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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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A STUDY OF LEGAL IMPLICATIONS OF ACCESSING PORNOGRAPHIC CONTENT ONLINE IN INDIA

AUTHORED BY - SATENDRA RAJPUT*

Abstract:

“This research delves into the contentious issue of the legality of pornographic content in India, advocating for its absolute prohibition due to its detrimental societal impacts. Employing a comprehensive review of existing literature and legal frameworks, this study highlights the pervasive negative consequences of pornography consumption on individual behavior, interpersonal relationships, and societal norms. It argues that unrestricted access to pornographic material exacerbates issues such as violence against women, objectification, and sexual exploitation. By analyzing relevant legal precedents and international perspectives, the researcher asserts that a stringent ban is imperative to safeguard the moral fabric and public well-being of Indian society. Through this exploration, the study provides valuable insights for policymakers, legal practitioners, and stakeholders concerned with regulating media content and fostering a healthier cultural environment.”

I. INTRODUCTION

"A *L'Ecu d'Or ou la bonne augerge*," which was released in France in 1908, has the distinction of being the first documented pornographic film. The X-rated Argentine film *El Satario* also emerged during the period from 1907 to 1912.¹ Despite being produced almost simultaneously, these two pictures served as the catalyst for the introduction of sexual material in the realm of cinema.²

There have been many debates on the harmful effects of technology on teenagers and young adults in

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¹ Lynn Hunt, *The Invention of Pornography, 1500–1800 Obscenity and the Origins of Modernity*, Book review.

² *Ibid.*

general. The main focus of conversation is the excessive use of technological devices by youngsters, which leads to a decrease in outside activities. Additionally, there are identified connections between increased screen exposure and declining mental well-being. Nevertheless, there is a noticeable lack of consideration of the substantive characteristics of the digital information that is accessed by these specific demographic groups. The important problem has been illuminated by a recent inquiry conducted by Common Sense Media, a non-profit organisation.³ The survey, named "Teens and Pornography," was done in September 2022 and included a sample of 1,350 teenagers ranging in age from 13 to 17 years. The results indicated that a majority of the adolescents polled had been exposed to explicit material by the time they reached the age of 13.⁴

Its impacts, namely its alleged impact on sexually aggressive conduct.⁵ Correlational studies were mostly used by researchers at the aggregate level to investigate the association between the diffusion of pornography and instances of sexual violence. The results indicated a decline in instances of sexual aggression after the legalisation of pornography⁶, indicating that pornography may not intensify sexually aggressive inclinations and might possibly serve as a deterrent. The Danish studies that were ground-breaking in nature played a crucial role in the first significant inquiries into the impacts of pornography, including the President's Commission on Obscenity and Pornography (1970), which was established by President Lyndon B. Johnson. The report issued by the Commission absolved pornography of any adverse consequences. However, the aforementioned governmental or international publications or study on pornography have not effectively suppressed the persistent discussion over its effects, which continues to be intense among both academics and the general public.⁷

Critics of pornography have historically argued that its consumption may have detrimental impacts

³ India Today, Survey shows majority of teens are not guilty of watching porn online, over 50 per cent watched it accidentally, Available at <https://www.indiatoday.in/technology/news/story/survey-shows-majority-of-teens-are-not-guilty-of-watching-porn-online-over-50-per-cent-watched-it-accidentally-2322214-2023-01-16>

⁴ *Ibid.*

⁵ Kingston, D. A., & Malamuth, N. M. (2011). Problems with aggregate data and the importance of individual differences in the study of pornography and sexual aggression: Comment on Diamond, Jozifkova, and Weiss (2010). *Archives of Sexual Behavior*, 40, 1045– 1048. doi:10.1007/s10508-011-9743-3.

⁶ Kutchinsky, B. (1991). Pornography and rape: Theory and practice? Evidence from crime data in four countries where pornography is easily available. *International Journal of Law and Psychiatry*, 14, 47– 64. doi:10.1016/0160-2527(91)90024-H.

