
PORNOGRAPHY IS LEGAL OR ILLEGAL IN INDIA?

Ms. Riya, Mody University of Science and Technology

ABSTRACT

This Research paper focuses on the current situation regarding the legal status of pornography in India. In the digital age, the internet has become an integral part of our lives, providing an enormous platform for content consumption. Unfortunately, alongside the myriad of valuable information, there is also an abundance of explicit and adult content available. This raises concerns about the legality of abstracts on pornography websites in India, a nation known for its conservative values and stringent laws. On the internet, adult entertainment is a significant industry. The order says that comfortable hosted on porn sites relay to morality & decency, therefore, subject to “reasonable restrictions” on the Fundamental Rights to freedom of speech & expression. The Supreme Court’s observation that “appropriate steps” were wanted against pornographic sites. In this research paper, we will delve into the legal landscape surrounding this issue and explore the arguments for and against their legality.

Based on the research methods, researchers would like to conclude that it is time for the relevant authorities, legal experts, jurists, and the general public to talk about it and come up with solutions. These solutions would most likely involve new legislation or better enforcement of existing provisions to ensure that the state is ultimately responsible for monitoring and enforcing the laws pertaining to pornography in India in order to put an end to the undesirable practices.

Keywords: Pornography, Effect, Impact, Legality, Rights, Laws

1. Introduction

The reporting or depiction of sexual acts in books, films, or other media with the intention of arousing sexual desire is referred to as pornography. This includes, among other things, pornographic websites, computer-generated pornography, and downloading and sharing pornographic texts, movies, images, and other media via the internet. To put it plainly, viewing porn privately in India is not illegal under Indian criminal laws, but there are some restrictions on this freedom that the Indian judiciary has repeatedly established. Since there isn't a clear rule in India that forbids people from watching porn in private, there is some ambiguity around the legality of doing so. However, the Information Technology (IT) Act of 2000 and the Indecent Representation of Women (Prohibition) Act of 1986 make it unlawful to produce, distribute, or sell pornographic content in India.

Pornographic material cannot be published or transmitted over the internet, according to the IT Act of 2000, which regulates online content. The statute also gives the government the authority to ban websites that are discovered to include pornographic content.

However, have criticized these initiatives, claiming that they infringe upon the right to free speech. while it is not specifically illegal to view porn in India, it is unlawful to produce, distribute, and sell porn, and the government has taken steps to restrict access to pornographic materials on the internet. When viewing such stuff online, it's best to proceed with caution and be informed of the legal ramifications of owning and disseminating pornographic material.

1.1 Aim and Objective of the Paper

The research paper aims to understand the legal framework of pornography in India. This paper talks about the legality of pornography and prevention of indecent representation of women through internet sources.

1.2 Scheme of the Paper

The research paper is divided into Five different Parts:

The First part talks about the Introduction.

The Second part talks about the Pornography and its Effects & Impact on society.

The Third part talks about is it ok to view porn privately .

The Fourth part talks about the Legal framework of pornography.

The Fifth part talks about the case laws.

The Sixth part is the conclusion of the paper.

1.3 Methodology of the Paper

The research methodology used for the present research paper is a traditional doctrinal research method. The information was sought from the available literature by referring to articles, journals, books, etc.

2. PORNOGRAPHY

Pornography is precisely defined as "relating or presenting sexual acts in arranged to cause sexual stimulation through books, films, etc."¹ This would include pornographic websites; computer-generated pornography; and downloading and sharing pornographic texts, images, videos, and other content via the internet. On the internet, adult entertainment is a significant industry.

2.1 EFFECTS OF PORNOGRAPHY

- Research has shown that attitudes and behaviors that can harm individual users and their families are influenced by pornography and the messages it conveys.
- Many people watch porn in secret, which breeds dishonesty in marriages and, in certain situations, can result in divorce.
- Pornography also encourages adultery, prostitution, and unrealistic expectations, all of

¹ Achash Darling, Is Pornography a crime in India, (June 25 , 2021), www.legalserviceindia.com.

which can lead to risky immoral behavior.

- A portion of the deceptive messages propagated by a sexualized culture.
- Having sexual relations with anyone, in any situation, is advantageous and does not have any negative consequences.
- Women's only responsibility is to fulfill men's sexual demands.
- Having a spouse and kids prevents sexual implementation.
- Everyone engages in premarital sex, adultery, and immoral sexual behavior.
- Addiction to pornography.

2.2 The Impact on Society and Cultural Values:

India is a diverse country with a mosaic of cultures and traditions. The perception of pornography varies significantly across different sections of society. While some view it as a violation of moral values and cultural norms, others argue for individual freedom and the need to address sexual education and expression in a balanced manner.

