

## Child Pornography In India : A Legal Analysis

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Best Citation - Tavleen Kaur, Child Pornography In India :  
A Legal Analysis, 2 (4) & 52 of 2022, IJLR.

### Abstract

Until a few years ago, the internet was a new and relatively unexplored territory. Initially, it was primarily used as an educational tool. Pornography has become more accessible as a result of the electronic revolution, bringing decadent and difficult-to-obtain images into the home. The expansion of computer databases on the internet has accorded adults and children the most access to sexually explicit images till date. Sexually explicit content emerges to be a bigger problem than anyone could have anticipated. The entire dynamic between sexual content and the audience has shifted dramatically over the years for a variety of reasons, both personal and authoritative. Addiction is a major factor in the rise in demand for pornography. By excluding age groups and social statuses, the efficacy of explicit content is maintained.

Cyberspace is crawling with pornographic content as a result of technological advancements and easy access. There is complete silence on many aspects of cyber pornography, besides women, children have always been soft targets in the cyberporn realm. The primary reason is that children are easily manipulated or coerced into participating in something inappropriate like this. Paedophilia is as real as it gets, and these child pornographic videos are grotesque proof of it. The number of sexual crimes against children has increased dramatically. The sheer gut-wrenching intent behind the demand for these videos is both shocking and sick. The internet is a playground for paedophiles because it provides anonymity and allows them to exchange information about

child pornography and interact with children through newsgroups, chat rooms, and e-mail. Society has consistently attempted to impose moral standards that set the parameters within which freedom of speech and expression can be legitimately exercised. Stepping over that line constitutes crossing the line into obscenity, which has been clearly identified as an exception to the exercise of free speech and expression in various legal systems. For centuries, courts and legislators have struggled to determine where exactly this line should be drawn. As a result, a variety of tests have evolved to determine whether an artistic or literary work is indeed obscene. While there are many opponents of obscenity who argue on moral and societal grounds, supporters of the case against pornography argue on the harm caused by the creation and dissemination of pornographic material. On the internet today, live sex and child pornography are ubiquitous.

The internet's power and the pornography industry have both fueled each other. Pornographic material was not as freely and easily available before the internet. Pornographic material, which was previously hidden in the nooks and corners of shady book stalls on roadside pavements, bus stops, and railway stations, is now only three clicks away from any location with an internet connection. They are only familiar with two aspects of computers: games and cyber pornography. The widespread availability of pornography to all, including our children, combined with the depths of depravity and the widespread involvement of children in sexual performance, has fueled the debate and controversy surrounding cyber pornography. This paper will discuss the prevalence of child pornography in India, the legal provisions for combating it, Case studies in Indian cases that have emerged as a new crime in India and Transnational legislation on child pornography.

Keywords: Cyber Pornography, Child Pornography, Paedophiles, Victims, Education, Obscene and sexually explicit content

## I. INTRODUCTION

Until a few years ago, the internet was a new and relatively unexplored region. Initially, it was primarily utilised as an instructional tool. Pornography has become more accessible as a result of the electronic revolution, bringing decadent and difficult-to-obtain imagery into the house. The growth of computer databases on the internet has given adults and children the most access to sexually explicit pictures to date. According to research, internet pornography contributes to negative socioeconomic concerns such as child abuse, aggression against women, rape, inequality, relationship and family collapse, juvenile criminality, promiscuity, and sexually transmitted illnesses. Today's parents have real concerns about what their children may be exposed to and the harm that internet pornography can do.

Child molesters are searching for victims on the information superhighway. The internet is paedophiles<sup>189</sup> playground because it provides anonymity and allows them to communicate information about child pornography and contact with minors through newsgroups, chat rooms, and e-mail. The internet is used by paedophiles to discuss trade secrets, such as how to alter identities, create passports, and smuggle juveniles.

Pornography can be found on the internet in a variety of formats. These include images, short animated movies, sound files, and stories. The majority of this type of pornographic content is available via World Wide Web pages, but it is also distributed via an older communication method, Usenet newsgroups. The internet also allows you to discuss sex, watch live sex acts, and plan sexual activities from the comfort of your own home. There are also sex-related discussions on the Internet Relay Chat channels, where users exchange messages and files in small groups or private channels. However, as with the web and Usenet,

only a small percentage of IRC channels are dedicated to sex.

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As a result, a variety of tests have evolved to determine whether an artistic or literary work is indeed obscene. While there are many opponents of obscenity who argue on moral and societal grounds, supporters of the case against pornography argue on the harm caused by the creation and dissemination of pornographic material. In essence, three types of harm can be directly attributed to pornography. First, there is the direct harm done to the participants in pornographic films and photographs, many of whom are coerced into performing the act. There is also the harm caused by sex crimes that would not have occurred if pornographic materials had not been available. Finally, there is societal harm, which is much more difficult to identify than the other two, but which nonetheless exists. One wonders when, where, and if cyber pornography will reach a plateau in the graph of fantasies. On the internet today, live sex and child pornography are commonplace. Cyber pornography is a difficult problem, owing to differences in acceptable moral boundaries across countries. Some of the implications of cyber pornography on the internet differ from other cyber crimes such as hacking, cyber fraud, virus distribution, and intellectual property theft. Unlike the latter cybercrimes, which endanger the internet's credibility, cyber pornography encourages its use.

<sup>189</sup> PALAK NIGAM, CHILD PORNOGRAPHY IN INDIA: A STUDY FROM SOCIO-LEGAL PERSPECTIVES, Manupatra Articles (Oct. 27, 2022, 9:29 AM), <https://articles.manupatra.com/article-details/CHILD-PORNOGRAPHY-IN-INDIA-A-STUDY-FROM-SOCIO-LEGAL-PERSPECTIVES>

The following are some of the reasons why cyber pornography<sup>190</sup> has become such a big business:

- The easy, free, efficient, convenient, and anonymous access to pornographic material via the internet.
- The anonymity of the cyber pornography industry, global accessibility, problems of jurisdiction, different laws and moral standards in different countries, which have made laws and their enforcement a mockery.

