
THE NEED FOR A ROBUST MOVEMENT TOWARDS PROACTIVE CONTENT DELETION FROM POST FACTO REMOVAL OF NON- CONSENSUAL INTIMATE IMAGERY (NCII)

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ABSTRACT

India currently follows a mixture of Post Facto Removal Mechanism and Proactive Content Deletion Mechanism for the removal of Non-Consensual Intimate imagery (NCII) from the internet. For many decades, India has relied on the Post Facto Removal Mechanism and has only recently introduced the Proactive Content Deletion Mechanism. This paper grapples with the pertinent issue of a lack of a unified legal statute which mandates for proactive content deletion mechanisms for Non-Consensual Intimate imagery (NCII). India's current legal framework provides for a procedure and penalties for NCII offences across multiple statutes like Bharatiya Nyaya Sanhita, 2023, Information Technology Act, 2000 and Digital Personal Data Protection Act, 2023. However these provisions are scattered across multiple statutes which cause institutional delays and are difficult to trace leading to a lack of general awareness among the citizens.

It is already known that Post Facto Removal Mechanism has many drawbacks including fatal delays and it is quite victim dependent requiring the victim to make the discovery of NCII content and then report the same. It also fails the proportionality test established under the Supreme Court Case of Justice K.S. Puttaswamy v. Union of India (2017). This paper traces the gradual movement from Post Facto Removal Mechanism to Proactive Content Deletion Mechanism for Removal of NCII content and discusses three central question. Firstly, does India's current legal framework adequately addresses the speed required for NCII content removal? Secondly, whether proactive content deletion infringe on freedom of expression by imposing a pre-publication censorship mechanism. Thirdly, should India mandate a type of UK model which is based on Stop.NCII.org facilitating a hash blocking function, for all the Intermediaries? Additionally this paper also discusses the lack of accessibility to these protective mechanisms for the women in Rural India and New Zealand's HDCA 2015 provisions in an international context.

The main aim of this paper is to highlight the statutory gaps related to the enforcement of Post Facto Removal and Proactive Content Deletion mechanisms. The research methodology used in this paper is mainly doctrinal and comparative.

INTRODUCTION:

This paper tackles a significant research problem which involves a gap in India's current legal framework. Till date, there is no unified legal statute which mandates for proactive content deletion mechanisms for Non-Consensual Intimate imagery (NCII). This paper highlights the imminent need for a standalone, uniform image based sexual abuse legislation which legally mandates proactive content deletion for the removal of NCII.

Currently, India has procedural protections and penal consequences for this offence but these provisions are scattered across multiple statutes and regulations which include the Information Technology Act, 2000 (Section 66E, 67, 67A, 67B), The Information Technology (Intermediary Guidelines and Digital Media Ethics Code Rules), 2021, The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, Bharatiya Nyaya Sanhita, 2023 (Section 74, 77, 78, 79) and Digital Data Protection Act, 2023 which mainly provides for civil monetary penalties.

This paper provides various recommendations for the incorporation of these provisions under a unified Statute which will be solely dedicated to Proactive Content Deletion mechanisms for the removal of NCII. This will be helpful to increase general awareness among the citizens and reduce confusions owing to the existence of multiple statutes. A singular authority which is dedicated to Proactive Content Deletion mechanisms for NCII will also increase the efficiency in dealing with these cases because currently there is a multi layered authority framework which deal with these cases which is causing major delays in grievance redressal, a major misnomer and lapse in justice. These authorities are Ministry of Electronics and Information Technology (MeitY), Department of Telecommunications (DoT), Indian Cybercrime Coordination Centre, Law Enforcement Agencies (LEAs) & One Stop Centres (OSCs) to name a few. A singular authority would mean lesser number of channels to go through leading a speedy and timely redressal of grievances.

This paper grapples a very relevant problem in the legal landscape and every day life. It traces the slow movement from post facto removal of NCII to a more proactive content deletion. It

also points out the critical gaps in cyber law pertaining to a lack of proactive content deletion mandate in the IT Act, 2000 and BNS, 2023, Secondly, the lack of stringent punishments and thirdly, the lack of a proper definition of NCII. Under BNS for instance, the definition of voyeurism is relied upon too often in this regard which is rather physical in nature than digital.