⁷ Hald, G. M., & Malamuth, N. M. (2008). Self-perceived effects of pornography consumption. *Archives of Sexual Behavior*, 37, 614–625. doi:10.1007/s10508-007-9212-1.

on individuals' principles, ethics, opinions, and behaviours. They have attributed these effects to a range of societal concerns, such as marital conflict, negative gender roles, sexual dependency, and unhealthy attitudes.⁸ On the other hand, proponents of pornography contend that there is a lack of substantial evidence supporting the existence of such adverse consequences.⁹ On the contrary, proponents argue for prospective advantages such as the augmentation of sexual encounters, the cultivation of sexual literacy, the provision of a leisurely avenue, the mitigation of sexual aggression, or the facilitation of the resolution of prevalent sexual dysfunctions.¹⁰

II. DEFINING PORNOGRAPHY

The word "pornography" has its origins in Greek, where it originally referred to writings or representations of harlots or prostitutes. More precisely, it originates from the term "pornographos," which is formed from the combination of "pórne," which signifies "whore," and "graphein," which means "to write."¹¹ Therefore, its original meaning was associated with writings about prostitution.¹²

The word 'Pornography' is not defined under Indian law.¹³ The phrase in question lacks a statutory meaning in the United States of America and other countries due to the absence of a standardised set of ethical principles and values. Consequently, a universally accepted definition of this term is unattainable. Nevertheless, the definition of pornography has experienced substantial alteration since the 19th century.¹⁴ The process of development is shown by a significant statement made by Stuart Potter, a Justice of the U.S. Supreme Court, around half a century ago, whereby he expressed his recognition of pornography upon seeing it.¹⁵ This assertion highlights the inherent subjectivity of the notion of pornography, which exhibits variation among individuals.¹⁶

⁸ J. Manning, *Who said pornography was accepted in the workplace? An investigation into the use of pornography*, NHS FERTILITY CLINICS LONDON (2010).

⁹ P. Paul, *Pornified: How pornography is transforming our lives, our relationships, and our families*. New York, Time Books (2005).

¹⁰ K. Wylie, K., & A.A. Pacey, *Using erotica in government-funded health service clinics*, 8 JOURNAL OF SEXUAL MEDICINE, 1261–1265 (2011).

¹¹ Eleanor Heartney, *Pornography*, 50(4) ART JOURNAL, 16 -19, (1991).

¹² *Ibid.*

¹³ SAURABH KIRPAL (EDITED), *SEX AND THE SUPREME COURT HOW THE LAW IS UPHOLDING THE DIGNITY OF THE INDIAN CITIZEN*, (Hachette India, 2020).

¹⁴ United States Sentencing Commission, *The History of the Child Pornography Guidelines* (CreateSpace Independent Publishing Platform, 2017).

¹⁵ *Ibid.*

¹⁶ *Ibid.*

Undoubtedly, studies on pornography demonstrate this diversity. Despite an extensive body of research produced over the last forty years, there is a lack of agreement over its precise description. Furthermore, Malamuth, Addison, and Koss argue in favour of adopting a nuanced perspective, proposing the use of precise language rather than using general designations such as "pornography" in order to distinguish between different forms of sexually explicit media.

According to Diamond, the prevailing definition of pornography in both research and U.S. courts is often characterised as "media designed to provide entertainment or elicit erotic desire." Furthermore, there are clear differentiations between peaceful and violent pornography. Nonviolent pornography may exhibit elements of submission or compulsion by using the placement of models or the use of props, while violent pornography overtly depicts non-consensual or coercive sexual encounters.

III. Legal Status of Accessibility of Pornographic Content in India

Denmark, a small Scandinavian country, accomplished the significant feat of legalising pornography using an innovative two-phase method. The first stage took place in 1967, when all written pornographic material was legalized, and was subsequently followed by the approval of visual pornography in 1969.¹⁷ In India, pornographic content is governed from the following laws: -

1. Indian Constitution
2. Indian Penal Code
3. Information Technology Act
4. POCSO Act, 2012
5. Indecent Representation of Women (Prohibition) Act, 1986

Indian Penal Code, 1860

The prohibition of the sale, distribution, display, or transmission of items considered obscene is outlined in Sections 292¹⁸ and 293¹⁹ of the Indian Penal Code of 1860. The Criminal Law Amendment legislation of 2013 was implemented after the terrible occurrence involving Jyoti Singh, often referred to as the Nirbhaya case.²⁰ This legislation included revisions to the existing legal framework, with

¹⁷ PETER LEHMAN, *PORNOGRAPHY FILM AND CULTURE*, 32-40 (Rutgers University Press, 2006).