The aforementioned factors have resulted in the cyber porn industry's attractive profitability and thus its growth. The power of the internet and the pornography industry have fueled each other. Pornographic material was not as freely and easily accessible before the internet. Pornographic material, which was previously hidden in the nooks and corners of shady book stalls on roadside pavements, bus stops, and railway stations, is now only three clicks away from any location with an internet connection. They only know two things about computers: games and cyber pornography.

The widespread availability of pornography to all, including our children, combined with the depths of depravity and the widespread involvement of children in sexual performance, has resulted in the heat and controversy surrounding cyber pornography. However, in order to combat pornography, many advocate for a ban on the distribution of all types of pornographic materials. While this appears to be an effective solution at first glance, it should be noted that prohibitions of any kind, rather than having a beneficial effect, usually succeed in driving prescribed activity underground, where it cannot be observed, let alone regulated.

Even the most stringent restrictions on the publication and dissemination of pornographic materials on the internet will have little effect, as the medium's very nature will allow

purveyors of pornographic material to evolve new and less detectable methods of distribution. In such cases, it has frequently been observed that greater benefits result from regulating the actual production of the material rather than controlling the distribution of the products. Because of the nature of the internet, its regulation has always been difficult. The existence of pornographic material on the internet has perhaps received more publicity and debate than any other aspect of the medium, sometimes to the point of overshadowing the several additional applications for the medium.

Technology<sup>191</sup> has an inherent capacity to disregard legislative and judicial efforts to regulate human behaviour. Science is constantly expanding boundaries, while law struggles to define and redefine boundaries in order to keep up. From cloning and biotechnology to the internet, the last few decades have seen quantum leaps that promise to shake the very foundations of current normative, social, and legal perceptions. While there is much to be gained, there is also the flip side to consider. The issue is exacerbated in areas such as pornography, which is based on moral standards and employs contentious parameters such as indecency and obscenity. These are by nature fluid, changing both over time and in terms of geography depending on social values. While there is no single monolithic authority that governs cyberspace, and there has been paranoia about the pervasiveness of internet pornography, it is not a fundamentally new form of criminal behaviour. What has happened, however, is that distribution has been greatly simplified. Whether pornography has any significant negative effects on consumers remains a contentious issue, not only for ordinary citizens but also for behavioural scientists. According to some social commentators, pornography is primarily a form of entertainment, possibly educational, occasionally sexually arousing, but essentially harmless. Or, at the very least, they claim that there is no good scientific evidence of harm.

<sup>190</sup> Jaskaran Singh Saluja, Pornography in India – A Moral Dilemma, Vol.2 IJLMH,2 (2018), <https://www.ijlmh.com/wp-content/uploads/2019/04/Pornography-in-India---A-Moral-Dilemma.pdf>

<sup>191</sup> Abby Lukas, Exploring the Extent to Which the Utilization of Technology Has Facilitated the Increased Possession of Online Child Pornography over Time ,DigitalCommons (Oct. 27, 2022, 9:29 AM) <https://core.ac.uk/download/pdf/231826258>

Other social commentators argue that the consequences are far-reaching, citing recent cases of sex murderers who claimed that pornography was to blame "persuaded them to do it."

## II. NESTLED IN HISTORICAL AND RELIGIOUS PARADIGM

In terms of history, pornography has existed in some form or another from time immemorial. The earliest love handbook, 'Kamasutra,' was composed about 300 AD and featured extensive descriptions of lovemaking and related subjects. So, by definition, this is a pornographic work, yet it is nevertheless recognised an expert on the issue, with several translations in other languages, and no stretch of the imagination can anybody label this an abscellious disar rather than a masterpiece on this delicate subject. It also a religious contest, since Lord Krishna and Copis in (Raaslila") are worshipped in Hide escapades. These adventures have been the theme of a lot of novels in Hindi literature, and such literature is also of course books. The sculptures at Khujraho's famed temples portray lovemaking scenarios in vivid detail and are centres of not just art and culture but also devotion. These are only a few instances that show that love in its purest form is not forbidden in India. The tribal societias' paintings on the walls rarely depict the titillation induced by nudity, since nudity was normal to them.

The Yakshi sculptures in the National Museum, the carved copulatory poses on the walls of temples, now on display at Konark, Orissa, and Khajuraho, Central India, seem to be a celebration of creation, according to the intelligentsia. The possibility that these are temples solely accessible to the elite for their titillation cannot be ruled out.

There is little study material for the mediaeval centuries, and there are few articles in newspapers, periodicals, and other media regarding pornography from the middle ages forward. One factor for the scarcity of study information is the desire to sustain the myth of the elder generation being morally superior to the young of that age and subsequent

generations. This also allows social scientists and commentators on the contemporary socio-cultural scene to put on a holier-than-thou' facade, which is useful in keeping the younger generation from going completely free; not to mention the *raison-de-etre* for the suppression of people in general, and control of sex and sexuality in particular, in the name of morality<sup>192</sup>.

The Oxford Dictionary describes pornography as "the explicit portrayal or exposition of sexual topics or action in literature, painting, cinema, etc., in a way designed to excite erotic rather than aesthetic feelings; literature, painting, films, etc. containing this."

Pornography is defined by Webster as writings, pictures, etc. intended primarily to arouse sexual desire; (in) the production of such writings, pictures, etc." Technically, the term "pornography" comes from the Greek word "Pornographos" (porne prostitute + graphein write). As a result, it begins with 'porne or porno,' which means 'prostitution,' implying that the subject is domination and violence against women rather than mutual love. It concludes with the root 'graphos,' which means writing about or describing, putting even more distance between the subject and object.

As a result, it elicits a spontaneous deep desire for closeness with the object and voyeur, creating a dangerous situation in which a person becomes a covert, passive, and powerless observer of pornographic activities written or otherwise available in cyberspace.

