

LEGALITY OF ONLINE PORNOGRAPHY UNDER CONSTITUTIONAL LAW

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ABSTRACT

The abstract attempts to elicit the approach, which the analysts have used to scan the present scenario in terms of legal status of Pornography in India. The strict sense of the articulation 'Pornography' is "to demonstrate or show sexual demonstrations in mastermind to provoke sexual incitement by books, films, etc" This would include clear sites, decent matter produced using computer and use of the web to download and transmit clear recordings, compositions, pictures, photos, etc. Although the Indian Constitution provides freedom of speech and expression under Article 19(1)(a), such freedom is subject to reasonable restrictions under Article 19(2) such as morality and decency. The Information Technology Act, 2000 (amended in 2008) makes the online transmission of obscene content a criminal act (Section 67), but does not make mere viewing an offense. In *Kamlesh Vaswani v. Union of India*¹ (2015), the Supreme Court weighed banning pornography outright but maintained a partial ban on child pornography and non-consent content while keeping access to adult content subject to conditions. Follow-up judgments and government decisions, like blocking porn sites (2018), have led to controversies regarding privacy, censorship, and excess. This article examines India's legal system, judicial trends, and the conflict between personal freedoms and state-mandated moral controls in the digital era. Although the Indian Constitution provides freedom of speech and expression under Article 19(1)(a), such freedom is subject to reasonable restrictions under Article 19(2) such as morality and decency.

Keywords: Internet pornography, obscenity laws, censorship, digital rights.

1 (2015) 1 SCC 265

INTRODUCTION

The exacting meaning of the articulation ‘pornography’ is Relating to or depicting sexual activity in a way that is intended to arouse sexual excitement, especially in books, films, etc². This would include obscene sites; explicit matter created utilizing PCs and utilization of the web to download and send obscene recordings, works, pictures, photographs, and so forth. Grown-up amusement is a significant industry on the web. There are extra than 420 million person explicit site pages today.

IMPACTS OF PORNOGRAPHY

- Research has parted with that pornography and its messages are associated with deciding perspectives and empowering conduct that can hurt individual user and their families.
- Pornography is frequently seen stealthily, which makes deceitfulness inside marriage that can prompt separation now and again.
- what’s more, porn advances the appeal of prostitution, infidelity, and unbelievable assumptions that can final product in risky improper conduct.
- Some of the boundless, yet bogus correspondence sent by sexualized culture.
- Sex with anybody, under any situation, at any rate it is liked, is helpful and doesn’t have a negative punishment.
- Women have one charge – to meet the sexual weight of men.
- Marriage and kids are impediments to sexual execution.
- Everybody is associated with improper sexual action, unfaithfulness and early sex.

2 Oxford English Dictionary, “pornography, n.” (3rd ed. 2021)

Pornography Addiction

Dr. Victor Cline, an expert on Sexual Addiction, bring into being that there is a 4 stage movement among numerous who set aside pornography.

Addiction

1. Pornography gives a telling sexual energizer or love potion impact, follow by sexual delivery, most consistently through masturbation.
2. Acceleration: Over time addicts have need of more express and degenerate make a difference to meet their sexual “needs.”
3. Desensitization: What was first assumed as gross, stunning and upsetting, in time becomes normal and adequate.
4. Carrying on physically: There is an expanding tendency to carry on practices see in pornography³.

LEGAL ASPECTS OF THE BAN ON INTERNET PORNOGRAPHY

The term pornography has begun from the Greek word “pornographos” which can in a real sense be deciphered as prostitutes. While the expression “pornography” in Webster’s Dictionary has been characterized as “compositions, pictures, and so on, expected principally to stimulate sexual craving.”