This paper focuses on reinterpretation of Intermediary liability from post harm removal to prevent the harm from the get go, similar to the model followed in UK under StopNCII.org hash blocking. The main research questions that are discussed in this paper are, firstly, whether or not India's current legal framework adequately addresses the speed required for NCII content removal? Secondly, whether proactive content deletion infringe on freedom of expression by imposing pre-publication censorship mechanism. Thirdly, should India mandate a type of UK model which is based on Stop.NCII.org facilitating a hash blocking function, for all the Intermediaries?

This paper also discusses the provisions of New Zealand especially the HDCA 2015 in international context and whether India can adopt an independent oversight. Lastly, this paper addresses the lack of accessibility to the protective mechanisms against NCII especially for Rural Indian Woman leaving them with no choice but to bear the brunt of the outdated post facto removal mechanism.

1. THE NEED FOR A UNIFIED LEGAL STATUTE WHICH MANDATES PROACTIVE CONTENT DELETION

India currently follow a mixture of post facto removal and proactive content deletion mechanisms. Prior, to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, India's approach to the removal of NCII was victim-dependent and outdated. The major provisions which dealt with NCII cases were Section 67 of the IT Act, 2000 which penalized Publishing or Transmitting Obscene Material. It was applied in the context of NCII in cases of revenge porn. There was no specific time limit for content removal and primarily relied on police complaints, i.e., quite victim dependent. Other provisions include Section 67A under the abovementioned act which penalized Publishing Sexually Explicit Material, this applied to sexually explicit intimate images but provided no mechanism for quick takedown, Section 66E penalized Violation of Privacy, this Section was applied to cases which involved capturing and publishing private images without consent. This section also had its own set of limitations because the victim had to file criminal complaint for the initiation of

legal proceedings which proved to be quite a slow process. Section 79 provided for the protection of Intermediaries as they were deemed to be not liable for third-party content. It was subject to another condition that the Intermediaries can only remove content upon “actual knowledge” by the virtue of a court order or government notification and the victim had to provide “actual knowledge”. Section 354 Section of the erstwhile IPC, 1860 penalized voyeurism but it did not cover distribution of intimate images. Section 354D of IPC, 1860 penalized Cyberstalking which was applied in cases of Online harassment and NCII sharing.

From the above discussion, it is clear that these provisions were not sufficiently addressing the speedy removal of NCII and relied on the victim’s action. Moreover these provisions did not clearly provide for a time limit within which the content had to be removed and section 79 relaxed the liability of the Intermediaries towards the third party content. The process of NCII removal was a very slow process which used to be initiated first by the victim discovering the NCII online and then had to manually report it. The victim had to also find the platform's complaint form was time-consuming, provide specific URL and had to submit screenshot and other proofs and wait for days because there was no guaranteed timeline for removal in the existing statutes. The IT rules of 2021 were the need of the hour because there was no timeline guarantee, or victim protection mechanisms like, counselling, or legal aid. Moreover there was no resurfacing prevention because hash technology was not mandatory.

In the Supreme Court Case of Justice K.S. Puttaswamy v. Union of India¹, the Supreme Court established that the right to privacy is a fundamental right under Article 21. The Court established a three-fold test to justify any state intrusion into this right. The post facto removal or restriction of non-confidential information (NCII) has time again clashed with the three pronged test. More specifically, the test of proportionality which demands that the harm to the victim of NCII should not be disproportionate to the public benefit. A delayed post facto removal leaves a damaging form of private data publicly exposed. This fundamentally shifts the balance of interest against the victim’s right to digital autonomy and right to privacy under Article 21 of the Indian Constitution.

