

# Pornography in India – A Moral Dilemma

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## ABSTRACT:

Pornography is not only a morally problematic issue in India but also in every corner of the world. A worst and unfavourable impact of the technology can be seen in this era where pornography's composition is 33% in the world-wide net. The word pornography is defined as "anything written, any photograph, any movie etc. intended to arouse sexual excitement." The main problem regarding pornography is that there are various technically specialised issues while banning those sites which exhibit pornographic items and how it violates the fundamental rights of speech and expression and to access to the free use of internet which causes a very ill impact on the upcoming generation. Under Section 67 of Information Technology Act 2000, pornography is held as a punishable offence. Therefore, there is an ongoing controversy between the rights of users to access the internet content and legal provisions regarding that particular content. In this article the researchers have tried their level best to discuss various issues and challenges of pornography in India, through various articles, online data, case laws and books. One third of the internet is covered by pornographic content which is resulting in men trying exploiting and suppressing women and children and committing various offences of unnatural sex. To stop this exploitation of women and children, a strong control of law is needed. Through this article researcher highlights pornography, its legal provisions and judicial control over it. Researcher sheds a light upon the adverse impact of porn on society, children and women and recommends strong control of law over it.

**Keywords:** - pornography, judicial pronouncement, sexual offences, challenges, legal provisions

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## I. INTRODUCTION

By the term 'Pornography', the first question comes in mind is – Is it a problem or a solution? i.e. problems like sexual offences which are consequences of pornography or solutions like relieving stress by watching pornographic content etc.

Times have drastically changed in the pornographic field, since the first known sexual guide book "Kamasutra", which was made public in 5th century in India. The word "pornography" is defined as "written works, photographs, movies, etc intended to arouse sexual excitement". In digital world the pornographic content includes the video pornography, interactive cyber-sex, webcam sex, social networking, mobile phones etc.<sup>1</sup> Without sparing any efforts to understand the nature of effects that pornography has on the people, especially as reflected in the law and its desire to contain it and how laws desire to contain is also about personal interest and practices around technology. This necessarily leads to focusing on pornographic field itself and from there to proceed to questions around law related to pornographic content, history of porn, film, video, new media and technology which necessitates an exploration of film and video studies, new media culture studies and technology, science in relations to pornography. The standpoint taken by two feminist

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<sup>1</sup> H. MONGOMERY HYDE, A HISTORY OF PORNOGRAPHY (1964).

Andrea Dwarkin and Catherine Machinan on pornography was very radical. Dwarkin was the big cat who gave woman civil rights to sue those who hurt them because of watching too much pornographic content. For Dwarkin through pornography people insult women and it helps in accomplishing the active subordination of women i.e. the creation of a sexual dynamic in which the woman is put down, ultimately the meaning of porn taken by the people is the suppression of women and ultimately the brutalization of woman. The connection drawn between pornography and sexual exploitation is excessively covered under passionate interactions which should not obscure the argument but it makes the mechanisms of domination clearer. That, in any case, does not occur rather a further obscuring of women and their subjectivity, their pleasures and experiences take place.

Catherine Machinan contends that pornography has a big influence over individuals' mind set or belief in myths of rape. Sexual content present in the digital world advances these rape myths and leads people to sexually abuse women, it plants a seed in the mind that you need more violence to become sexually aroused. This is well recorded. The digital obviously adds a completely unique layer to interactivity and reciprocity but also perhaps brings into play distinctive corpo-realities and embodied experiences in stimulated environments, or even through devices possibilities. Be that as it may it is quite the more straightforward ways that the digital interact in the ways in which the viewer moves of his or her own volition through various material or how shoddy digital modes of production particularly mobile phones allow for creating and putting up of their own videos. A BBC World Service Poll of 27,973 people above 1years of age in 26 countries, which includes 14,306 Internet users, was conducted between 30 November 2009 and 7 February 2010. The head of the organization which conducted the poll felt in overall that the poll indicated that; in otherwise being worried about privacy and fraud people around the world considers accessing internet as their fundamental right. Their thinking is that the internet is a privilege for good number of people and who knows the importance of and they don't want government to regulate<sup>2</sup>. The findings of poll were that nearly four in five (78%) users thought that the internet brings them greater freedom and 53% of them felt that "the internet should never be regulated at any of governmental level or agency however, and almost 80% of internet users around the world thought that access to the internet was a fundamental right. 50% strongly agreed, 29% somehow disagreed, 6% strongly disagreed and 6% gave no opinion.<sup>3</sup>

The present study is entitled with the following "Objectives"

- To shed a light on the adverse effect of pornography on Indian society.

