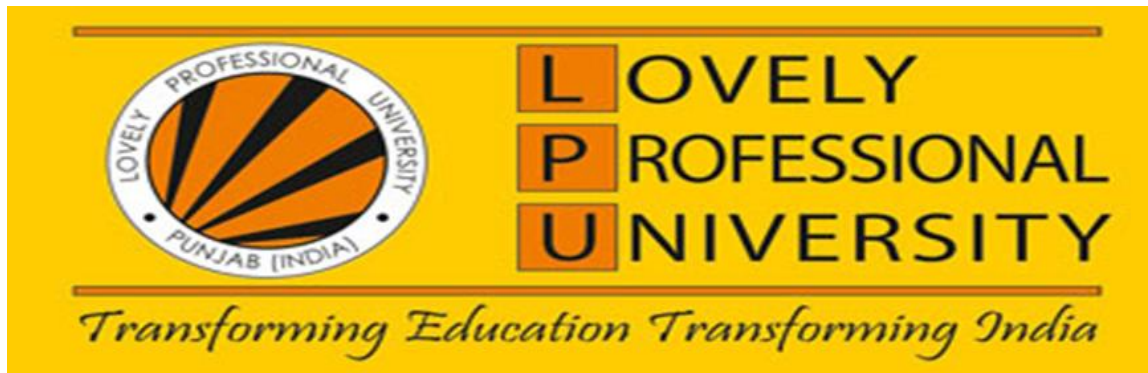


## **Project Report On**

### **“LAWS RELATING TO PORNOGRAPHY: A COMPARATIVE STUDY IN INDIA AND BANGLADESH”**



**Submitted to Lovely Professional University**

**In partial fulfilment of the requirements for the awards of the  
Law of Masters ( LLM)**

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**DEPARTMENT OF LAW AND JUSTICE**

**LOVELY PROFESSIONAL UNIVERSITY**

**PHAGWARA, JALANDHAR, INDIA**

**..... 2017.....**

## **CERTIFICATE**

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This is to certify that the project report titled on “Laws relating to Pornography: A Comparative Study in India and Bangladesh”, carried out by Rana Ahmmed has been accomplished under my guidance and supervision as a duly registered LLM student of the Lovely Professional University, Phagwara. This project is being submitted by her in the partial fulfilment of the requirements for the awards of the Law of Masters from Lovely Professional University.

Her dissertation represents her original work and is worthy of consideration for the award for the decree of Law of Masters.

.....

Sunil Kumar, Assistant Professor

Lovely Professional University

Date On:

## DECLARATION

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I, “Rana Ahmmed”, hereby declared that the work presented herein is genuine work done originally by me and has not been published or submitted elsewhere for the requirements of a degree program. My literature, data or work done by others and cited within this dissertation has been given due acknowledgement and listed in the reference section.

.....  
Name of Student and Signature

.....  
Registration No

.....  
Date of Submission

## PREFACE

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There has been an increasing interest in behavioural attitude on any immoral or obscene material, which is causes over the children, young stars, or teenagers, or women. There are number of sex video, or porn video, it is more than 857 website in India and Bangladesh. Form this website any one get national international sex or porn video. Basically, the website browsers like most the own country sex video than the others. However, the porn is fairly easily and widely available on the web and clamping down on its near impossible, unless the Government of India and Bangladesh is willing to spend crores every year just to keep an updated web content filtering system in place. The Government's Order to telecom operators and internet service providers came in as a surprise as just a month ago Chief justice of India HL Dattu had flatly refused to block the sites citing the very right to privacy and person—*“such interim Orders can't be passed by this Court. Somebody can come to the Court and say 'Look, I am an adult and how can you stop me from watching it within the four walls of my room? It is a violation of Article 21, the right to personal liberty of the Constitution.' Yes the issue is serious and some steps need to be taken the Centre has to take a stand... let us see what stand the Centre will take”*

Right to privacy is integral to fundamental right to life under Article 21 of the Constitution. SC has also upheld it several times including in this case. It includes access to any adult content by adult persons that is why Parliament also opted not to make any law criminalising watching porn. You should realise that the country's Chief Justice also upheld the crucial right.

There are tens of thousands pornographic sites on the internet. Even with its exhaustive ban list, the government is aiming to block merely hundreds. While a lot of popular websites are part of the block list, anyone in India looking for porn will find it just one Google search away. To block content, the Indian government with the help of internet service providers, use a list based approach. This means list of websites, with their exact website URL, are fed into a system and then access to those sites is denied to a user. Adult websites are just one part of the internet.

However, in the Information Technology also intermediaries would not be entitled to exemption from liability if they failed to “expeditiously” remove or disable access to objectionable material “upon receiving actual knowledge, or on being notified by the government or its agency that any information... residing in or connected to a computer resource controlled by the intermediary” was being used to commit unlawful acts. Pornography is a public health crisis. The problem is rampant, yet it thrives in secrecy and silence. Today's bills will start an open discussion, bringing its very real dangers to light,” he said in a statement. The state legislature approved the text earlier this year, calling for “the need for education, prevention, research and policy change at the community and societal level in order to address the pornography epidemic that is harming the citizens of Utah and the nation.”

## Acknowledgement

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I am grateful to a numbers of people's and institutions for conducting this study. I efforts in this project. However, it would not have been possible for me without any kind of- inspiration, support and help of many individuals' institution and also persons. I would extend my sincere thanks to all of them and almighty God.

After all, I would like to department of Law and Justice, and the assistance professor Sunil Kumar for his Supreme knowledge end efforts that the has provided to me regarding this project work and gave me a chance to work on my capability and come up with my strengths.

I would like to express my great appreciation to Advocate Nafiul Mazid, Nasir Shikder and Justice Nazrul Islam of the Bangladesh Supreme Court for his keen observations and constructive guidance as to the ambit and focus of the present study. And also honour my respectful teacher for this kind support. I would also like to thank anonymous reviewers for their comments on the study.

.....Rana Ahmmed.....

REG: 11512736

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CTW	Children's Television Network
WWI	World Watch Institute
WTO	World Tourism Organization
WSP	Women Strike for Peace
WRAP	White Ribbon Campaign Against Pornography
WASP	We Are Sexual Perverts
WAP	Women Against Pornography
VITI	Vaginal Intratubal Insemination
USSR	Union of Soviet Socialist Republics
URC	University Research Corporation
UPI	United Press International
STD	Sexually-transmitted disease
SSSS	Society for the Scientific Study of Sex
SLAA	Sex and Love Addicts Anonymous
SKAT	Sex Knowledge and Attitude Test
SIECUS	Sex Information and Education Council of the United States
SAR	Sexual attitude restructuring
SAA	Sexual Addicts Anonymous
OSHA	Occupational Safety and Health Administration
NWLC	National Women's Law Centre
NRLC	National Right to Life Committee
NIAAA	National Institute of Alcohol Abuse and Alcoholis
NCCY	National Committee for Children and Youth
MM	Moral Majority
LLM	Master of Law
JLC	Juvenile Law Centre

ICJ	International Court of Justice
IASR	International Academy of Sex Research
HIV	Human immunodeficiency virus
GI	Government Issue
FOCA	Freedom of Choice Act
ESCAP	Economic and Social Commission for Asia and the Pacific
EPS	Early Pregnancy Services
DAP	Dial-a-porn
CSE	Classroom sex education system
CJ	Chief Justice
BVM	Blessed Virgin Mother
ASRC	Abortion Survivors Rescue Committee
ASAP	As soon as possible
ARV	AIDS-related virus
AKA	Also known as
AG	Attorney general
SC	Supreme Court
HC	High Court
IPC	Indian Penal Code
Cr.P.C.	Code of Criminal Procedure
DVDs	Digital Videodiscs
DOT	Department of Telecommunications