1.1 the Information Technology Act, 2000 [Section 66E, 67, 67A,67B], The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

¹ Justice K.S. Puttaswamy (Retd.) v. Union of India,(2017) 10 S.C.C.1

After many judicial interventions and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 was enforced in 2021. The IT Rules of 2021 introduced India's first binding framework for NCII removal, addressing the critical gaps in the pre- 2021 legal framework. The IT rules of 2021 made it mandatory for the Platform to remove the NCII content in 24 hours. The IT Rules of 2021 imposed a binding obligation on the intermediaries to look into the matter and provide for speedy removal. Penalties were introduced and the platform would lose protection of safe harbour under Section 79 of the IT Act, 2000 if they fail to comply within 24 hours. Rule 3(2)(B) clearly mentioned a time limit and provided a definite scope of NCII, "The intermediary shall, within twenty-four hours from the receipt of a complaint made by an individual or any person on his behalf under this sub-rule, in relation to any content which is prima facie in the nature of any material which exposes the private area of such individual, shows such individual in full or partial nudity or shows or depicts such individual in any sexual act or conduct, or is in the nature of impersonation in an electronic form, including artificially morphed images of such individual, take all reasonable and practicable measures to remove or disable access to such content which is hosted, stored, published or transmitted by it"²

Moreover, Rule 3(1)(b) provided for Restricted Content Categories and Intermediary Due Diligence Obligations were clearly defined. Grievance Redressal Mechanism post 2021 IT rules mandated that victims would file complaint through intermediary's grievance portal, platform had to designate an officer to handle complaints. Officer had to respond within prescribed timeline. If officer refused, victim could appeal to the Grievance Appellate Committee (GAC) which is a dispute resolution platform established by Ministry of Electronics and Information Technology³.

Despite these advancements propelled by IT Rules of 2021 there were plenty of drawbacks. The aforesaid due-diligence obligations are imposed on the intermediaries so that they do not seek the "safe harbour" against the liabilities as provisioned under Section 79 of the IT Act. "The Rules have retained the previous policy for the intermediaries to respond/take down the content no later than thirty-six hours of notice of the order and keep such data for a period of hundred and eighty days for the purpose of investigation, which would also be applicable on

² Information Technology(Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Ministry of Electronics & Information Technology, Government of India.

³ Ministry of Electronics & Information Technology, Government of India, Standard Operating Procedure to curtail Dissemination of Nonconsensual Intimate Imagery (NCII) (Oct.2025)

voluntary removal of such content.”⁴

The issue is that these Rules do not provide an opportunity either to the user or the intermediary to challenge an order before takedown of the NCII. The Rules do not provide for any punishment particularly but it does specify that any intermediary that does not comply would lose the protection under Section 79 of the IT Act, 2000 and could be punished in accordance with the provisions under IT Act and the erstwhile IPC 1860.

The other drawbacks were mainly inclusive of the IT Rules of 2021 being based on post facto removal mechanism rather than proactive content deletion. Victims would discover their NCII Content, then they had to complain and wait for 24 hours while their NCII would spread instantly during the timeline between discovery and reporting which caused a delay. The provision of a 30 day GAC appeal was quite unfair because if the Grievance Officer refused to take action, victims had to appeal to GAC which caused enough delay and inconvenience but on top of that they had to wait for 30 days before doing so and the victim in the meantime suffered an irreversible harm waiting 30 days for content removal.

This particular drawback was the main reason for seeking a more proactive content deletion. Hash matching mechanism was only reserved for SSIMs which had more than five million users. Sahyog Portal was mandatory only for Significant Social Media Intermediaries. But Smaller platforms like Telegram were exempted from enforcing hash-matching function hence if a content was removed on Instagram it could reappear on Telegram. No stringent rules were made for regulating AI generated deep fakes either. Another major concern was the 36 hour timeline and the platforms struggled to regulate massive amount of content.

1.2 STANDARD OPERATING PROCEDURE OF 2025

Due to the such major drawbacks, the Ministry of Electronics and Information Technology (MeitY) had decided to release a Standard Operating Procedure (SoP) to strengthen the mechanisms for removal and prevention of Non-Consensual Intimate Imagery (NCII) content on online platforms and also for strengthening the provisions of IT Rules, 2021. It was released as a, “compliance with the directions of the Madras High Court (Writ Petition – Civil No.25017/2025, Order dated 15.07.2025), aims to provide clear and victim-centric procedures

⁴ Vijay Pal Dalmia, India IT Rules Before and After Amendment & AI Generated Content, Vaish Associates advocates (Feb 24, 2026)

for swift removal of such objectionable content and to ensure effective implementation of Rule 3(2)(b) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.”⁵