The societal attitude towards pornography largely shapes the debates on its legality. The conservative sections of society often call for stricter regulations and complete bans, while others advocate for a more nuanced approach, focusing on education, awareness, and consent.

3. Figuring out if it's OK to view porn in India?

The Supreme Court of India orally said that watching porn in a private room may fall under the Constitution's Right to Personal Liberty. Indian individuals are guaranteed the Right to Life and Personal Liberty under Article 21² of the Indian Constitution. Because it is entirely lawful to watch porn in one's own home, no one can have it taken away from them by any government. However,

² The Constitution of India, 1949 (Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law).

it is prohibited to watch or save pornographic content that depicts child pornography, rape, or violence against women if it is viewed in a private setting.

In **Ranjit D. Udeshi v. State of Maharashtra**³, the Supreme Court of India established the Hicklin Test to determine whether the possession and sale of an allegedly obscene book constituted obscene conduct under IPC, 1860 Section 292.

There are no guidelines provided by Section 292 regarding what constitutes "lascivious," "prurient," or potentially "deprave and corrupt persons," despite the fact that it states "a book, pamphlet, paper, writing, drawing, painting, representation, figure, or any other object" shall be "deemed to be obscene if it is lascivious or appeals to the prurient interest, or if its effect, taken as⁴ a whole, tends to deprave and corrupt persons. In the Ranjit D. Udeshi case, The Hicklin Test served as the accepted guideline until 2014 for determining whether or not a piece of art, content, or behaviour qualified as obscene in India.

However, the Hicklin criteria was rejected by the Supreme Court in **Aveek Sarkar v. State of West Bengal**⁵, which substituted the community standard criteria for determining what constitutes obscenity. This test is used to ascertain if, in addition to the numerous sections of the Indian Penal Code, 1860, the IT Act, 2000, the POCSO Act, 2012, and the IRWA, 1986.

If anything is offensively obscene or sexually explicit, it is illegal and penalised; if it is in the public interest, science, literature, art, learning, history, culture, religion, or other topics of broad concern, it is legal.

To put it briefly, the following is a summary of what is and is not permitted:

1. It is permissible to watch adult pornography in private.
2. It is forbidden to produce or create any kind of pornographic material.

³ 1965, SC.

⁴ Indian Laws on Pornography, www.indianlawofficers.com.

⁵ 2014

3. It is illegal to force a woman, your spouse or a friend, of any age, to watch porn.
4. Making any male over the age of 18 view porn is legal.
5. It is illegal to watch, make, or share any type of child pornography.
6. Sharing links to pornographic movies on any social media platform even in private messages.
7. Watching pornography in a group or in a public location is prohibited.

4. UNDERSTANDING THE LEGAL FRAMEWORK:

The legal status of pornography in India is not straightforward. While the country does not have specific laws addressing pornography, the legality of watching it falls under the purview of several broader laws and provisions. The primary legal framework that governs the regulation of pornography in India is the Indecent Representation of Women (Prohibition) Act, 1986. This act criminalizes the portrayal of women in obscene or vulgar manners.

However, it is essential to note that watching pornography in private for personal consumption is not explicitly illegal in India. The focus of the law is primarily on the creation, distribution, and sale of explicit content, especially if it involves the exploitation or degradation of women.

4.1 Information Technology Act, 2000

Cyber pornography is, to put it simply, the act of using cyberspace to create, exhibit, import, distribute, or publish pornography. Since the internet's inception, online and digital pornographic entertainment has mostly replaced traditional pornographic entertainment. While it is permitted in certain nations, cyber pornography is prohibited in others. According to the Information Technology Act, 2000, this is a grey area in Indian law where it is neither illegal nor allowed. Downloading child pornography via the internet is likewise punishable under the Information Technology Act, 2000.

Section 66 E prohibits the transmission of images showing "a private part of any person without

his or her agreement." The punishment for the same offence is three years in prison, fine of two lakh rupees or both. The right to privacy was recently determined to be protected under the Right to Life in Part III of the Indian Constitution and guaranteed as a fundamental right in the historic ruling in Justice K. S. Puttaswamy & anr. v. Union of India⁶. Thus, sharing any content that infringes upon someone's privacy is against Article 21 of the Indian Constitution.

Section 67 (defined as “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”) prohibits the publishing or transmission of pornographic material. The first conviction entails a term of up to three years in prison and a fine of up to five lakh rupees. If found guilty a second time, the punishment is five years in prison and a fine of up to 10 lakh rupees.

Section 67 A prohibits publishing or mailing anything that shows acts or conduct that is sexually explicit. The maximum sentence for a first offence is five years in jail and a fine of up to ten lakhs. Since the exchange of altered photos of females occurred during the Boys locker room event, the current clause is applicable.

