

PORNOGRAPHY: ITS STATUS IN INDIA AND A COMPARATIVE STUDY OF PORNOGRAPHY AND LAWS IN INDIA & US

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ABSTRACT

Pornography? What is it? A sin? A taboo? Probably, yes. ¹It is defined as a representation of sexual behavior in books, pictures, statues, films, and other media platforms that is intended to cause sexual excitement. The word pornography was originally defined as any work of art or literature depicting the life of a prostitute. Pornography was and is a debatable topic to discuss upon. Views on pornography are different in different countries. Its legal and moral status is different in different countries all around the world. few support the very concept of pornography and few stand against it. But in India, 90% of them believe that pornography sets a path to immortality. They believe that pornography is spoiling the culture and the values that are followed and set and it deeply affects the morality and ethics of the individual and society. And in addition, it also increases the crime rate in India. This paper talks about the effects of pornography in India and how people see it. It further deals with the pros and cons of pornography, deciding if it's a boon or a bane. When there are cons with respect to pornography, then there shall also exist laws that face the cons. Hence, further, the paper digs into the legal status of pornography in India and what all Acts and laws are brought to protect its citizens from illegal pornographic content and ends with a comparative study of pornography and laws in India and The United States of America.

Keywords: Pornography, Pornographic Content, Legal, Illegal, Information Technology Act, Indian Penal Code, Child Pornography.

INTRODUCTION

²Sex is seen as a forbidden subject in India. It has always been considered as a part of immorality, indecency, illegal etc. Taking into consideration the social norms, social behavior and morality, the Indian legal system made suitable provisions. One such provision pulled out was the criminalization of pornography. The word 'pornography' comes from the Greek

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¹Britannica, 'Pornography' <<https://www.britannica.com/topic/pornography>> accessed 14 April 2023

²Manupatra, 'Right to pornography in India' <<http://docs.manupatra.in/newsline/articles/Upload/AD469423-96F8-4A5F-AC67-B9EBE7A5E6E5.pdf>> accessed 14 April 2023

word '*pornographos*'. Where the word *porni* means 'prostitute' and *graphein* means 'to write'.³It is considered one of the major socio-ethical problems that global society is facing today. Society treats it as unethical and against the dignity of human sexuality and its divine purpose.

In India, pornography is seen as a sin. One who practices pornography is looked down on. From ancient times pornography and sex is considered immoral. They never minded practicing sex but developed disgusted feelings mentioning sex. We live in a society where talking about periods (menstrual cycle) is also felt immoral. So, it's not surprising that "pornography and sex" are put in the box of immoral to society.

Times changed once people were introduced to *Kamasutra*.⁴It is an ancient Indian Sanskrit text on sex and emotional fulfillment in life, written by Vātsyāyana. It is known as the first-ever sexual code written in the entire world. It gives a detailed explanation and interpretation of psychoanalytic principles and sexual love. Hence, in ancient times, sex wasn't seen as a sin or immoral. But as time changed, with time societal norms and morals have changed. And people, in order to fit into such societal norms, have changed their definition of morality in the case of pornography.

⁵Standing in favor of pornography was to stand in favor of civil liberties, sexual liberation and science. On the other hand, opposing pornography was repressive, reactionary, and anti-sex. Dislike of obscenity could simply be reduced to some form of religious superstition, sexual shame, or fear.

It has always been a question of whether pornography is a problem or a solution. Problems include sexual offences, rape etc. caused as a consequence of pornography, and the solutions like relieving stress by watching obscene content or pornographic content etc.

There have been different viewpoints of various feminists around the world. ⁶Two such feminists were Andrea Dworkin and Catherine Machinan. According to Dworkin, pornography is a language through which people insult women, and create a sexual dynamic

³Academia, 'Pornography: An Ethical Analysis'

<https://www.academia.edu/6530444/Pornography_An_Ethical_Analysis_PressCopy_Version> accessed 14 April 2023

⁴Simple Hinduism, <<https://simplehinduism.com/kamasutra-what-is-kama-sutra/>> accessed 14 April 2023

⁵Pamela Paul, *Pornified: How Pornography Is Transforming Our Lives, Our Relationships, and our families* (Owl Books: Henry Holt and Company, LLC 2005) <https://books.google.co.in/books?hl=en&lr=&id=xhB->

⁶International Journal of Law Management & Humanities, <<https://www.ijlmh.com/wp-content/uploads/2019/04/Pornography-in-India-%E2%80%93-A-Moral-Dilemma.pdf>> accessed 17 April 2023

seen down on, showing the brutalization of women. On the other hand, Catherine says that pornography has a lot of influence on the mindsets of people. She contends that it can also influence the belief in myths of rape. Her contention shows the negative side of pornography which was mentioned earlier i.e. leading to acts like rape and sexual abuse of women. Watching pornographic content may give rise to sexual thoughts and the urge to have sexual interaction, and in order to fulfill such urge and satisfy such thoughts, people tend to commit rape, sexually abuse women etc.

