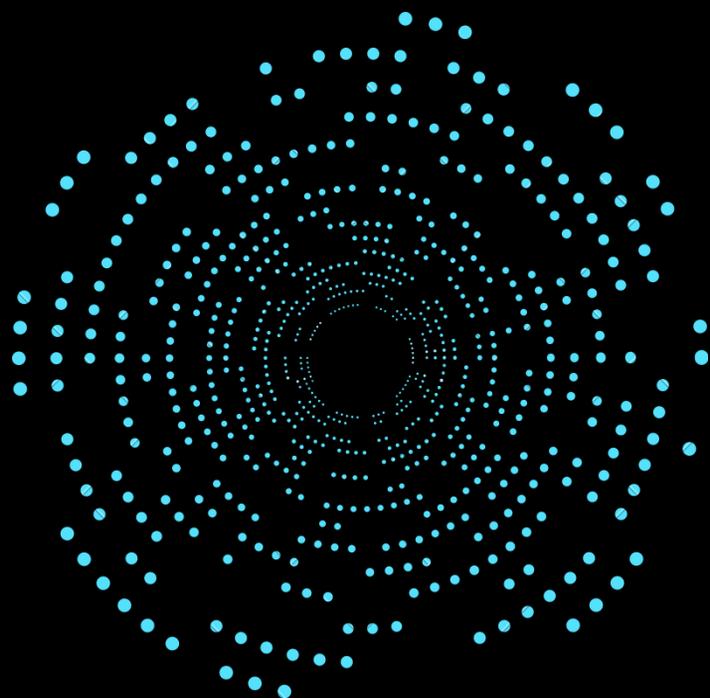


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## Cyber Pornography: A Legal perspective

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### ABSTRACT

With the development in science and technology, the world has seen a drastic increase in the number of cybercrimes. Along with the other cybercrimes such as e-mail and internet fraud, identity fraud, cyber extortion, website spoofing and more, pornography has also spread its deep roots within the society. The world is now observing the growth of pornography along with the growth in the society. It has been the most controversial subject among several other cybercrimes in the recent years. In this modern world of online obsession and online attachment a great deal of information is available online. This paves way to higher rate of threats and cybercrimes. The Extensive usage of internet installation has given rise to various issues related to cybercrimes along with the process of growth of information and technology. This paper centers on cyber Pornography as a new face of crime within the term cybercrime, the initiatives undertaken by the Police, the call for creating awareness, educating parents. It is an attempt to analyze the development and implementation of legal framework on cyber pornography.

**Keywords.** *Cyber pornography, Education, Laws, Internet, Obscenity*

### INTRODUCTION:

This paper centers on cyber pornography as a new face of crime within the term cybercrime.

The increase in the use of internet has helped the community in many ways. But, the unlawful usage of internet has affected the society as a whole where the younger generations as well as the adult class are equally involved in enjoying and adopting pornography on a day-to-day basis. The purpose of Internet is to be beneficial to the entire mankind across the globe and not to be an arena to spread negative thoughts by demeaning the social morals to vulgarity. The worldwide utilization of internet provisions has fetched numerous challenges related to cybercrimes on the way of building information and communication technology. According to Oxford dictionary Pornography is Imprint/Optical matter carrying explicit description or portrayal of sexual organs or activities which creates sexual enthusiasm. [1] Additionally, the Black's law dictionary defines pornography as "Lewd and Lascivious materials depicting erotic images, designed to arouse sexual desire". Cyber pornography has been the most controversial Subject among several other cybercrimes in the recent years on internet. Internet is a universal stage in which each and every country has its own ethnic, communal, governmental, economic, virtuous and valid legal structure, so it is arduous to regard the "Pornographic content" as one country might contemplate such indecency as permissible while others may not. To Control issues associated with cyber pornography various laws, counsels and ventures have been initiated by the Government as well as the police authorities across the world.