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<sup>2</sup> *Censorship*, ENACADEMIC, at <http://enacademic.com/dic.nsf/enwiki/9830525>.

<sup>3</sup> *Digital rights*, WIKIPEDIA, at [https://en.m.wikipedia.org/wiki/Digital\\_rights](https://en.m.wikipedia.org/wiki/Digital_rights).; *Censorship*, WIKIPEDIA, at <https://en.wikipedia.org/wiki/Censorship>.

- To search or find out the legal issues and challenges which are before the people of India because of pornography
- To study the legal provisions and statutes related to pornography and whether it is efficient to deal with it.
- To suggest some measures on the basis of research work.

## II. PORNOGRAPHY IN INDIAN SOCIETY

In the setting of India, the whole content of pornography includes film, video technology, literature. How law doesn't look or looks, at pornography is not the matter of only how law having the governing rules or policies but also in the view of society and how it relates to the various ways in which pornography is explicitly shown. Questions related to pornography can be clearly looked into by keeping away the field of law or focussing on this field only till various legal researches and analytical or critical studies. It is expected by the laws to prohibit pornography in its clear sense or on a reasonable ground. Law can sort or order pornography only by the word "obscenity". But pornography contains an exceptionally wide scope. The videos, films, porn movies, porn talking, porn article can't be marked by a solitary word obscenity or vulgarity.<sup>4</sup> The working of law of India and the co-connection of obscenity with dirt and filth is explored particularly visual reception of pornography which arouses or excites bodily reactions, pleasure, excitement body responds with all the film. It can without much of stretch weaken those mental faculties that are open to such immoral influences and no conscience to think over it. Their body simply reacting in an invulnerable manner. Legitimately, pornography means the explicit form of obscene scenes; & the material which is indication of vulgarity and obscenity whose main purpose is sexual arousal or excitement.<sup>5</sup>

Few months ago, a horrific incidence was reported in Dehradun where a girl of 10th class was brutally raped by four of her seniors and when the accused got arrested, they confessed that they did such rigorous act after watching pornographic material on internet which has created the sexual fantasies.<sup>6</sup> In this case also, Pornography is responsible for violent sexual behaviour and rape. The questions that arises is whether pornography is an offence or? and watching pornographic content is not consider as a crime in India but wat about accessing banned or blocked porn websites? The reason for the sexual crime to be held as pornography, in numerous cases it is held by the court that mental pollution of the criminal in sexual crime is directly related

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<sup>4</sup> Archana Awaghad & Kalpana Jawale, *Legal issues and challenges on Pronography in India*, 1(9) INTERNATIONAL J. OF APP. RESEARCH 1033 (2015).

<sup>5</sup> *Id.*

<sup>6</sup> Priya Pathak, *many porn sites are banned on Jio, Airtel in India, is it legal for people to access them despite ban?* INDIA TODAY, at <https://www.indiatoday.in/technology/features/story/many-porn-sites-are-banned-on-jio-airtel-in-india-is-it-legal-for-people-to-access-them-despite-ban-1408033-2018-12-12>.

to pornography. In gang rape also the arousal of such a barbarian act is the result of the scenes which are shown in porn movies which shows that women enjoy gang rape.

### III. SEXUAL OFFENCES: REPERCUSSIONS OF PORNOGRAPHY

The main purpose which the pornography serves is sexual, each and every time it is used & there is nothing like nonsexual use of it. It provides a platform where people develop deviant and violent fantasies and if watch more than the normal number of times then it will eventually lead some individuals acting those fantasies out. Many kinds of fantasies develop while watching porn, some of them may be good and healthy and some of them may be deviant and bad. The fantasies present in your mind, when being acted out, involves consensual and respectful sexual activity then that sexual activity is healthy. But when deviant fantasies are acted out, if without consensus then it is not healthy and may lead a person to act in such a way that that act may fall under the category of sexual offence.<sup>7</sup>

The main debate about pornography is how it impacts deviant behaviour, sexual thoughts and fantasies. It is proved that when pornography is viewed more frequently, then the fantasies get stuck in your head and whenever a person feels aroused, he may act according to the fantasies developed in the mind. It is proved that use of pornographic materials was very significantly related to the situation where an individual asks their female partner to engage in a sexual act which may be violent.<sup>8</sup> And sometimes women can also be forced to engage in such acts if they do not give their consent freely. In addition to this it is also proved that the younger the age of an individual is when he first watched porn then he will more likely engage in sexually assaultive behaviour.