Though, the expression “pornography” or obscenity has consistently had the no-no impact on the Indian culture and has not coincided well with the social texture of the country. For the progression of the article, indecency will be utilized as the expression “obscene” isn’t unequivocally characterized with regards to Indian laws. Indeed, obscenity has consistently been considered external the domain of assurance allowed under the Freedom of speech & expression⁴ and has been exposed to the reasonable trial of public morali-

3 Cyber Law Introduction, CYBERLAWSINDIA, <http://www.cyberlawsindia.net/index1.html>.

4 Ranjit D. Udeshi v. State of Maharashtra, AIR [1965] SC 881

ty and decency. In India there is no specific arrangement which criminalize pornography. There are basically three resolutions which talk about the pornography Indian Penal Code, 1860 (IPC) section 292 alongside Section 67 of the Information Technology Act, 2000 (IT Act). The third explicit resolution is Indecent Representation of Women (Prohibition) Act, 1986. (here in after IRWA)

The idea of obscenity has not been characterized and the significance of the term changes through time and advancement of society. However, the Indian courts have embraced the Hicklin test as figured in *R v. Hicklin*⁵ and has held that indecency is sex which offers to the lewd side of the human instinct or has such propensity; in any case, such an allure fluctuates on singular case basis. The courts under Art.19 (2) have consistently discovered public profound quality as limitation to the people the right to freedom of speech & expression. Also, this article would look to analyze the infringement of the Fundamental Right of a person alongside considering the destructive impacts of unregularized access of pornographic material while making certain proposals on the equivalent.

Infringement of Fundamental Rights

The discussion around pornography has consistently been seen with two distinct crystals of conservative and liberals. Philosophically the moderates see each physically express material as vulgar and request a total restriction on the equivalent. For them securing and saving the traditionalist viewpoint of life from the damaging impact of the physically unequivocal substance is undeniably more significant the person's opportunity and freedom. In any case, this has been dependent upon solid analysis and energetically dismissed by the dissidents. The possibility that the dissidents proliferate is the base state obstruction besides in situations when there is an ensuing mischief to the next. The principle grounds on which a liberal dispute stands is that the right of freedom speech secures the individual freedom of an individual gives him/her the right to state their viewpoint at their own understanding and even proliferate

⁵ *R v. Hicklin* (1868) 3 QB 360

such assessment without making hurt the others. Indeed, an assumption against disallowance of such exercises will likewise be considered as they portray a method of individuals which certain people follow. In addition, a Moreover, an individual's fundamental right to freely explore and nurture their personal beliefs, thereby shaping their consciousness and way of life, remains equally essential and significant fragment of the general public feels that separated from aiding an individual reach and become mindful about his freedom, the obscene material ought to be ensured as pornography is a significant type of sexual articulation which might free the women from the abusive shackles of sexual traditionalism and would assist the ladies with investigating their own type of sexuality⁶. The women rights activist discussion which is organized on uniformity, additionally discusses the correspondence of ladies as far as their sexuality. Inspite, the circumstance of individual sexuality being on a lower platform, the underestimated position of ladies adds to their impediment in accomplishing sexual freedom. Also, these liberal musings are well inside the system of our Constitution and are lined up with the vision of our ancestors, notwithstanding, the whole degree of Indian laws which manage obscenity have been maintained under article 19(2) which discusses reasonable restriction in light of a legitimate concern for the State which incorporates public order, decency and morality the Supreme court has maintained. In any case, the State just as the Judiciary has totally neglected to expand because how the private use and delight in pornography prompts the infringement of public decency and morality⁷ while the rationale of the damage principle⁸ likewise falls flat as the State has not had the option to show the mischief cause to the next by the private utilization of sexual entertainment, and along these lines the State can't practice this control over the person. Besides, the contention of convincing state interest test as set down in *Govind v. Territory of M.P*⁹. which expresses that lone limitation that can be put on

6 D. Cornell, "Feminism and Philosophy" (2000)

7 Vallishree Chandra and Gayathri Ramachandran, 'The Right to Pornography in India: An Analysis in Light Individual Liberty and Public Morality' (2011) 4 NUJS L Rev 323