⁷Back in the fifties, pornography was relegated to dusty newsstand corners or to run down in adult theaters on the wrong side of the town. Also in the eighties, when pornography was surreptitiously, obtained on video cassettes, via mail catalogs, or watched in the back room of video stores. People during those days were ashamed of being caught watching porn. On the other hand, in all-male circumstances like bachelor parties, army stints, auto garages and prep school dormitories, pornography gained a level of acceptability, yet carried a tinge of embarrassment. Whereas today, pornography has become part of the 'popular culture'. It is no longer a superstition or an embarrassment.

AFFECT OF PORNOGRAPHY IN INDIA

Pornography is treated differently in different countries. For instance, it is held legal in countries like the United States of America, the United Kingdom, and Germany etc. and illegal in countries like North Korea, Bangladesh, Italy etc. Whereas in many countries it is allowed but with heavy restrictions. Hence, it's clear that pornography is legally, ethically and morally treated wrong in many countries over the world. It carries different aspects in different parts of the world. With specific reference to India, pornography is allowed to a certain extent, but with heavy and strict restrictions. In India, according to Indian Penal Code (IPC) and Information Technology (IT) Acts, watching pornographic content in a private space is not considered illegal, but the Supreme Court (apex court) criminalised the sharing and distribution of such pornographic or obscene content/material through a case in 2015.

Despite of the existence of masterpieces like Kamasutra and Khajuraho, people have been demanding to ban pornography in India. Khajuraho is a Hindu temple located in the state of Madhya Pradesh. ⁸It is different from other ancient temples. The walls that surround the

⁷Paul (n 4).

⁸Racquet Social, 'Should Khajuraho Downplay the Erotic Aspects of its Monuments?'

<<https://racquetsocial.com/khajuraho-what-the-heck-were-they-thinking/>> accessed 20 April 2023

temple are sculptured with erotic sculptures. The Khajuraho sculptures depict a bold sexual image that suggests permissiveness in society and a general predilection for the pursuit of pleasure.⁹At Khajuraho, nudity is spread with graphic portrayals of sex and communion. Nudity at that time, especially female nudity during those days was not seen as a sinful temptation, but rather as a symbol of female fertility and spirituality. India was extremely liberal and open about the concept of sex even before the 12th century. Sex was even taught as a formal subject back then through the representations of *Kamasutra*. But now, it's no more like that. People who lived a thousand years ago were way more permissive in their outlook than their current descendants, because ¹⁰today, these sculptures are caught in constant negotiation between conservative Indians who see nudity and sexuality as shameful and as an embarrassment of traditional values and morals. There is a very less percentage of Indians who see it as a celebration of the human body because Indians are yet to grow liberal.

In the later stages, a major legal development took place with respect to Pornography through the case of ¹¹*Kamlesh Vaswani v. Union of India (2014) 6 SCC 705*. The petitioner Kamlesh Vaswani filed a Public Interest Litigation (PIL) in the Supreme Court of India, requesting the ban of porn websites in India. On a special note, he seeks a ban on online pornography, citing various reasons like violence against women and children. ¹²He further believed that such content results in pornography addiction which corrupts and pollutes India's culture and values and becomes a 'basis for unequal treatment of women'. The petitioner argued that the availability and consumption of porn lead to '*moral and cultural pollution*' in society. The petition alleges that "*pornography cannot be considered to be a self-regarding activity because it brings sex into the public sphere*", and puts "*peace of mind, health and wellness, happiness and human potential*" at risk. The petition also alleges that pornography means '*unequal treatment of women*'. It says that allowing access to such pornographic content means allowing the degradation of women, humiliating them, and treating them as mere objects to satisfy sexual satisfaction. As a part of the judgment, in 2015 the Supreme Court said that pornographic sites cannot be blocked because such action would violate the *right to privacy* under ¹³*Article 21* of the Indian Constitution. The court believed that watching

⁹ Open Edition Journals, 'The Sacred and the Sensual'
<<https://journals.openedition.org/viatourism/1792?lang=en>> accessed 20 April 2023

¹⁰*ibid.*

¹¹*Kamlesh Vaswani v. Union of India (2014) 6 SCC 705*

¹²Manupatra, 'OUR UNCHAINED SEXUAL SELVES: A CASE FOR THE LIBERTY TO ENJOY PORNOGRAPHY PRIVATELY' <<http://docs.manupatra.in/newsline/articles/Upload/AD8AC438-666E-427C-A910-CAFDBBF50C7A.pdf>> accessed 20 April 2023

¹³ Article 21 of the Indian Constitution

pornographic content in private is the right of every citizen, which will not harm anyone and that it is not held illegal under any law passed by the parliament. And also, the reason that more than half of the adult website servers were outside India and it was not practically possible to block those sites.

Soon after the judgment of *Kamlesh Vaswani v. Union of India* (2014) 6 SCC 705, the Indian government banned 857 porn sites. The government received a lot of criticism for the ban on these sites. Later government decided to flexible the rules and directed a ban on only child pornographic content.

In October 2018, the Indian government passed an order to ban 827 websites that were detected as pornographic content-producing sites. This was the result of the *Uttarakhand Gang Rape* case, where four schoolboys raped a 16-year-old girl in school. Upon interrogation, they confessed that have got the idea to rape her after watching a porn video.

