



CYBER PORNOGRAPHY: A DARK SIDE OF VIRTUAL WORLD

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ABSTRACT:

Recent era is the revolutionary era in the field of digital technology. The present scenario of online dependency shows that vast amount of the information is available online and hence prone to cyber threats. This paper focuses on cyber pornography. The paper cyber pornography considers the banning of Cyber Pornography in India; the role of service providers. In addition to this it also takes into account the amendments related to Information Technology Act, 2000 for more stringent rules and Regulation, fair prosecution and conviction of offender who has committed offences of Cyber Pornography. This paper also discuss about the Protection of Children with Sexual Offences Act (POCSO), 2012. The new Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 is an attempt to impose restriction and regulate on Cyber Pornography. But still it a distant dream the fulfilment of which require detail strategic plan and improvement in technical ability and tools of law enforcement bodies.

Keywords: Cyber Poronography, POCSO,

INTRODUCTION :

Recent era is the revolutionary era in the field of digital technology. The Internet network has been spread rapidly throughout the country, across the limits of the country and even to the remotest area in a country. Information technology is used as a means of communication by the young generation. Apart from its advantages there are several issues of concern due to the misuse or wrong use of internet; Cyber Pornography is one of them. With the easy availability of the Internet, people can now watch thousands of porn on their mobile or laptops, they even have access to upload pornographic content online. The internet has decreased the obstacle of shame in purchasing the pornographic material in shops or the embarrassment of being spotted with the pornographic material. The Consumer of such material is more comfortable in accessing it on internet privately; this led the increase in demand for online pornographic material.

Cyber pornography means an act of using cyberspace to create, display, distribute, import, or publish pornography or obscene materials. With the advent of cyberspace, the problem of cyber pornography has become a burning issue. The word pornography is derived from two Greek roots, i.e. “*Porne* and *graphos*”. The word “*porne*” means prostitute, harlot or female captive, and the word “*graphos*” means “*writing about*” or “*description of*”. In a legal sense, Pornography means “*obscenity*”. Pornographic includes any video, pictures or movies that contain sexually explicit acts that are considered indecent by the public. There is a difference between Pornography and Obscenity. In **Ranjit Udeshi vs. State of Maharashtra** distinction between Pornography and Obscenity was clearly spelled out by the judiciary. It was held that while pornography denotes writings, pictures, etc. intended to arouse sexual desire, obscenity may include publications not intended

to do so but which have that tendency. While both offend against public decency and morals, pornography is obscenity in a more aggravated form.

Cyberspace is an instrument for the Cyber pornographers who either for their own enjoyment or for the sake of earning profit distribute or sell the pornographic material to the interested one. In the quest of obtaining porn material they even put the hidden cameras and violates the privacy of the society in places such as hotels, paying guest, hostels, changing rooms in shopping complex etc. It has been a market for near about \$1 trillion. Not only access but even uploading of any material or content even though it is unfiltered, uncensored or scrutinized any way is very easy.

Various issues are arising from this kind of behaviour and the most common one is, the collateral damage done to the lives of different individuals directly or indirectly related to such content.

Pornography is not legal in India. In January 2020, the Department of Electronics and Information Technology asked Internet service providers to take down 857 porn websites complying with the Supreme Court directive asking for measures to block porn sites, particularly those dealing with child pornography.

There are several laws related to Cyber Pornography in India like Information Technology Act, 2000, IPC, Indecent Representation of Women (Prohibition) Act, 1986, Young Person's (Harmful Publication) Act. The Protection of Children from Sexual Offences Act, 2012. The provisions in these laws can be discussed as follow:

Information Technology Act, 2000:

Cyber Pornography is neither banned nor legalised under the Information Technology Act (IT Act), 2000. The IT Act under section **67** prohibits the publication and transmission of

cyber pornography in electronic form. The offence under this Act is 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**. But this section does not prohibit the viewing or downloading of pornographic content if it is not child pornography. The term Publication include any material whenever transferred on a site, twitter or WhatsApp gathering or some other person to person communication destinations or any advanced entryway through which outsiders will approach such material. The term Transmission include dispersing any material having indecent pictures to any individual through email, messages, WhatsApp or some other type of advanced gateway.

