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## Pornography: Legal and Ethical Aspects

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*Pornography has been an area where conflicting values of liberals, legal moralists, and feminists have always existed, and hence creating laws in this area has not been an easy task. All three are forming a triangular conflict, with each group present on one corner of the triangle, not ready to find a middle ground. Liberals argue that restricting pornography is equivalent to curtailing the freedom of speech and individual Liberty. On the contrary, legal moralist advocate that pornography is inherently immoral and does not or cannot lead to anything moral or beneficial for society. Feminists are neither concerned with liberalism nor with legal moralism, with how pornography affects individual women, portraying them as mere sex objects. Problematic pornography use has become rampant. This article addresses pornography as a social, ethical, legal, and moral issue, especially for the young minds exposed to it. It further studies the harmful effects it has on its consumers, its current legal status in India, and how we can remedy this modern issue.*

**Keywords:** *pornography, liberal ideology, freedom of speech, liberty, moral values, society.*

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### INTRODUCTION

With the advent and advancements in photography, books, films, printing, and other media. pornography and its distribution have become more robust. Since it is thought that pornography has the potential to deprave and corrupt both kids and adults, as well as lead to the commission

of sexual offences, it has long been the subject of moral and licit condemnation. Pornographic material distribution, consumption, and possession are all on the ascension. Because of pornography, sex has become exorbitantly commercialized and the subject of our attention. This Commercialization has further complicated the process as the distributors and creators are solely focused on increasing and generating more profits, regardless of its harmful effects (when used incorrectly).

Some argue that pornography is not a threat but freedom of expression and thought. However, such Rights in all civilized societies are qualified and can't be used if they're harmful to society at large. Due to human nature and their psychology of reward and pleasure, Pornography is very addictive. Everyone who is exposed to it has the danger of not only consuming it excessively but eventually becoming dependent on it. Thus, corrupting them. Therefore, it will not be wrong to compare pornography with drugs. Just like drugs offer some benefits, so does pornography. However, the drawbacks outweigh the few benefits.

*'Pornography is an inherently addictive form of media that inevitably promotes compulsivity and dysregulation.'*

## **DESCRIBING PORNOGRAPHY AND ITS ORIGIN**

The word pornography is constituent of two words "porni" meaning "prostitute" and "graphein" meaning "to write". The whole idea consequently denotes "any work of art or literature that depicts the existence of prostitutes. Several definitions of pornography have evolved.

*"They range from any depiction of uninhibited nakedness or sexual activity to depicting women as limited beings with restricted sexual presence subservient to specific male desires".<sup>1</sup>*

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<sup>1</sup> 'Pornography' (*The Encyclopedia of World Problems & Human Potential*, 08 March 2021) <<http://encyclopedia.uia.org/en/problem/136823>> accessed 16 November 2022

As Justice Stewart in *Jacobellis v Ohio* rightly said, "I can't define pornography, but I know it when I see it."<sup>2</sup>

For this article, pornography is defined as the manipulative use of sexually explicit content to make money and exploit the physiological human need to gain personal benefits. It is therefore an abuse of human sexuality and dignity. It is a type of sexual exploitation in which written, graphic, or other forms of communication are used to arouse sexual desires of a particularly lewd nature. Obscenity is a natural tendency of the work.<sup>3</sup> The origin of pornography is unknown as it was never considered worthy of being transferred down to generations. The 1986 Report of the Attorney General's Commission on Pornography (AGCP), for example, concluded that "the history of pornography remains to be written."

However, some evidence of pornography is found in ancient Greece and Roman culture. The first ever modern version of Pornography emerged in Europe in the 18th century in the form of Fanny Hil or Memoirs of a Woman of Pleasure and "French Postcards" etc. In today's world pornography has become widespread, it can be found in the forms of books, magazines, photographs, films, television, and all other means of communication. This widespread availability has also given rise to many thought groups debating the ethical aspects of pornography.