PROS AND CONS OF PORNOGRAPHY

Pornography has both pros and cons, as discussed in brief in earlier paragraphs. Though it has both aspects, the cons of pornography weigh more than the pros of pornography. While the pros of pornography reveal reasons like a stress buster, suppress of sexual desire, sex education and a few anti-pornography feminism movements, proponents of pornography believe that porn “liberates women”, the cons majorly talk about the increase in crime rate as argued by Kamlesh Vaswani in *Kamlesh Vaswani v. UOI* case. It increases crimes like rape, sexual assault, sexual harassment, human trafficking etc towards women since watching such content generates a sexual urge and in order to fulfill such urge, they tend to commit crimes. Pornography is also considered as degrading and humiliating women and questioning their morals, values and dignity, where women are treated as mere objects for the purpose of sexual acts, hence, disrespecting them. ¹⁴Viewing pornography may make a man feel confident but makes women feel less confident and insecure about their bodies. Pornography doesn't just affect women but also affects the minds of the children. Children who watch pornographic content will grow up with the thought of degrading women and start seeing women the way it shows. They tend to disrespect women and devalue them. Access to such pornographic

¹⁴Bartleby Research, ‘pros and cons of pornography’ <<https://www.bartleby.com/essay/The-Pros-and-Cons-of-Pornography-FKT2N5ZVC>> accessed 22 April 2023

content makes the children start believing that sexual act is a public act and not a private one. It tends to spread wrong information to society.

Though watching pornographic content in a private space is considered legal in India, it is felt by many that this flexibility should also not be given and watching pornographic content in private should also be banned and made illegal in India. It is argued that banning watching pornographic content in private in India will not infringe Article 21 Right to Privacy since watching pornographic content in private also causes harm to society. Because a person who watches pornographic content in private, again at the end of the day comes out into society only and shows that urge which may result in various crimes. Giving access to pornographic content means giving access to the path of crime.

LEGAL STATUS OF PORNOGRAPHY IN INDIA AND LAWS RELATED TO IT

Currently, Child pornography is completely banned in India. One cannot watch, promote or share such content. In fact, the possession of content related to child pornography is also illegal in India. *Section 13, Section 14, and Section 15 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and Section 67B of the Information Technology (IT) Act, 2000* protect child pornography. Child pornography is not just banned in India but in all countries all over the world. But general pornographic content is illegal in a few countries and legal in a few countries and legal with restrictions in a few countries. Private viewership of legally permissible Porn is allowed in India which is backed by *Article 21 'Right to Life'* of the Indian Constitution which includes *the Right to Privacy*. But on the other hand, any kind of publication, transmission, distribution, display or sale of pornographic content is not allowed and considered illegal and shall be held liable under *Section 292, Section 293, Section 294 & Section 354A of the Indian Penal Code, 1860 and Section 67,67A,67B & 66E of Information Technology Act, 2000*.

COMPARATIVE STUDY OF PORNOGRAPHY AND LAWS IN INDIA & US

¹⁵The increase in technology and usage of the internet has increased access to pornographic material very much for free of cost with great ease. The term pornography when used as an offence is not defined in any statute in India. But whereas the term obscenity is used and explained in two of the legislations namely the Indian Penal Code, 1860 and the Information

¹⁵ Geetika Sood, 'PORNOGRAPHY AND LAWS: A COMPARATIVE STUDY OF INDIA & USA' 208 LQR

Technology Act, 2000. Both these legislations consider watching pornographic content legal when done in a private space but consider it illegal when done in a public space, transmits or possesses pornographic content. It criminalised child pornography completely. Any person who watches child pornographic content privately or in public, possesses or transmits child pornographic content is held liable and is awarded punishment.

On the other hand, in the US though child pornography is illegal and banned just like in India, watching normal adult pornographic content privately or in a public space, possession of such content or transmission of such obscene content is held legal and one who practices such acts aren't held liable for any sort of punishments under the laws of the United States.

As discussed, child pornography is illegal in both India and US. In India, there is no such enactment or law which directly deals with child pornography. The laws that deal with pornography and cyber pornography in India, also deal with child pornography, like Section 67B of the *Information Technology Act, 2000* which cover or deal with the issue of portraying children in sexually explicit act or conduct.

¹⁶Section 2252(a)(2)(A) of Title 18 of The United States of America defines child pornography as a visual depiction of sexually explicit conduct involving children. Unlike in India, the USA has several laws or statutes that prohibit online child pornography: *The Communication Decency Act, 1996*, and *The Child Pornography Prevention Act, 1996*. Under Title 18 of the United States of America Code, Section 2256 and the *Child Online Protection Act, 1998*, *The Protection of Children from Sexual Predators Act, 1998* under Title 18 United States of America Code, Section 302, etc. It has also introduced the *Child Pornography Prevention Act, 1996*, and the *Children's Internet Protection Act, 2000* is one of the bills that the United States of America proposed in an attempt to limit children's exposure to pornography.

¹⁶ *ibid.*