**R.D. Udeshi v. State of Maharashtra**<sup>193</sup> is a significant case that defines the term "obscenity" in the Indian context. Obscenity is defined as anything that depraves or corrupts the minds of those who are susceptible to such immoral influences. It also stated that no intention was required. Obscenity, on the other hand, is a legal term defined by the United States Supreme Court in its **1973 Miller v.**

<sup>192</sup> Tarannum Vashisht, Child Pornography: Reasons, Impact and Regulation, iPleaders (Oct. 27, 2022, 9:29 AM), <https://blog.iPLEaders.in/child-pornography-reasons-impact-and-regulation/>

<sup>193</sup> Ranjit D. Udeshi vs State Of Maharashtra AIR 881, 1965 SCR (1) 65

**California**<sup>194</sup> decision. To be deemed obscene, and thus unprotected by the First Amendment, a judge or jury representing a cross-section of the community must determine whether the material:

- 1) appeals to a prurient (sick, morbid, shameful, or lascivious) interest in sex;
- 2) depicts sexual conduct in a patently offensive manner (i.e., goes beyond contemporary community standards with regard to depictions of sexual conduct or activity); and
- 3) As a whole, it lacks significant literary, aesthetic, political, and scientific worth.

Before the content to be considered obscene in the eyes of the law and its dissemination outlawed, it must pass all three standards. This implies that anything might be considered "pornographic" but not obscene, such as an explicit sex video made and used to educate medical students about human sexuality, or a film or book of substantial aesthetic and/or literary merit that contains some explicit sexual material. As a result, the Supreme Court has safeguarded a broad range of sexual content in movies, books, magazines, and other mediums from being restricted for sale or display to adults (there is a stricter standard with respect to minors). However, under the Miller test, the dissemination of obscene pornographic content, such as most hardcore, may be restricted and fines imposed.

While sexual objectification of women is widespread in all pornography, women are treated significantly worse in violent pornography, in which female characters are slain, tortured, gang-raped, maimed, tied, and otherwise tormented in order to provide sexual stimulation or pleasure to male characters.

Pornography is ethically repugnant and immediately leads to violence against women. It is violent in a variety of ways, including:

- Women being physically forced into pornography,
- Women engaging in pornography production who have not been physically wounded by patriarchy to the point that they are incapable of providing informed or genuine consent,
- Capitalism is an economic coercion system that compels women into pornography to earn a livelihood.
- Pornography is violence against women who consume it, reinforcing their own subjugation;
- it is also violence against women as a class, who must live in dread due to the climate of horror it produces.

### III. CHILD PORNOGRAPHY

Online child pornography poses more dangers than in the real world. The term "child pornography" refers to any visual portrayal of a child under the age of eighteen engaging in sexually explicit behaviour, whether it be actual sexual conduct or a simulation of sexual activity. The quantity of online child pornography has skyrocketed, says Interpol. However, with the introduction of internet pornography, there has been a surge in new and younger consumers. Seventy percent of 15 to 17-year-olds "have accidentally come across pornography on the web," according to a report by the Kaiser Family Foundation<sup>195</sup>.

Given that teenage boys are disproportionately represented among pornographic content consumers and that their online access is largely unrestricted, this demographic may be facing an even more serious problem—sexual addiction.

As a result of the anonymity it provides, as well as the ease with which they may communicate through newsgroups, chat rooms, and e-mail, paedophiles have found the internet to be a veritable paradise in which to engage in their perverted activities. The online community includes specialised message boards designed with the explicit goal of luring minors into sexual encounters. They use games as a hook to connect with children online.

<sup>194</sup> Miller v. California, 413 U.S. 15 (1973)

<sup>195</sup> Sharon Lerner, The Henry J. Kaiser Family Foundation: The Sex-Ed Divide, KFF (Oct. 28, 2022, 9:29 PM) <http://www.kff.org/>

The next step is for them to set up a meeting in person. It is common practise for paedophiles to initiate contact with youngsters through internet chat rooms and instant messaging.

If a paedophile wants to feel accepted and that their sexual interest in children is normal, they may utilise the internet to find groups of other paedophiles with whom they can "virtually validate" their behaviours.

### 8 Pornography Leveraging New Technology

Pornography followed in the footsteps of scientific and technological advancements. There was a rapid boom in video pornographic content when projection technology became affordable enough for even middle-class households to put up in their own homes. By the late 1980s and early 1990s, television had established itself in cities. As a result, everybody with a cable connection had effectively transformed his or her house into a movie theatre. The permissive sex movies presented in the serials increased demand for more graphic video. Semi porn had infiltrated the family's holy sanctum. At the same time, the computer revolution was taking place. Data, jokes, anecdotes, and rudimentary line drawings with jagged ends and edges were exchanged via computers. Cyber technology moved from data transport to still photos, then to choppy video. Video clips nowadays have a lifelike quality. Pornography on the internet comes in a variety of forms. These include images<sup>196</sup>, small animated movies, sound files, and tales. The majority of this kind of pornographic material is accessible through web sites, but it is also delivered using an older communication method, Usenet newsgroups. The internet also allows you to talk sex, watch live sexual acts, and plan sexual activities from the comfort of your own home. There are also special groups or private channels where messages and data are exchanged. As we can see, pornography has progressed

from prehistoric caves to today's quickest method of communication, the internet, and has always kept up with technological advancements. There has never been a time in history when pornography was not a vital component of human growth.

Pornographers have never shied away from using technology to assist commercial activities. On modern media such as hard drives, floppy discs, and CD-ROMs, massive volumes of pornographic content may be replicated more swiftly and inexpensively. The new technology is more than just an extension of traditional formats such as text, photos, and graphics. Aside from still photos and photographs, full motion video snippets with sound and whole movies are also accessible. In fact, the newest trend seems to be toward interactive live sex'where persons perform on and in response to requests from service customers.' All of information may be seen on the end user's display, saved and sent, or printed out as physical copies of pictures and text. As a result, law enforcement agents have a tough time deterring the replication of this content. Forfeiture was formerly a reasonably effective punitive consequence, but its impact has been diminished due to the simplicity of copying and backup copies. Then there's the medium's inherent character. All of the benefits of the internet, such as its simplicity of use, extensive availability, and somewhat democratic character, benefit pornographers. The number of internet users in India is steadily increasing. This has particularly worrying repercussions for youngsters. They may now log on in relative secrecy from their homes, and the traditional social and legal barriers connected with physically buying an adult magazine from a newsagent are no longer existent. The substance is not difficult to get. Any search engine may provide a list of several sites containing pornographic material.