Section 67 B This provision applies to the production or distribution of any digital text or images that portray minors “in an obscene, indecent, or sexually explicit manner,” not only images of kids engaging in sexual activities. It's important to note that young girls' explicit or private images are now being distributed. It imposes a maximum five-year prison sentence and a fine of up to 10 lakhs for a first conviction.

4.2 The Indian Penal Code, 1860.

Prohibits the sale, distribution, exhibition, and circulation of goods deemed offensive or deviant, as stated under Sections 292 and 293 of the code. The Indian Penal Code, 1860 now has Section 354 D, which addresses stalking, thanks to the Criminal Law Amendment of 2013. The horrible gang rape and murder of victim Jyoti Singh—known as the Nirbhaya case—led to the passage of the Amendment Act of 2013, which amended the Code in several ways, including adding Section

⁶ September 26, 2018.

354D. Section 354 D (b) includes the following: "monitoring a woman's use of the internet, email, or any other kind of communication."

Therefore, compiling pictures of women from their social media accounts would also fit into this category. If this section is found to be true, the punishment for a conviction is three years in jail and a fine.

- Section 292 of the Code stipulates that anyone who prints publishes, or sells any material that is obscene in nature or publicly exhibits any obscene material may face up to 3 months in prison, fine or both.
- As per the Indian Penal Code, Section 293, an individual who "prints or causes to be printed any obscene book, pamphlet, paper, drawing, painting, representation or figure or exhibits any obscene material may face up to 3 months in prison, fine or both.

4.3 Indecent Representation of Women (IRWA) Act⁷

Ads, publications, writings, paintings, figures, and other forms of indecent portrayal of women are prohibited under the 1986 indecent portrayal of Women (Prohibition) Act (IRWA).

Section 4 to state that "No one shall publish or distribute or cause to be published or cause to be distributed by any means any material that contains indecent representation of women in any form." Additionally, the definition of distribution is expanded to include publishing, licensing, or uploading using a computer resource or communication device.

In addition to delegates from the Ministry of Information and Broadcasting, the Press Council of India, the Advertising Standards Council of India, and one person with experience working on women's issues, this committee will be chaired by the Person Secretary, NCW.

The government withdrew the long-pending Indecent Representation of Women (Prohibition) Amendment Bill, 2012 on July 27, 2021, citing that the proposed changes to the 1986 law were deemed unnecessary since the issues had already been addressed in light of newly emerging

⁷ 1986.

realities as stipulated in the Cinematograph Act of 1952, the Information Technology Rules of 2021, and other legal provisions.

4.4 The Act of 2012, Protecting Children from Sexual Offences (POCSO): The creation, dissemination, and ownership of child pornography are all prohibited under this law.

One significant piece of law aimed at safeguarding children and preventing child sexual abuse and exploitation is the POCSO Act, 2012. Any person who commits a sexual offence against under 18 year old child is considered a kid under Section 2(d) of the Act. The POCSO targets the use of kids for pornographic purposes in Chapter III and creates Special Courts specifically for these types of crimes. Section 42 of the POCSO is a key provision that stipulates that if an offence is considered criminal under both the POCSO and the IPC, the person found guilty would be subject to the harshest sentence.

Under Section 14(1), child or minor pornography carries a maximum five-year jail sentence along with a fine. Furthermore, keeping child-related pornography with the intention of disseminating it is illegal under Section 15 of the aforementioned Act and can result in fines of up to three years in jail.

4.5 The Customs Act of 1962: This law forbids the importation or exportation of any pornographic material.

The Act forbids the importation and exportation of goods that are forbidden by any other Indian legislation. Furthermore, it forbids the import or export of products that are forbidden by any international agreement or convention. Pornography is forbidden by the Indian Penal Code, and as a result, the Customs Act forbids the import or export of it.

4.6 The Cable Television Networks (Regulation)⁸: Act governs advertising and programming on cable networks, including anything that is deemed obscene.

The Indian Parliament passed the Cable Television Networks (Regulation) Act, which sets down rules for how cable television networks are run in the country. It aims to offer guidelines for the

⁸ 1955, Act no. 42 of 1955

management of these networks' operations and to stop their use for illegal purposes, such as the production of pornographic or offensive content. The Act also calls for the creation of a regulatory body, whose duties include overseeing cable television networks and enforcing the Act.

To operate their networks in India, cable television companies are required under the Act to seek a license from the regulating body. In addition, it keeps an eye on and filters out any offensive television material and enforces a cable network code of conduct.

5. CASE LAWS

In the case of **Kamlesh Vaswami v . Union of India & ors.**⁹ Attorney Kamlesh Vaswani filed a Public Interest Litigation (PIL) asking the Supreme Court to declare pornography illegal in India and to order the Union Government to "treat watching of porn videos and sharing of them as non-bailable and cognizable offence."

