes are some as young as 11 and popular celebrities. One of the popular victims in the UK was a judge in a reality TV show. In 2012, her ex-boyfriend released a video of her giving him oral sex at the peak of her fame.⁹ This action caused her role as a judge in a reality show difficult as she had been painted in bad light by reason of the exposure of her sex video.

The number of revenge porn victims in the UK reached alarming proportions necessitating the passage of a new law in April 2015. The Criminal Justice and Courts Act 2015 contains specific provisions relating to revenge porn. The Act in Section 33 dealing with disclosing private sexual photographs and films with intent to cause distress provides as follows:

(1) It is an offence for a person to disclose a private sexual photograph or film if the disclosure is made—

(a) without the consent of an individual who appears in the photograph or film, and

(b) with the intention of causing that individual distress.

(2) But it is not an offence under this section for the person to disclose the photograph or film to the individual mentioned in subsection (1)(a) and (b).

⁷Kaine Agary 'Revenge Porn' *The Punch* 16 November 2014

⁸<<<http://news2.onlinenigeria.com/news/general/239823-2-friends-gang-rape-woman-take-her-nude-photos.html#ixzz3mXyCwN9f>>> accessed 22 September 2015.

(Fenton, 2015)(Duggan, 2015)

⁹Emily Duggan, 'Revenge Porn: Are The Police and the Courts Taking the Crime Seriously?' *The Independent* 25 August 2015

- (3) It is a defence for a person charged with an offence under this section to prove that he or she reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.
- (4) It is a defence for a person charged with an offence under this section to show that—
- (a) the disclosure was made in the course of, or with a view to, the publication of journalistic material, and
 - (b) he or she reasonably believed that, in the particular circumstances, the publication of the journalistic material was, or would be, in the public interest.
- (5) It is a defence for a person charged with an offence under this section to show that—
- (a) he or she reasonably believed that the photograph or film had previously been disclosed for reward, whether by the individual mentioned in subsection (1)(a) and (b) or another person, and
 - (b) he or she had no reason to believe that the previous disclosure for reward was made without the consent of the individual mentioned in subsection (1)(a) and (b).
- (6) A person is taken to have shown the matters mentioned in subsection (4) or (5) if—
- (a) sufficient evidence of the matters is adduced to raise an issue with respect to it, and
 - (b) the contrary is not proved beyond reasonable doubt.
- (7) For the purposes of subsections (1) to (5)—
- (a) “consent” to a disclosure includes general consent covering the disclosure, as well as consent to the particular disclosure, and
 - (b) “publication” of journalistic material means disclosure to the public at large or to a section of the public.
- (8) A person charged with an offence under this section is not to be taken to have disclosed a photograph or film with the intention of causing distress merely because that was a natural and probable consequence of the disclosure.
- (9) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both), and
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine (or both).
- (10) Schedule 8 makes special provision in connection with the operation of this section in relation to persons providing information society services.
- (11) In relation to an offence committed before section 154(1) of the Criminal Justice Act 2003 comes into force, the reference in subsection (9)(b) to 12 months is to be read as a reference to 6 months.
- (12) In relation to an offence committed before section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (9)(b) to a fine is to be read as a reference to a fine not exceeding the statutory maximum.

At the time of the passing of the new law, the UK Culture Secretary, Maria Miller stated that “By putting this in place, the government has given young women the opportunity to protect themselves from their lives being blighted. When you speak to the victims of these crimes, many say that it feels as if you’ve been virtually raped.”¹⁰ It is submitted that men could also be victims of the crime.

¹⁰Siobhan Fenton, ‘Revenge Porn Laws: First Person Found Guilty Under New Laws to Be Sentenced Today’ *The Independent* 7 August 2015.

It is worthy to note that the law in the UK has been drafted and passed in order to address the high incidents of revenge crime cases and also to deal with the new phenomenon of the internet and the social media, this writer is of the opinion that the punishment for revenge porn under the UK law is not deterrent enough. A jilted lover can endure the pain of a conviction for revenge porn and a term of two years or of a fine. It is submitted that the damage that could be done to an individual who is a victim of revenge porn is not commensurate with the punishment. Nonetheless, the new law shows that the UK government is taking a stand against the crime of revenge porn. There are also cases where before the passing of the 2015 Act that suspended punishments have been handed out to convicted persons of the crime of revenge porn.

It is pertinent to note that the crime in the UK has been delineated in such a way that when the consent of the individual is obtained before the publication of the nude photos or videos of the victim, it would not fall under the heading of 'revenge porn.'¹¹

On the other hand, there seems not to be a corresponding reaction on the part of the Nigerian government against the crime of revenge porn. Considering also that a perpetrator of the crime upon conviction can be punished for up to three years' imprisonment under existing laws prompting the question whether or not Nigeria should pass a law on revenge porn in line with changing times.

