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Legal issues and challenges on Pornography in India

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Abstract

Pornography is not only an emerging issue in India but also over all worlds. A worst and adverse effect of the technology can be seen in this era. The word pornography is defined as “writing, photographs, movies etc. intended to arouse sexual excitement.” The main issue regarding pornography is that there are technical issues while banning those sites and also fundamental rights to access the free use of internet which causing a very ill impact on the upcoming generation. Under Information Technology Act 2000 pornography is held as a punishable offence. Therefore there is controversy between the rights of users and legal provisions. In this article the Researcher has tried to discuss various issues and challenges of pornography in India, through various articles, online data and books. Researcher also provides some suggestions related to this. One third of the internet is covered by porn-sites which are leading to exploitation n suppression of women and children. To prevent it, a strong control of law is needed. Through this article researcher highlights about pornography, legal provisions and judicial control. Researcher emphasizes through this article the adverse impact of it on society, children and women and recommended strong control of law over it.

Keywords: pornography, judiciary, legal issues and challenges, legal provisions.

Introduction

For centuries humans have been creating explicit images to depict their sexual fantasies and desires. Time have drastically changed however since the first known sex guide” Kamsutra “was illustrated in 5th century in India. The word pornography is defined as “writing, photographs, movies, etc intended to arouse sexual excitement”. The digital world (the moment of video pornography, interactive cyber-sex, webcam sex, social networking mobile phones etc) to attempt to understand the nature of affects that surround pornography, especially as reflected in the law and its desire to contain it and how laws desire to contain is also about subjectivities and practices around technology. This necessarily leads to a focus on pornography itself and from there to proceed to questions around law, history, film, video, new media and technology which necessitates an exploration of film and video studies, new media culture studies and technology, science in relation to pornography.

The radical feminist stance, taken by Andrea Dworkin and Catherine Machinan on pornography. Dworkin was a drafter of law that gave woman civil rights to sue those who hurt them through pornography. Pornography for Dworkin is the insult offered to sex and it accomplishes the active subordination of women i.e. the creation of a sexual dynamic in which the putting down of woman, the suppression of women and ultimately the brutalization of woman is what sex is taken to be. The link drawn between pornography and sexual exploitation is too buried in passionate rhetoric which in itself should not obscure the argument but to make the mechanisms of domination clearer. That however, does not take place instead a further obscuring of women and their subjectivity, their pleasures and experiences takes place as we are continuously confronted in Dworkin’s texts with the woman who is a victim who is silenced, who is oppressed and who is objectified with depersonalized.

Catherine Machinan argues pornography affects people’s belief in rape myths. Pornography promotes these rape myths and desensitizes people to violence against woman so that you need more violence to become sexually aroused if you’re a pornography consumer. This is well documented.

The digital of course adds an entirely different layer to interactivity and reciprocity but also perhaps brings into play different corpo-realities and embodied experiences in stimulated

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environments, or even through devices possibilities. But it is actually in the simpler ways that the digital interactive in the ways in which the viewer moves of his or her own volition through different material or how cheap digital modes of production especially mobile phones allow for creating and putting up of their own videos.

A BBC World Service Poll of 27,973 adult in 26 countries, including 14,306 Internet users^[1], was conducted between 30 November 2009 and 7 February 2010. The head of the polling organization felt overall that the poll showed that; despite worries about privacy and fraud people around the world see access to the internet as their fundamental right. They think the web is a force for good and most, don't want government to regulate^[2].

The poll found that nearly four in five (78%) users felt that the internet had brought them greater freedom than most internet users 53% felt that "the internet should never be regulated by any level of government anywhere and almost four in five internet users around the world felt that access to the internet was a fundamental right. 50% strongly agreed, 29% somewhat disagree, 6% strongly disagreed and 6% gave no opinion^[3].

The present study is entitled with the following "Objectives"

- 1) To highlight the adverse impact of pornography on society.
- 2) To find out the legal issues and challenges on pornography in India.
- 3) To study the legal provisions and its efficiency to deal with it.
- 4) To provide suggestions on the basis of research work.

Research Methodology

Research Methodology is the way systematically solves the research problem. While doing research there is needed to follow some steps by the researcher. Therefore while writing this article the researcher has adopted doctrinal method and data is collected from websites, various articles related to pornography and law, and newspapers containing the news related PIL.