The federal government's Department of Telecommunications ordered Internet service providers (ISPs) to block 857 pornographic websites in July 2015, citing the websites' violation of "morality and decency." Subsequently, several websites were blocked from using the networks of big telecom firms including Jio, Airtel, BSNL, and Vodafone.

In the September 27, case of **In Re vs. State of Uttarakhand and Others**¹⁰, the Uttarakhand High Court ordered Internet service providers to strictly abide by the 2015 Centre notice banning porn sites, and requested that the Centre impose a strict ban on pornographic websites.

The petition and the related narrative:

The following concerns about pornography are brought up in this continuing public interest case before the Supreme Court, which was filed in 2013 by attorney Kamlesh Vaswani of Indore.

1. Does India need to make pornography illegal?
2. Should persons who see porn in private face criminal, experimental, exploratory, deviant,

⁹ 2014, 6 SCC 705

¹⁰ 2018.

or recreational charges?

Vaswani contends that the providers of our internet connections ought to be held responsible for reducing the amount of pornographic material available. Persuaded that the current law is a stopgap measure for the "growing problem of pornography," Vaswani asked the Supreme Court to invalidate a number of provisions of the IT Act, 2000 and mandate that the Indian government create a national policy and action plan to deal with the issue of pornography in addition to passing new, comprehensive legislation.

The Observation of the Supreme Court

The Vaswani petition goes a long way towards outlawing the use of pornography in any setting, including public and private spaces. This prayer, which aims to criminalize the use of pornography in all forms, poses major risks to our freedom under Article 21 of the Indian Constitution and has to be addressed, without lessening the significance of the other issues mentioned. . In this case, Hon. Chief Justice H.L. Dattu declared that adults in India were free to view pornographic content if they so desired, provided that they did so inside their own houses. He also correctly pointed out that such a prohibition would be against Article 21, which protects an individual's right to personal freedom. Consequently, no authority may take it away unless a legally mandated method is followed. In India, not one of the fundamental rights is unqualified. Every right comes with reasonable restrictions. The Indian Constitution's Article 19(2) lists "morality and decency" as a justification for restricting a person's ability to enjoy their basic rights. Based on similar grounds, the Indian government unsuccessfully attempted to outlaw pornographic content in 2015 and again in 2018. The Supreme Court of India declared that it is lawful to watch porn in a private room since it may be covered by the right to personal liberty guaranteed by the Constitution. Thus, only a legally recognized mechanism may be used by an authority to revoke such a privilege.

RAJ KUNDRA CASE

The Mumbai police said on February 4¹¹ that they had taken five persons into custody for allegedly coercing women into watching pornographic films. These ambitious women travelled from

¹¹ 2019.

different regions of the nation to Mumbai with the prospect of opportunities in web series. But on the day of filming, they would alter the plan and make the ladies feel threatened with coming out as bisexual. The women were offered to pay for the shooting preparations if they refused. Raj Kundra was accused of creating and disseminating pornographic material via applications such as "Hotshot" and "Bollyfame." Viaan was the business that handled the Hotshots app's operations and content generation. CBI authorities claim that 68 pornographic videos were discovered on the hard drive of a laptop that was taken during Kundra's property search. A PowerPoint presentation purportedly including information on the Hotshots app, such as market plans and financial forecasts, was discovered by the police.¹²

Section 67 of the Information Technology Act 2000 makes it illegal to publish or transmit "obscene material" in electronic form. Anything that is "lascivious," appeals to a sensual interest, or has the potential to deprave and corrupt those who view, read, or listen to it qualifies as this kind of content. Anyone caught doing this faces a fine of Rs 5 lakh in addition to a three-year prison sentence. It is against the Indian Penal Code 1860, Sections 292 and 293, to sell, distribute, show, or circulate things that are considered offensive.

CONCLUSION

The debate surrounding the legality of pornography websites in India continues to be a complex and multifaceted issue. While there are no explicit laws that make pornography entirely legal or illegal, India's legal framework addresses obscenity, child pornography, and online content regulations in a broader context. Striking a balance between individual freedom, protection of vulnerable individuals, and societal values remains a challenge for policymakers and lawmakers.

As technology advances and the internet becomes an integral part of our lives, it is crucial to engage in constructive conversations to develop comprehensive regulations that protect citizens while respecting individual right The legality of watching pornography in India remains a subject of debate and interpretation within the existing legal framework. While specific laws address the creation and distribution of explicit content, watching pornography for personal consumption in

¹² www.lawwire.in.

private has no explicit legal prohibition. However, societal norms, cultural values, and ongoing debates continue to shape the conversation around pornography and its regulation.

Irrespective of the legal status, it is essential to prioritize conversations surrounding consent, education, and responsible consumption of explicit content. Addressing the concerns raised by both sides of the debate in a comprehensive manner will contribute to a healthier and more informed society that respects individual rights while upholding cultural values and freedoms.