### DISCUSSION:

The term pornography is conventional and not a legitimate term. It alludes to wide scope of sexual materials. It is gotten from the Greek words whose (prostitution) and graphs (portrayal). In this manner, initially it alluded to any show-stopper or writing managing sex and sexual subjects. In any case, there is no consistent endless supply of pornography among researchers. Pornography is only from

time to time endeavored to be characterized by legislators too. In any case, it was endeavored to be characterized by Mackinnon-Working while drafting a statute as “realistic explicitly express subjection of ladies through pictures or words, including electronic or other information recovery frameworks”. [2]

There is no Specific Classification named as Pornography in law. It is generally considered as exasperated type of obscenity. However, vulgarity incorporated all the materials that are soiled, revolting and hostile to humility and fairness. Pornography is subset of profanity. Pornography is natural piece of vulgarity that concentrates after de-humanizing its entertainers by introducing them as simple articles occupied with satisfying longings of clients of pornography. Obscenity includes venturing over the moral lines however Pornography is a lot of genuine undertaking than indecency. Along these lines, the term ‘Pornography’ when utilized according to an offense isn’t characterized or utilized in any resolution in India yet the term “Foulness” has been adequately utilized and clarified in two significant sculptures in India. [3] The present legal framework for cyber-Pornography the prior rendition of IT Act, 2000 was inadequate in managing the crime of digital pornography, principally because of following reasons- It didn’t characterize what is implied by disgusting material in electronic structure. Subsequently, customary test to decide foulness was the solitary path for demonstrating the offense of youngster pornography and impliedly included such offense inside the standard pornography. [4]

Section 66E the arrangement tries to cover the cases of establishment of concealed camera inside washroom, room, evolving room and the sting activity by private individual or organization. The articulation ‘in light of the current situation disregarding protection’ signifies conditions in which an individual can have a sensible assumption that their

constitution isn’t under open eye or general reconnaissance. The clarification condition for terms ‘communicates’, ‘catch’, ‘private region’ and ‘distributes’ adds precision to the arrangement for its applicability. It is the basic that this arrangement should be applied related to Section 354 A (Sexual Harassment and Punishment for lewd behavior) Section 354B (Assault or utilization of criminal force to lady with expectation to uncover). Section 354C (Voyeurism) section 354 D (Stalking) or (Following) of IPC. Such arrangement is truly amazing advance with respect to council toward controlling the digital pornography as this offense frequently promotes the offense of digital Pornography. The guilty party first gathers the culpable pictures of casualty and afterwards utilizes them for the motivations behind making pornography. Hence, the offenses covered under section 66E and digital pornography are a lot of interrelated and the viable guideline of one offense will prompt decrease in other offense.[5]

Internet technology offers access to a wide variety of useful data and limitless streams of entertainment. This facility provides enormous opportunities for pornography to be widely distributed on the internet. It also exposes users to certain risks and to hazardous materials. Moreover, since there is no single body responsible for controlling the internet, the challenge of monitoring such a distribution is further compounded. In the case of cyber-Pornography, the main issue with tracking down the accused is the problem of finding the accused. Anyone located anywhere in the world may be the victim of crime. [6]

Morality has sociological and psychological aspects. Morality is individuals’ perception due to which human beings accept certain things as good and reject certain things as bad in society. It Changes from individual to individual and from society to society. What is immortal for one is not so to others or in other society. There is no Stand basis to regulate the things



which are moral and which are immoral. So, it is up to the judiciary as sensible and wise repository of moral degree in the society. Law and morality are closely related. When there is cooperation between law and morality in the society, there will be no dispute and society will develop evenly and quick. But all morals are not enforceable by law rather we have to make a balance and accept shared morality.[7]

The Indian penal code, 1860 and the Information Technology Act, 2000 provides limitations and prohibition of certain things which are obscene. It prohibits sale, publication export, import of obscene books, pamphlets, paper writing, painting, representation and expects justification like literature, art, learning, monuments prescribe punishment. It prohibits sale of obscene objects to young person and obscene acts and songs to annoyance of others in or near any public place and prescribes punishment. It prohibits gesture or act intended to insult the modesty of a women. Whoever publishes / transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