¹⁸ S. 292, Indian Penal Code 1860 (Act No. 45 of 1860) India. (Section 292 – *Sale, etc., of obscene books, etc.*).

¹⁹ *Id.* at S. 293. (Section 293 – *Sale, etc., of obscene objects to young person*).

²⁰ K.A. Pandey, *5 Penal Code*, 644 (4th Ed., Easter Book Company, 2022).

Section 354D being particularly notable. This clause specifically deals with the conduct of stalking, which includes acts like monitoring a woman's online interactions. As a result, it also covers the act of obtaining images from social media accounts. A conviction under Section 354D(b) may result in a maximum jail sentence of three years, in addition to a fine.

In accordance with Section 463 of the aforementioned legal code²¹, forgery refers to the act of producing counterfeit papers or electronic data with the intention of causing harm. The penalty for forgery, as stipulated in Section 465²², might include a maximum jail sentence of two years, a monetary punishment, or both. In addition, Section 471 prohibits the use of counterfeit papers or electronic data as authentic, with same penalties. This pertains to modifications performed on digital photographs, hence expanding the extent of the transgression.²³

Legal precedents in the case of *State of Punjab v. Major Singh*²⁴, have shown that any behaviour that is considered as sexually provocative towards women, whether it is directed towards them or in their presence, is covered by Section 509 of the Code. This clause is relevant in cases when explicit comments on the physical characteristics of women shown in widely circulated visuals are made, resulting in potential consequences such as imprisonment for a maximum duration of one year, a monetary penalty, or both.²⁵

In instances pertaining to the distribution of explicit material, those who have been harmed may pursue legal remedies by means of defamation lawsuits. The Indian Penal Code, specifically Section 499, imposes a prohibition on the creation or dissemination of defamatory comments, regardless of their medium (verbal, written, or visual), with the explicit aim of inflicting damage upon an individual's reputation.²⁶ In order to be prosecuted under this rule, the criminal must have the intention to tarnish the victim's reputation. As a result, those who have been harmed have the option to initiate legal proceedings in accordance with the aforementioned provisions. Defamation offences are subject to penalties as specified in Section 500 of the Code, which include a maximum of two years of simple

²¹ *Supra* Note 18 at S. 463 (Section 463 – Forgery).

²² *Id.*, at S. 435 (Section 435 – Punishment for forgery)

²³ *Id.*, at S. 471 (Section 471 – Using as genuine a forged document or electronic record).

²⁴ *State of Punjab v. Major Singh*, 1967 AIR 63.

²⁵ *Supra* Note 18 at S. 509 (Section 509 - Word, gesture or act intended to insult the modesty of a woman) .

²⁶ *Id.*, at S. 499 (Section 499 – Defamation).

imprisonment, a monetary fine, or both.²⁷

Information Technology Act, 2000

Within the domain of Indian jurisprudence, certain types of sexually explicit, pornographic, or obscene visual representations, distinguished by their inclination to provoke lasciviousness or arouse pruritic cravings, or which exhibit a proclivity to corrupt humans, are susceptible to legal consequences. The determination of the legality, ban, or punitive character of actions is mostly governed by legislative frameworks, as shown by the Information Technology (IT) Act of 2000.²⁸

Section 66E of the IT Act²⁹ specifically deals with the distribution of photographic material that shows private anatomical areas of a person without their agreement. Noncompliance with this stipulation has potential consequences, including a maximum jail sentence of three years, a fine not beyond two lakh rupees, or both. The case of *K. S. Puttaswamy v. Union of India and Ors*³⁰ has established the right to privacy as a fundamental and safeguarded aspect enshrined in Article 21 of the Indian Constitution. This ruling highlights the importance of protecting individuals' privacy rights.³¹

Furthermore, Section 67 of the Information Technology Act³² addresses the dissemination or transmission of information that is considered obscene. Obscene material is described as anything that is lascivious, appeals to prurient desires, or has the potential to degrade and corrupt persons. Penalties of up to three years, in addition to a fine of up to five lakh rupees, may be imposed for first convictions under this provision. Repeated infractions result in increasingly severe consequences, such as a maximum jail sentence of five years and a fine of up to 10 lakh rupees.