As paedophiles<sup>197</sup> and sexual predators share child pornography, engage in sexually explicit chats with minors,

<sup>196</sup> Dr. Samir Bhadury, Child Pornography in India: Issues and Challenges, Vol.6 Journal PPW 6527, (2022) <https://www.journalppw.com/index.php/jjsp/article/download/8639/5646>

<sup>197</sup> Bernadette H.Schell, Cyber child pornography: A review paper of the social and legal issues and remedies—and a proposed technological

and seek victims in chat rooms, the internet has proved to be a handy tool. The more pornography these people see, the more likely it is that they will act out what they see, including sexual assault, rape, and child abuse. Bari exposure to pornography (under the age of fourteen) is associated with increased engagement in deviant sexual practises, notably rape. Pornography usage on a regular basis might lead to decreased pleasure with moderate types of pornography and a similarly strong urge for more deviant and violent content. Pornography supports child molestation in various ways, apart from encouraging the offender. Pedophiles, for example, utilise pornographic images to show their victims what they want them to do. They are also used to excite or depress a child's inhibitions. As more youngsters are exposed to not just soft-core pornography, but increasingly explicit deviant sexual content, pornographers are teaching them an exceedingly hazardous message: sex without responsibility is acceptable and desired. Pornography endangers children's health because it promotes irresponsible sexual expression. One of the most ominous implications of adult-like sexual behaviour among adolescents has been a rise in the number of young people infected with venereal disease. Pornography may cause children to behave sexually against younger, smaller, and more vulnerable youngsters. Most responsible, loving parents want to impart in their children our own particular ideals about relationships, sex, intimacy, love, and marriage. Unfortunately, pornography's strong irresponsible messages may be instructing our youngsters on these critical life concerns. Just as thirty-second advertising may affect our decision to buy a popular product. Exposure to pornography impacts our views, values, and, in many cases, behaviour. Photographs, movies, publications, virtual games, and internet pornography depicting raps and the "dehumanisation of females in sexual scenarios" are potent yet dehumanising sex education tools. During crucial stages of life, the brain of a kid is programmed for sexual orientation. During this time, the mind seems to be preparing for what may excite or interest the individual.

solution, ScienceDirect (Oct. 28, 2022, 9:29 PM), <https://www.sciencedirect.com/science/article/abs/pii/S1359178906000401>

The youngster may develop a healthy sexual orientation if exposed to appropriate sexual norms and attitudes throughout this crucial era. In contrast, if a youngster is exposed to pornography at this era, sexual deviance may become a permanent aspect of his or her sexual orientation, which may not be considered normal. There is a clear need to strike a balance between adult interests and the protection of children and other vulnerable populations. This is particularly crucial given that internet users are a fiercely autonomous group who view any efforts at external control with profound scepticism and disdain. A consensus-based approach that achieves its goals without being too restrictive is the desired objective of every endeavour at regulation. Consequently, one must examine the value of legislation as a means to this objective. Among the documented cases of the possible damage caused by the current wave of cybercrime are the following:

- A military panel sentenced a lieutenant colonel to 25 years in jail after he acknowledged murdering his wife after an argument about his pornographic internet usage<sup>198</sup>.
- Seven-year-old Danielle Van Dam was killed in San Diego County, California, by a pornographic junkie last year "victimless" crime<sup>199</sup>.
- "Less than one hour after obtaining pornographic material from the internet, the father stabs his 12-year-old kid in the brain for refusing to perform a sex act<sup>200</sup>."
- "Paedophile with pornography-filled rucksack attacks youngster in library."
- Two girls, aged 11 and 12, upload naked photos of themselves on the internet, claiming that they were motivated by pornographic content on the web.
- According to a recent federal complaint, a flood of online pornography has made the downtown library a hostile workplace for a dozen librarians.

<sup>198</sup> theIntelligencer, <https://www.theintelligencer.com/news/article/Colonel-Sentenced-in-Wife-s-Death-10485175.php>, (last visited Oct. 30, 2022).

<sup>199</sup> Last Time Around, <https://www.nationalreview.com/2003/06/last-time-around-jan-larue/>, (last visited Oct. 30, 2022).

<sup>200</sup> The Crime Wire, <https://thecrimewire.com/true-crime/Murderous-Children-Joshua-Phillips>, (last visited Oct.30,2022)

The 12 plaintiffs filed suit against the city library system in U.S. District Court in Minneapolis on Monday, alleging they were subjected to an intimidating, hostile, and offensive work environment that violated state and federal law

- " A man was arrested for masturbating while using a computer in the children's section of the downtown Cleveland Public Library. According to library security staff, a surveillance camera captured 23-year-old John Titter with his hands down his trousers. In October 2002, Titter was arrested for obtaining child pornography from the Mayfield Village Library."

#### IV. CASE STUDIES IN INDIAN SCENARIO

- i. Photographs taken by Swiss couple William and Loshier Marty<sup>201</sup>, who were part of an international paedophile syndicate with operations in the west, Thailand, Sri Lanka, and India, were found in an online case. The Marty's were literally caught with their trousers down on December 16, last year, at a resort on Madh Island, Mumbai, with two young girls. According to police sources, images of the couple's victims—some as young as seven years old—were sent to paedophile rings and were also uploaded on the Internet. These images are only a drop in the bucket of child porn accessible on the internet. However, paedophilia and its cyber manifestations are crimes that India can no longer ignore.
- ii. The Delhi Police's cybercrime squad has just six cases<sup>202</sup>. And the only one even somewhat linked to paedophilia, if at all, is against a 16-year-old youngster who started his own website to retaliate against his classmates for

tormenting him. A dozen of his schoolmates are described in vulgar ways on the website. His "special" friend enjoys "stroking his carrot," while another is labelled gay.

