



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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The Rise in Illegal Pornography and The Legal Remedy

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Received 16 December 2021; Accepted 03 January 2022; Published 06 January 2022

Pornography is a business that has a global market, its audience spanning multiple nationalities and borders, and has witnessed unsurprisingly exponential growth over the span of a few years, with the advent of technology. The porn industry functions across borders and has links even to the underworld mafias, giant multi-national companies, and big movie actors and producers, who happen to invest in porn filmmaking in order to pool an extra source of income for themselves and their families. Mostly, the victims of illegal pornography are women and young innocent children. Women and children become very easy targets of illegal pornography for they are physically weaker and are made emotionally vulnerable to be pushed into the dark world of sexual abuse and the trauma associated with it. The Covid-19 pandemic heightened the extend of the various cyber-crimes largely affecting women and children. While people were and are still struggling to survive with the covid-19 virus spreading rapidly amongst the entire human population, there is another virus of cyber-crime advancing itself into the ecosystem of the internet resulting in the rise of illegal pornography in India. In this article, we are going to focus on what is illegal pornography and how does it function despite being largely restricted or prohibited especially in India and the world. We will also throw some light on the history of illegal pornography, how prevalent it still is in today's times, and will also explore the various legal remedies available to the Indian citizens at large in order to protect themselves from this dreadful creation of mankind.

Keywords: *illegal pornography, cyber-crime, legal remedies, laws, internet.*

INTRODUCTION

The word pornography¹ is derived from the Greek word “porni” meaning “prostitute” and “graphein” meaning “to write” and it was originally defined as any work of art and literature that depicts the life of a prostitute.² Pornography is basically the explicit portrayal of sexual activities between the sexual subjects (in words, images, or videos) with the intention of sexually arousing, exciting, and satisfying its viewer or reader. Porn is the short form of the word pornography.³ The subject matters mentioned above are the ones who participate and indulge in sexual intercourse on the viewer's screens in the case of digital porn. There are numerous categories of porn available on the world wide web such as romance, eroticism, anime, softcore and hardcore et cetera; but the ones that are mostly viewed feature women and children in them, who are practically mistreated and brutally harassed by men featuring with them alongside in the videos.

Pornography can also be defined as an advertisement of the display of a man’s and woman’s sexual organs. Sexual illustrations and depiction of human genitals have been in existence since time immemorial. Since the prehistoric age; coins, walls of temples, rock arts, and a wide collection of artifacts like stones and pebbles carried such explicit imagery. India, in specific, has a long list of temples depicting erotic art and sculpture over its walls and designs. ⁴The Khajuraho Temple in Madhya Pradesh, Sun Temple in Konark, and Virupaksha Temple in Karnataka are to name a few. Various ancient mythological texts and folklores, like those of Greeks and Mesopotamians, also contain titillating graphics, visuals, and textual accounts of sexual interactions between opposite and even the same sexes.⁵ Gradually, from the 19th century, with the progression towards the industrialization of humanity, photographic porn came into the spotlight. From the early 1920s, porn filmmaking began to expand its footing

¹ ‘Pornography’ (Merriam Webster) <www.merriam-webster.com/dictionary/pornography> accessed 01 December 2021

² *Ibid*

³ *Ibid*

⁴ Mukta Manshi, ‘7 Sex Temples of India: Idolising Sex through Erotic Sculptures’ (Holidify) <[7 Sex Temples of India: Idolising Sex](#)> accessed 1 December 2021

⁵ *Ibid*

into the adult entertainment industry and by the 1960s it started to boom and grapple the attention of the masses.

With the rapid development in science and technology, the internet has become a domestic commodity, easily accessible to everyone and at any time, including a five-year-old. Internet is full of information of all kinds, good and bad. The information flooded on the internet can also be termed to have the potential to damage and corrupt the minds of its accessor or viewer, independent of their age or maturity. ⁶India is the third-largest consumer of pornographic content,⁷ a step higher from its previous position at fourth. ⁸Pornhub, a very famous pornography website reported that the Indian audience generated the maximum mobile traffic on their web page. With the easy accessibility of cheap internet data connections, pornography, especially illegal pornography is on a tremendous rise. Porn today far away deviates from the ethical porn standards that the masses had once welcomed.⁹