Moreover, Section 67A pertains to the distribution of content portraying sexually explicit activities or behaviour, carrying the consequences of a maximum jail sentence of five years and fines of up to 10 lakhs upon first conviction. The significance of this rule is especially evident in situations like the

²⁷ *Id.*, at S. 500 (Section 500 – *Punishment for defamation*).

²⁸ Information Technology Act, 2000 (Act No. 21 of 2000) Parliament (India).

²⁹ *Id.*, at S. 66E (Section 66E – *Punishment for violation of privacy*).

³⁰ *K. S. Puttaswamy v. Union of India and Ors*, AIR 2018 SC (SUPP) 1841.

³¹ *Ibid.*

³² *Supra* Note 28 at S. 67 (Section 67 – *Punishment for publishing or transmitting obscene material in electronic form*).

Bois Locker Room episode, when modified photos of underage girls were distributed.³³

Similarly, Section 67B of the legislation establishes sanctions for the production or distribution of digital material that depicts individuals under the age of majority in a way that is deemed vulgar, indecent, or sexually explicit. Significantly, this clause goes beyond portrayals of explicit actions to include any kind of visual representation that infringes upon the dignity and privacy of underage individuals. In light of the current circumstances surrounding the dissemination of explicit photographs depicting underage females, this particular section plays a crucial role in providing a comprehensive approach to resolving such transgressions.³⁴

Moreover, according to Section 79(3)(b) of the Information Technology Act, intermediaries are required to expeditiously remove or prevent access to offensive material whenever they become aware or are notified by governmental authorities about the existence of illegal content on their platforms. Noncompliance with this guideline makes intermediaries responsible for any related illegal conduct.³⁵ Furthermore, according to the Information Technology (Intermediary Guidelines) Rules of 2011, intermediaries are required to provide users with warnings regarding the dissemination of content that is deemed blasphemous, defamatory, obscene, harmful, harassing, pornographic, libellous, pedophilic, invasive of privacy, hateful, ethnically offensive, or detrimental to minors.³⁶

Protection of Children from of Sexual Offences Act, 2012

The POCSO Act of 2012³⁷ is a significant legal initiative designed to protect minors against sexual exploitation, namely the creation and distribution of pornographic material involving children. The Act aims to tackle the serious issues related to the widespread distribution of such content and enforces strict penalties to prevent wrongdoers. Chapter III of the POCSO Act is particularly noteworthy as it deals with the severe exploitation of kids for pornographic purposes. Section 14(1) of the POCSO Act has a significant clause concerning pornographic material involving juveniles.

³³ *Id.*, at S. 67A (Section 67A – Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form).

³⁴ *Id.*, at S. 67B (Section 67B – Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form).

³⁵ *Id.*, at S. 79 (Section 79 – Exemption from liability of intermediary in certain cases).

³⁶ Information Technology (Intermediary Guidelines) Rules, 2011 (G.S.R. 314(E)).

³⁷ Protection of Children from of Sexual Offences Act, 2012 (Act No. 32 of 2012) Parliament (India).

This section imposes penalties, including imprisonment for a maximum duration of five years and monetary fines, for the utilisation of minors for pornographic purposes. The aforementioned clause highlights the legislative objective of reducing the exploitation of children for the purpose of satisfying lascivious inclinations, thereby reaffirming the state's dedication to safeguarding the innocence and dignity of minors. Moreover, the storage and transmission of pornographic material portraying minors is addressed under Section 15 of the POCSO Act.

Individuals who are found guilty of having such material with the purpose to distribute are subject to imprisonment for a maximum duration of three years or the imposition of penalties, or both. This law aims to impede the dissemination of illegal information and hinder its spread, therefore reducing the negative impact on susceptible youngsters.

Women's Indecent Representation (Prohibition) Act, 1986

The Women's Indecent Representation (Prohibition) Act of 1986 (IRWA)³⁸ was a significant law designed to restrict the spread of content that depicted women in a crude or objectifying way through different channels, including advertisements, publications, artworks, and digital platforms.³⁹ The Act was originally established in reaction to social apprehensions around the objectification and commercialization of women. It underwent extensive debates throughout its development, ultimately resulting in the formulation of suggested modifications in December 2012.⁴⁰

The Indecent Representation of Women (Prohibition) Amendment Bill highlights the changing patterns of media consumption, especially in light of the emergence of digital messaging systems such as WhatsApp and Skype. The Ministry of Women and Child Development has urged for the implementation of strict measures to criminalise the spread of indecent representations in digital spaces, acknowledging the need of addressing this issue.