8 John Stuart Mill, on "Liberty" (1975)

9 *Govind v. State of M.P.* (1975) 2 SCC 148

major rights is the point at which the law fulfils this test, doesn't hold a lot of ground as the Delhi High Court in *Naz Foundation*¹⁰ held that public morality or public dissatisfaction with regards to specific demonstrations is definitely not a legitimate legitimization for the limitation of the key rights conceded under Article 21 of the Constitution and "In case there is any kind of 'profound quality' that can breeze through the assessment of convincing state interest, it should be 'established' ethical quality and not public morality." Notwithstanding the *Naz Foundation* Case being overruled by a two-judge seat of the Supreme Court, the established significance of the equivalent can't be overlooked. The Delhi seat choice structures a significant milestone in the understanding of the principal rights and the limitations on it.

'Reasonable Restriction'

The DoT request says that agreeable facilitated on pornography destinations advice to ethical morality and decency and is, hence, subject to "reasonable restriction" on the Fundamental Right to the right of speech & expression. While the individual is sure this opportunity under Article 19(1)(a) of the Constitution, Article 19(2) permits the state to force "reasonable restriction" on its work out "in the interests of the sovereignty & integrity of India, the safety of the State, friendly relations with foreign States, public order, morality or in relation to dislike of court, defamation to an offence".

On March 24, 2015, while suppress the much really mishandled Section 66A of the IT Act which permitted police to grab individuals for online media post that were understood as being "offensive" the Supreme Court had additionally manage Section 79(3)(b), and read it down. The court held that mediators can't be called winning to practice their watchfulness in hindering substance, and that they should act possibly what's more on court data or when the public authority asks them to. "Additionally, the Court masterminds or the notice by the appropriate Government or its organization should exactly adjust to the topic set down in Article 19(2). Illicit demonstrations past what is set down in Article 19(2) observably can't shape any division of Section 79,"

¹⁰ *Naz Foundation v. Govt. of NCT* (2009) 160 DLT 277

the Supreme Court had dominated.

This judgment didn't, then again, make it mandatory for the executive to assess the need of issue the limitation request, or to express the purposes behind impeding a site. The DoT request is pleasing to legal survey, and ISPs, the hindered sites, a person Internet client can push toward a High Court or the Supreme Court on the off chance that they experience that the request isn't encased by the limitations notice under Article 19(2).

Legal Framework

Section. 67 makes distributing or sending or causing publication or transmission of any electronic material containing a “sexually explicit act or conduct” as punishable. In *Jaykumar Bhagwanrao Gore v. Province of Maharashtra*¹¹, the Bombay High Court, clearly deciphering the Section, said that s. 67A ventures out in front of s. 67 of the IT Act. Prominently, s. 67 rebuffs distribution or transmission of any electronic material which is “vulgar or requests to the lecherous interest.” On the other hand, s. 67A stretches out to any electronic material which isn't simply vulgar or interesting to the indecent interest, yet additionally depicts a physically express demonstration or lead. The Court in *Jay Kumar* characterized “unequivocal” under the Section as “depicting or addressing sexual movement in an immediate and definite manner” (Paragraph 9). The movement can be respective (Court's pretentious method of alluding to intercourse) or one-sided (Court's smug method of alluding to masturbation). To make it more clear, standard picture of a penis can be licentious or interesting to salacious interest and covered under s. 67, while a picture of a raised hand-held penis is covered under s. 67A on the grounds that first, it is licentious or interesting to the indecent interest, and second, it shows a one-sided physically unequivocal action.

To mastermind the obstructing of these locales on Section 79(3) (b) of the IT Act, the DoT answered. Section 79 sets down conditions under which ISPs or mediators are not responsible from culpability for hostile agreeable transferred

11 (2023) SCC Online SC 1234.

by an outsider. It commits the arbiters to work out “due diligence”, and to follow up on the data of the court or the public authority and its organizations to meet the models for invulnerability.