Today, the porn industry acts as means of economical profit for many who invest in its making, propagating, and at last uploading on the internet. There are practically millions of websites that offer free access to obscene content to anyone wishing to view them on their platforms, even without confirming the age of the viewer. In the present times, the concept of putting up an explicit picture of someone known, for example of a former lover on the internet is in practice. This is done out of fun or can be termed as a type of vengeance the perpetrator tries to get from the victim. Mostly, women and young girls are abused online in this hideous way. In many paid public accommodations like hotels or hostel rooms, hidden cameras are installed in the rooms and bathrooms of the guests in order to take non-consented pictures or videos of them. Even the dressings rooms in shopping malls and complexes are known to be practicing this tactic of illegally capturing the customers in obscene ways. These illegally captured materials are later on sold to many pornographic websites, thus generating an

⁶ Souvik Ray, 'Top 10 Most Porn Watching Countries in the World: India on 3rd!!' (*Indiatimes.com*, 9 September 2021) <[Top 10 Most Porn Watching Countries in the World: India on 3rd!!](#)> accessed 01 December 2021

⁷ *Ibid*

⁸ Aarzu Khan, '50% Of Online Porn Content Consumers In India Access Porn Websites From Their Smartphones [STUDY]' (*dazeinfo.com*, 22 November 2014) <[50% Of Online Porn Content Consumers In India Use Smartphone To Access Websites \[STUDY\]](#)> accessed 01 December 2021

⁹ *Ibid*

unwarranted income for the offender or are stored on the devices of the offender for self-pleasure. These illegally made or occupied explicit tapes can later on also be used by the offender to blackmail and harass the victims in order to extort money or force sexual advances from them.

The very recent controversy relating to ¹⁰Raj Kundra, a businessman, a film producer, and also a husband to the famous Bollywood actress Shilpa Shetty was in news for quite some time. He was arrested for allegedly being a key conspirator in a case pertaining to the production and publication of pornographic films through a mobile application named 'Hotshots' and offering subscriptions to it correspondingly in a similar way as the over the top (OTT) platforms do.¹¹ The allegations against Kundra include the development of a mobile phone app used for publishing porn, management and maintenance of the same, supervising its functioning and monetary dealings through a WhatsApp group, and setting up of another company for protecting 'hotshots' videos from duplication and having an apprehensively large amount of global cash transfers in his bank accounts.¹² Kundra was booked under various sections of the Indian Penal Code (IPC) including section 34¹³ (common intention), 354 C (voyeurism)¹⁴, 292 (relating to the sale of obscene books)¹⁵, 293 (relation to the sale of obscene objects to young person)¹⁶, 420 (cheating and dishonesty)¹⁷ along with relevant sections of the Information and Technology Act, 2000¹⁸ and The Indecent Representation of Women Prohibition Act, 1986¹⁹.

In the past, there have been many such cases involving not only ordinary people but even celebrities. Cases like these prove that not only porn and pornographic material is illegally created but it is also illegally promulgated over the internet at a bare minimum to no cost at

¹⁰ Mohamed Thaver, 'Explained: Why Raj Kundra was arrested in connection with an adult film racket' (*Indian Express*, 14 September 2021) <[Explained: Why Raj Kundra was arrested in connection with an adult film racket | Explained News](#)> accessed 01 December 2021

¹¹ *Ibid*

¹² *Ibid*

¹³ Indian Penal Code 1860, s 34

¹⁴ Indian Penal Code 1860, s 354C

¹⁵ Indian Penal Code 1860, s 292

¹⁶ Indian Penal Code 1860, s 293

¹⁷ Indian Penal Code 1860, s 420

¹⁸ Information and Technology Act 2000

¹⁹ Indecent Representation of Women Prohibition Act 1986

all. Henceforth, there needs to some major legal remedy available to everyone who finds themselves to be exposed to the pornographic world without their consent and will.