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## **ABSTRACT**

*We live in world and also increasing the numbers population day by day along with increasing the problem. The pornography is one them problem among them. Though pornography not only the national problem but also international problem. The most of the country try to solve the pornography problem but some are zig zag over the world. Our present generation are taking the pornography with their interest. Even the authority, government and law commission try to solve this from the society but in India and Bangladesh have existent. Studies have shown show that non-aggressive men's reactions to non-violent the pornography is markedly different from aggressive men's reactions to violent pornography. Among women, findings show that those who have experienced coercive sexual behaviour before exposure to pornography are offended by violent pornography but approve of erotica which is the artistic use of subject matter for sexual arousal. Therefore, it is clear that pornography can't be treated as an undifferentiated mass and that its implications for sexual violence can't be assessed without accounting for one's social predispositions. The study was able to show that while there seemed to be no demonstrable link between viewing pornography and sexual behaviour, the age at which the viewer was exposed to pornography and sexual stimulation-seeking behaviour seemed to affect how aggressive the viewer turned out to be.*

**Keywords:** Pornography, sexually explicit materials, erotica, obscenity, definitions, concepts, typicality, prototypically, family resemblance

## **LITERATURE REVIEW**

A literature review is a body of text that aims to review the critical points of current knowledge including substantive findings as well as theoretical and methodological contributions to a particular topic. Literature reviews are secondary sources, and as such, do not report any new or original experimental work. No study can be undertaken without reviewing and analysing the literature available related to the field of study. Review of Literature is an important component of research by which multifaceted understanding of the phenomenon becomes the part of researcher's cognitive personality. The researcher has studied the literature from following sources: Books, Journals, Magazines, Research articles and Newspaper articles.

Adv. Rajas Pingle, 2014<sup>i</sup> In India the Information and Technology Act,2000 basically deals with the issues among them the Cyber Pornography. Under the Act storing or private viewing of pornography is legal as it does not specifically restricts it. On the other hand transmitting or publishing the pornographic material is illegal, following are some sections of Information Technology Act, 2000 which prohibit cyber pornography with certain exceptions to Section 67 & 67A, Section 66A of the Information and Technology Act,2000 of India, to prohibits the sending of immoral and offensive message through the communication service, the Section 66E of the Information Technology Act, 2000 prohibits capturing, transmitting or publishing of the images on private private area of a person without prior consent, Section 67 of the Information and Technology Act, 2000 in India, specifically prohibits, transmission or publication of the obscene material in any electronic form, Section 67A of the Information Technology Act, 2000 prohibits transmission or publication of the obscene material containing sexual explicit act in any electronic form, Section 67B of the Information Technology Act, 2000 prohibits storing, private viewing, transmission or publication of material containing child pornography in electronic form”

Suresh Bada Math, 2014<sup>ii</sup> The pornography industry is involved in the production and distribution of sexually explicit materials including literature, photos, audio, animation, movies, toys, and video games. The most popular modes of access are magazines, compact discs, digital versatile discs, and the internet. It is estimated to be a \$57 billion/year industry worldwide with its revenue being larger than the combined revenues of all the professions, even football, baseball, and basketball franchises put together.

Puneet Bhasin, 2015<sup>iii</sup> World over online child pornography is illegal. It is great work on the child pornography published perpetrators was launched in May 2002 and called Operation Ore. Afterwards the FBI accessed the number of information, based on the- credit card details, email addresses, and home addresses of thousands of pornographers accessing a British child pornography site, for this activity the particulars were given to the British police

for accurate investigation. The arrest of a computer consultant in Texas led to an international investigation that jailed Thomas Reedy for 1,335 years for running the pornography ring. About 1,300 other perpetrators were also arrested, including teachers, child-care workers, social workers, soldiers, surgeons, and 50 police officers. As a result, 40 children, 28 of them in London, were placed under protective care.

Debarati Halder, 2014<sup>iv</sup> Sexting among teens has become a phenomenon problem in the US as well as in India. This has given birth to numerous issues including issues related to child pornography, exploitation of images by perpetrators and revenge porn. While in the US laws are being created and tested for regulating sexting in relation to revenge porn, the situation is quite different in India. This paper emphasises upon the fact that there is a lacuna in dealing with adolescent sexual behaviour including revenge taking mentality with the help of sexted images

Dr. Hemanta Dutta, 2015<sup>v</sup> Pornography addiction is a novel and a less encountered term in psychiatric practice. Diagnostic and Statistical Manual of Mental Disorders (DSM) and the International Statistical Classification of Diseases and Related Health Problems 10th Revision have not given any procurement to diagnose this particular kind of addiction. While drafting DSM-5, experts considered a proposed di-agnostic addiction called hypersexual disorder, which also included a pornography subtype. However, at the last, reviewers could not get enough evidence to incorporate hypersexual disorder or its subtypes in the 2013 edition. DSM 5 has abstained from paying more importance to pornography addiction as they failed to demonstrate any health hazard due to use of excessive porn materials. They found insufficient peer reviewed evidence to establish diagnostic criteria for pornographic addiction. Leyte all through their study expressed that pornography has failed to establish itself as an addiction.

Saha, Hussain, 2015<sup>vi</sup> Anti-pornography law is enacted by the government of Bangladesh to protect the youth from the curse of moral degradation. In this study, it is actually attempted to view the law from a theoretical vantage point on the pornography law in Bangladesh. The theory of Emile Durkheim on Social Facts has picked to prove anti-pornography law as a social fact. To do this, at first it is focused on the characteristics of social facts and forms of solidarity as postulated by Durkheim and matched them with the definition, nature and measures of anti-pornography law in the context of Bangladesh. Thus in the theoretical part of this research paper, the law has been explained as a social fact after Durkheim's theory. In addition, we have elucidated our research methodology, analysed collected data, interpreted our findings, and included our systematic discussion. Our empirical work incorporated perception, knowledge and attitude of the young students of the University of Dhaka towards pornography and anti-pornography law in Bangladesh.



Lotte Hoek, 2010<sup>vii</sup> This article discusses the ‘cut-piece’, short strips of celluloid containing sexually explicit imagery that are spliced in and out of Bangladeshi feature films, even during screening. Such cut-pieces came into existence in Bangladesh in the mid-1990s and are made in Bangladesh with Bangladeshi actors and crew. The article outlines the generic conventions of such Bangladeshi hard-core cinematic pornography found in Bangladeshi action movies and focuses on four generic characteristics: production values and the representations of female nudity, rape and class difference.

## **METHODOLOGY**

The necessary data in this study is primary and secondary data obtained from various sources. The collection of data obtained from the books, articles, newspapers, law commission reports, precedent and studies of the literature that supports the understanding of the concepts related to the study of scientific papers, books and literature, international journal.

The study is partially based on empirical investigation undertaken by the researcher- Researcher posed the following subject-oriented questions to twenty five(25) respondents.

### **i. Do you know who is involved in pornography?**

Ans: Yes, I know.

#### **Summary of Response**

Most of the people answered in a similar manner. Basically, the number reasons behind why person are involved cause of poverty, love, money, family background. In our present society living lots persons, who are anti-social and try to increasing those types problem. However, the young stars and young girls more involve in this problem. The guardian are so busy, they have no enough time to take their child, where they are going and what is doing.