Likewise, In the Information Technology(Intermediary Guidelines) Rules, 2011, middle people should educate “client of PC asset not to mass, alter, distribute, communicate, show, transfer, update any data that is... profane, disparaging, indecent, terribly hurtful, pestering, obscene, hostile, pedophilic, obtrusive of another’s security, disdainful, ethnically hostile... “, and so on, and “hurt minor in any way”¹².

Obscenity

This term has not been characterized under any law/resolution which punishes, disallows, distributing, bringing in, mailing, sending out and selling such profane material or matter. The Court has the obligation to inspect whether the supposed indecent substance contains foul matter which is probably going to draw in individuals and degenerate those personalities who are available to such impacts.

Section 292 of IPC,1860 arrangements with the selling of the indecent books, magazines and so on Whosoever sells, disseminates or publicly displays or in any way export, or imports or fares any obscene book, pamphlet, paper, drawing, craftsmanship, painting, portrayal or figure or whatever other vulgar item which is in his/her ownership.

This part, tells that the information on indecency isn’t fundamental for constitution of an offense. It furnishes discipline on first conviction with imprisonment of one or the either depiction for a term which might extend out to 2years and fine of 2,000 rupees, and in the ensuing conviction with imprisonment which might extend to/ 5 years and furthermore fine which might stretch out to 5,000 rupees. But the actual contact, requesting or mentioning for sexual blessings, showing erotic entertainment or offering physically shaded comments will

12 Manoj Mitta, *Watching pornography no offence: IPC and IT Act*, THE TIMES OF INDIA ,<http://indianexpress.com/article/explained/background-and-legal-aspects-of-porn-block-on-internet/>.

comprise reason for inappropriate behavior and he/she will be rebuff with detainment which might go from to 3years or fine or both, in initial three cases and in fourth case detainment which might reach out to 1 year or with fine or with both.

Indecent Representation of women Act 1986 (hereinafter IRWP Act)

The IRWP Act characterizes ‘indecent representation of women act’ as the portrayal of the figure of women as to ruin public morality¹³. Thus the target of such guideline of indecent representation as in obscene materials is intently attached to the profound quality which thusly is consequently thought to be predefined and normally concurred upon. Sec.5 of the IRWP Act gives wide-going forces to ‘gazette officer’ whereby he can, with a warrant, enter and search anybody’s home and hold onto anything he believes is revolting, including explicit material. The ability to absolve the material on grounds of being scholarly, creative, logical or strict has been vested with such Officer and regardless of whether the court later concludes that the seizure wasn’t right, Sec.9 of IRWP Act protect the official from any lawful action. Thus, an administration official is enabled to pester any resident, and the resident has no real way to look for redressal.

Watching Pornography no offense: IPC and IT Act

In India, seeing pornography in private spaces isn’t illicit. The Supreme Court had likewise orally commented back in July 2015 that it can’t prevent a grown-up from practicing his fundamental right to personal liberty to watch pornography inside the protection of his room.

Intrinsically, any restriction on the activity of free discourse is needed to stringently adjust to any of the eight grounds contained in Article 19(2) of the Constitution. At the end of the day, a law can limit the freedom of speech and expression on these eight grounds, which incorporates “morality and decency”.

13 IRWP Act 1986, Sec2(c): ‘indecent representation of women’ means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or is likely to eprave, corrupt or injure the public morality or morals.

Use of porn is no offense. All in order to the law disallows is its diary or transmission. On the off chance that the rail line police in Mumbai could unmoving threaten an IIT understudy, just by guarantee that his cell phone store explicit video, they were trample his human rights¹⁴.