LEGAL REMEDIES IN INDIA

The Government of India in recent years have brought in many proposals and amended a number of existing laws in India to monitor and keep a rigorous check on the content displayed over the internet on various social media and non-social media platforms with the intention of curbing the extent of cyber-crimes, with its measures including even the setting up of an ombudsman for peeking into the contentious issues arising on the various internet platforms.²⁰ Legislations to regulate cyber pornography in India include²¹ the Information Technology Act, 2000, Indian Penal Code (IPC), Indecent Representation of Women (Prohibition) Act, 1986, and Protection of Children from Sexual Offences Act, 2012 (POSCO). There are multiple questions that need to be answered such as; Is porn legal in India? Is watching and storing ethical pornography content on one's device for personal use is considered a crime or not? How can a layman over the internet differentiate between legal and illegal sexual content available on it? Let us now try to answer these questions while going through the various legal remedies available to us against illegal pornography in India one by one.²²

THE INFORMATION TECHNOLOGY ACT, 2000

²³The government of India had imposed a ban on 857 pornographic websites on July 31st, 2015, under **section 79(3)(b) of the IT Act, 2000**²⁴. Under this guideline, the government strictly warned the intermediaries or the Internet Service Providers to take down any content circulating on their respective platforms that were obscene or grossly vulgar in nature or were harmful, radical, objectionable, or blasphemous and had the potential to hamper the

²⁰ OB Bureau, 'What Defines Pornography? Know The Law Against It In India' (*Odisha Bytes*, 21 July 2021) <[What Defines Pornography? Know The Law Against It In India](#)> accessed 01 December 2021

²¹ *Ibid*

²² *Ibid*

²³ Pujitha G, 'Legality of recent ban on Pornography in India' (*iPleaders*, 7 September 2015) <[Legality of recent ban on Pornography in India](#)> accessed 01 December 2021

²⁴ Information Technology Act 2000, s 79(3)(b)

sovereignty and integrity of the nation.²⁵ The ban was widely criticized as it was said to be interfering with the fundamental rights of the citizens²⁶ but the government justified the ban by stating that it was being imposed as a form of “reasonable restrictions” upon the fundamental rights under Article 19(2)²⁷ of the constitution. Later on, the government lifted this ban partially and issued a fresh version of the order banning only those websites that hosts child pornographic material.²⁸

The²⁹**section 67A of the IT Act,2000**³⁰ states the punishment for publishing or transmitting obscene material³¹ in electronic form³²;

1. The publication includes uploading the content on a website or on any social media platform like messaging apps where a third party can have access to it in any way.
2. The transmission includes sending or circulating any explicit images or visuals over messaging apps or emails or through any digital means.
3. Causing to be published or Transmitted means that here the social media intermediary will be held liable by using whose platform the offender has uploaded and circulated the content. The Intermediary guidelines under the IT act put the onus on the intermediaries to keep a check on what content is put up on their platform and also exercise due diligence with utmost care in avoiding any types of mishaps. The new amendments to the Intermediary guidelines have also led to the appointment of the nodal contact officer and a grievance redressal officer by giant social media networking firms like Twitter and Facebook, who will be looking after the complaints received by the respective users of the platform and respond within a 24 hours-notice period and resolve the issue at the earliest.³³

²⁵ Pujitha (n 23)

²⁶ *Ibid*

²⁷ Constitution of India, art 19(2)

²⁸ *Ibid*

²⁹ Puneet Bhasin, ‘Cyber Pornography Law in India- The Grey law decoded’ (*iPleaders*, 5 March 2015) <[Cyber Pornography Law in India- The Grey law decoded - iPleaders](#) > accessed 01 December 2021

³⁰ Information Technology Act 2000, s 67A

³¹ Puneet Bhasin (n 29)

³² *Ibid*

³³ *Ibid*

Any violation under section 67A of the IT Act will result in punishment of 3 years with a fine of up to 5 lakhs and a subsequent conviction will result in imprisonment up to 5 years and a fine up to rupees 10 lakh.

Section³⁴ 66E of the IT Act, 2000 provides punishment for the violation of the privacy of an individual. The means of violation include someone who intentionally or knowingly captures, publishes, and transmits the image of the private area of a person without his or her consent. A convict under this section can be punished with imprisonment that may extend to 3 years or with a fine that can be a maximum of 2 lakh or with both.³⁵

Section³⁶ 67B of the IT Act, 2000 is the bedrock of the cyber laws in India. The amendment of this section in 2008 led to the incorporation of a specific provision dealing with the criminalization of child pornography in the country. First-time offenders under this section will be awarded imprisonment of five years and a fine of 10 lakh rupees,³⁷ whereas, subsequent offenders will receive a 10 years term of imprisonment along with the fine of 10 lakh rupees. Under this law, any person who has not attained the age of 18 is a child.³⁸