The proposed revisions placed significant emphasis on broadening the scope of distribution, which now includes activities such as publishing, licencing, or uploading information using computer

³⁸ Women's Indecent Representation (Prohibition) Act, 1986 (Act No. 60 of 1986) Parliament (India).

³⁹ P. ISHWARYA, THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986 (HARPERCOLLINS 360, 2022).

⁴⁰ *Ibid.*

resources or communication devices. Furthermore, it is imperative to strengthen Section 4 of the Act by specifically forbidding the dissemination or circulation of any content that includes derogatory depictions of women in any medium.⁴¹

In order to ensure the effective enforcement of these regulations, the proposed legislation suggested disciplinary actions that are comparable to those outlined in the Information Technology Act of 2000. Furthermore, it suggested the creation of a centralised governing body under the National Commission for Women (NCW), consisting of delegates from pertinent regulatory entities and media industry players. In July 2021, the government made the decision to remove the Indecent Representation of Women (Prohibition) Amendment Bill amidst ongoing talks. The rationale for this decision was based on the conviction that the current legal frameworks, such as the Information Technology Rules of 2021 and provisions within the Cinematograph Act of 1952, sufficiently dealt with issues related to inappropriate portrayals in modern media.⁴²

Actions of Telecom Department of India

The telecom department of the Indian government sent a notice in October 2018 to internet service providers, instructing them to prohibit the hosting of pornographic material on 827 websites, including as Pornhub, Tube8, and YouPorn.⁴³ The Indian government has already made attempts to prohibit and oversee pornography on many occasions. As an example, the Ministry of Communications and Information Technology (2011) mandated that cyber-café proprietors must provide their computers with filtering software in order to prevent access to pornography⁴⁴, as stated in the Information Technology (Guidelines for Cyber Café) Rules 2011.⁴⁵ In addition, they were obligated to maintain a record of all websites visited by the consumers for a minimum duration of one year (2011, 3–4).

In addition, café proprietors were instructed to refrain from constructing cubicles exceeding a height

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Ministry of Electronics & IT, Restriction of Pornographic Websites, Available at <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1881412>.

⁴⁴ Ministry of Communications and Information Technology Available at https://www.meity.gov.in/sites/upload_files/dit/files/RNUS_CyberLaw_15411.pdf.

⁴⁵ *Supra* Note 34.

of four and a half feet. In order to minimise privacy concerns, computers were positioned with their displays facing outward. Additionally, kids were prohibited from entering cubicles unless accompanied by their guardians and parents (2011, 4).

If the internet user does not have a valid identification, they may be captured in an image using a webcam (2011, 3). In 2013, attorney Kamlesh Vaswani filed a plea with the Indian Supreme Court seeking a ban on pornography, in response to a rape incident that occurred in Delhi in 2012. Vaswani said that pornography is of a magnitude surpassing that of Hitler, Aids, cancer, or any pandemic. It is more devastating than nuclear holocaust and should be halted. As a result, the government established the Cyber Regulation Advisory Committee, which was led by Ravi Shankar Prasad, the former Telecom and IT minister. The committee implemented measures to provide authorization to the Internet and Mobile Association of India for the purpose of compiling a comprehensive inventory of websites that facilitate the hosting of pornography.

In reaction to the censorship and blocking of Pornhub in India, the company made an announcement about the development of a new website using a modified URL. The government made an effort to implement a prohibition after a ruling by the Supreme Court that attributed the promotion of sexual assault to pornographic material. However, the ban was subsequently rescinded due to widespread public opposition.

Judiciary - Decriminalization of Watching Porn

To effectively navigate the legal framework pertaining to pornography in India, it is imperative to possess a comprehensive comprehension of several legislative enactments, including the Indian Penal Code of 1860, the Information Technology Act of 2000, the Protection of Children from Sexual Offences (POCSO) Act of 2012, and the Indecent Representation of Women (Prohibition) Act of 1986. These laws set boundaries for permissible and impermissible behaviours linked to pornography, including issues with consent, exploitation, and the safeguarding of children.