#### **INDIAN LAWS PERTAINING TO CYBER-PORNOGRAPHY:**

Cyber pornography is neither legally recognized nor completely banned under the information technology act 2000 in India. According to the IT act, any transmission or issuing of pornographic material is considered to be illegal. The section in the IT act, 2000 which prohibits cyber-pornography with few exceptions to them are section 67 and 67A. Section 67 deals with publishing or transmission of obscene materials in electronic form. The IT amendment act 2008 included child pornography and possession of records by intermediaries. Someone who publish or transmits any obscene materials or

provokes interests to read, see the pornographic content or hear it or if its effects disturb the mental being of the person, shall be punished with 3 years' imprisonment which may even be extended to 5 years with a fine of rupees 5 lakh which may extend to 10 lakh rupees or both.

The section dealing with cyber-pornography mainly section 67A and 67B are non bailable as per section 77B of the Act, whereas others are bailable. Sections 69A authorize the central government or respective officers to issue bearings to various offices of government and negotiators to square feet to any such data which impacts the severity and respectability of India. Section 292 (2) of IPC says that "A book, handout, painting, portrayal of obscene material will be esteemed to be indecent in the event that is abusive or appeal to vulgar interest of its impact, it will be rebuffed with detainment for a period which may reach out to 2 years and with fine which may stretch out to rupees 2000.

#### **LEGAL CASE TRENDS:**

- **Tamilnadu v suhas katti :**  
Information technology amendment Act, 2008 includes retention of pornography intermediaries. Under this section who ever publish or transmit lustful content are punished with detention up to three years to five years and fine of five to ten lakhs.  
This Section got foremost importance after the landmark judgment case. State of Tamil Nadu VS suhas katti on 5 November 2004, Pursuance authenticated the reliability of electronic gadgets in sending the obscene message to the women is known as cyber stalking criminal activity.  
This was first case of the cybercrime cell Chennai. The defendant was charged for annoying, obscene and defamatory message in the yahoo message group relating to a divorce woman. The

accused at first opened a false account in the name of the victim and then sent her information through e-mails. It annoyed the victim because she had to face harrowing calls. The accused was found in Mumbai, who was traced by Chennai police, later the Chennai police arrested him immediately. On the basis of the expert witness the court held that the crime is conclusively proved and the accused was convicted and sentenced to undergo rigorous imprisonment for two to three years and to pay fine of five hundred and 469 of the IPC that is forgery for the purpose of harming reputation for the offence and 509 of the IPC that is words, gesture or acts intended to outrage /insult the modesty of a woman with one year simple imprisonment and rupees five hundred fine and for the offence 67 of IT Act, 2000 with two years rigorous imprisonment and four thousand fine. The court held that all these sentences must run concurrently. [8]

- **Avinash Bajaj Vs State:**

Avinash Bajaj was arrested for advertising sex humiliation video. The video was not passed in digital address; rather that Avinash was arrested under Section 67 of the Information Technology act. [18] A Delhi Public school boy while performing an act of oral sex with his girlfriend, captured without bringing notice to his girlfriend on his mobile phone which is to be called as MMS clip. This video clip was then forwarded by him to his friend and then his friends sent it to others. Gradually within a minute it was available to almost all users and even it was available for small prices to the roadside vendors. The clip was copied to VCD (video compact disk) for sale and distribution. Ravi Raj, an IIT Kharagpur student uploads the MMS clip which is of duration 2 minutes 37 seconds for auction on the website

named baazee.com which was India's one of the top auction websites which was owned by e-Bay. The Delhi police arrested DPS student, Mr. Ravi Raj Singh and the portals CEO, Mr. Avinash Bajaj. The counsel for the boy contended that the charge against his clients is totally false and it is very difficult to prove who was that particular person because there was no visual of his face in the clip and he prayed for bail u/s 12 of the Juvenile Justice Act, 2000 though he was arrested u/s 293, 294, 201, of the IPC, 1860 and section 67 of the IT Act, 2000.