Section **67A** of the Information Technology Act makes publication, transmission and causing to be transmitted and published any material containing sexually explicit act or conduct punishable with imprisonment up to **5 years and a fine up to Rs 10 lakh**.

Section **67B** of the IT Act, 2000 makes publishing, transmitting, viewing or downloading child pornography illegal. The punishment for this offence is imprisonment for a term which may extend to **five years** and with a fine which may extend to **ten lakh rupees** and in the event of second or subsequent 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**. According to Section 67B, any person who has not attained the age of 18 years is a child.

Child pornography is material "that visually depicts sexual conduct below a specified age". As per the **Article 9 of the Cyber Crime**

Convention, 2001, child pornography includes: “obscene material that outwardly delineates: a minor occupied with explicitly express lead and a man having all the earmarks of being a minor occupied with explicitly unequivocal direct, the term “minor” shall include all persons under 18 years of age”.¹¹ Article 9 of this Convention also provides for the punishment related to child pornography

In ***Kamlesh Vaswani v. Union of India***, it was held that, the sites indicating child pornography, particularly of kids between 14 to 18 years ought to be entirely prohibited. The court additionally laid emphasis upon the significance and desperation of the issue and held that, all gatherings by the said arrange must find a way to attempt and contain the hazard of child erotic entertainment.

Section 67C impose the duty on the intermediaries that they will protect and hold such data as might be indicated for such length and in such way as the Central Government may recommend. Non-compliance of this requirement is an offence which is punishable with imprisonment up to three years and fine.

Indian Penal Code:

The law relating to obscenity is codified in sections 292,293 and 294 of IPC.

1. **Section 292:** According to this section the publication of a book, pamphlet, paper, writing, drawing, painting etc. will be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect tends to deprave and corrupt persons who are likely to read, see or hear the matter contained in such materials. Clause (2) of S. 292 provides punishment for Sell, distribution, publicly exhibition or putting into circulation etc. or import or export of any obscene object which is imprisonment up to 2 years and fine of Rs. 2000 and in any subsequent conviction for a term and fine which may extend to 5 years and Rs. 5000 respectively.

Section 293 IPC provides punishment for a person who sells, distributes, circulates, exhibit etc. any obscene material to any person who is under the age of 21 which is imprisonment up to 3 years & fine of Rs. 2000 and on subsequent conviction up to 7 years and Rs. 5000 respectively.

Section 294 of the Indian Penal Code lays down the punishment for obscene acts or words in public which is imprisonment up to three months, or with fine, or with both.

Indecent Representation of Women’s Act, 1986:

This Act seeks to prohibit the representation of women or any part of her body in an indecent form through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or incidental thereto provided that such representation will injure public morality or morals.

It also prohibit selling, distribution, circulation of any book, pamphlets etc. which contain indecent representation of women. Offences under this Act are made punishable with imprisonment up to **2 years and with fine up to 2,000rs.**

On 19th July 2021 Businessman & husband of Bollywood actress Raj Kundra was arrested with 11 other people on an allegation of creation and distribution of pornographic films using a subscriber-driven mobile app called 'Hotshots'. He was in judicial custody for more than two months. Charges were levelled against him under relevant sections of the Indian Penal Code, the Indecent Representation of Women (Prevention) Act and the Information Technology Act, 2000. Now he is released on Bail.

In the leading case ***Avinash Bajaj v. State (N.C.T.) of Delhi***, popularly known as Baze.com case, an IIT Kharagpur student named Ravi Raj placed on baze.com a listing offering an obscene MMS video clip for sale for

Rs. 125 per video with the username Alice-elec. Fortunately, bazee.com had a filter for posting such questionable content. Despite that the listing never took place with the description, Item 2787748- DPS Girl having fun!!! Full video + Bazee points.

An F.I.R was also filed against the bazee.com for selling such obscene material on sale. Avinash Bajaj, CEO of bazee.com was arrested by the police under Section 292 of the Indian Penal Code (advertisement/sale of obscene objects) & Section 67 of the IT Act. Since Ravi Raj (the user who uploaded the MMS) absconded, Avinash Bajaj file a petition, seeking the quashing of criminal proceedings.

