

PORNOGRAPHY AND THE INDIAN LAW

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Pure was the time, Pure were the stories of love.

Pure were the sayings of love making,

and pure were the souls she was living with.

Ten, yes she was ten, the pictures on the TV excites him,

Groaning out the frustration of loneliness.

The mind was so high that all he can see with his open eyes were women's naked legs.

India a place with 1.3 billion population, free to do anything, reside anywhere, practice whatever the heart feels like, and then comes a mind mixing place, a social world, a world where it is easier to express about what is happening, what changes you and getting through. On the other place, a world of dark color, where faces are difficult to identify, where revenge becomes so easy and for some money making at a place without identity

becomes smooth, which is called a Cyber space, a sense of a social setting that exists.

Pornography and the Indian law

Indecent representation of women means¹ the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or is likely to deprave, corrupt or injure the public morality or morals. Similarly, Section 67² and 67A³ of the Information

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¹ Section 2(c) of the Indecent Representation of Women (Prohibition) Act, 1986

² **Publishing of information which is obscene in electronic form:** Whoever publishes or transmits or causes to be published in the electronic form, 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 who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.

³ **Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form:** Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent

Technology Act, prohibiting obscene and sexually explicit material respectively.

The word pornography is derived from the Greek word PORNI that means 'prostitute' and GRAPHEIN, which means 'to write', was originally defined as any work of art or literature depicting the life of prostitutes. Talking about India and Pornography, to the irony or taking it to the favor of some watching porn in private is not illegal, but transmitting in public messages, or any public social media group and forcefully making someone else watch it is a crime punishable by up to 7 years of imprisonment.

Talking about pornography of adult or children, there are some rules regarding the pornography in India. Watching ADULT PORNOGRAPHY, in which they themselves makes a visual identity is of no harm, but, no vigilante groups, hackers, state bodies etc., anywhere in the world supports the idea of CHILD PORNOGRAPHY .

In February 2009, the Parliament of India passed the Information Technology Bill, which made creation and transmission of child pornography illegal. The newly passed Information Technology Bill is set to make it

conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

illegal to not only create and transmit child pornography in any electronic form, but even to browse it. The punishment for a first offence of publishing, creating, exchanging, downloading or browsing any electronic depiction of children in "obscene or indecent or sexually explicit manner" can attract five years in jail and a fine of Rs 10 lakh. The very fact that child pornography exists is a failure of the entire ecosystem of interest, values, morals, and the law. Even in USA and UK where possession of pornography has never been an offence, child pornography is condemned and is a penal offence.

Leading to the mentality of unemotional sex

Above statement were well explanatory to make them understand the world of visuals and pornographic status in India. Now it is time to go to the law, the law that is handling such situations, but before that, a real life skit, being a Delhi girl, it not much hectic seeing almost population on one metro station. In 2017, I remember Connaught Place metro station, Rajiv Chowk. A five minutes clip of porn was made visible on the big screen, being it a technical failure or due to some intentions, but

it did made me realize, it's something not decent and against the mortality, there was something which struck my mind, which was the fundamental rights and hence: One of the exceptions to the fundamental Rights to free speech and expression guaranteed under Article 19(1)(a) of the Constitution it is in respect of laws which impose reasonable restrictions in the interest of “decency” and “mortality”.

There are so many Acts for making the visual decency in India, like the Cinematography Act 1952, The Dramatic Performance Act 1876, The customs Act 1962, The Post Office Act 1898, The Indecent Representation of Women (prohibition) Act 1986 and many more. Have you even been to old monuments and have seen some pictures of nudity and sex, do you think even then India was bounded by so many laws, which are not even been counted on my fingers. There are Indian artistic tradition abounds with eroticism, sexual symbolism, allusion and graphic depiction of sexual images which are evident in early Hindu temples across the country.

Although some may feel offended at the depiction of mother India in the nude that by itself was not sufficient to qualify the painting

as obscene. We are born at the place of Kama Sutra, then why to shy about? It is our perception to objects, thoughts and situations, which rule the mind to perceive them in the way that we do and same goes for obscenity. Back then, it is not wrong to say that our ancestors lead a life, which was erotic and dedicated to sensuality in all of its form. It was healthy and artistic, the studied sex, practiced sex, taught sex, shared the techniques and sexual pleasure was not behind the closed door, it was in the air in different forms. And then came a time of 2018, no sharing, no teachings, no forcing to watch or it will bring you behind the bars, and you very well know what people do when they are strictly restricted to do.

In *Shankarsan Krishna Mundra v. State of Maharashtra*⁴, the Bombay High Court held that the private viewing of pornographic or obscene films within a private room does not amount to public exhibition and would not even attract Section 292 of Indian Penal Code (IPC). The publisher under Section 1(3) of the obscene Publication Act 1959 is the one who is in the relation to obscene material. By virtue of Section 66 E of the Information Technology ACT 2000, if a person intentionally or knowingly captures, publishes or transmits the

⁴ WP (Cri) No. 1580 of 2010, decided on 24-11-2010 (Bom)

image of a private parts of any person, without his consent, violating the privacy of that person, shall be punished with imprisonment which may extend to 3 years or with fine not exceeding 2 lakh rupees or with both.

When we talk about pornography, the main word which comes in the modern world now is “OBSCENE”, because in the back era, it was something which was good, which they preached and shared about, but the cyber world comes now and so does the rules. A material is obscene, if it predominantly draws an average person in the contemporary community to a shameful or morbid interest in nudity, sex or excretion, or such material, if taken as a whole lacks serious literary, artistic, political or scientific value.

The well-known illustrative cases of pornography that may be cited are; Delhi Bal Bharti Case (2001)⁵ and Bombay Swiss Couple Case (2003)⁶

Both of them being the leading case, in on taking out the revenge, and in the other dragging some slim children to appear for obscene photographs. The expansion of Internet and its frequent use in day to day and its easy access, making the children as targets.

⁵ The Air Force bal Bharti, Delhi Cyber Pornography Case (2001)

⁶ Swiss couple cyber pornography case, Mumbai 2003

Sexually related contents was among the first content to be commercially distributed over the internet, there are as many as 4.2 million pornographic websites according to researchers, that may be available at the internet at any time, leading to some ban on minors by giving warning on the computers like;

- Press NEXT, only if your age is above 18.
- Sign in before initiating the videos (to let know the age of the person signing in)

As regards the reported Indian cases on cyber pornography, they are far and few as most of them are disposed of in the lower court at the magisterial level. However, the case of state of *Tamil Nadu v. Subas Katti*⁷ deserves a special mention in terms of cyber pornography context since it was disposed of within a record period of seven months from the date of filing of the FIR. The credit for expeditious investigation of the case goes to the Chennai cybercrime cell, which produced 18 witness and 34 documents in support of the prosecution case.

⁷ Decided by the Chief Metropolitan Magistrate, Egmore, on November, 2004

Being in the modern world has lots of boon, but being in the cyber world has more of banes. In the age of internet, where people spend more time in browsing, leaves an impact on their mind with the exhibition and presentation of several indecent and immoral objects. Coming through a lot of cases, most of the them were about sending videos to harass, blackmail, recording some videos in hotels etc.

Did you realize the mindset of people have changed from what is it now and back then in the era, people have become advanced and so has the technology, more of easy ways to lead to porn, having a stressful lives, a loneliness and watching porn which leads to heavily affecting the sexual desires, making them do crimes, it affects the brain, damaging the love life of people.

SO, THINK BEFORE CLICKING AND MAKE SURE BEFORE BROWSING

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