#### **LAWS PERTAINING TO CYBER PORNOGRAPHY IN DEVELOPED COUNTRIES:**

Cyber pornography is prohibited in some countries, although it is legalized in some other countries. In United States of America pornography is constitutionally accepted by law as act of prostitution. However, child pornography is excluded from its scope. There are 3 major legislations dealing with censorship of pornographic material on the internet in the United States:

The Communication decency act (CDA) which was enacted as part of Telecommunication act of 1996, The Child online protection act 1998(COPA) and The Children internet protection act 2003 (CIPA) The CDA seek to ban the usage of an interactive computer service to forward or portray in any manner to those below the age of 18, any sort of communication that shows sexual or excretory activities in a way that is offensive. For instance, united states versus Simson case court laid down that the analysts sworn statement which portrays the pre-maturely ended exchange consulted in internet visit space for exchanging of child explicit issue which establish as adequate reason in getting court order against them.[9]

In United Kingdom the owning of any pornographic picture for individual purpose is not an offense, but the marketing or issuing of

hardcore pornography through any channel was banned until the laws were modified in 2002. The citizens of UK were free to have access to pornography except the child pornography. In UK the obscene publication 1959 has been amended by the criminal justice and public order act of 1994,(CJPOA) to prevent the spread of electronically stored data. The Australian government has put forward the regulatory framework and criminal law enforcement which prevents the production, distribution and usage of illegal pornography. In United Nations article 34 of United Nations convention of the rights of the child, 1989 states that the youngster must be kept away from all sorts of sexual misuse and sexual abuse. Strict Precautions are taken by the UN government to prevent exploitation of kids in prostitution or obscene exhibition or illegal sexual practices

#### **PYSCHOLOGICAL OUTLOOK OF PORNOGRAPHY:**

The advancement and expansion in technology and internet come up with both positively and negatively impact. It is this "INTERNET" which is irreplaceable and given more priority by adolescent in their life. Survey conducted by MSNBC (Microsoft / National Broadcasting company)in 2004states that three-fourth of men said they had downloaded erotic films and videos from the internet. 41% of the female population did as well. Those who decided to quit from pornography gave the following reason for their disinterest: satisfaction in their sex life, didn't want to betrayal to their partner, breaching of moral beliefs. Excess viewing of pornography is corresponded with sexual dysfunction like: erectile dysfunction, hypoactive sexual dysfunction and even it leads to delay in ejaculation. [10]

PPU: Problematic pornography use (PPU), is considered as hypersexual disorder which is a subtype of sexual addiction [11]. This pornography doesn't affect only the person who view erotic videos, it extends to society also such as increased prejudice against women, unreasonable hope, which may even create

unreasonable exception so it directly effects on realistic / typical sex. Pornography generates a great change in brain structure of the person who views more. One of the main effects of pornography is that in some, it leads to masturbation; the objective idea about this is to gain self-sexual satisfaction.

- **RECENT FINDINGS:**

The definition of problematic and non-problematic pornography uses among that is almost double the new adolescent is highly dependent on perspective. Pornography use is not reliably linked with mental health problems. Though, Pornography use is connected with a personalization process, sexual fulfillment and risky sexual behavior. The latest review indicates that to define pornography use as risky we need to determine whether or not it relates to compulsive sexual behavior disorder (CSBD) but when treating CSBD we must consider the specific perspective that patient hold. [12]

#### **ERA OF COVID-19 PANDEMIC IN CONSUMPTION OF ONLINE PORNOGRAPHY:**

COVID-19 pandemic has transformed the whole world. Millions of deaths and many of them unemployed, this led them to "free- time", which enforced many of them to maladaptive addiction. BBC and Netflix recorded 16 million new subscribers in the first 3 months of 2020, which are nearly double the sign-ups it saw during the final months the year 2019. [13] In 2019, Porn hub one of the world's largest pornographic video- sharing websites, received 42 billion visits roughly 5 times the world's population. Pandemic seems to have caused an even sharper and more noticeable surge in traffic on pornographic websites. Porn hub has shared information on regular basis reporting the changes and trends in the utilization of their content, showing the all the time deviation from

average traffic on average pre pandemic day.  
[14]