The legal problem surrounding the decriminalisation of pornography use in India is multifaceted, including constitutional rights, judicial interpretation, and cultural standards. The Right to Life and Personal Liberty, which is a fundamental aspect of individual liberties, is protected by Article 21 of

the Indian Constitution. In 2015, the Supreme Court granted an oral recognition that the act of watching pornography in one's own residence is in accordance with this fundamental entitlement, confirming that people possess the freedom to consume such material inside their own areas without any intervention from governing bodies. Nevertheless, this freedom is not without limitations, since the act of consuming or retaining pornographic content that portrays child pornography, rape, or violence against women continues to be unlawful. This underscores the legislative parameters established to safeguard susceptible communities and mitigate potential damage.

The idea of obscenity in India has been significantly influenced by legal precedent, as shown by the seminal case of *Ranjit D. Udeshi v. State of Maharashtra*⁴⁶. The Hicklin Test, which was developed in this case, was traditionally used to ascertain the obscenity of content, based on ambiguous factors such as its capacity to morally corrupt and degrade persons. The Supreme Court's decision in *Aveek Sarkar v. State of West Bengal*⁴⁷ to reject the Hicklin Test signified a transition towards using a community standard test for evaluating obscenity. This approach takes into account society norms and values as a means of determining the legality of such content.

In instances such as *Kamlesh Vaswani v. Union of India & Ors*⁴⁸, the judiciary's position on pornography has been clearly shown. This case included a public interest lawsuit that aimed to prohibit pornographic information on the internet. The decision from the court emphasised the need of implementing comprehensive regulation, instructing governmental entities to tackle the matter via recognised legal avenues.

In brief, while the act of privately watching adult pornography is considered lawful within the framework of constitutional rights, the creation, dissemination, and consumption of certain categories of pornographic content continue to be subject to legal examination and oversight in India. The dynamic legal environment exemplifies the intricate equilibrium between personal liberties, communal principles, and the safeguarding of marginalised populations, underscoring the intricate methodology necessary to tackle the intricacies of pornography in contemporary society.

⁴⁶ *Ranjit D. Udeshi v. State of Maharashtra*, 1965 AIR 881.

⁴⁷ *Aveek Sarkar v. State of West Bengal*, AIR 2014 SC 1495.

⁴⁸ *Kamlesh Vaswani v. Union of India & Ors.*, Supreme Court on 26 February, 2016.

IV. Issues in the current regime

The present system of decriminalising the use of pornography in India encounters certain urgent challenges that need thorough scrutiny and appropriate governmental responses. The present policy of decriminalising the use of pornography in India gives rise to apprehensions over its potential effects on adolescents, who are progressively gaining access to sexually explicit material. Studies suggest that teenagers resort to pornography for a multitude of reasons, such as managing difficulties, seeking stimulation, forming social connections, and becoming used to it.⁴⁹ Furthermore, prolonged exposure to pornographic material has the potential to impact the formation of sexual scripts and behavioural patterns in young individuals. Empirical data indicates a connection between regular pornography use and heightened involvement in sexual activities that include sexuality, such as casual sexual encounters and engaging in dangerous sexual behaviours.⁵⁰ Moreover, the frequency of pornography use is influenced by several variables, including age and academic performance. Studies have shown that older teenagers and those with lesser academic accomplishment are more prone to engaging in pornography consumption. The results emphasise the need of implementing comprehensive approaches to tackle the possible adverse effects of unregulated availability of pornography among adolescents in India.

Furthermore, the widespread availability of internet pornography made possible by digital technology poses distinct difficulties in terms of regulation and supervision. In contrast to conventional media formats, the internet facilitates the extensive distribution of explicit content across national boundaries, posing challenges for authorities in efficiently monitoring and regulating access. The provision of anonymity via online platforms presents additional challenges in the identification and resolution of illicit content, such as child pornography and depictions of violence against women. Consequently, marginalised demographics, including minors, have an elevated susceptibility to encountering detrimental or exploitative content, underscoring the pressing want for comprehensive regulatory frameworks and technology remedies.