## **ETHICAL ASPECT OF PORNOGRAPHY**

Ethically pornography is a debated topic. Broadly one can classify them into three groups:

- Moralists
- Liberals
- Feminists

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<sup>2</sup> West & Caroline, 'Pornography and Censorship' (*The Stanford Encyclopedia of Philosophy Archive*, 22 September 2022) <<https://plato.stanford.edu/archives/win2022/entries/pornography-censorship/>> accessed 16 November 2022

<sup>3</sup> Pornography (n 5)

Traditionally moral and religious conservatives had advocated that pornography is socially and individually corrupting therefore it should be banned. They use the principles of legal moralism and legal paternalism as arguments. Legal moralism means that when someone in society does something which is Offensive & harmful to the community at large and is devoid of decency and morality, the state has the power to enforce the community's moral convictions. Legal paternalism means that if a mentally competent person is doing something harmful to themselves, the state is entitled to interfere with their freedom for their benefit. Liberals defy both Legal moralism as well as legal paternalism and argue that the use of pornography is a right of freedom and freedom of expression. Three basic arguments have historically been used by liberals to support the right to pornography.<sup>4</sup>

- Freedom of speech or expression (free speech defence);
- Right to privacy (moral independence);
- Pornography is comparatively harmless.

Liberals do not commit to free speech and privacy as absolute rights, rather most liberals are of the view that these rights are subject to reasonable restrictions. Feminists are concerned with how pornography harmfully affects women. They typically distinguish between "pornography" and "erotica" (both of which are a sub-category of sexually explicit material). Erotica is sexually explicit material based on equality which shows women as equal, consenting partners. On the other side, "pornography" refers to a kind of sexually explicit content that encourages the subordination of women by depicting them as being forced, abused, dominated, or otherwise degraded.

Few liberals agree of pornography hurts women and on increasing gender discrimination, however, they argue that the right to freedom of speech is superior to the right to equality for women. So, if we have to choose between any one right, we should choose the right of freedom of speech. This argument is heavily criticized. The debates on pornography are a hot topic and no middle ground has been found between the diverse groups. Even though, all debates exist

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<sup>4</sup> West & Caroline (n 6)

simultaneously in today's world but the critical issue to address here is "how is pornography problematic"? What are the legal implications of it? And how can we resolve the problematic aspects of pornography?

## **PROBLEMATIC ASPECTS OF PORNOGRAPHY**

The pornography industry is exploitative and harmful. Most Of the sellers are solely concerned with increasing their profits, generating revenue, or getting other personal benefits. In 2006 alone pornography industry had made 12 billion dollars more than any of the most famous agencies like ABC, NBC, and CBS combined.<sup>5</sup> As of today, at least 30,000 people are consuming porn at any given second. The industry grows so fast that agencies can't keep up with the latest statics on pornography.<sup>6</sup> Pornography has now become so widespread that it's called the "new drug".

The Indian porn industry is even more complex, unruly, and unmanageable. The industry is completely unregulated. There is little to no sex education for young people in school and the topic is considered taboo (hence no one talks about it at home with their parents). This unawareness, combined with the curiosity (of young people) leaves the youth more vulnerable and exposed to the porn industry-leading them to have a mistaken image of sex as something violent, related to perversion, and exploitation of others.<sup>7</sup> It has many other detrimental effects on people of all ages such as

- Increased hostility and diminished sensitivity to women.
- Users are finding it harder and harder to make the connection between sex and emotion.
- Seeing women as promiscuous, thoughtless objects, sex addicts, and inferior beings.
- Negative impact on closeness, sexual satisfaction, and relationship satisfaction.