The SoP gave many guidelines pertaining to:

- Multiple Reporting avenues for the Standard Operating Procedure (SoP) like the one stop centres, intermediaries like the Grievance officers and in app reporting, National Cyber Crime Reporting Portal (NCRP) and Law Enforcement Agencies.
- Mandatory Timelines were given the intermediaries to remove flagged content within 24 hours of filing complaint. Moreover Significant Social Media Intermediaries (SSMIs) had to use hash matching and crawler technologies to prevent re-surfacing of content.
- It provided for Inter-Agency Coordination between different ministries, agencies and departments mainly to facilitate timely redressal of grievances and removal of the harmful content.

Regardless of this initiative by the Ministry the major problems persisted. The time limit for removal of NCII remained 24 hours and did not prevent initial distribution from the get go. This delay led to the spread of NCII content. The victims as a result suffered irreversible psychological trauma during delay. The SoP also lacked clarification in regards to the technical feasibility standard and because of the ambiguity platforms can easily evade liability by claiming “technically infeasible.” Moreover this SoP also did not provide for coverage for cross border NCII content either which is prevalent in present times. Another critical gap involves SOP not defining NCII to include AI generated images, photo morphing . AI-generated NCII is currently increasing day by day and victims remain unprotected. Hash matching function was also not provided to deal with identical images which are not A.I variants. The problem of Hash matching function being limited to SSMIs still remained. Interestingly, tracing the UK model of removing NCII content, one can observe that there is a singular authority, stop.ncii.org which uses Hash matching functions in an unrestricted manner when compared to India.

⁵ Press Information Bureau, Ministry of Info. & Tech., Govt. of India, *MeitY Issues Standard Operating Procedure to Curtail Dissemination of Non-Consensual Intimate Imagery (NCII) Content* (Nov. 11 2025)

Following the above discussion, one can understand the obvious solution to all of these problems. A robust movement towards Proactive Content Deletion mechanisms like the one which already exists in UK can singlehandedly deal with many of these problems. Another point to be noted would be relaxing the restrictions on hash matching function in India. Because this mechanism can truly save a lot of time and increase efficiency by broadening the scope to include other intermediaries and platforms which are not that popular yet are used by people on a daily basis.

The post facto removal mechanism still persisted to some extent. Though these changes did pave the way for a slow but gradual movement towards proactive deletion content mechanism.

1.3 Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026

Before the February 2026 amendments, the IT Rules of 2021 aimed to put more responsibilities on social media platforms and Intermediaries and make them more accountable. However, one could see there were many gaps in the IT Rules of 2021. One of the major gaps that persisted over the years was a focus on removing the NCII content post the complaints being lodged rather than preventing the harmful content from being spread beforehand. The 2021 Rules were mainly based on the Post Facto Removal Mechanism, with the introduction of the February 2026 amendments i.e The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026, one could observe a slow but a growing trend towards enforcing the Proactive Content Deletion mechanisms in India.

Prior to the 2026 amendments, The IT Rules of 2021 had major drawbacks which has already been discussed in the previous sections. One of the major reasons for this amendment was the lack of coverage of A.I generated or synthetically created content. Synthetically created content was recognised formally by Indian law. There was a serious Lacuna when it came to specific laws regulating and removing the A.I generated Deep fakes. Another reason for the amendment was the speed at which the NCII content usually spread through the web. Neither IT Rules of 2021 nor the SoP of 2025 could shorten the delays and the timeline in which the content would be removed.

The February 2026 Amendments were introduced to address the A.I generated deep fakes because circulation of deep fakes have increased over the last few years owing to the

technological advancements as well as an increase in the sophistication level of these crimes. These Rules have provided for a stricter regulation as compared to the 2021 rules and the SoP of 2025. It has also proved to be stepping stone towards the Proactive Content Deletion in India. Additionally, it has introduced a faster takedown timeline including a three hour removal requirement for government declared unlawful content and a faster action for highly sensitive content which is within 2 hours.⁶

It also introduced an obligation by the platforms to label and use digital fingerprinting mechanisms so as to allow users to be able to differentiate between A.I generated content and real images. The amendment retained the provision of loss of safe harbour under section 79 of IT act, 2000 in case of non compliance with due diligence obligations. It aligned with updates from the IPC, 1860 to BNS, 2023. Under this framework, complaints are handled faster and are to be addressed within 7 days instead of 15 days. And complaint regarding identity theft are to be dealt within 36 hours.⁷ These Rules have also added more to the responsibilities of SSMLs with more than 5 million.