Recently in the year 2018, the issue of the ban on pornography has again got heated up because Uttarakhand High Court gave an order to the centre for banning pornographic websites by citing an horrific event which occurred in Dehradun. In this incident a girl of 10th standard was brutally raped and sexually offended by four of her seniors of her school. The accused later confessed that they did such rigorous act because they were so sexually driven by their own fantasies which were in turn were developed by watching pornographic materials.<sup>9</sup> At last it is being derived here that watching porn may be not bad but if it turns the behaviour a person deviant because of the unnatural sexual fantasies they started developing while watching porn.

### IV. LEGAL PROVISIONS AND JUDICIAL PRONOUNCEMENTS

**The legal aspect** of pornography shows wide variations from country to country. Using porn sites in private is

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<sup>7</sup> Scott A. Johnson, *The Role of Pornography in Sexual Offenses: Information for Law Enforcement & Forensic Psychologists*, 17 INTERNATIONAL J. OF EMERGENCY MENTAL HEALTH AND HUMAN RESILIENCE 239 (2015).

<sup>8</sup> Id.

<sup>9</sup> *Supra* note 6.

not illegal in India but the production and sharing of pornography are both illegal, hence it allows the individual to see porn privately. By the virtue of Information Technology Act, 2000 (hereinafter referred as 'IT Act') Chapter XI 67, the Government of India takes into account the online pornography as punishable offence.<sup>10</sup> The CEO of Indian subsidiary of eBay was charged with various criminal offences for allowing the trading of and containing these clips on the websites. According to 2010 survey of children and young adults, done by the Indian Ministry of Women and Child Development, 53.22% of children had reported of sexual abuse and 5.69% of children and young adults had been sexually assaulted through oral sex or penetration of vagina or anus.<sup>11</sup>

Watching porn sites or possessing any kind of pornographic material is legalised in India although the sharing or production of such material is outlawed. Similarly, the publication of 'X' rated materials is also contraband. The IT Act, Chapter XI paragraph 67 considers online pornography as a punishable offence. Section 293 of Indian Penal Code, 1860 (IPC) also states that the law against sale of obscene objects to minors and Section 292 of Indian Penal Code is also relevant which appertains pornography or "obscenity" which was amended by the IT Act to include electronic data. The amendment of IT Act took place in 2008 and section 67 was embedded which illegalises browsing, publishing, downloading or creating child pornography. Child anime porn is also explicitly illegalised. browsing for child pornography on the internet can lead to a therefore, imprisonment for the term of 5 years and fine of 4 Lakhs is set as a punishment by the Government of India for browsing of child pornography on the internet.

There are certain **judicial pronouncements** which shows the social dissidents, who filed petitions regarding the restriction on pornography, are trying to seek solutions through the judicial system to stop the impact of pornography on society. In 2013 a PIL petition was documented in the Supreme Court of India seeking a restriction on pornography in India. A notice was issued by the court to the Central Government and waited for its response. The Supreme Court was informed by the Government that the Cyber Regulation Advisory Committee (CRAC) was assigned with a brief related to availability of pornography on internet under section 88 of the IT Act, 2000<sup>12</sup> and it was looking into the same and it's still pending in the Supreme Court.

After the petition, which was filed by Adv. Vijay Panjwani to looking for an anti-pornography law, some notices also issued to the ministries of Home Affairs of Information Technology and Broadcasting, by the Supreme Court, besides the Internet Service Providers Association of India (ISPAI). Another public interest litigation (PIL) was documented before the Supreme Court by Kamlesh Vaswani who recommended that the

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<sup>10</sup> UNIVERSAL'S CONCISE COMMENTARY, THE INFORMATION TECHNOLOGY ACT 2000 (Universal Law Publisher).

<sup>11</sup> *Supra* note 4.