### **ii. Do you know who is a porn addict?**

Ans: Yes I know. There are few people are addicted in sex. The time has changing everything day by day, that's way persons are very busy for their work. Those five persons were shown different reasons for the addiction. Among them loveless person, rich man (who have huge money, even he did not know where can proper be use this money), genetic sex loving persons, few are doing for money. Anyway they believe that it's not good for health, even they try to re-back to fresh life. Also more say need to family care to solve this problem.

### **iii. Do you know what types of girl or women involved in prostitution?**

Ans: Yes we know. They told me the basic reasons- who are involved to this profession such as- poor girl, back groundless girl, not well famous, without specific guardian, who have no way back to family after any types of mistake (like-love, sexual harassment, marriage without parent), who lost virginity by illegal relation. Most offid backer given those types answer after the complete of this question. However they want to lead a natural life but from this situation no one accept this ours. That's way ultimate aim to continue this profession.

**iv. Do you know how we can solve this problem?**

Ans: No. For this question I had appear different type people, they also ensure the verity answer. They tell me how can be solve this problem by taking number initiative steps among them- to ensure job who involve this profession, to ensure the familial status, to stop the prostitutions, to development the free educational system, to ensure the punishment who sale ours to others, to development the guideline for the child . At this modern time the pornography problem increasing. However, the primary duty of Government, NGO, and Social Worker to solve of that particular problems from the rote level.

**v. Has any future as a worker in prostitution?**

Ans: No. All the persons given same type of answer for this question first they say there is no future who are involve this work. We are earning huge money every day but the money taking different types of agent who involve under this business. Reason behind they earn more money but get less money cause the manager or supervisor taking all the interest from ours. Though the maximum interest taking the agent who is the supervisor.

**vi. The porn worker can enjoy the human and fundamental rights?**

Ans: No. Every person got the human rights naturally, but the fundamental rights got persons qualification. Majority of porn worker told me their life look like as custody life, where there is no human rights as well as fundamental rights. Because of the number prostitute maintain controlled by the Sordhar (manager) who purchase the worker. He or she did not consider the outside moving, if she go away or made a complaint against him or her. For all this reasons all the workers did not enjoy the human and fundamental rights.

**vii. Whether the kidnapping is responsible for prostitution?**

Ans: Yes. Kidnapping is a one kind of offence but it's a profitable business that's away most of the work less try this business for the reason of more money within short time. This question answer taken from different type of NGO who are working for helpless persons. They told me kidnap is a one of the reason to increase the porn worker or sex worker, cause after the complete of kidnap there is no alternative to do this and who take this person that person aim for doing this. Even any one if not agree do this, they also torture their physically

and verbally. Some people collect this girl by promise send to abroad for earn more money their family. This is one kind of circle to do this business.

**viii. Whether the poverty is responsible for prostitution?**

Ans: Yes. Definitely poverty is responsible for to live as a helpless life. No one see the poor people who lived under the poverty. The particular persons shown different types of point of view according to their opinion. Some people tell me lit bite responsible for prostitution but poverty development the crime not at all porn worker. Some people tell me few are enjoy the sex with different persons and different style that's way do this. It can be one reason for sex the poverty. According to the opinion of sex worker, every one try to lead happy but some are got it and some are not.

**ix. Whether the illiteracy is responsible for prostitution?**

Ans: No idea. Literacy always given light for all things. This question answers different person's to persons perception totally different from others. Few are tell me illiteracy can be reason for position but right now all are educated lit bite. Even this problem day by day increasing not only national level but also international level people did not consider this problem. However they known that HIV day by day developing the porn work, even they understand why increasing HIV but people not conscious. Basically this HIV problem is one of the problems in India and Bangladesh.

**x. Whether the porn worker treated equally from the society or not?**

Ans: No. The constitution of India and Bangladesh ensure the equal opportunity for all without any discrimination. Who are working in prostitution more than 5 years but answer of this question same among others. The most of the answerer tell me we did not treated equally as a citizens of country. Many of the times got miss behave and few are neglect ours for this profession. But we deserve the equal opportunity.

**xi. Whether the porn worker interested to make a family?**

Ans: Yes. None one has, who did not love to make family and consider the family life. Who are working more than 4 years under prostitution centre. The average answer of this question shown me the majority girl conceive a dream for family making but ultimate there is no future for porn worker to lead good life. Cause of no one easily did not agree to accept to this

worker. Family give the knowledge, how to make love or respect with other which that right now don't getting from this situation.

**xii. Whether the salary is enough for porn worker?**

Ans: No. Every profession have profit or salary to achieve a goals and to make standard of life. This question answer given, who has professional experience over this sex. The most of the worker told me we are working more than 16 hours per day and the benefit enough for the work but the thing is that we get lit bite money which that not enough to continue a standard of life. The manager of the prostitution take the more benefit, which that more than of the porn worker.

**xiii. Whether the porn workers get the helping hand from the government to stop the work?**

Ans: No. This question answer taken from live question, who working under the prostitution. The sex worker share the information with me, which that happening from the government offer to stop the sex work. The government did not ensure enough facility to ban or stop the sex work. First of all should be ensuring job facility to stop the sex work and to ensure the reformation facility for future plan. Another very important thing is that to provide family life, so that re-set the new life.

**xiv. Whether the society accepts the porn worker as family member?**

Ans: No. Everything has good side and bad side, sex work among them. The family of the sex worker told me, we have social status to live under the society that's way we cannot accept our daughter. If we want to accept the society to crate pressure over usfor the separation from the society. But sex worker told me we have interest to lead a life with our parents.

**xv. Whether the guardian has any duty to protect his child from the pornography?**

Ans: Yes. Every parents conceive a good dream for their child and future. The sex worker guardian with life feedback from the question. The primary duty of the guardian to build character of their child and how to move, taking, behave with others. But the thing is that the parents are so busy that's way have no time for their child. As a result the child tries to pass the time with others.

**xvi. Whether the porn workers get the happiness of their life?**

Ans: No. The most of the sex worker try make happiness of their life but ultimately did not do this. Reason behind the no one can be happy by hart of their parents. When a child does this work, the society give blame to the parents for this work. Every night the sex crying for the happiness and future.

**xvii. Are you enjoying those types of work?**

Ans: No. The sex worker who are working more than 3 years under the prostitution. Among the five workers one person told me I love sex and another four workers told me we did not like or love this work. Moreover told me job is better than of this work cause under the respect and dignity. Most of the person who sex with us did not consider our interest, they want sex more us.

**xviii. Have any relation with your family member?**

Ans: No. This question answer all are same, they told me there is good relation with our family. Just after long time to talk with my parents by the phone call for few minutes but father did not talk with me. Even when I'm talking with my family, most of the gesture in humane and all time told me don't communication with your family.

**xx. If you get any other work after that are you stop the sex work?**

Ans: Yes. All the sex worker given same answer because they want to live dignity and with a happy family life. But from this situation want to get marry to ours. The sex profession is a one kind of blame for us. We have no opportunity to get a job, when they know that about us did not agree to provide. Even from the government side make offer for us, to stop the sex work and do the this job.

**xxi. Do you know the young man or old man comes to prostitution for sex?**

Ans: Yes. This question answer was taken from sex worker under the prostitution in Tangail district, Bangladesh. They told me the under age of 20 years boys are came to us, comparatively less than the old man. They also share the information about the power and sex interest, under the age of 25 years boys sex streaming more high but the old man has no more streaming.

Researcher will be visiting Bangladesh and adopting sampling technique to assess the awareness about laws relating to pornography and the rehabilitation techniques.