Despite the much needed changes brought by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2026 more pertinent issues arise. Erosion of data privacy can take place because data can be stored for 6 months even if we choose to opt against it. This actively violates the fundamental right of privacy under Article 21 (Right to life) of the Indian Constitution because platforms retain data longer than it is necessary. Which can make the citizens vulnerable to data breaches and other kinds of misuses. It also compromises the Right to erase personal data. Moreover, identity can be disclosed to private parties, Rule 3(1)(ca)(ii)(III) mandates disclosure of violating users' identities directly to complainants who are deemed to be victims which can lead to harassment and anonymity is eroded massively⁸. Hence some modifications have to be introduced in the 2026 amendment Rules to deal with these drawbacks. Otherwise, these Rules do provide a solid stepping stone for Proactive Content Deletion in India.

⁶ Vijay Pal Dalmia, India IT Rules Before and After Amendment & AI Generated Content, Vaish Associates advocates (Feb 24, 2026)

⁷ Vijay Pal Dalmia, India IT Rules Before and After Amendment & AI Generated Content, Vaish Associates advocates (Feb 24, 2026)

⁸ A Constitutional critique of Synthetically Generated Information (IT Rules Amendment), (Feb, 2026)

1.4 WHY DOES INDIA NEED A ROBUST MOVEMENT TOWARDS PROACTIVE CONTENT DELETION?

In India, for many decades a post facto removal mechanism was followed and is currently still being followed in many areas especially the rural India. An introduction of Proactive Content Deletion has just been made recently in February 2026. One can observe that there has been a slow movement towards this mechanism in India when we compare the removal models that is being followed in countries like UK, China and New Zealand to name a few. The movement towards proactive content deletion is still in its initial stages in India and there is room for improvements. Because Proactive Content Deletion (PCD) has just been introduced a few months ago people in many areas still cannot access it. Especially in Rural India owing to the outdated technologies in the rural places and lack of funds for bringing technological advancements. Not just Rural areas but even in those areas which remain highly under-developed are not able to access the PCD mechanism. The people in these areas are left to bear the brunt of disadvantages propelled by Post Facto Removal Mechanism. They face delays and psychological pressure due to this.

The need for a robust movement is imminent because the sophistication of crimes keep on increasing as the cross border crimes increase in number. India is infested with similar kind of crimes like the other countries like UK but there is a huge disparity when it comes to the protective mechanisms used to combat these crimes. India is still way behind when it comes to deploying the Proactive Content Deletion (PCD). Using PCD would reduce delays no doubt but at the same time it can also prevent the publishing of NCII content by using hash matching functions to prevent the upload altogether moreover under PCD, AI will detect the NCII on the website instantly and victim does not have to make the discovery reducing psychological turmoil and delays in reporting. If it can be prevented victim would not have to report the crime either. Using hash matching function PCD mechanism can prevent images from resurfacing and automatically block the images from being uploaded on other platforms simultaneously.

1.5 A UNIFIED LEGAL STATUTE FOR PROACTIVE CONTENT DELETION

India has many statutes and authorities to regulate the NCII content. However, there are many gaps in the current legal framework. Provisions for penalising deep fakes, A.I morphing images are covered by different statutes. Currently, the small platforms are exempted from hash matching obligations as well which provides for a significant risk. A unified Statute for

Proactive Content Deletion will not only mitigate confusions regarding fragmented laws but provide for a comprehensive statute which defines the scope of NCII and provides for penalties regarding the different forms of NCII offences under the same statute. Under this kind of a statute, hash matching function would be mandatory for the small platforms as well not just the SSIMs. Under this statute, an Independent National NCII commissioner would be appointed as a singular authority who would have independent oversight to reduce delays and also to maintain transparency between the citizens and the government rather than the commissioner being controlled by Ministry of Electronics and Information Technology which would reduce transparency and autonomy. Stringent punishments also need to be introduced as opposed to the current penalties which are quite lenient so as to deter the perpetrators from committing this crime. A unified Statute would also be able to regulate cross border crimes more efficiently because of lesser number of channels.