Pornography: Indian context

In Indian context the whole picture of pornography is tied in between film, video technology, literature. How law looks or doesn't look, at pornography and it's not the matter only how law having the policies or governing rules but also in the view of society how it relates to the various ways of pornography. Keeping away the legal field or concentrating this field only the various legal researches, studies, analytical or critical; can transparently look into the questions related to the pornography i.e. technology, historical background, film video, media, mobiles and many more things related to pornography. The law is needed to prohibit it in its clear sense or on a justifiable ground. Law can categorize pornography only by the word "obscenity". But pornography contains a very vast scope. The videos, films, porn movies, porn talking, porn article can't be labeled by a single word obscenity.

The functioning of Indian law and the co-relation of obscenity with dirt and filth is explored particularly visual reception of pornography arouse bodily reactions, pleasure, excitement body reacts with all the film. It can easily dilute those minds that are open to such immoral influences and no conscience to think over it. There body just reacting in an invulnerable manner. Legally pornography is an aggravated

porn of obscenity; the material which is sign of vulgarity and obscenity meant for sexual arousal i.e. pornography. In the last decade, the leaking of pornographic sight assisted by digital technologies and the internet, consequently the swarm of moral, ethical, social dilemmas that have arisen has led to most of the scandals which are pushing the category of pornography and unexamined illegality into the realm of the law.

Nussbaum's analysis on obscenity law on pornography relies on the work of radical feminists Andrea Dworkin and Catherine Machinans. As far as obscenity law and pornography are concerned. Nussbaum's analysis is that the emotions of its gust obfuscates and doesn't allow us to fully register that is committed to equality for women should not object to porn on grounds of obscenity but on grounds of how it is humiliating and degrading to women.

According to Dworkin, The judicial test for pornography should not be the penis erection but it has to the status of women and pornography is a discrete, identifiable system of sexual exploitation that hurts women as a class by creating inequality and abuse. Whether her arguments are on the side of reality of porn industry or not. The various porn stars willingly entering to this industry for money making and popularity in a filthy and disgusting way. Law should have structural control from the creator of the porn clip, to the person who put it online to the one who distributed it via p2p website (peer 2 peer website) to someone who tried to auction it, to those running the auction website. Because of this remote links in the network original offence become weaker on a sense of legal or legal or even ethical responsibility is too neglected and lethargic on the another hand.

The fact that consumption or watching pornography was not considered an offence. Time and desire are crystallized here into a form that is then accessed by us when we desire to encounter a particular moment and this is true in relation to pornography. If the human being having sexual desires likewise animals pornography as a hybrid creature of media and technology. Pornography is responsible for violent sexual behavior and rape. The questions that arises if pornography is not the offence? Then what is it? The reason behind the sexual crime is held as pornography, in many cases it is held by the court that psycho pollution of the criminal in sexual crime is because of pornography. In gang rape also the arousal of such an animal act is because of scenes which are shown in porn movies by showing a women enjoying gang rape.

Legal Provisions

The legal status of pornography varies widely from country to country. Most allow least some form of pornography. The distribution and production of pornography are both illegal in India however accessing pornography in private is not. According to Information Technology Act, 2000(IT Act), Chapter XI 67, the Government of India clearly considers online pornography as punishable offence. The CEO of Indian subsidiary of eBay was charged with various criminal offences for allowing the trading of and containing these clips on the websites⁴ In 2007 the India Ministry of Women and Child Development did a survey of children and young adults 53.22% of children reported having sexual abuse 5.69% had been sexually assaulted oral sex or penetration of vagina or anus.

In India watching or possessing pornographic material is

legal although the distribution of such material is illegal. Likewise the publication or production of 'X' rated materials is illegal^[5]. Information Technology Act 2000 Chapter XI paragraph 67, the Government of India clearly specifies online pornography as a punishable offence. The Indian Penal Code, 1860 (IPC) section 293 also specifies in clear terms, the law against sale of obscene objects to minors. As it pertains to pornography or "obscenity" is laid down in section 292 of the IPC which was amended by the IT act to include electronic data^[6].