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<sup>5</sup> 'Pornography Statistics' (*Family Safe Media*) <[http://www.familysafemedia.com/pornography\\_statistics.html](http://www.familysafemedia.com/pornography_statistics.html)> accessed 16 November 2022

<sup>6</sup> Franklin White, 'Pornography addiction statistics' (*Key Loggers*, 23 April 2022) <<https://keyloggers.mobi/pornography-addiction-statistics/>> accessed 16 November 2022

<sup>7</sup> Prof. (Dr.) Vijay Nagpal & Sushma, 'Pornography Laws In India' (*Law Finder Live*, 11 May 2015) <<https://www.lawfinderlive.com/Articles-1/Article3.htm?AspxAutoDetectCookieSupport=1>> accessed 16 November 2022

- Negative sexual behaviours, but also related to binge drinking behaviours and drug use.<sup>8</sup>
- Evidence reveals a high correlation between porn addiction and psychiatric conditions, specifically mood, anxiety, and personality disorders.<sup>9</sup>
- Lower levels of life quality and more depressive symptoms.
- Pornographic usage among teenagers, particularly that found online, is associated with worse levels of social integration, an increase in conduct issues, higher levels of delinquent behaviour, a greater prevalence of depressive symptoms, and lower levels of emotional attachment to caregivers.<sup>10</sup>

Besides its harmful effects on an individual, pornography is also associated with many societal issues such as child porn, obscenity, indecent art, prostitution, the infantilization of women, and the depersonalization of sex, etc. Being harmful both at individual and societal levels, pornography is considered immoral, unethical, inappropriate, sinful, and corrupt. However, in today's world people follow laws more than morality, so let us have a look at the legal status of pornography.

## LEGAL STATUS OF PORNOGRAPHY

Pornography has long been a source of contention for authorities. The introduction of the Internet has exacerbated the problem. There is a need for education and control to temper its pernicious influence without being unduly conservative or authoritarian. United Nations sustains developmental goals namely "good health & well-being," "quality education" and "gender equality" all relevant to pornography and measures to control this evil. There are many international organizations such as:

- End Child Prostitution, Child Pornography, and Trafficking of Children for Sexual Purposes (ECPAT)

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<sup>8</sup> Christina Camilleri et al., 'Compulsive internet pornography use and mental health: A cross-sectional study in a sample of university students in the United States' (*Frontiers*, 12 January 2021)

<<https://www.frontiersin.org/articles/10.3389/fpsyg.2020.613244/full>> accessed 16 November 2022

<sup>9</sup> 'Porn addiction' (*Psych Guides*) <<https://www.psychguides.com/behavioral-disorders/porn-addiction/>> accessed 16 November 2022

<sup>10</sup> Pornography (n 5)

- International Academy of Sex Research (IASR)
- Centre international de formation et de recherche en sexualité (CIFRES)
- Sexaholics Anonymous (SA)
- International Association for the Study of Sexuality, Culture, and Society (IASSCS)
- Society for the Scientific Study of Sexuality (SSSS) etc.

They are working to curb pornography and taking the appropriate measures to resolve this issue. The production and marketing of sex are now legal in many Western nations (such as Denmark, Germany, the United States, and the Netherlands), yet prostitution – another sex act done for pay – may still be illegal in some of these nations.<sup>11</sup> In terms of the Indian context, there is a dearth of studies on pornography's negative impacts. In India, there are also no clear regulations governing pornographic material. Privately watching porn is not illegal, but keeping or disseminating photographs of child sexual abuse, rape, or violence is punishable.<sup>12</sup>

Watching porn falls under reasonable restrictions under Article 19(2) of the constitution of India, which allows the state to impose “reasonable restrictions” on its workout “in the interests of the sovereignty & integrity of India, the safety of the State, friendly relations with foreign States, public order, morality or about dislike of court, defamation to an offence”.<sup>13</sup> Even though the current laws of India neither define "pornography" nor are they enough to get rid of pornography, they do limit the show of sexually illicit content. Current legislations dealing with the topic are:

- The Indian Penal Code, 1860
- Information Technology (IT) Act 2000
- Protection of Children from Sexual Offences (POCSO) Act 2012
- Women’s Indecent Representation (Prohibition) Act of 1986 (IRWA)

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<sup>11</sup> *Ibid*

<sup>12</sup> Joshua B. Grubbs, ‘Pornography Problems Due to Moral Incongruence: An Integrative Model with a Systematic Review and Meta-Analysis’ (*Springer Link*, 03 August 2018) <<https://doi.org/https://doi.org/10.1007/s10508-018-1248-x>> accessed 16 November 2022