- iii. During ordinary browsing, another site caught the attention of the CBI's cyber crime investigative unit. The website marketed itself as a marketplace for people looking to acquire or sell sex slaves. Since 1998, it has provided members with a horrifying range of slaves, including virgins, black slaves<sup>203</sup>, young slaves, pregnant slaves, and others. If a person abused a slave and sent in images, the membership price may be waived. The CBI put up a dummy client and were immediately given an adolescent girl. They discovered that the site's pimp was working from cybercafés in Delhi. He pulled out of the arrangement at the last minute, though, and is now untraceable.
- iv. Last year, law enforcement uncovered India's first incidence<sup>204</sup> of child pornography on the Internet. The homepage of the site in issue was deceptively benign. However, following the links yields 27 files with names such as "Little women on the beach" and "All in the family." Watch the "VIP series" and customised films for a little fee. The majority of the highlighted girls were under 10 and South Asian. The site was built in Lima, Peru, according to the investigation. However, Arvind Shyam Jagdam from Hyderabad was its domain server provider. In September of last year, Jagdam was detained and then freed on bond.

<sup>201</sup> Pamela Raghunath, Paedophile Swiss couple held in Mumbai, UAE (Oct. 30, 2022, 9:29 PM), <https://gulfnews.com/uae/paedophile-swiss-couple-held-in-mumbai-1.437161>

<sup>202</sup> The Economic Times, [https://economictimes.indiatimes.com/blogs/Cyberlawstodaytimes/online-predators-and-indian-cyberlaw/\(last-visited-Oct.-30,-2022\)](https://economictimes.indiatimes.com/blogs/Cyberlawstodaytimes/online-predators-and-indian-cyberlaw/(last-visited-Oct.-30,-2022)).

<sup>203</sup> Thousand Windows, <https://10thousandwindows.org/cybersex-trafficking/> (last visited Oct. 30, 2022).

<sup>204</sup> Yamini & Mohit, Dynamics of Internet Child Pornography - Menace to Legal and Societal Perceptions, Legal Services (Oct. 30, 2022, 9:29 PM), <https://www.legalserviceindia.com/legal/article-2379-dynamics-of-internet-child-pornography-menace-to-legal-and-societal-perceptions.html>



v. Prior to the implementation of the Information Technology Act in 2000, the Arjika case arose. Interpol reportedly contacted the Indian authorities, who then filed a charge under Section 292 of the Indian Penal Code. There was a website named [www.sweeties.arjika.com](http://www.sweeties.arjika.com) that hosted child pornographic content. Three-hour-long, custom-made films on the offending website featured minors engaging in sexual orgies. The films included images of nude youngsters aged 6 to 15 years old. However, this obscene content was well concealed. The homepage of the website featured the popular cartoon character Pokeman. There was explicit child pornographic content accessible upon accessing the link. Interpol, which has a unit dedicated to detecting internet child pornography, contacted the CHI, which then filed the case under Section 292 of the Indian Penal Code. CHI then arrested a Hyderabad-based computer engineer, Arvind K Shyam Jagdam of M/s Arjika Impex Pvt. Ltd<sup>205</sup>, on the grounds that he controlled the domain hosting the paedophile website. Further investigation found that Jagdam reportedly created a free website with free web space available to anybody who registered with the site. Consequently, someone in Peru enrolled on this free website and established a pedophilic website disguised as the cartoon character Pokeman. The fact that the nude youngsters shown on the website were absent from their separate families added to the mystery of the case. It is also crucial to note that in this instance, Jagdam provided a free website with unlimited web space to everyone who registered on the site. As a result, Jagdam

lacked physical control over the website's content and could not be considered its creator. The authorities essentially accused Jagdam of carelessness on the grounds that when he obtained the free space via North Sky, he signed an agreement pledging that [www.arjika.com](http://www.arjika.com) would not host any pornographic websites. The matter is confidential. This case also poses complex jurisdictional difficulties, since the domain name in question is held by an Indian, the author of the pedophilic website is situated in Peru, and the website's server is based in the United States. This case presents very complex questions about different facets of internet pornography. It would be fascinating to see how this pre- IT Act cyberporn issue is resolved logically.

vi. In the first case of its sort, the Delhi Police Cyber Crime Cell filed a complaint under Section 67 of the IT Act of 2000 in the Air Force Bal Bharati School case<sup>206</sup>. According to reports, a 16-year-old student from Air Force Bal Bharati Institution, a prestigious Delhi school, built the website [www.amazing-gents.8m.net](http://www.amazing-gents.8m.net). The schoolboy hosted the website on free web space. It had writing and was dedicated to Air Force Bal Bharati School. On this website, clear, detailed sexual information about several "hot" schoolgirls and instructors were provided. Girls and instructors were also categorised based on their physical characteristics and reported sexual inclinations. The website existed as part of an adult boy's prank among a student's social group. This went on for a while until one of the males informed a female "featured" on the website about it. The girl's father, an

<sup>205</sup> The Economic Times, <https://economictimes.indiatimes.com/company/arjika-impex-private-limited/U51909TG1999PTC030993> (last visited Oct. 30, 2022).

<sup>206</sup> TheDQWeek, <https://www.dqweek.com/net-pornography-incident-at-bal-bharti-school-raises-several-issues/> (last visited Oct. 30, 2022).

Air Force officer, reported the incident to the Cyber Crime Cell of the Delhi Police under Section 67 of the IT Act of 2000. The police detained the suspected youngster at the Timpur juvenile facility. The Juvenile Board granted bail to the 16-year-old pupil after almost one week. It is important to emphasise that the purportedly indecent website did not include any visual content, simply text. The matter is confidential.