THE³⁹ INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986

This act prohibits the indecent or objectionable representation of women through advertisement or publications, writings, paintings, figures, or any other manner that may amount to a vulgar characterization of women. The law further states that nobody should take part or indulge in publishing or causing to publish or exhibit any form of advertisement that may contain graphics, visuals, audio, or video amounting to the indecent representation of women in any form.⁴⁰ Any person found guilty under this law shall be liable for punishment under first conviction itself with imprisonment that may extend to two years and a fine of two

³⁴ Information Technology Act 2000, s 66E

³⁵ *Ibid*

³⁶ Information Technology Act 2000, s 67B

³⁷ *Ibid*

³⁸ *Ibid*

³⁹ Indecent Representation of Women (Prohibition) Act 1986

⁴⁰ *Ibid*

thousand rupees. Upon second or subsequent convictions the imprisonment may extend up to 10 years and the fine may extend up to 10 lakhs.

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (POSCO)

POSCO is one law that has been formulated solely to protect children from sexual offenses of all kinds. ⁴¹There has been a rise of almost 400% in cyber-crime cases committed against children in the year 2020 itself cites a report from NCRB (National Crime Records Bureau). This act has been formulated keeping the interest of safeguarding the children from all forms of sexual abuse, whether in the offline or online world. There are various sections under this law that deal with types and degrees of offenses committed, including child pornography.⁴²

Section⁴³ 14 of POSCO Act, 2012 strictly criminalizes the use of children for the creation of pornographic content in any form of means or media,⁴⁴ including the portrayal of a child in an indecent objectionable manner (showing off their private organs) or in the stimulation of sexual organs or engaging in actual sexual intercourse.⁴⁵ The offender under this section will be awarded with a jail term of at least five years and with a fine depending upon the degree of commitment to the crime. The subsequent conviction will lead to an imprisonment of seven years and a fine.

Section⁴⁶ 15 of the POSCO Act, 2012 makes the storage and possession of child pornography illegal. Under this section, the circulation, promotion, and display of any such material in any manner is also strictly prohibited and is termed illegal.⁴⁷ The only exception under this section is only if the possession of such material is for reporting it to the authorities or presenting it as

⁴¹ Press Trust of India, 'Over 400% rise in cyber crime cases committed against children in 2020: NCRB data' (*Economic Times*, 14 September 2021) <<https://economictimes.indiatimes.com/news/india/over-400-rise-in-cyber-crime-cases-committed-against-children-in-2020-ncrb-data/articleshow/87696995.cms?from=mdr>> accessed 01 December 2021

⁴² *Ibid*

⁴³ Protection of Children from Sexual Offences Act 2012, s 14

⁴⁴ *Ibid*

⁴⁵ *Ibid*

⁴⁶ Protection of Children from Sexual Offences Act 2012, s 15

⁴⁷ *Ibid*

evidence in the court of law. This section also prescribes the punishment of three to five years to anyone who stores child pornographic material for commercial use.⁴⁸

CONCLUSION

Porn today is freely, widely, and easily available to everyone in society than ever before. The youthful generation is thus able to access it even more quickly and even illegally than ever before. Watching ethical porn for casual self-pleasure occasionally is not termed illegal and is harmless. But, a constant habit of engaging oneself in pornographic pleasure can prove to be detrimental to one's peace of mind and negatively impact their intellectual growth and development. Research shows that an unhealthy addiction to porn has the potential to damage an individual's mind and make him grow fonder of unemotional and even unconsented sex. Porn has the ability to corrupt one's morality and mentality in a threatening manner. Most of the pornographic material happen to display women as objects of sexual pleasure for men and this is not healthy for a society that is constantly struggling and battling to establish gender equality and is trying tirelessly to reduce the unprecedented amount of violence being committed against half of the humanity, that is, women. Pornography is a very subjective matter and the enjoyment of the same is a personal choice but this personal choice and freedom of an individual is also accompanied by a set of reasonable restrictions and therefore one's personal enjoyment should not and never become a hazard to society and should not disturb the balance of law and order existing within the country. The current existing laws of the country to curb the rise of illegal pornography may not be entirely sufficient but it surely paves the way to justice for any victim of it. Illegal pornography is now as common as picking pockets in crowded areas and so one should definitely acquaint itself with the legal remedies discussed here in this article and be aware of the threats and dangers that may befall them in this highly technological world that can be referred to as the internet age.

⁴⁸ *Ibid*