Furthermore, it is essential to adopt a sophisticated approach to regulation and intervention when

⁴⁹ Mehmood H. Qadri Et. Al., *Psychosocial and Substance Abuse Effects of Pornography Addiction: A Narrative Review*. 15(1) CUREUS 12 (2023).

⁵⁰ *Ibid.*

addressing the nexus of pornography with gender-based violence and exploitation. Although consensual use of adult pornography may be legally acceptable, the reinforcement of detrimental stereotypes and the objectification of women in certain pornographic genres may foster a culture of sexism and sexual violence. Furthermore, the process of commodifying sexual activity and the acceptance of forceful or non-consensual actions shown in some pornographic material give rise to ethical considerations about their influence on social attitudes and behaviours. To effectively navigate these intricate relationships, it is essential to adopt a holistic approach that covers legal, educational, and socio-cultural aspects. This approach aims to foster positive and respectful views towards sexuality and gender relations.

Additionally, the absence of a comprehensive sexual education curriculum in educational institutions amplifies the difficulties linked to the use of pornography among young individuals. Adolescents may resort to pornography as their major means of acquiring sexual knowledge in the lack of precise information and direction, which might possibly result in skewed perspectives and the adoption of hazardous sexual behaviours. Additionally, the negative perception associated with conversations about sexuality in several Indian communities hinders the provision of education and support services that are suitable for different age groups. In order to rectify these deficiencies, it is imperative to implement methodical initiatives aimed at incorporating comprehensive sexual education into educational curriculum. Additionally, it is crucial to empower parents, educators, and healthcare professionals to foster open and well-informed talks pertaining to matters of sexuality and pornography.

Furthermore, the implementation of current legislation and regulations pertaining to pornography exhibits disparities and often lacks efficacy, especially within the realm of digital platforms. Despite the implementation of statutory measures such as the Information Technology (IT) Act and the POCSO Act, there continue to be persistent obstacles in the identification and prosecution of individuals involved in offences relating to internet pornography. The effectiveness of law enforcement organisations in combating internet pornography is impeded by several factors, including limited resources, technical impediments, and jurisdictional issues. Consequently, wrongdoers may avoid being held responsible, while those who have been exploited and abused may have difficulties in obtaining legal recourse and assistance. In order to effectively solve the systemic

deficiencies and maintain the rule of law in the digital era, it is imperative to bolster enforcement mechanisms, foster cross-border collaboration, and harness technical advancements.

In summary, the decriminalisation of pornography use in India within the present political framework is confronted with a multitude of intricate obstacles that need immediate attention and collaborative efforts. The problems at stake are complex and interwoven, ranging from uncertainties in legal frameworks to the widespread presence of internet pornography and its impact on society. To effectively tackle these difficulties, it is imperative to adopt a comprehensive strategy that integrates legislative changes, technology advancements, educational endeavours, and community involvement endeavours. India can effectively address the challenges of pornography regulation by encouraging open communication, raising consciousness, and developing cooperation among relevant parties. This approach would ensure the protection of individual rights, the advancement of public health, and the prevention of exploitation and violence.

V. Conclusion

The legality surrounding the use of pornography in India is a multifaceted matter that has substantial social ramifications. The constitution safeguards the fundamental right to personal liberty; nonetheless, apprehensions emerge over the possible ramifications for children and marginalised communities. Existing research suggests that unregulated availability of pornography has the potential to impact the behaviour and attitudes of adolescents towards sexual matters, hence prompting inquiries into the need of regulating pornography and implementing comprehensive sex education. Moreover, the progressive legal structure, shown by significant court rulings and legislative actions such as the POCSO Act, illustrates the state's dedication to safeguarding children from harm. Nevertheless, there are ongoing difficulties in achieving a harmonious equilibrium between personal liberties and the overall welfare of society, especially in the era of digital technology when pornography is readily available. In order to effectively address the intricate issues surrounding pornography usage in India, it is imperative to adopt a comprehensive strategy that encompasses legislative protections, educational endeavours, and social interventions. Policymakers may work towards a fairer and more responsible approach to regulating pornography by tackling the underlying causes and reducing any negative effects. This will ensure that basic rights are protected and the well-being of all people is safeguarded.