### **HYPOTHESIS**

1. The modernization and easy access to internet is causing an increase in circulation of pornography.
2. Reformation is needed for a porn addict at multiple levels
3. The law is insufficient to deal with the menace of pornography

In the present world there are number of ingredients involve with our daily life. Even we cannot think anything without internet along with the electronic service. But the thing is that, from this internet and digitalizes system make a person so intelligent and clever to doing work and crime. In India and Bangladesh has number of web site to watch the porn video from this site. However the impact day by day developing with rapidly over the child, juveniles. Even there is no controlling system from the online watching porn video. Though the parents did not enough for their child and their care not good at all.

In India ensure good treatment for all patients. But the thing is that the huge number of porn addicted person in our society. The Government of India and Bangladesh are worried about the matter to solve or ban problem in our society. Though the porno or sex problem not only in national problem but also international problem now a days. There are number of sex worker existing in India and Bangladesh without any prior permission or license from the authority. The main thing is that for this there is no extra qualification like- literature, good manner, that's way the number of person are involving in this profession. Even in this profession has huge income within a short period. For this reason many Spector says, nothing is impossible if you have money and money changing everything.

## **OBJECTIVE OF THE STUDY**

The study deals with a variety of aspects related with pornography and the ultimate aim of the study over the porn work in the internal assessment on the condition of pornography. In India and Bangladesh have number of porn institution, and the higher authority will not ensure the security to the porn worker. The people in favour of a web filter understand this all too well, which is why untenable arguments such as “pornography causes sexual violence and is responsible for crimes against women” are advanced, because they are causes that we can all seemingly get behind and support. Likewise, the war against child pornography is a great rallying call. But while it is a noble objective, it is also a mask that hides the other problems for which a web filter will be used. From this point of view the researcher has laid down following objectives.

- ❖ The actual meaning of the pornography and obscene act.
- ❖ The reason behind to increase the pornography.
- ❖ To find out the root who is responsible for the pornography.
- ❖ To find out the cause, why increasing pornography.
- ❖ To affected the juveniles from the pornography.
- ❖ The government of India and Bangladesh who taken more effective footstep to impose the restriction over pornography.
- ❖ The punishment is enough for the obscenest acts.
- ❖ To find out the reason of divorce and illegal relation
- ❖ Pornography creates huge problem in our society
- ❖ An internet pornography and offensive content is creating a negative social impact on all the citizens
- ❖ They find sexual excitement and release enjoyable and that’s what they get from porn.
- ❖ It caters to the fetishes that people have and gives them an endless selection to choose from.
- ❖ To reduce the level of stress and uncertainty of their personal life.
- ❖ Conflict between the sexual moods among couples leads to watching porn.



## **THE SCOPE OF STUDY**

The scope for the research and to collecting the materials from different places in whole India and Bangladesh. The materials collection from the pornography problem among the young stars, those who are porn addicted and those who are involve of this work. The laws relating to pornography is not enough to control the problem from the society. There are number of porn institution in India and Bangladesh and day by day increasing this problem in our national level. As a result develop others problems and crime.

## **LIMITATION OF THE STUDY**

The researcher face huge problem for the collection of study materials. Generally the limitation is that language problem ( India have different states with different language but I have knowledge over in Bangla and English language), the other thing is that there is lack of laws, literature and library books, journals, article not available for the study on pornography. However the other problem is that the limited time for the study and collection of materials. Even the university did not ensure any facility for the research student to make a quality of work.

**CHAPTER-I**  
**INTRODUCTORY**

*“Not until a women of exceptional purity and strength of character rises and devoted her to the task of redeeming this portion of fallen humanity, will the problem of prostitution be tackled. No doubt man can do much among men who degrade themselves by enticing young women to sell themselves for their lust. Prostitution is as old as the world, but I wonder if it was ever a regular feature of town life that its today. In any case a time must come when humanity will rise against the curse and make prostitution a thing of past as it has got rid of many evil customs, however time honoured they might have been.”<sup>viii</sup>*

Mahatma Gandhi

Pornography and its circulation is a menace. India and Bangladesh also are affected by the ill-effects of this menace.

Today is the modern time but the pornography developing the effects of our young generations than beyond our imagination? From my personal experience, the consumption of pornography is nearly universal among young men, and the effects are never neutral.

As a researcher after the study find out that only 3% of boys and 17% of girls have never seen and not involve any pornography activity. However, the free access internet now makes it available anytime and anywhere. The first exposure most often occurs during adolescence, when the brain is still forming and very impressionable by graphic images. The important thing is that the free access also means that porn has gone mainstream and become a commodity. The only accurate measurement we have of porn consumption is internet click rates or Google searches. Profits are decreasing while porn is proliferating. From the online report, one of the world’s biggest online purveyors of pornography, reports that it serves more than 100 million visitors a day, who consume 1.5 terabytes of pornography per-second enough to download 150 feature films.<sup>ix</sup>

**India**

The history of India is very old, even we are following the previous curriculum, which that happening at present time. The policy or law makers of India have been alive to this issue as a live witness. The Information Technology Act, 2000 (IT Act)<sup>x</sup> contains a specific provision under the Section -67-of the (IT Act) it also indicate about the invent text or digital pictures,

collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form delimitating of children over the obscene or indecent or sexually explicit manner)<sup>xi</sup> for material delimitating children explicitly or obscenely, stating that those who any activity which cover this Act will be punishable. The IT Act, 2000 of India clearly mentioned criminalises for watching child pornography (Even watching pornography regular basis is not a crime in India).<sup>xii</sup> In India have number of Organisations or individuals can proactively report or identify and report child pornography online. On the other hand, in western countries have tried, with legitimate success, the systems using hotlines, verification of reports and co-operation of the internet server as well service providers to take down child pornography. However, the internet service systems have also most of the time resulted in the removal of other legitimate content.<sup>xiii</sup>

Section 354 C of the IPC reads: in any person who watches, or the capture of image a woman engaging in a private act in situation where she would be usually have potential of not being observed either by the perpetrator or by any other person at the dictate of the perpetrator or disseminates such image shall be punishable. Proponents of free speech would advocate that freedom of speech and expression would curb any such restriction on accessing pornographic material and such restrictions would impinge on basic rights. But while the law doesn't prohibit one from watching pornography privately, it forbids its transmission, distribution or production.<sup>xiv</sup>

## **Bangladesh**

The government of Bangladesh is focused on banning or stop the porn sites in order “protect young people and women from pornography”. But the majority of Bangladesh believe that the government is trying to build or set standards of public life or morality. Even the citizens of Bangladesh know that here is also no guarantee which one can be blocking certain pornography sites will actually decrease porn consumption in the country. It was taken from the commenter put it, the government “*needs to focus more on providing sex education for the better condition of citizens instead of hunting down porn sites.*” When a girl with ugly religious guilt have sex for the first time with a boy filled with anticipation from watching Caucasian skilled porn artists perform weird and unreal acts, the boy faces a wall of disappointment and the girl breaks down from the unreal demand of the boy. The girl hates her unexplored sexuality more than ever.