<sup>12</sup> The Information Technology Act, 2000, Sec. 88.

major cause of increasing sexual offences against women is online Pornography. The restriction on online pornography may not be practicable and certainly court has no call on it.<sup>13</sup>

Another PIL seeking for restriction on such sites written by Utkarsh Anand, published on April 28, 2014 that, there cannot be an entire ban on online pornography in the country and legal actions are also not feasible in a large number of cases as the govt. had told the Supreme Court. Even the Secretary of Department of Telecommunication (hereinafter referred as 'DoT') said that blocking porn websites is not practice able due to certain difficulties. The problem lies that most of the Internet Services were quite often located in foreign countries where such production or creation is permissible. Supreme Court asked for the clarification from the Secretary of DoT related to this issue. In response of that, Secretary of DoT said that the role of DoT was under some finite boundaries. These types of technical issues are creating hurdles between the law and its control on pornography. Finally, in that case Supreme Court says that it could not intervene on porn viewers who uses it in private as it will be against his fundamental right and violation of Article 21 of Constitution i.e. right of personal liberty and such temporary orders cannot be passed by this Honourable Court. Such opinion was explicated by Chief Justice of India HL Dattu. This issue is really serious and there is a great expectation from Centre to take action.<sup>14</sup>

But **in the year 2018**, the issue was again got agitated in the media and reason for same is the horrific incidence from Dehradun where a girl of 10th class was rigorously raped by four of her seniors and when the accused were arrested, they confessed that the cause of their brutal and disgraceful act was the sexual fantasies which was produced after watching pornographic material on internet. By the virtue of this incidence, the Uttarakhand High Court passed an order to ban pornographic websites in India and following by this order, Government once again directed the ISPs to ban 827 websites and now according to DOTs directive, major telecom companies like Jio, Airtel and Vodafone banned many pornographic websites from their network including the legal and genuine websites like Pornhub etc.<sup>15</sup>

## V. CONCLUSIONS AND SUGGESTIONS

Though pornography creating adverse impact on society, its values and morals and damaging the ethical ways of enhancing the culture with modesty and sensuousness, still laws are not sufficiently cope up to deal with it. Majority of masses found internet is the way to enjoy and express freedom, as their fundamental right. IT Act 2000 having some provisions to control child abuse and exploitation for pornography on internet. Some people

<sup>13</sup> *Can't ban child porn sites without ruling: ISPs to Supreme Court*, THE TIMES OF INDIA (Jan. 28, 2014, 3:13), at [http://timesofindia.indiatimes.com/articleshow/29462222.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cpst](http://timesofindia.indiatimes.com/articleshow/29462222.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpst).

<sup>14</sup> Utkarsh Anand, *can't ban pornography on Internet: Govt to SC*, INDIAN EXPRESS (Apr. 28, 2014, 12:31 a.m.), at <https://indianexpress.com/article/india/politics/cant-ban-pornography-on-internet-govt-to-sc/>.

<sup>15</sup> *Supra* note 6.

filed PIL, asking ban on such sites in Supreme Court. But some PIL are still pending and in some due to technical complexities; a complete ban on such sites cannot be granted by courts. Ultimately the woman and children the weaker section; held by Constitution, is still being exploited at a large scale due to the trade of pornography spread worldwide through pornography. An aggressive and brutal picturization of woman is used to excite the adult but mostly the teenagers are captured, targeted by these persons in this trade. Due to that a violent sexual behaviour is increased which leads them to cross the limit of humanity. The thing which is very natural it is showed in an unnatural and inhuman manner with the help of pornography. Which are taking this generation closer to animal behaviour.

Lastly, we concluded that technology is the best tool for enhancement of human development and pornography is the worst use of technology. In this era a strong legal control and prevention is needed for pornography to save the upcoming generation from moral degradation.

According to the us, certain suggestions should be taken into the account-

- There should be a rigorous watch of cyber laws and other laws on the persons who are related or dealing in any kind of pornographic trade.
- The proper execution of the law should be there, to prevent the free access of pornographic materials by teenagers.
- There should be deterrent and reformative punishment for illegitimate trade of pornographic materials.
- Empowerment of Judiciary for dealing with the cases related to pornography.
- Some social organizations should take active involvement to control woman and child exploitation through the porn-sites.