Analytical Essay on Whether Tort Law Adequately Protects Women’s Interests in Cases of Revenge Pornography and Reproductive Torts

This essay will discuss whether tort law adequately protects women’s interests in cases of revenge pornography and reproductive torts and whether feminist perspective can provide an advancement to the adequacy of torts law. Feminist legal critiques in the UK have constantly criticized the British tort law for failing to provide adequate and accessible full compensation for damages that marginally and disproportionally affect women. Although tort law does not address equality or discrimination directly, it does however largely reflect on changing behaviours, injury and harm which are all indeed central feminist concerns; all these aspects make tort law adaptable to feminist input and could indeed instigate room for reform in areas that concern feminists such as revenge pornography and reproductive torts.

This essay will conclude that current revenge pornography torts do not effectively protect women’s rights and that a drastic reforms such as Canada’s Intimate Image Protection Act which creates comprehensive torts.

Revenge porn:

Firstly, non-consensual pornography which is also known as ‘revenge porn’ is the distribution of sexually graphic or intimate images of individuals without their consent. Although this is known to have devastating effect on victims of both genders, many feminist critiques aster that revenge pornography is “explicitly purposed to shame, humiliate, and destroy lives and reputation of young women”. For the civil liability of revenge porn, a claimant can claim for breach of confidence, breach of the Data Protection Act, the statutory tort of harassment, and copy right infringement.

Firstly, and the most common is a breach of confidence claim. A breach occurs when the defendant distributes private images within or outside marriage, the images covers all non-consensual imagery that is deemed pornographic or sexual in nature. The tort also not only includes the defendant, but also any party that further shares the private imagery since it is reasonable to create a duty of confidence on them too even when they have no direct connection with the victim. This is because a reasonable duty of confidence arises whenever an individual receives information that they would know or reasonably assume to be classed as confidential or when the information in question is ought to be private. Secondly, a non-consensual dissemination of private imagery is a misuse of private information. A victim of dissemination would have had a reasonable expectation of privacy as per Article 8 of the European Convention on Human Rights. In such cases courts are sympathetic to claimants who had their trusts abused and would be rewarded damages for injury to their emotions and distressed caused by the abuse and misuse of private information with interference with their Article 8 rights.

Although the remedies exist, there are significant problems with their effectivity to protect women’s interests. For instance, both breach of confidence and misuse of private information

are the logistics of brining forward a claim. Such legal endeavours can cost fortune and be a very lengthy and stressful endeavour as a rare successful case such as Chrissy Chambers' costed almost £26,000 and took 3 years. This potentially could deter more women to seek remedy as obtaining one would seem impossible due to the sheer cost and lengthy process making it impossible to be successful. Although it is important to note, despite the failure of previous reforms to reduce cost and time such as Woolf reforms, claims and settlements relating to misuse of private information are slowly evolving to become more simplified as per Vidal-Hall and Ors v Google Inc [2014] EWHC 13 (QB) which has potentially opened the door for claims for emotional distress caused by misuse of private information. This case is very important in protecting women's interests as it sets a benchmark for future claims for misuse of private information to remedy damages caused by revenge porn. However, a major drawback is that even per Vidal's case the compensation is capped, and the damage caused by revenge porn can indeed be drastic where it might even lead to sever consequences such as suicide.

Notably the most effective way to protect women's interests in terms of fighting revenge pornography stems from copy right infringement. Copy right infringements are governed by the Copyright, Designs and Patents Act 1988. Therefore, for a claim to be valid, the victim must have contributed to the production of the imagery rather than just being the subject of it. In instances where the victim has been the subject of the imagery, the copy right claim would not subsist to enforce a claim. It is important to note this covers a large percentage of revenge porn cases as almost 80% of such cases are self-produced and thus eligible for claim on infringement.

This provides a claimant with the arguably most important remedy which is the prompt removal of the imagery. The victim can invoke the infringement laws and urgently require the person who disseminated the imagery along with any other parties to remove the imagery from public and private platforms and to undertake not to further disseminate the imagery. This is a powerful tool as it will grant women or any victims for that matter the power over the disseminators through legal means. For instance, assuming a website or a co-operation is not forthcoming to remove the images, an interim injunction can be sought. This is arguably the best tool to protect women's interest in terms of fighting revenge porn as the court can grant an injunction to anyone who can infringe the copyright such as the original dissimantor, the website hosting it and even extends to anyone who had the imagery in their possession as per Contostavlos v Mendahun [2012] EWHC 850 (QB).

However, although the process to bring forward a claim of infringement is convenient in terms of duration and costs. There are significant drawbacks to this remedy to protect women's interests as it can be difficult and also does not solve the original harm done by dissemination of imagery. Firstly, a co-operation can be not forthcoming and ignore the injunction, this will cause the claimant to go through a very lengthy battle especially if the co-operation is outside of the UK. Moreover, by redressing the harm of infringement of the creative property of the victim, the law offers the claimant a tool to take down the revenge porn but by doing so it significantly minimizes the recognition of renege porn's moral evil and instead regards it as professional matter.