The need for a proper unified Statute which mandates Proactive Content Deletion is the need of the hour because as mentioned before the fragmented legal framework cannot adequately enforce Proactive Content Deletion. There have many cases which have echoed the need for PCD for instance, in 2020 when India was mainly relying on Post Facto Removal, a girl in Gujarat had committed suicide after her intimate video was leaked online⁹

The platform did not timely remove the content because there was no 24 hour timeline back in 2020. Hence the content became a source of a viral spectacle and the victim committed suicide. Cases similar to this scenario takes place every single day in India and that is the reason why the timely removal of NCII content is so important.

2. DOES INDIA'S CURRENT LEGAL FRAMEWORK ADEQUATELY ADDRESS THE SPEED REQUIRED FOR NCII CONTENT REMOVAL?

India has shown an indication of a slow and a gradual movement towards adopting a Proactive Content Deletion mechanisms. As discussed before, the enforcement of Proactive content deletion mechanism in India is still in a preliminary stage. There is still a lack of accessibility to this protection mechanisms in many parts of India. Especially the rural areas.

While we cannot forget to mention the advancements brought by the 2026 Amendment Rules

⁹ Seerat Gill, *Why India needs a robust content deletion procedure to repress revenge pornography*, The Leaflet, (June 25,2023)

and its 3 hour timeline for takedown of harmful and illegal content declared by the Court order and 2 hour emergency timeline for removal of highly sensitive NCII content. Yet the reality of the present scenario is not so far from what it used to be before. Which is why there is a need for robust movement towards Proactive Content Deletion. As mentioned before, there is a disparity between the protective mechanisms adopted by India for removal of NCII content and the rate at which the crimes are becoming more sophisticated day by day due to technological advancements. This perspective can be illustrated by a few relevant case laws.

For instance, In the case of **Mrs X vs. Union of India**¹⁰ The petitioner's explicit photos had been uploaded to multiple pornographic websites and a daily YouTube channel. Despite reporting to the relevant cybercrime portals as per the usual procedure, her NCII stayed put on the websites for many years. This forced her to initiate many legal proceedings to seek directives from the court to the relevant platforms for the removal of her NCII.

Another case showcases this perspective. In **2025, A Madras High Court Advocate's** private images were shared by her ex partner and it continued to be circulated across many platforms. The Madras High Court had to intervene, "N. Anand Venkatesh J. held that the right to privacy and dignity guaranteed under Article 21 of the Constitution were being violated every second in the present case and thus, directed for removal of advocate's NCII within 48 hours."¹¹

In the case of **M Moser Design Associates vs. State**¹², there was a NCII dissemination which involved international Proton Mail accounts. Delays occurred due to severe international jurisdictional and encryption hurdles. And Court had to again intervene to fill the gap in the legal framework.

These cases are all recent and have one thing in common, there were major institutional delays in each of these cases in regards to the removal of NCII content. These cases highlight the practical reality on field which is very different from the rules on paper. The Current Legal Framework is not being able to adequately address these challenges and is far behind the other countries when it comes to the enforcement of Proactive Content Deletion. There is a lot of room for improvement but as of now the growth is quite slow which is why there is a need for

¹⁰ Mrs. X v. Union of India, 2023: DHC:2806, W.P(Crl.) no.1505/2021

¹¹ X v. Union of India, 2025 SCC Online Mad 3310 (July, 2025), *Inside Madras HC Ruling on Removal of Female Advocate's non-consensual photos and videos from internet*, SCC online blog (July 16, 2025)

¹² M Moser Design Associates (India) vs. State of Karnataka, W.P 2358 of 2025

speedy advancements.