- vii. *State of Tamil Nadu v. L. Prakash*<sup>207</sup>: In the last week of December 2001, another complaint was filed in India under Section 67 of the Information Technology Act of 2000. The lawsuit was filed against Dr. L. Prakash of Chennai based on the accusation of a young guy from Pondicherry named Ganesh. According to reports, Ganesh filed a criminal complaint at the Vadapalani police station in Chennai, stating that Dr. L. Prakash was blackmailing him into having sex with women because he appeared in pornographic movies and photographs. Ganesh, an SSLC student, said that Dr. L. Prakash threatened him with a gun and forced him to engage in sexual activity. Allegedly, Ganesh once fled to Pondicherry, but the doctor again coerced him into the sex ring. Dr. L. Prakash is claimed to have offered large sums of money to college and working women in exchange for pornographic recordings and photographs. Even the female employees of his clinic were apparently not spared. Dr. Prakash reportedly preyed on women in order to maintain the success of his pornographic websites [www.realindianporn.com](http://www.realindianporn.com) and [www.tamilsex.com](http://www.tamilsex.com). The doctor reportedly distributed blue videos and naked images over email from his residence. In addition, it was

said that the doctor's brother Laxmanan, who lives in the United States, assisted him in selling pornographic recordings in the West, from which he allegedly made thousands of dollars. A case was subsequently filed under Section 67 of the Information Technology Act, 2000, Section 4 read with Section 6 of the Indecent Representation of Women Act, Section 27 of the Arms Act, and Sections 120-B and 506(2) of the Indian Penal Code. This case is very significant since, for the first time in our nation, internet pornographic sites and brokers have been directly targeted. The matter is confidential.

#### V. COMPARATIVE ANALYSIS OF CHILD PORNOGRAPHY LEGISLATION WITH OTHER COUNTRIES

How pornography should be governed is one of the most contentious internet-related issues to emerge in recent years. The broad availability of pornographic content on the Internet has sparked a "moral panic" shared by the government, law enforcement agencies such as the police, prosecutors, and courts, and the media in general. Governments and law enforcement agencies from throughout the globe have made several efforts to restrict the availability of pornographic information on the Internet. In the summer of 1996, when the US government enacted the Communications Decency Act (CDA), the UK authorities sought to suppress Usenet discussion groups that allegedly included child pornography. Both initiatives were criticised, and in June 1997, the US Supreme Court threw down the CDA. There is no universally accepted definition of pornography in any country or on the internet, since cultural, moral, and legal differences make it impossible to characterise pornographic material in a manner that is acceptable to everyone. What is just sexually explicit but not obscene in England may be obscene in many other countries; conversely, what is legal but not pornographic in Sweden may be obscene under current UK law. Numerous

<sup>207</sup> *Dr. L. Prakash vs State Of Tamil Nadu* (2002)

governments have attempted to restrict pornography on the Internet, and a summary of their efforts is provided below.

### A. United States of America

#### 1) The United States Communication Decency Act of 1996:

The Communications Decency Act (CDA), 1996<sup>208</sup> (Title V of the Telecommunications Act of 1996; 47 U.S.C. §223) was enacted to protect children from pornographic material. The CDA makes it illegal to transfer obscene content with the intent to sell or distribute it in international or interstate commerce or through the use of an interactive computer service. The CDA has been criticised for being too cumbersome and excessive in its efforts to regulate. Specifically, the CDA stipulated that it extended to content accessible through an interactive computer service, such as the Internet. However, in the United States, with its more liberal constitutional framework, speech that is neither obscene nor indecent is protected by the First Amendment, which protects Freedom of Speech and Expression. The CDA stipulates sanctions of up to five years for a first offence and 10 years for consecutive offences. In *ACLU v. Reno*, the Supreme Court ruled that obscene content aimed at kids on the Internet was entitled to the same First Amendment protections as other forms of expression. The Child Online Protection Act of 1998 (COPA) was created as a replacement for the unconstitutional sections of the Child Online Privacy Act (CDA).

#### 2) US legislation against child pornography:

Child pornography is largely governed by the Child Pornography Prevention Act of 1996 and the Child Online Protection Act of 1998. The previous law outlaws the use of computer technology to manufacture child pornography, or representations of sexually explicit behaviour involving or

seeming to include children. The later Act is seen as an effort by the American Congress to replace some CDA provisions. It mandates that commercial site owners that provide information considered detrimental to children must utilise legitimate techniques to authenticate the identify of site users.

#### 3) Child Pornography Prevention Act of 1996 (CPPA) - 18 U.S.C. § 2256

For our purposes, Section 2256 of the Child Pornography Protection Act is the most important provision. It forbids and criminalises the use of computer technology to manufacture child pornography including both actual and fake children. Section 2256 explains what constitutes child pornography: "any depiction, including any photograph, film, video, picture, or computer or computer-generated images or picture, of sexually explicit conduct, where:

- The employment of a minor participating in sexually explicit activity in the production of such visual portrayal;
  - Such visual depiction is, or seems to be, of a minor engaged in sexually explicit conduct;
  - Such visual depiction has been created, adapted, or reproduced by a minor;
  - Such visual depiction has been created, adapted, or reproduced
- In *U.S. v. Hilton*<sup>209</sup>, the court affirmed the defendant's conviction for possession of child pornography on the grounds that "child pornography was an unprotected category of speech defined by its content and, as such, may be freely controlled." The Court made no distinction between photographs of actual children and those of fictional or imagined youngsters. *U.S. v. Acheson*, a Florida case, reached a similar decision. In the case *Free Speech Coalition v. Reno*, however, the court reached the opposite result. It believed that the CPPA's definition of child pornography was too wide and ambiguous since it extended to both actual and fictional

<sup>208</sup> Communication Decency Act, <https://www.sciencedirect.com/topics/computer-science/communication-decency-act/> (last visited Oct. 30, 2022).

<sup>209</sup> *United States v. Hilton Hotels Corp.* - 467 F.2d 1000 (9th Cir. 1972)

images of children. Therefore, the court determined that the First Amendment forbade Congress from adopting a law making it illegal to produce pictures of fictional children engaging in imagined but explicit sexual behaviour. It would be very hard for someone seeing the photographs to distinguish between a child and an adult with a youthful appearance. In addition, the court said that the CPPA altered the original purpose of Congress when it enacted child pornography laws. Originally, these laws solely applied to actual children. The CPPA went from "defining child pornography in terms of the damage inflicted upon actual children" to "determining that child pornography was inherently wicked, regardless of whether it included actual children. "The court ruled that this was a violation of the First Amendment."