Suggestions

In order to protect the well-being of the general population and defend the fundamental ideals outlined in the Indian Constitution, it is crucial to campaign for a comprehensive prohibition on the availability of pornographic material. Extensive documentation exists on the detrimental consequences associated with unregulated availability of pornography, which provide substantial hazards to personal welfare, society conventions, and the rights of susceptible demographics, notably minors. To justify regulatory actions, it is necessary to interpret Article 21 of the Indian Constitution⁵¹, which ensures the Right to Life and Personal Liberty, in connection with other constitutional provisions and legal precedents.

First and foremost, Article 21 of the Constitution not only safeguards personal liberty but also places significant emphasis on the right to life. This right incorporates a larger concept of preserving the overall well and dignity of persons. The act of consuming pornography, particularly when it include exploitative or violent material, might potentially have adverse consequences for individuals' mental well-being, interpersonal connections, and social perspectives towards gender and sexuality. In several instances, the Supreme Court has emphasised the state's responsibility to safeguard the basic rights of its inhabitants, even if it entails imposing restrictions on individual freedoms.

Furthermore, it should be noted that Article 19 of the Indian Constitution⁵², which ensures the entitlement to Freedom of Speech and Expression, might be subject to justifiable limitations in order to uphold public morality, decency, and the security of the state. The widespread dissemination of explicit content, especially via digital media, gives rise to apprehensions over its influence on society norms and ethical principles. The government is granted the authority to control internet content in order to prohibit the distribution of information that is deemed obscene, defamatory, or harmful to children, as outlined in statutes such as the Information Technology Act of 2000.

Moreover, it is worth noting that Articles 39(e)⁵³ and (f)⁵⁴ of the Indian Constitution place significant emphasis on the responsibility of the state to safeguard children from both moral and material neglect,

⁵¹ Art. 21, Constitution of India (Article 21 – Protection of life and personal liberty)

⁵² *Id.*, at Art. 19, (Article 19 – Protection of certain rights regarding freedom of speech, etc.).

⁵³ *Id.*, at Art. 39(e), (Article 39(e) – *that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength*)

⁵⁴ *Id.*, at Art. 39(f), (Article 39(f) – *that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment*)

while also ensuring that they are afforded chances for their holistic development. The presence of explicit material presents a substantial hazard to the mental and emotional welfare of children, exposing them to unsuitable information that may alter their understanding of relationships and sexuality. The legal goal of the Protection of Children from Sexual Offence Act, 2012 (POCSO Act) is to provide protection for kids against sexual exploitation and abuse, which includes the prevention of exposure to pornography.

The Supreme Court, in the significant legal case of *Kamlesh Vaswani v. Union of India & Ors*⁵⁵, recognised the adverse impact of pornography on minors and underscored the need of implementing regulatory actions to limit its availability. The court acknowledged the obligation of the state to advance the well-being of children and emphasised the significance of comprehensive sex education initiatives in mitigating the impact of pornographic content.

Furthermore, it is worth noting that Article 15(3) of the Indian Constitution⁵⁶ confers authority upon the state to enact specific measures for women and children, thus recognising their susceptible position within the societal framework. Proactive actions are essential in safeguarding the rights and dignity of women and children due to the widespread occurrence of gender-based violence and sexual exploitation, which is often perpetuated via the consumption of pornographic material. The importance of a community standard test in assessing the obscenity of content has been underscored by the court in instances such as *Aveek Sarkar v. State of West Bengal*⁵⁷. This underscores the changing cultural standards pertaining to decency and morality.

In summary, the comprehensive prohibition of pornographic material accessibility is not only warranted by constitutional requirements and legal precedents, but is also essential for the preservation of public welfare, the safeguarding of vulnerable populations, and the maintenance of societal morality. The detrimental consequences of pornography on people, especially children, emphasise the need for legislative actions to alleviate its detrimental influence. The state may achieve its constitutional obligation to promote the comprehensive growth and welfare of its inhabitants by giving priority to the ideals of dignity, morality, and social justice.

⁵⁵ *Supra* Note 48.

⁵⁶ *Id.*, at Art. 15(3), (Article 15(3) – *Nothing in this article shall prevent the State from making any special provision for women and children*).

⁵⁷ *Supra* Note 47.