According to Bangladesh Telecommunications Regulatory Commission, the number of Internet users in the country has risen to more than 62 million (out of a population of approximately 160 million). Ninety-five percent of that online access the Internet via mobile devices. And almost 30% of mobile data is reportedly used to visit porn sites. A recent survey by Manusher Jonno Foundation, an NGO, found that almost 77% of the capital's schoolchildren watch pornography via mobile phone, laptop and other electronic device.<sup>xv</sup>

The Senior advocate Mahalakshmi Pavani for the Supreme Court Women Lawyers Association said there are even instances where school bus drivers watch porn and compel children to watch them, leading to sexual assaults on them. The court directed the Centre to reply on ways and means to curb free access to porn on the Internet and asked the government to reply whether there can be a ban on watching porn “of any form” in public places.<sup>xvi</sup>

### **1.1. Concept of Pornography**

The idea ‘Pornography’, representation of the sexual activity or behaviour in books, magazine, pictures, statues, motion pictures, and other media that is intended to cause sexual excitement. The distinction between pornography illicit and condemned material and erotica, which is broadly tolerated is largely subjective and reflects changing community standards. The word pornography, derived from the Greek porni “prostitute” and graphein “to write”, was originally defined as any work of art or literature depicting the life of prostitutes.<sup>xvii</sup>

### **1.2. Historical Context**

From the many historical societies, frank depictions of sexual behaviour, often in a religious context,<sup>xviii</sup> were common. In ancient Greece and Rome,<sup>xix</sup> for instance, phallic imagery and depictions of orgiastic scenes were widely present, though it is unlikely that they fulfilled anything like the social or psychological functions of modern pornography, a treatise on the art of seduction, intrigue, and sensual arousal. Some of the 100 stories in the Decameron, by the medieval Italian poet Giovanni Boccaccio,<sup>xx</sup> are licentious in nature. A principal theme of medieval pornography was the sexual depravity and hypocrisy of monks and other clerics.

From the time that Queen Victoria<sup>xxi</sup> came to the throne in Great Britain in 1837, there were more than 50 pornographic shops on Holywell Street known as “Booksellers’ Row” in London. Pornography continued to flourish during the Victorian Age in Britain and in the United States despite or perhaps because of the taboos<sup>xxii</sup> on sexual topics that were characteristic of the era. The massive and anonymous autobiography *My Secret Life*, 1890 is both a detailed recounting of an English gentleman’s lifelong pursuit of sexual gratification and a social chronicle of the seamy underside of a puritanical society. An important periodical of the era was *The Pearl*, 1879–80, which included serialized novels, short stories, crude jokes, poems, and ballads containing graphic descriptions of sexual activity. Such works provide a valuable corrective to conventional images of Victorian prudery.

In the 19th century the inventions of photography and later of motion pictures,<sup>xxiii</sup> were quickly put to use in the production of pornography. Pornographic films were widely

available no later than the 1920s, and in the 1960s their popularity enjoyed a massive upsurge. The development of videocassettes in the 1980s and digital videodiscs (DVDs) in the 1990s enabled the wide distribution of pornographic films and further encouraged their use because they could be viewed in private. Pornographic images and films became even more widely available with the emergence of the Internet in the 1990s. The pornographic industry became one of the most profitable on the Internet. Apart from providing a vast marketplace for commercial pornography appealing to many diverse tastes,<sup>xxiv</sup> the Internet also encouraged many amateurs to post images of themselves, images that often challenged traditional concepts of beauty and sex appeal. The use of webcams opened the industry even further to amateurs, allowing individuals to post live depictions of themselves, often for fees. The Internet also increased the availability of child pornography.

### 1.3. Obscene- Definitional Challenges

Section 294 of the Indian Penal Code lays down the punishment for obscene acts or words in public. The other sections of Indian Penal code which deal with obscenity are 292 and 293. The law does not clearly define what would constitute an obscene act, but it would enter the domain of the state only when it takes place in a public place to the annoyance of others. Temple art or nakedness of sadhus are traditionally outside the purview of this section.<sup>xxv</sup>

The consideration level of obscenity in the films, photographs, paintings, and stories and novels is not yet well managed in India. Even in the terms of sec-292 of the IPC, mentioned any matter is obscene, if it takes part as a whole, it is lascivious or appeals to the prurient interest or if its effect and tends to deprave and corrupt persons who read, see or hear the matter contained or embodied in it. From this appeal the petitioner argue that the community standards test as against the Hicklin test in the backdrop of the Supreme Court Judgment in the **Aveek Sarkar vs Of the West Bengal**.<sup>xxvi</sup>

In the case of **Ranjit Udeshi vs the State of Maharashtra**, the Supreme Court of India held that over the obscene--

*“The standard for judging obscenity, adequate to withstand the charge of constitutional infirmity, is whether, to the average person, applying contemporary community standards, the dominant theme of the material, taken as a whole, appeals to prurient interest.”*

In the sec- 292: The sale of obscene books—

Whoever – the sells, let’s to hire, distribution, publicly express or in any other manner puts into production, or for the purpose of sale, hire, distribution, public disclose or production, makes, produces or has in his possession any obscene books, pamphlet, papers, drawing, painting, representations of figure or any other obscene objects.<sup>xxvii</sup>

The term Obscene indicates the following meanings-

- i. It is offensive to morality or decency; indecent; depraved.
- ii. It is causing uncontrolled sexual desire.
- iii. It is abominable; disgusting; repulsive.<sup>xxviii</sup>
- iv. It is disgusting to the senses.
- v. It is abhorrent to morality or virtue; specifically.
- vi. It is relating to sex in an indecent or offensive way.
- vii. It is very offensive in usually a shocking way.
- viii. It is so large an amount or size as to be very shocking or unfair.

The U.S. Supreme Court has ruled that obscene applies to materials that appeal predominantly to a prurient interest in sexual conduct, depict or describe sexual conduct to the penalty in any offensive way, and the lack serious literary, artistic work, political, or the scientific value. Material or expression deemed obscene by the court is not protected by the free speech guarantee of the First Amendment to the U.S. Constitution.<sup>xxix</sup>

Examples of obscene in a sentence-

1. Ram Kumar was accused of making obscene phone calls.
2. Kamal made an obscene gesture at the driver who cut him off.
3. The hotel manager earn obscene salaries.

Neither English nor Indian laws define obscenity though both lay down exacting standards as to what will be deemed to be obscenity. The test was evolved in **R. vs. Hicklin** in 1868 in England. The case arose out of an attack on the Catholic Church and its practice of resorting to confessions in a book which was considered a blatant instrument of propaganda for a Protestant society. The test laid down by Cockburn (the Chief Justice) was "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences".

The Hicklin test was approved by the Supreme Court of India, in the Ranjid Udeshi case,<sup>xxx</sup> in 1965 when it had to consider whether the D.H. Lawrence's novel, lady D Chatterley's is lover for obscene material. In this case the Supreme Court of India held that, it was so and that: "*The divagations with the sex are not a legitimate broidery but they are only painting the common man.*"

A test for obscenity derived from Roth laid down the Hicklin test that included the following five-part structure: The obscene includes-

- i. the perspective of appraisal was that of an ordinary, reasonable person,

- ii. the community standards of consideration were to be used to measure obscenity,
- iii. the works whose predominant theme was questionable were the only target of obscenity law,
- iv. a work, in order to be evaluated for obscenity, had to be taken in its entirety, and
- v. Obscene work was one that aimed to excited individuals' prurient interest.<sup>xxxii</sup>

In the learned Senior Council has referred to the decision of the Allahabad HC in **Kamla Kant Singh vs Managing Director, Bennett Colman and Company Ltd. And Others**, the court held that about obscene<sup>xxxii</sup> *“An article is deemed to be obscene, if its effect, or where the article comprises two or more distinct items, the effect of any one of its items if taken as a whole, is to tend to deprave and corrupt persons, who are likely having regard to all the relevant circumstances to read, to see or hear matters contained or embodied in it.”*

The judges, while passing the judgement, rightly said, *“A deterrent punishment is being imposed in order to help wipe out the name of India from the map of sex tourism. Let paedophiles all over the world know that India should not be their destination in the future. Children are the greatest gift to humanity. The sexual abuse of children is one of the most heinous crimes.”*<sup>xxxiii</sup>

Aloof from the submitting the Orders passed by the Court are entirely contain and deserve to be Lancinated, it was submitted by the Mr. Subraamaniam, the learned senior council that, to be participate the question framed by this Court, otherwise jis reservation on the legal point as regards its Phraseology, the basic concept of the term of 'obscene' by the Court.