The IT act amended in 2008 and section 67 was inserted which criminalizes browsing, downloading creation and publishing child pornography. Child anime porn is also explicitly criminalized for ex. browsing for child pornography on the internet can lead to a 5 year term of imprisonment and 4 lakhs fine^[6].

Judicial pronouncements on pornography

The social activist, who filed petitions regarding ban on porn sites, are seeking solutions through judiciary to prevent the impact of pornography on society. In 2013 a PIL petition was filed in the Supreme Court of India seeking a ban on pornography in India. The court issued a notice to the Central Government of India and sought its response. Govt. informed the court that the Cyber Regulation Advisory Committee constituted under section 88 of the IT Act, 2000 was assigned with a brief with regard to availability of pornography on internet and it was looking into the matter. The matter is still pending before the Supreme Court.⁷ The Supreme Court has issued notices to the ministries of home affairs information technology and broadcasting, besides the internet Service Providers Association of India on a petition seeking an anti-pornography law that was filed by advocate Vijay Panjwani

By express new published: public interest litigation was filed before the Supreme Court by Kamlesh Vaswani who suggested that pornography was among the causes of increasing sexual offences against women. A ban on online pornography may not be feasible or desirable and certainly it's not the court's call. PIL calling for ban on such sites written by Utkarsh Anand, New Delhi published on April 28, 2014 that, there cannot be a complete ban on internet pornography in the country and legal actions are also not possible in a large number of cases the govt. has told the Supreme Court. The Secretary of Dept. of Telecommunication (DoT) said that blocking pornographic websites is not feasible due to practical difficulties. Internet Services were quite often located in foreign countries where such publication is permissible. The Govt. maintained that total ban on it reduced censorship before the content could be released in cyber space. Supreme Court asked to clarify, to the Secretary of DoT, this issue. In response Secretary of DoT said that the role of DoT was limited. The procedure however contemplates that a request

For blocking of a website must come from a court or a nodal officer of an organization and no complaint from an individual shall be entertained. These sort of technical issues are creating barrier between the law and its control on pornography. Such hurdles are there having ban on pornography.

Supreme Court says that India could not intervene on private porn viewers. If an adult privately looking pornsite in his room then he should not be restricted on the ground of his fundamental right of personal liberty. Such interim orders

cannot be passed by this court. Somebody can come to the court and say that I am above 18 years and I am watching porn website within four walls then how can you prevent me? to prevent him will be violation of Article 21(right to personal liberty) of Constitution. Such opinion expressed by Chief Justice of India HL Dattu. This issue is really serious and there is a need to take some action. There is an expectation from Center to take action. HL Dattu had asked the Union Home Ministry to file a detailed affidavit in four weeks^[7].

Conclusion

Though pornography creating adverse impact on society, its values and morals and damaging the ethical ways of enhancing the culture with modesty and sensuousness, still laws are not sufficiently cope up to deal with it. Majority of masses found internet is the way to enjoy and express freedom, as their fundamental right. IT Act 2000 having some provisions to control child abuse and exploitation for pornography on internet. Some people filed PIL, asking ban on such sites in Supreme Court. But some PIL are still pending and in some due to technical complexities; a complete ban on such sites cannot be granted by courts. Ultimately the woman and children the weaker section; held by Constitution, is still being exploited at a large scale due to the trade of pornography spread worldwide through pornography. An aggressive and brutal picturisation of woman is used to excite the adult but mostly the teenagers are captured, targeted by these persons in this trade. Due to that a violent sexual behavior is increased which leads them to cross the limit of humanity. The thing which is very natural it is showed in an unnatural and inhuman manner with the help of pornography. Which are taking this generation closer to animal behavior. Technology is the best tool for enhancement of human development and pornography is the worst use of technology. In this era a strong legal control and prevention is needed for pornography to save the upcoming generation from moral degradation.

Suggestions

- 1) Enforcement of the law to prevent the free access of pornsites by teenagers.
- 2) A strict watch of law and cyber laws should be on the persons in this trade
- 3) Active involvement of some social organization to control child and woman exploitation through the pornsites
- 4) Judicial empowerment for handling the cases related to pornography
- 5) Reformative and deterrent punishment should be for illegal trade of pornography

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