3. DOES PROACTIVE CONTENT DELETION INFRINGE ON FREEDOM OF EXPRESSION BY IMPOSING PRE-PUBLICATION CENSORSHIP OBLIGATIONS?

Proactive Content Deletion is a mechanism which can efficiently supplant the existing system of Post Facto Removal. Proactive Content Deletion can involve discussions relating to Article 19(1)(a) of the Indian Constitution. It provides freedom of speech and expression to every citizen of India. Restriction on this right should meet some constitutional requirements. It has been provided under the Supreme Court case of **K.S. Puttaswamy v. Union of India** a test of proportionality. It provides that there must be a legitimate reason for enforcing a restriction¹³

As discussed in the previous section, in contrast to Proactive Content Deletion, the Post Facto Removal Mechanism blatantly fails this proportionality test. The restrictions imposed must be reasonable and legitimate and only imposed when faced with no other alternative. Many critics have argued against the three hour takedown timeline which is deemed to be amounting to a pre-publication restraint and construed as censorship. Proactive Content Deletion must be properly enforced instead of strict enforcement which may indeed then align and subscribe to the critics' views. Proper enforcement through proportionality assessments and critical evaluation can ensure this.

The main point of difference between a pre-publication censorship and proactive content deletion is that proactive content deletion deals with removal after uploading has taken place but before public visibility. Moreover, since it functions on hash matching mechanism it is automatic and free from governmental control. If properly enforced and if it meets the proportionality tests then it is constitutional in nature. On the other hand, pre-publication censorship involves the removal of content before it is uploaded and it is approved by a government official, it is unconstitutional in nature because the government is playing a direct role hence the fear of governmental control and censorship in this case is substantial.

Hence, Proactive Content Deletion does not infringe on the freedom of expression by imposing pre-publication censorship obligation if it meets the required constitutional tests and is not

¹³ Aayushman Gaikwad & Smruti Mishra, Three Hours to Comply: India's New Rules for AI Generated Content and Deepfakes, Live law (February 21,2026)

strictly enforced by the letter.

4. SHOULD INDIA MANDATE A TYPE OF UK MODEL WHICH IS BASED ON STOP.NCII.ORG?

In UK, Under the UK Online Safety Act, 2023, Ofcom has recognized StopNCII.org as a leading solution for tackling image-based abuse. StopNCII.org is a free tool and it works by generating a hash from intimate images/videos and shares the hash with the relevant platforms so that they can detect and remove the content. It is a process by which an algorithm is used to assign a unique hash value to an image. It is like a digital fingerprint¹⁴.

The UK model not only offers hash generation but also protects the privacy of the victims because the original image never leaves the device. It is a centralized authority hence there is a singular database. And the hash matching takes place across all the platforms regardless of how small or big they are.

When compared to the Indian Model, the hash matching function is limited only to the SSIMs with more than 5 million users. And small platforms are exempted which causes the problem of resurfacing which does not happen in the UK model. Moreover there are more privacy risks associated because the hash matching takes place on the intermediaries servers And images are often uploaded in the Sahyog portal. In the UK model, the content is removed at the pre- upload stage while in India post- upload harm is mitigated.

India should adopt a singular authority like StopNCII.org hash matching model which is applied to all the Intermediaries not just the SSIMs and bring about a few key modification. Namely, there should be an Independent oversight to create transparency and reduce political pressure and government pressure, Perceptual hashing should be introduced to combat A.I morphing. Moreover instituting a single authority like stopNCII.org can reduce the inconvenience of reporting to multiple authorities and platforms and going through various channels which cause delays in delivering justice.

Justice delayed is Justice denied hence India needs to adopt some of these measures from the UK model to modify the current system of protective mechanism against NCII content in India instead of relying mostly on Post Facto Removal mechanism like it has in the past few decades

¹⁴ Stop NCII, StopNCII.org

as well as in the present.

5. INTERNATIONAL CONTEXT: A DISCUSSION ON NEW ZEALAND'S HDCA 2015 PROVISIONS

The Harmful Digital Communications Act (HDCA) 2015 is New Zealand's legislation which regulates NCII (non-consensual intimate imagery). 'Harm' is also clearly defined under this legislation as serious emotional distress. This act also lays down ten communication principles to guide citizens and help them distinguish which digital communication is harmful. Digital Communication is also defined under this act to include texts, Electronic mails, Social media content to name a few.