However the obscene is consider as offence under the contemporary community standards of the morality and decency; grossly ambivalent to the ordinary grant nations of what is appropriate. In the Supreme Court consider the three test material as a obscene, which mentioned below—

- i. To appeals for the sensual interest in the sex, as considered by the average person who applying for contemporary community standards;
- ii. For delineate sexual conduct, as separately mentioned by the applicable state law, in a patently offensive way; and.
- iii. To deficiency of serious literary, artistic, political, or scientific value.

In the phrase “reasonable restriction” indicates that, the boundary imposed in any enjoyment of the right should not be uninterrupted or the superfluous nature, beyond what is mandatory in the interest of the public. The term “reasonable” applied intelligent case and the interlocution that is the choice of a course which reason indication. The legislation which os arbitrary or excessively invades the right cannot be said to contain the quality of reasonableness and unless it width a proper balance between the freedom guaranteed in

article- 19(1)(g) and the social control permitted by the clause (6) of the- 19, it must be held to be wanting in that quality.<sup>xxxiv</sup>

#### 1.4. Immoral acts

In 2015, 11,538 cases of immoral trafficking were found pending in courts across the country out of which more than 70% of the victims were connected to Delhi. In 10% of the cases, the accused were booked under the law, which that specially ensure the protection of children from sexual offences Act (POSCO). There were 23 cases of parents getting booked for abandoning minor children, who were later trafficked.<sup>xxxv</sup>

The meaning of “immoral” acts indicate-

- iv. The transgressing accepted moral rules; corrupt
- v. A sexually dissolute; profligate or promiscuous
- vi. An unscrupulous or unethical: immoral trading.
- vii. The tending to corrupt or resulting from corruption: an immoral film; immoral earnings.<sup>xxxvi</sup>
- viii. An immoral quality, character, or conduct; wickedness; evilness.
- ix. A sexual misconduct.
- x. An immoral act<sup>xxxvii</sup>

Immorality is evil, sinful, or otherwise wrong behaviour. Immorality is often called wickedness and is a state avoided by good people.<sup>xxxviii</sup>The immoral is-

- i. not in conformity with accepted principles of right and wrong behaviour, specif., depraved
- ii. Not in conformity with the accepted standards of proper sexual behaviour, specif., unchaste or lewd.<sup>xxxix</sup>
- iii. the quality, character, or state of being immoral
- iv. immoral behaviour, esp. in sexual matters; licentiousness; profligacy or promiscuity
- v. An immoral act.<sup>xl</sup>

#### 1.5. Idea Sexual Matters

Basically the sexual matters indicate the following things-

- i. The ‘sexual act’ introduce of an act of sexual percolation or an act of sexual transgression.



- ii. The 'sexual offence' mentions a sexual crime in terms of this act in which the aggrieved may have been exposed to body moisture of the alleged offender.
- iii. The term 'sexual penetration' indicates any act which causes penetration to any extent whatsoever by –
  - a. The genital organs of one person into or beyond the genital organs, anus, or mouth of another person;
  - b. The other part of the figure of one person or any object, joining any part of the body of an animal, into or beyond the genital organs or anus of the another person's;
  - c. By the genital organs of animal, into or beyond the mouth of the other person, and the sexual penetrates has a corresponding meaning.
- iv. The term 'sexual violation' mentioned any of the act which causes of the direct or indirect covenant in between--
  - a. the genital organ or anus of one person or on the case of a women, her breasts, and any of the part of the body of another person or any animal, or any object or representing the genital organs or anus of person.
  - b. The mouth of the one person; and—
    - aa. The genital organs or anus of another person, or in the case of women, her breasts;
    - bb. The mouth of another person's;
    - cc. The other part of the body of other person, other than the genital organs or anus of that person or in the case of women, with her breasts, which is could--
      - aaa. be used in the act for the sexual penetration;
      - bbb. be causes the sexual arousal or stimulation;
      - ccc. be the sexual aroused or stimulation thereby;
      - ddd. be the any object resembling the genital organs or anus of the person, or in the case of the women, with her breasts or the animal;
  - c. the mouth of the complainant and the genital organs, or the anus of an animal;
- v. the causing of masturbation by the reason of other person
- vi. the placing of any object resembling or showing the genital organs of a person, or animal, into the or mouth of the other person, but does not consider an act of sexual penetration, and sexually violates has a corresponding meaning;

## 1.6. Pornography

The word "pornography" comes from the Greek for writing about prostitutes. However, the etymology of the term is not much of a guide to its current usage, since many of the things commonly called "pornography" nowadays are neither literally written nor literally about

prostitutes.<sup>xlii</sup> The first is porne, meaning “harlot,” which is akin to the word pernai, meaning “to sell.” The second word is graphein, meaning “to write.” In other words, pornography is literally “the writing of harlots.”<sup>xlii</sup>

The word pornê stands for prostitute, and graphein stands for documentary. Pornography literally means “Documenting a Prostitute” or “Depictions of acts of Prostitutes”. Pornography in the eyes of law is not necessarily obscene.<sup>xliii</sup>

Here is a first, simple definition is that, ‘Pornography’ is any material either pictures or words that is sexually explicit. This definition of pornography may pick out different types of material in different contexts, since what is viewed as sexually explicit can vary from culture to culture and over time. “Sexually explicit” functions as a kind of indexical term, picking out different features depending on what has certain effects or breaks certain taboos in different contexts and cultures.<sup>xliv</sup>

The etymology of pornography can be traced to graphs writing or description and Porneia (prostitutes) and hence it means the description of the life, manners, etc. of prostitutes and their patrons. One of the commonly accepted definitions of “pornography” in modern times defines it as sexually explicit material that is primarily designed to produce sexual arousal in viewers.<sup>xlv</sup>

Pornography is sex-related material - like a movie or picture - designed to sexually arouse the person looking at it. Whether you've ever actually owned it or looked at it, just about everyone has heard of things like pornographic movies and "porno magazines," which typically show men and women in the nude.<sup>xlvi</sup>

Pornography is the pictures of sex organs and their usage devoid of all other meaning-the personality having no place. They bear in upon one a sense of increasing ugliness and degradation of the human being.<sup>xlvii</sup>

### **1.7.Categories of Pornography**

In the course of his reasons, Mr. Justice Sopinka provided some guidance in applying the various tests to determine what constitutes undue exploitation:-

- i. the community standards test,
- ii. The degradation or dehumanization test, and
- iii. The internal necessities test or artistic defence.