- 4) Protection of Children from Sexual Predators Act of 1998, Title 18 U.S.C. § 302

The Protection of Children from Sexual Predators Act of 1998 broadens responsibility to include individuals who seek to utilise the Internet for child pornographic purposes. This regulation explicitly targets commercial pornographers and makes it illegal to produce a communication for commercial reasons that is detrimental to kids (16 years and younger) or to engage in sexual intercourse with children through the internet.

## B. United Kingdom

India's legal system was inherited from the United Kingdom, and it is there that attention must be directed. The Obscene Publications Acts of 1959 and 1964, as revised by the Criminal Justice and Public Order Act of 1994, prohibit depraving and corrupting materials. A person commits an offence if they post an indecent article. Possession alone is insufficient, but possession for publishing for profit is criminal. In addition, the Act was recently revised to emphasise that publishing includes the transmission of electronically stored material. In two paedophilia-related

instances, the court was presented with a number of publication-related difficulties. In the case of *Fellows and Arnold*, the two defendants were charged with 18 counts<sup>210</sup> under the Protection of Children Act of 1978, the Obscene Publications Act of 1959, and the CJPOA of 1994, which expanded the definition of publishing to include computer transmission for the first time. The issue then arises as to whether putting obscene content on a website was sufficient transmission for publishing, given that the other party had to actively retrieve the content. The court investigated the activities preceding the offence and determined that there was sufficient action for it to be considered publishing. In addition, the law now considers as publications photos kept on computers and even so-called 'pseudo-photographs,' which are digitally changed images used by paedophiles to combine the bodies of adults and the faces of children. Lastly, the enforcement agencies are also serious. The Criminal Justice and Public Order Act of 1994 (CJPOA 1994) revised UK obscenity laws to address the unique issue of online pornography. The following will demonstrate, however, that applying current national rules to a medium with no boundaries, such as the global internet, might be problematic.

- 1) Child pornography legislation in the United Kingdom:

Legislators and parents in the United Kingdom are more concerned about child pornography than with other types of pornographic information on the internet. This has been the case since since paedophiles began using the internet to distribute child-oriented pornographic content. Pedophilia may be seen as a sexual minority with its own form of expression featuring graphic thoughts and imaginations of having sex with youngsters. However, although it is often maintained that pornography should not be prohibited on free speech grounds, there is widespread agreement that child pornography should be prohibited. In most instances, child pornography is a permanent record of genuine child

<sup>210</sup> INBRIEF, <https://www.inbrief.co.uk/offences/child-porn-and-the-law/> (last visited Oct. 30, 2022).

sexual abuse (except in the case of pseudo-photographs). Understanding the unique method in which child pornography constitutes child abuse is essential to comprehending the whole issue of child pornography.

## 2) Child Protection Act of 1978:

In response to the rising issue of child pornography, the 1978 Act was established. Its primary objective was to address any inadequacies in the measures available to law enforcement and prosecutors. Following the revisions made by section 84 (4) of the Criminal Justice and Public Order Act of 1994, the definition of "photograph" in section 7(4) of the 1978 Act was expanded to encompass images in electronic data format (CJPOA 1994). The CJPOA of 1994 established the notion of kid "pseudo-photographs." Pseudo-photos are technically photographs, however they are generated by modifying one or more existing images using computer software. For example, a kid's face may be placed on an adult's or another child's body, with the body's attributes adjusted, to make pornographic computer-generated photos without the participation of a real child. Section 1 of the 1978 Act makes it illegal to "take, or enable to be taken or made, any indecent photos or pseudo-images of a child; or to disseminate or display such photographs or pseudo-photographs."

Few people would be willing to take the risk when it comes to children, and just as the law recognises that children should be protected against sexual behaviour to which they are too young to give informed consent, it is almost universally agreed that this should also apply to participation in pornography. There is significant evidence that images of minors engaging in sexual behaviour will be used interchangeably with fake photographs for this purpose.

### C. China

China's obscenity laws ban access to websites such as Playboy, Penthouse, and others.

### D. Singapore

In Singapore, websites featuring pornographic content, as well as those expressing political criticism, religious or racial content, are prohibited. Note that, unlike in the United States, libraries and schools are subject to a greater degree of internet access monitoring.

### E. European Community

In April 1997, the European Parliament passed a resolution in response to a report on a Communication from the European Commission. Article 9 addresses a variety of child pornography-related actions, including creation, diffusion, receiving, and storage. Using the principles of the Council of Europe's Convention for Human Rights and Fundamental Freedoms, the Convention reaffirms the legal protection given to minors against a variety of exploitative acts, including pornography. The Convention outlines a variety of unlawful behaviours relating to child pornography, including the production, acquisition, offer, distribution, and possession of pornographic material as stated in Article 9, section 2, paragraphs A to C:

- A minor participated in sexually explicit behaviour.
- Person presenting as a minor engaging in sexually explicit behaviour.
- Realistic depictions of a minor engaging in sexually explicit behaviour.

Minor is defined as any individual under the age of eighteen, however parties may, in accordance with domestic law, decrease the age restriction to sixteen if domestic law specifies a lower age than eighteen.

### F. India

At the end of the 20th century, the most technologically advanced media emerged, fundamentally transforming the notion of Information Technology. With the expansion of information technology, the global society felt compelled to govern this high-tech medium with laws. **Article 19(1)(a)**

of the Constitution of India guarantees all Indian citizens the right to freedom of speech and expression: "Protection of certain rights relating freedom of speech, etc. - All citizens shall enjoy the right to freedom of speech and expression." The absolute nature of this freedom was later restricted by Art. 19(2): "Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, and morality. Thus, it is evident that although the Constitution of India allows people to enjoy freedom of speech and expression, the State has the authority to act in a few limited instances to legitimately restrict this right. The limitation is primarily motivated by considerations of decency and morality. In this context, several pre-existing laws obtain constitutional sanction despite the fact that they contradict the spirit of freedom of speech and expression, since these laws receive protection under the exception to Art 19(2). (2). The Indian Constitution lays forth in detail the constraints placed on its citizens' freedom.