There are criminal offences for posting Intimate Visual Recordings (Revenge Porn) and causing severe emotional distress, penalties are provided as well. The penalty is imprisonment for a term not exceeding 2 years or a fine not exceeding 50000 dollars and in the case of a body corporate the fines will not exceed 200000 dollars. These penalties are quite stringent so as to deter the perpetrators something which is missing in the penal provisions provided across multiple statutes like BNS, 2023 and IT act 2000. The fines provided under the Indian statutes are somewhere between 2 lakhs to 10 lakhs. Compared to the fines in New Zealand, this amount does fall short.

District Court orders can also remove these recordings which falls under the civil help mechanism for immediate takedown of content. This fast track method of removal is missing in the Indian model. Moreover there is independent oversight entrusted to Netsafe and not the government. This act established a non-profit organization like Netsafe because this organization investigates and meditates the victim's complaints in the first place so that it does not escalate to the Courts. Netsafe and the District Courts act consistently with New Zealand Bill of Rights Act 1990. This act provides the citizens with right to freedom of expression but the right is not absolute in nature and citizens cannot breach the communication principles laid down by HDCA, 2015¹⁵.

In this context, India can definitely benefit by adopting some of the measures like the independent oversight mechanism and civil self help mechanism as well. India should also adopt a singular unified Statute like the HDCA and Institute a singular authority like Netsafe

¹⁵ Netsafe, About the Harmful Digital Communications Act (2015)

to regulate the removal of NCII for the timely addressing the grievances of the NCII victims.

6. LACK OF ACCESSIBILITY TO PROTECTIVE MECHANISMS AGAINST NCII FOR RURAL INDIAN WOMEN

Rural Indian Woman are facing a huge problem of non accessibility to protective mechanisms against NCII mainly because the recent introduction of Proactive Content Deletion (PCD) is yet to reach these areas. The enforcement of PCD is still in its initial stages and has not been able to reach many underdeveloped areas of India. As a result women in Rural areas are systematically excluded from the NCII protection mechanisms. The Current protective mechanism is Post Facto Removal which is quite outdated and inefficient in taking timely action causing major delays.

These woman are also lacking the awareness and resources to access these mechanisms. The Current framework requires victims to report initially. Which happens through a 1930 helpline, NCRP portals, one stop centres, approaching grievance officers to name a few.

However all of these methods require digital literacy which is devastatingly low in the rural areas, it also requires a general awareness which these woman lack. Reporting on portals require steady internet connection which is also not available in the rural, remote areas. Reporting to One Stop Centres and grievance officers will require the victim to have a physical access which is not always possible due to taboos, intimidation and lack of resources.

Another reason for this problem of non accessibility is the police apathy. Villagers are often shunned away and their concerns are trivialized because the police refuse to do the formalities. Villagers feel self conscious due to taboos and on top of that police apathy can make exacerbate this issue. Moreover the local police stations are not always equipped with the technology to address these grievances. The officials lack the specialized and technical knowledge to combat the rising rate of these sophisticated crimes.

7. CONCLUSION

India is currently still relying on Post Fact Removal Mechanism for NCII which is quite outdated. It does not adequately address the grievances in a timely manner. NCII as we know causes irreparable psychological damage to the victim and delays can push the victims to take dangerous steps which can cause serious physical damage and death in the worst cases.

The Post Facto Removal Mechanism is clearly inadequate and fundamentally broken because it fails to prevent harm. In this context, speedy adoption and enforcement of Proactive Content Deletion is not an option it is the need of the hour.

In India, there is no proper single unified mandate for Proactive Content Deletion which can singlehandedly combat many of the issues mentioned above.

Nevertheless, some recommendations can be put forth to mitigate some of these issues in the meantime, starting from the grass root level. These areas lack the coverage of protective mechanisms against NCII mostly.

- Awareness campaigns in the rural areas would increase the digital literacy and general awareness of the villages in rural India.
- Action should be taken against police apathy to deter such negligent behaviour towards villagers
- Villagers need to be encouraged to come forward and speak their truth.
- Government funds need to be increased at the rural level to replace the outdated technology in rural areas.
- Officials with specialized and technical knowledge should be appointed and posted in every local police station.
- Regular and timely communication between the local police stations and district agencies must be ensured.
- Female police officers should assist grievance officers when female victims report the NCII crime in rural areas to create a comfortable environment.

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