Protection of Children from Sexual Offences Act (POCSO), 2012:

POCSO Act makes the act of using child for pornographic purposes punishable. Section 13 of the Act explains what all acts constitute to be usage of a child for pornographic purposes. According to the said section, any person who uses a child for the purpose of sexual gratification through any kind of media either printed or electronic, no matter whether it was aimed for distribution or just personal use is said to have used the child for pornographic purposes. It includes the display of a child's sexual organs, indecent representation of a child, and engaging a child in true or simulated sexual activity where penetration is not a mandatory condition.

Section 14 of the POCSO Act punishes any person committing an offence under section 13 with an imprisonment for at least **5 years and fine**. And if the person is convicted for the same offence again, then he would be punishable with imprisonment for a minimum of **7 years and fine**.

Section 15 of the POCSO Act provides punishment for storing or possessing pornographic material that involves a child in three different situations. Firstly, if it has been

done to share such material so as to commit child pornography then it is punishable with a minimum fine of Rs. 5000, and for repeated act with a fine not less than Rs. 10,000. Secondly, if such storage or possession has been done to display or distribute it, then the punishment is imprisonment for a term which may extend to 3 years, or with fine, or both.

However, the storage would be exempted from this offence if it was done for the purpose of reporting or using it as evidence in court. Lastly, if the said pornographic material is possessed with an intention to use it for commercial purposes, then the person would be punishable with imprisonment, the term of which would be between 3 years to 5 years, or fine, or both. And if the same is committed again, the punishment would be between 5 years to 7 years of imprisonment and fine.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021:

Now a days the governments all over the World are facing with the issue of regulating social media intermediaries. To deal with this issue recently the Govt. of India through its Ministry of Electronics and Information Technology has issued the **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 which cover both intermediaries and publishers of digital content, including OTT platforms. These rules** mandate social media platforms to exercise greater diligence with respect to the content on their platforms. Now the obligation is imposed on social media intermediary to inform the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that is defamatory, obscene, pornographic, paedophilic, invasive of another's privacy, including bodily privacy, insulting or harassing on the basis of gender, libellous, racially or ethnically

objectionable, relating or encouraging money laundering or gambling, or otherwise inconsistent with or contrary to the laws in force. Further the Social Media Intermediaries (SMI) are required to make reasonable efforts to prevent prohibited content being hosted on its platform by the users.

Another obligation casted on Social Media Intermediaries is to “respect all the rights accorded to the citizens under the Constitution, including in the articles 14, 19 and 21”.

SMIs are now obligated to remove information or a communication link in relation to the six prohibited categories of content as and when a complaint arises. They have to remove such information within 72 hours of the complaint being made. This is an important step to hold the spread of the content.

Under these new IT Rules, 2021, the Indian Government ban 63 porn sites with immediate effect. The order ask ISPs to ban the said websites on all platforms, including computers, apps and mobile internet.

It must be said that these are the most needed rules as now a days OTT platforms are the most sought mode of entertainment. These platforms now produce their own contents which include films, documentaries, web series etc. In recent times many web series sparked into controversy due to their sexual scenes, abusive language and for the vulgarity. Before the enactment of these rules there were OTT platforms that were making cheap B Grade adult and erotic content which was not less than Soft core pornography. Hence it was very necessary to regulate these contents to stop such nudity and porn.

CONCLUSION:

Cyber Pornography is a big problem which the Whole World is witnessing now a days. Laws are there but despite such laws there has been easy accessibility to all kinds of pornographic content on the internet. These content include Child pornography, MMS, Videos of Sexual offences

etc. Internet is the very wide and easily accessible platform by the people of all ages and kind. These pornographic content influence the minds of young generation in unhealthy and undesirable manner. It is the problem how to restrict especially children from access to cyber pornography. Cyberspace and the pornographic material travelled through it have created challenges for Indian laws. Secondly, anybody can upload information on a website from anywhere with the entire world as its market. The online market extends well beyond the geographical boundaries and it is extremely difficult to identify persons responsible for such activities. The new **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 is an attempt to impose restriction and regulate on Cyber Pornography. But still it a distant dream the fulfilment of which require detail strategic plan and improvement in technical ability and tools of law enforcement bodies.**

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