In the UK already, a number of alleged revenge porn perpetrators have been charged to court at the time of writing. Two incidents are worth discussing. The first case incidentally involved a Nigerian man. The facts of the case are these: Mr John Asagba, the perpetrator had uploaded nude photos of his victim an unidentified 20-year-old woman on social media. The victim reported the crime to the police barely three days after the new law had been introduced. Mr. Asagba pleaded guilty to the crime and was convicted.¹² The second incident involved a female, who is considered the first woman to be prosecuted under the Act of 2015. On 1st September, 2015, Paige Mitchell was sentenced to six-weeks imprisonment suspended for 18 months, rehabilitation requirement for 50 days and ordered to pay costs after pleading guilty to disclosing private sexual photographs with intent to cause that individual distress. Mitchell had uploaded nude photos of her victim on Facebook.¹³ This latter case points to the fact that women could also perpetrate the crime of revenge porn. It is submitted with respect however, that the punishment meted out by the court in that case is akin to a slap on the wrist and may not be deterring enough to someone who may be out to cause another pain in the form of revenge. A jilted lover would risk the consequences of a suspended sentence by merely pleading guilty to the charge.

A notable case involving a female perpetrator against a man is that of a 39-year-old man who contacted the Leicestershire police after a woman he had met online convinced him to perform a sex act over webcam and then blackmailed him to send money to her or risk the video being uploaded online.¹⁴

V. The Role Of The Law In Checking Revenge Porn

Generally, the law plays a role in maintaining order in society. Without the law anarchy would be the order of the day. With specific reference to privacy of individuals in an internet and social media age, the law ought to reflect the times in order to be relevant in maintaining law and order. It is also important to also concede at this point that internet and social media usage may cut across different jurisdictions. For example, a consensual video taken in Munich in Germany by two lovers, one a Nigerian and the other British. In an act of revenge porn, the Nigerian lover uploads the nude photographs on the victim in South Africa where he is resident. Although this is not the primary purpose of this paper, there is a challenge with prosecuting such a crime. Notwithstanding, the law ought to function in such a way as to deter crimes.

It is important that laws, especially those dealing with crimes are not static. They ought to evolve with the times. Following the introduction of the internet and means of social media, current laws need to evolve to check new challenges that evolve with technology. It is important that law does not only prohibit an act or omission, the law must also make the omission or commission of the wrong unpleasant. Even though it has been argued that given available behavioural science data, stiff punishment may not always deter crimes generally because those who commit offences may not even know the penalty for the offence being committed.¹⁵ This writer submits that this line of reasoning is not totally correct. For example, in jurisdictions where the crime of murder is punishable by death, it is common knowledge that the punishment for the crime is death. This is the same for many other types of crimes. Again, certain crimes like revenge porn receive so much publicity because of its nature and those who use the internet and social media are generally the enlightened members of the public who should know what the punishment for the crime is. It is on this basis, that this writer considers that

¹¹ See Section 33(1) (a) of the The Criminal Justice and Courts Act 2015

¹² Siobhan Fenton, *Ibid*.

¹³ See <<http://www.cps.gov.uk/news/latest_news/female_sentenced_for_revenge_porn/>> accessed 28 September 2015.

¹⁴ Caroline Davies, 'Revenge Porn Cases Increase Considerably, Police Figures Reveal' *The Guardian* 16 July 2015.

¹⁵ PH Robinson and JM Darley, 'Does Criminal Law Deter? A Behavioural Science Investigation' *Oxford Journal of Legal Studies* Vol. 24 (2004) at 173

the UK law on revenge crime is not deterring enough to put a check on future commitment of the crime. The punishment meted out so far by the courts in the UK, it is submitted, may do little to put a halt to future commission of violations of Section 33 of the The Criminal Justice and Courts Act 2015.

VI. Lessons For Nigeria

The civil society, interest groups as well as female rights protection advocates must champion the cause for victims of revenge porn to come forward to press charges against perpetrators of the crime. This is because many victims have chosen to remain quiet for fear of stigmatisation that could potentially result from negative publicity as those who were not aware of the nude photos or videos will come to the knowledge of their existence as soon as the press gives publicity to any such cases. In the UK, the names of victims except where they chose to, are not made known to protect their privacy. This should also apply in the Nigerian legal system. The comfort of knowing that as victims they would not come under the searchlight of the media, will allow victims to come forward.

Again, the government must do more to ensure that the law in Nigeria reflects the evolving times.

VII. Conclusion And Recommendations

The internet and the social media are easily accessible tools for jilted lovers to seek to 'pay back' those who they consider to have hurt them emotionally. The damage that a nude photograph uploaded on the internet or distributed on a social media can do to a victim can be devastating. Persons who have been victims of revenge porn have testified about how they feel virtually raped and humiliated. It is also worrying to note that there are even child victims in recent times.

The bold step taken by the UK Government to specifically define the crime of revenge porn in the light of high incidence of the crime is one in the right direction. However, it is submitted that the punishment for the crime be reconsidered in order to help curb future commissions of the crime.

It is recommended that individuals should be mindful of capturing their nude or private photos or videos on mobile phones, webcams or other electronic devices. The availability of nude photos or videos of potential victims in the first place is a chance for such to be used against them in revenge porn situations. The non-availability of nude photos or videos for such use means there will be less chances of such being used by a revenge porn perpetrator.

Again, this paper recommends that the Nigerian government ought to borrow a leaf from their UK counterpart and delineate the crime of revenge porn in the country. However, the punishment must be no less than the punishment provided for under extant laws in the country.

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