- 1) **Section 67<sup>211</sup>** addresses the criminal offence of disseminating obscene material in electronic media. The model for Section 67 of the IT Act, 2000 is Section 292 of the IPC. The Act's Section 67 is the most severe legal action against pornography. This section reads as follows: "Whoever publishes or transmits or causes to be published in electronic form any material which is lascivious or appeals to the prurient interest or 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 a flimsy pretext."

<sup>211</sup> The Information Technology Act, 2000 , § 67, Acts of Parliament2000(India)

Important elements of an offence under section 67 include

- Publishing,
- Transmitting, or
- Causing to be Published obscene content in electronic format.
- Transmit: The Oxford dictionary defines transmit as "pass on, hand on, transfer, communicate, let to pass through, provide a means for, and serve to communicate" Internet service providers are well described by this definition.
- Publishing: The Oxford dictionary defines publish as "make widely known; proclaim officially propagate, release copies for public sale." Using this definition, it is clear that if a website is distributing pornographic content, the domain name owner, the technical and administrative contacts of the domain name, and the originator of the pornographic material being disseminated will be held accountable under section 67.
- Causing to be published: Cause is synonymous with effect. To induce publication is to generate the result of publication. Clearly, the phrase "cause to be published" encompasses the function of the web server. A web server facilitates the publication of content on the internet.

Consequently, it is evident that the requirements of section 67 are sufficiently broad to include all offenders of "Cyber-obscenity," including Internet Service Providers, online hosting corporations, and the individuals behind the actual website.

Leaving aside constitutional considerations over pornography on the internet, it may be essential to explore the potential criminal ramifications for those who have uploaded pornographic content online. To begin with, the penal code, the Indian Penal Code, makes no mention of the word pornography. Before reviewing Section 67 of the IT Act of 2000, it would thus be good to read Section 292 of the IPC. The Indian Penal Code regulates the offence of obscenity in India. Obscenity is the subject of section 292

of the IPC. Surprisingly, the Indian Penal Code of 1860 does not define obscenity or porn. Section 292 states that a book, pamphlet, paper, writing, drawing, painting, representation, or figure on any other object is considered obscene if :

- it is lascivious, or
  - it appeals to prurient interest, or
  - its effects, or (where it comprises two or more distinct items) the effect of any of its items, tend to deprave and corrupt persons who are likely, having regard to relevant circumstances, to read, see, or hear it.
- 2) **Section 67-A<sup>212</sup> Punishment for publishing or distributing content involving sexually explicit acts, etc. in electronic form**

Whoever publishes, transmits, or causes to be published or transmitted in electronic form any material containing 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 on 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 twenty lakh rupees.

Exception.-This section and section 67 do not apply to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form- I the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art, learning or other objects of general concern; or (ii) which is kept or used bona fide.

3) **Section 67-B<sup>213</sup> Electronic publication or transmission of material portraying minors in sexually explicit acts, etc., is punishable.**

- (a) publishes, transmits, or causes to be published or transmitted material in any electronic form depicting children engaging in sexually explicit act or conduct;
- (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges, or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or
- (c) cultivates, entices, or induces children to engage in online
- (d) promotes the online abuse of children, or
- (e) records in any electronic format own abuse or that of others including sexually explicit acts with minors.

shall be punished on first conviction with imprisonment of either kind for a period of up to five years and a fine of up to ten lakh rupees, and on second or subsequent conviction with imprisonment of either description for a term of up to seven years and a fine of up to ten lakh rupees: Provided, however, that the requirements of sections 67, 67 A, and this section do not apply to any electronic book, pamphlet, paper, writing, drawing, painting, representation, or figure-

- (i) The publishing of which is shown to be for the public benefit on the grounds that such book, pamphlet, paper writing, drawing, painting, representation, or figure is in the interest of science, literature, art, or learning, or other general concerns; or
- (ii) which is preserved or utilised for legitimate historical or religious reasons

<sup>212</sup> The Information Technology Act, 2008 , § 67-A, Acts of Parliament2008(India)

<sup>213</sup> The Information Technology Act, 2008 , § 67-B, Acts of Parliament2008(India)

Section 67 of the Information Technology (Amendment) Act of 2008 was amended, with the fine raised to Rs 5 lakhs for the first instance and Rs 10 lakhs for the subsequent instance, and the sentence decreased to three years for the first instance and five years for the subsequent instance. Section 67A was added to encompass literature bearing the phrase "Sexually Explicit Act." Increased jail time and fines in comparison to Section 67. This is a subset of Section 67, and it does not constitute a major change when compared to the current Section 67. A new Section 67B was added to address Child Pornography with severe penalties. For the first and subsequent offences, the penalty is 5 or 7 years in jail and a fine of RS 5 or 10 lakhs. It also addresses "grooming" and self-harm. As a result, cyber pornography violates human rights. It is a demeaning and humiliating type of art performed in bad taste. Finally, steps must be done to reduce the ease with which individuals may locate these sites. This would also assist to eliminate exposure to youngsters, who are our nation's future and should be taught respect.

## VI. CONCLUSION

The modern era has unfortunately given rise to the horrific phenomenon of child pornography. Even if some of the causes have been identified, there has been little progress made in terms of putting a halt to the problem. It has also been determined which segments of the population are most likely to have their private information made public as a result of the actions in question. However, there have not been any efforts at a resolution that have been fruitful. This demonstrates that just as vital as it is to identify the causes of the issue, it is just as crucial to eradicate the causes of the problem.

In India, there are laws in place to combat the problem of child exploitation in pornographic media, but it is abundantly clear that these laws are insufficient. The changes that need to be made on a more fundamental level, most importantly in people's families, are where the genuine answer to this issue may be found. It is of the highest significance for parents to use effective parenting strategies

and to keep consistent and regular checks on their children. The guilty can be punished by laws, but genuine change and solving this issue from its fundamental foundation can only come about via reforms made at the grassroots level.

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