He also divided pornography into three categories:

- iv. Explicit sex with violence;
- v. Explicit sex without violence but that is degrading or dehumanizing; and

vi. Explicit sex without violence that is neither degrading nor dehumanizing.<sup>xlvi</sup>

*“Nothing can more efficiently destroy a person, fizzle their mind, evaporate their future, eliminate their potential or destroy society like pornography,” Mr. Vaswani wrote in his petition to the Supreme Court. “It is worse than Hitler, worse than AIDS, cancer or any other epidemic,” he added. “It is more catastrophic than nuclear holocaust, and it must be stopped.”<sup>xlvi</sup>*

## **1.8. Child pornography**

The order is based on recommendations of an interministerial committee set up following a 2013 Supreme Court directive. The committee noted that most online child sexual abuse materials are hosted by sites created outside India. The dynamic nature of these websites and URLs make them hard to track and block. At present, India does not have a centralised mechanism to track online child sexual abuse imageries or pornography.<sup>1</sup>

The child pornography recognize the different point of view which that cover the following materials-

- i. The pornographic, a film, videos, or others immoral restriction, whether the, or not it was complete by the electronic or mechanical creation, that shows a person who is or is the depicted as being under the age 18 years of old, and in involve in or depicted as engaged in explicit sexual acts, or the magisterial characteristic of which is the depiction, for a sexual purpose, of a sexual organ, the anal region of a person under the age of 18 years old.
- ii. The written documents, visual representation, or the audio capture that advocates or councils sexual acts with a person under the age – 18 years old that would be consider as a crime under this Act, or whose control of nature is the narrative, for a sexual intention, of the sexual acts with a person under the age of – 18 years old that is offence under this Act;
- iii. The another types of video or audio capture that has as its control portent the narrative, shown or representation, for the sexual intention, of sexual acts with a person under the age of- 18 years of old, would be consider as a crime under this Act.<sup>li</sup>

An expert on Sexual Addiction, found that there is a four-step progression among many who consume pornography-

1. Addiction: Pornography provides a powerful sexual stimulant or aphrodisiac effect, followed by sexual release, most often through masturbation. It is addictive because it creates dependency on porn.
2. Escalation: Over time addicts require more explicit and deviant material to meet their sexual “needs.”
3. Paralyzing Effect: Sometimes referred as desensitization. What was first perceived as gross, shocking and disturbing, in time becomes common and acceptable.
4. Aggression: Porn leads to acting out sexually. There is an increasing tendency to act out behaviours viewed in pornography. People turn into imitators of what they see. No emotions are involved in the act which lead to aggression.<sup>lii</sup>

**Mohd. Faruk v. State of Madhya Pradesh & Ors,**<sup>liii</sup> In this case mentioned the rapidly growth the use of computer and the high speed of internet has consider new forms of offence instance, publication of sexual material in the electronic form, the video voyeuristic and the violation of secret and leakage of data by intermediary, e-commerce frauds like personation commonly known as phasing, identity theft and the offensive messages through the communication service. However, the Penal provisions are required to be mentioned in the Information Technology Act, 2000 of India, the Penal Code, the Evidence Act, and the Cr.P.C. to prevent such crime.

*“The Supreme Court and the Law Commissioner must be considering the validity of the impugned law imposing a prohibition on the carrying on of a business or profession, attempt an evaluation of its direct and immediate impact upon the fundamental rights of the citizens affected thereby and the larger public interest sought to be ensured in the light of the object sought to be achieved, the necessity to restrict the citizen's freedom, the inherent pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public, the possibility of achieving the object by imposing a less drastic restraint, and in the absence of exceptional situations such as the prevalence of a state of emergency-national or local-or the necessity to maintain essential supplies, or the necessity to stop activities inherently dangerous, the existence of a machinery to satisfy the administrative authority that no case for imposing the restriction is made out or that a less drastic restriction may ensure the object intended to be achieved.”*<sup>liv</sup>

A petition filed before the Supreme Court, the Mumbai-based lady said that her matrimonial life had been destroyed as her husband became addicted to online pornography and pleaded the court to direct the Centre to take immediate steps to ban such obscene sites.<sup>lv</sup>

*"My husband has of late become a addict of porn and spends a lot of his precious time watching pornography which is now-a-days is easily accessible through the internet. As a result my husband has fallen prey to this addiction of watching pornographic videos and pictures which has*

*made my husband's mind perverted and ruined my matrimonial life," she said in her petition."*

In the **Mr Vaswani's petition**<sup>lvi</sup> court held that pornography is "*worse than Hitler, worse than Aids, cancer or any epidemic. It is more catastrophic than nuclear holocaust, and it must be stopped*". His petition also argues that watching porn "*puts the country's security in danger, encourages violent acts, unacceptable behaviour in society, exploitation of children and lowers the dignity of women*".

***Kamlesh Vaswani v. The Union of India & Others.***<sup>lvii</sup> In this case the Court indicate how to ensure protect the porn user and how to take initiative staves to save porn browser, cause its impact more than drugs. The government has taken a dramatic U-turn from its stated position on internet pornography. A year after conveying to the Supreme Court that a blanket ban on internet pornography was not possible, through the department of electronics and information technology, it has asked internet providers to disable 857 websites that carry adult content. A senior official from the department of telecommunications (DoT) said the ban was a temporary measure, till the final order is announced by the apex court on August 10.<sup>lviii</sup>

The July 31 notification from DoT has advised internet service licensees to disable content on 857 websites, as the content "hosted on these websites relates to morality and decency as given in Article 19(2) of the Constitution of India". The government had stated last year that it was not technologically feasible to monitor such contents as it would require physical intervention, which would impact data speeds.<sup>lix</sup>

"As all forms of data, audio, video, text, images, etc., are transmitted together, it will not only introduce large delay in the transmission of forms of data but may also adversely affect the normal audio communications made through Internet telephony. The entire traffic from the websites, emails, electronic and financial transactions, etc., will have to be examined during the process," the affidavit said.

Under the Supreme Court of India, on the hearing in a PIL on banning pornographic websites in the country and the absence of laws to regulate such contents, will take up the Secretary's response. It had earlier asked government departments to put their head together to deal with the "serious" issue and propose a mechanism to block such sites, particularly those showing child pornography.<sup>lx</sup>

## **CHAPTER- II**

### **Analysis of laws relating to Pornography in India and Bangladesh**

#### **2.1. The Constitution of the India**

In the India Constitution to India ensures protection and imposes restriction for the personal rights and human rights. The Art-19 of the Indian Constitution<sup>lxii</sup>, the restriction most of the face controversy, which information we can get from different public interest litigation before the Supreme Court of India. Anyway, few information include for the security that are mentioned in the following-

- i. The State security.
- ii. To maintain the friendly relation with foreign Country.
- iii. Any public Orders.
- iv. To the Decency and Morality.
- v. The Contempt of Court.
- vi. To the Deformation.
- vii. The Offence relating to incitement.
- viii. To the Sovereignty and integrity of India

#### **Incitement to an Offence:**

The fundament rights of freedom of speech and freedom of expression given by the constitution of India, but any how its incites commit that's amount offence, which is consider the attempts to insult the religious beliefs of any class of person. The burglary forms of insult to religion which may clearly introduced the disrupt public order are reasonable grounds based on those restrictions can be applied on the freedom of speech and freedom of expression. The promotion of impropriety among the various classes during an election speech also can be restricted on the same ground. Seeking votes on the ground of candidates religious a in a secular state is against the norms of decency and propriety of the society. Under the Section- 123(3) of Representation of People Act 1951 which is also induct imposes restriction on the exercise of Constitutional right

under Article 19(1)(a)<sup>lxii</sup> is based on the support from Article 19(2) which include 'decency' as a ground.

In **Indulal K. Yagnik vs The State of Maharashtra**<sup>lxiii</sup>, In this case the petitioner filed his petition against the Section 3 of the Police Incitement to Disaffection Act 1922 was challenged as a controversial issue to the fundamental right to freedom of expression. However, the Bombay High Court held that, the encouragement of a police officer, which is punishable and thus the restriction on the free expression to prevent incitement to offences is valid under Article 19(2).