Psychoactive substance use and other reinforcing behaviors such as gambling, video-gaming, watching TV series or surfing the internet are often used to reduce stress and anxiety and/or to alleviate depressed mode. Although this behavior typically constitutes non problematic coping strategies, for a minority of individuals they can lead to reduced engagement in usual social interaction and other activities of daily living. As a result, the tendency to use such substance and engage in the aforementioned behaviors as putative coping strategies in crisis like the covid-19 pandemic increases considerably and may develop into habits that are difficult to break.[15] The interest in Corona virus themed porn has also increased during this pandemic in all nations. In the month of March 2020, considerably more than 1.8 million corona virus themed researches have popped up on Porn hub. Corona themed porn normally includes sex with masks, surgical gloves and hazmat suites.[16]

A spare reason for drastic increase of porn exhaustion during covid 19 national lockdown is to get deprive loneliness, depressive symptoms.

#### **STATUTORY PROVOCATION ON CYBER PORNOGRAPHY:**

1. Patrimonial Counsel: The effective medium to prevent the child from exposure to pornographic content is through patrimonial counsel. This method includes use of software which keeps under the website that contain pornographic content. Install parental control and scrutinize the kid's device regularly.
2. Credit Card ratification: A Spare medium to regulate cyber pornography is through credit card ratification, which ratify the age of the viewer and viewer

could be asked for a credit card number to verify whether the viewer is not minor.

3. Adult oriented top-level domains: The use of top-level domains may be an effective way to control pornography in the cyber world. TLD is the label which comes after "dot" in an internet address. For example, in "yahoo.com", "com" is the TLD similarly in "Wikipedia.org", "org" is the TLD. Initially, the Internet was used for military purpose and thus, there were very few purposes connected to the internet, each computer was recognized by its IP(Internet Protocol) address. Also, as the number of computers and internet users increased, the network became troublesome and thus, the necessity was felt for panning and designing a new system that used graded database structure allowed for two domains Viz. Top-level domains and second-level domains are registered under the Top-level domain itself. It would be easier to filter pornographic content if the source selects to force their registrants to register themselves only under the sector for which the website is created. For example, using the TLD "XXX" or "Sex" for adult website. This helps in cutting the pornographic content, as filtering software need not filter the keywords but only the Traffic light protocol (TLP).[17]
4. Educating the police on cyber-pornography offence for effective and quality investigation: To curb cyber pornography offences, the foremost step is to make stringent provisions related to conviction which created fear in mind of offender. This will be possible if the investigating agencies collect direct evidence against the cyber pornographic offender before the court law. The central and state government should organize course by engaging cyber experts, which provide effective

and quality investigation and evidence gathering related to cyber offences.[9]

5. Contribution of cyber in order to prevent cyber pornography: All the companies in cyber should be equipped commercially with user safety or filtering software to avoid access into cyber-pornography. It is the duty of cybercafé to inform police if they found any doubt in regards to the user.

### CONCLUSION:

A legal framework for the cyberspace was adopted in India in the shape of e-commerce act, 1988. Later on, the fundamental law cyberspace related affairs in India have appeared in the form of the Information Technology Act, 2000 which was amended in the year 2008. The Information Technology Act (IT) amends certain provisions of our prevailing laws such as Indian penal code 1860, The Indian evidence act 1872, The Bankers book evidence acts, 1891 and The Reserve bank of India Act, 1934. Besides, Cyber-pornography is not a subject of concern for India alone but it is a global issue. The world at a wide range has to step forward to curb this threat. In addition, complicating cyber pornography enforcement is the zone of legal jurisdiction. The subject of jurisdiction in cyber pornography cannot be solved spontaneously; yet a global approach in this matter is the need of our because the process of preventing a crime very importantly needs great support and collaboration of its citizens, institutions and government. Internet is a vast means of communication with wider connectivity, which is misused by lot of criminals. Internet is a tool of communication through which people especially the younger generations are using it for unlawful activities which affect their guilt less minds and degenerate their moral values. Thereby, the international body should strongly implement prohibitive standards against pornography films and also on obscene materials. This paper also recommends the government to develop swift and constructive software trackers for

parents and other legal enforcement authorities.

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