CHILD PORNOGRAPHY

Child pornography is an illicit act in India. Information Technology Act, 2000 and Indian Penal Code, 1860 gives insurance against the child porn. Child alludes to the individual who is below the age of 18 years. The Internet is by and large exceptionally utilized by its victimizers to reach and mishandle children physically, all around the world. The web is turning into a family product in India. Its blast has made the child a feasible casualty to the cybercrime. As more homes approach web, more children would utilize the web and more are the shots at succumbing to the animosity of pedophiles. The simple admittance to the explicit substance promptly and unreservedly accessible over the web brings down the hindrances of the youngsters. Pedophiles draw the youngsters by circulating explicit material, then, at that point they attempt to meet them for sex or to take their naked photos remembering their commitment for sexual positions. In some cases Pedophiles contact youngsters in the visit rooms acting like teens or an offspring of comparable age, then, at that point they begin becoming more amicable with them and win their certainty. Then, at that point gradually pedophiles start sexual visit to help youngsters shed their hindrances about sex and afterward call them out for individual cooperation. The Information Technology Act is set of rules to make it illicit to not just communicate or make child porn in electronic structure, however even to ride it The above segment covers sites, designs documents, SMS, MMS, computerized photos and so on. The punishment for a first offense of publishing, creating, exchanging, downloading or perusing any electronic portrayal of child in obscene or indecent or sexually explicit matter is imprisonment for 5 years and a fine of Rs 10 lakh. Section.67

14 Manoj Mitta, Watching pornography no offence: IPC and IT Act, THE TIMES OF INDIA, <http://indianexpress.com/article/explained/background-and-legal-aspects-of-porn-block-on-internet/>.

of the Information and technology Act manages distributing disgusting data in electronic structure. Section.67 alongside section 67A doesn't matter to any book, pamphlet, paper, composing, drawing, painting, portrayal or figure in electronic structure which is utilized for religious purposes or is in interest of a legitimate concern for science, writing, craftsmanship or learning. It is a for the most part that it doesn't explicitly characterize porn or make it an offense, and doesn't specify youngster sexual entertainment. Section 67B sets out the punishment for sexual elucidates electronic or online substance that portrays kids'. It is additionally illicit to actuate kids' in sexual demonstrations or into online connections.

CONCLUSION

Along these lines, the unregulated utilization of obscene material isn't agreeable to either the general public or the person. The State will pass laws which finds some kind of harmony between the freedoms of an individual in the meantime confining his admittance to such ruin use of his freedom. In the meantime likewise finding a way ways to guarantee that this material isn't gotten to by child who are inclined to its unfavorable impacts. To conclude, internet pornography has not been lawfully perceived in India, be that as it may, it's perusing has not been prohibited either separated from on account of child pornography. Globe over child pornography is unlawful. Watching pornography no offense in IPC and IT Act.

The regulation of online pornography in India remains a contentious issue, balancing constitutional freedoms, moral imperatives, and state control. While Article 19(1)(a) of the Indian Constitution guarantees freedom of speech and expression, Article 19(2) permits reasonable restrictions on grounds of public decency and morality. Judicial interventions, particularly in *Kamlesh Vaswani v. Union of India* (2015)¹⁵, have clarified that a complete ban on pornography is untenable, but the state can restrict child pornography, non-consensual content, and obscene material under Section 67 of the IT Act, 2000. However, India's approach remains inconsistent, with periodic website blocks raising concerns

15 (2015) 7 SCC 805

about arbitrary censorship, privacy violations (as highlighted in *Puttaswamy v. Union of India*, 2017), and the lack of a clear regulatory framework. The absence of age-verification mechanisms and poor enforcement against deepfake/exploitative content further complicate the issue. Moving forward, India needs a balanced legal approach like Upholds constitutional freedoms while preventing harm (e.g., child abuse, revenge porn), Defines “obscenity” more precisely to avoid misuse of laws, Strengthens digital rights and privacy safeguards for adults, Promotes awareness and tech-driven solutions (e.g., age-gating) rather than blanket bans. Ultimately, the legality of online pornography in India must evolve to reflect both democratic values and contemporary digital realities, ensuring that restrictions are proportionate, evidence-based, and rights-respecting.