<sup>13</sup> Ankur Singhal, ‘Legal Status of Pornography in India’ (2018) 1(2) *IJLMH* <<https://www.ijlmh.com/wp-content/uploads/2019/03/Legal-Status-of-Pornography-In-India.pdf>> accessed 16 November 2022

Section 79 of the IT act makes it mandatory for internet service providers and distributors to do the due diligence on the content they're sharing; they shall inform their users that no such content is allowed to be produced and distributed via their service. The Indian Penal Code, 1860 (sections 292 & 293), The Young Persons Harmful Publication Act, 1956, and the Indecent Representation of Women (Prohibition) Act, 1986 stop the distribution of obscene material.

People under the age of eighteen are protected by the POCSO Act 2012, which specifically bans both the use of minors for pornography as well as the keeping of pornographic material involving children. Failure to comply with the provisions results in imprisonment, fine, or both. Women are protected under the IRWA Act of 1986, which bans the publishing and distribution of any type of content "that contains indecent representation of women in any form." The important thing to note here is that in all of the bans of the aforementioned law "obscene material", therefore a question that should naturally arise in one's mind is " what is the test for determining whether something is obscene or not? The test used in India is the community standard test. It was laid down in *Aveek Sarkar v State of West Bengal*.<sup>14</sup>

The problem here is that even though laws exist banning pornography, there is still lacking in the execution of these laws. A young teenager can easily search and find or even children (accidentally) come across such obscene material. It's as simple as writing xxxx on Google search and all kinds of material pop up. Even on websites like solar movies etc., there are provocative images put up as advertisements. This issue has now become a global pandemic and is required to be overcome before it rots the sexual and mental health of our coming generation. Such addictive consumption is by no means good for young or adults.

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<sup>14</sup> *Aveek Sarkar & Anr v State of West Bengal & Ors* (2014) 4 SCC 257



## RECOMMENDATIONS

There is much discussion on how the authorities should regulate the astronomically immense business of pornography, seesawing between freewheeling libertarianism and heftily ponderous-handed censorship.<sup>15</sup> Here are a few suggestions:

- Implementation and execution of current laws.
- Security checks are to be put on all websites.
- Strict cyber laws regarding the putting up of such material.
- Banning of advertising such obscene material.
- Separate commission/ govt. Organization to be constituted whose duty will be to monitor such cases quickly, vigilantly with caution, and make sure no further incidents occur.
- Strict protocols are to be introduced for websites.
- Awareness campaigns informing parents and children about such harmful websites and practical ways to avoid them.
- Workshops in schools and colleges to show the harmful effects of pornography on teenagers.
- Rehabilitation of the young & adults who've become addicted to it.
- Help centres to guide pornography addicts on how to navigate through the whole situation, to provide all help and support they need during the rehab process.
- Increasing awareness and training families of addicts on how to oversee them and support them in recovering.

## CONCLUSION

The unsettled debate between liberals, moralists, and feminists and the ambiguous and many times insufficient laws on pornography has caused this pandemic where so many have gotten

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<sup>15</sup> Rachel L. Wagley, 'Pornographic Ethics' (*The Harvard Crimson*, 28 March 2011) <<https://www.thecrimson.com/column/democracy-of-the-dead/article/2011/3/28/porn-pornography-moral-doeful/>> accessed 16 November 2022

affected and many more have been left vulnerable and exposed to it. This virus needs containment before it swallows the right of more people to have a healthy sex life and a healthy mind. Debating on the topic and choosing sides will not help the world, trying to find solutions to the problematic aspects of porn is a need of time and should be given due attention by authorities and governments. Given the negative correlation between exposure to pornographic imagery on the Internet and levels of genital and sexual esteem, as well as the link between pornography use and inferior quality of life, depressive and anxiety symptoms, it is crucial to educate students about the dangers of problematic pornography use. Young people would benefit from gender-specific discussions to encourage sexual health and involvement in media literacy education to change attitudes about pornography.