On the other side, the Sec- 144 of Criminal Procedure Code, which gives wide range of power to District Magistrates to impose restriction upon the fundamental rights of freedom of speech and unlawful assembly, which is considered Constitutional, it is also included in the case of *Babulal v. State of Maharashtra*<sup>lxiv</sup> and *State of Bihar v. K.K. Mishra*.<sup>lxv</sup>

In **Ramji Lal Modi**, the court held that Section 295A was constitutionally valid since, in accordance with Article 19(2) of the constitution, it was a 'reasonable restriction' upon the freedom of speech, 'in the interests of public order'. The core of the court's reasoning was that the phrase 'in the interests of', as required by Article 19(2), was of very wide ambit, and allowed the state to make a variety of laws that bore some relation to maintaining public order. The court held that:

*"The Section 295A only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the section, which penalises such activities, is well within the protection of clause (2) of Art. 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Art. 19(1)(a)."*<sup>lxvi</sup>

## **2.2. Impose Censorship on the Books**

India has a very big books sale market that is not only cover the national level but also cover the international level. For achievement of goals should be maintain the quality and avoid the obscene from the books. However, the Censorship induct the Penal Code of India and Bangladesh in sec- 292, 293, and also 294.

In the case of *Mr. Ranjit D. Udeshi*,<sup>lxvii</sup> In this case a partner of a firm which owned the Happy Book Stall in Bombay was prosecuted and convicted under Section 292, of the Indian Penal Code, the possession of an obscene book with intentionally and unintentionally that is considered as offence. He filed Appeal before the Supreme Court, which upheld the conviction. The court said that the opinions of literary or other experts were not relevant to the question of whether a publication is obscene. The court adopted the test of obscenity laid

down by the Chief Justice **Cockburn in Regina v Hicklin**<sup>lxviii</sup>, which is known as Hicklin test, where it was observed:

*“The test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall...it is quite certain that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character.”*

The Court further relied on **MF Hussain v. Rajkumar Pandey**<sup>lxix</sup>, (also decided by Justice Sanjay KishanKaul) wherein it was held, that while evaluating obscenity in a work, *“the judge has to place himself in the position of the author in order to appreciate what the author really wishes to convey and thereafter, placing himself in the position of the reader in every age group in whose hand the book is likely to fall, arrive at a dispassionate conclusion.”*

The Court also said, “there are different kinds of books available on the shelves of book stores to be read by different age groups from different strata. If you do not like a book, simply close it.” While this reflects a progressive view of the judges on sexual morality, we have reservations on court’s reliance on ancient literature to justify why sex and its depiction in art or literature is not obscene.

In the legal discourse pornography is missing as a category except as an aggravated form of obscenity in **Ranjit Udeshi v. State of Maharashtra**<sup>lxx</sup>. In this case the obscenity of Lady Chatterley’s lover was on trial, and it was held that the book as per the Hicklin test is obscene since it has the potential to deprave and corrupt by immoral influences. In essence, the judgment deals with slang and colourful language and it was held that there was not enough preponderance of art or social purpose in the text. The judgment does make reference to pornography as “dirt for dirt’s sake” further explained as “libidinous writings of high erotic effect unredeemed by anything literary or artistic and intended to arouse sexual feelings”. It is this judgment that establishes the Hicklin test as the law to be followed in independent India as well.

In the legalistic drive to categorize and label, the court has also drawn fine distinctions between obscenity and vulgarity stating that – *“A vulgar writing is not necessarily obscene. Vulgarity arouses a feeling of disgust and revulsion and also boredom but does not have the effect of depraving, debasing and corrupting the morals of any reader of the novel, whereas*



*obscenity has the tendency to deprave and corrupt those whose minds are open to such immoral influences.*<sup>lxxi</sup>

The decision in which there was an appeal to the courts to declare that pre-censorship of cinema in India is unconstitutional to be mentioned in the case of **K.A. Abbas vs The Union of the India and Anthers**<sup>lxxii</sup>. This appeal was not accepted and it was held that pre-censorship in cinema is necessary because of the impact that cinema has on the senses, unlike other mediums such as books, magazines, paintings, etc., – “*with trick photography, vista-vision and three dimensional representation thrown in has made the cinema picture more true to life than even the theatre or indeed any other form of representative art*”.

The court has a heavy investment in the question of aesthetics and especially narrative as is evident in the decision on **Shekhar Kapur’s Bandit Queen in Bobby Art International &Ors. v. Om Pal Singh Hoon &Others**.<sup>lxxiii</sup> In Bandit Queen, Phoolan Devi is raped and walks through the street of the village, naked. This caused much consternation and led to the case coming up before the court. Aesthetic opinions on the film varied even as Arundhati Roy described it as the ‘great Indian rape trick’<sup>lxxiv</sup> the court held that, in this film that attempts to show the reality of a communal ominous. Consequently it must show that social evil in the film. The narrative demands that the rape sequence that puts Phoolan Devi on the path to becoming a cruel, vengeful dacoit is essential “in aid of the theme and intended not to arouse prurient or lascivious thoughts but revulsions against the perpetrators and pity for the victim.”<sup>lxxv</sup>

### **2.3. Section 292, and 294 of the Penal Code of India**

In this section of the IPC directly discuss on the obscene material, which is consider as crime and it also impose bad impact for the society. Any way the main thing of this section given below-

Whoever—

- iv. The number of instrument are involve among them, the sells, lets to hire, distributes, publicly exhibits, or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces, or has in his possession an obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or
- v. The other points cover the imports, exports or coveys any obscene object for any of the purposes aforesaid, or knowing or having reasons to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

- vi. takes part in or receives profits from any business in the course of which he knows or has reason to believe that any obscene objects are, for any of the purposes aforesaid, made, produced, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or
- vii. advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be produced from or through any person, or;
- viii. offers or attempts to do any act which is an offence under this section, shall be punished with imprisonment of either description for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.

In the case of **R Basu vs The National Capital Territory of Delhi and others**<sup>lxxvi</sup>, In this case, the advocate Mr. Arun Aggarwal, his client filed a complaint before the learned Chief Metropolitan Magistrate (CMM) against Star TV, Star Movies and Channel V, for this offence the number of persons responsible for the day-to-day affairs of these channels or the various cable operators transmitting these channels. According to the complainant, the obscene and vulgar TV films shown and transmitted through various cable operators come off as obscenity and, therefore, that's way which that done by the accused person that is consider as crime under the sec- 292, 293, and 294 IPC and under Section 6 read with Section 7 of the Indecent Representation of Women Prohibition Act, 1986.

The petitioners argued that two of the movies had been awarded "A" certificates by the CBFC and therefore were immune from being prosecuted for obscenity under Section 292 of the IPC and the Indecent Representation of Women Act. With regard to the other two movies it was admitted that they have no censor certificates. However, they stated that with respect to the movie, Big Bad Mama, the application for certification had been made to the CBFC. They argued that these movies are telecast from other countries via satellite and broadcasters comply with various strict internal codes as well as the statutory codes prescribed by the Broadcasting Authority of the place of uplink. In respect of some of the Individual accused persons, it was argued that they were not responsible for the telecast of these movies.

Under the argument and witness speech the high court held that, for the two films without censor certificates the petitioners could not claim immunity from Section 292 IPC. For the other two films, also, the court said that, since the petitioners had not produced CBFC certificates, they could not claim immunity from prosecution.

Added also after the analysis of the section, if that does not extend to the—

- i. a book, pamphlet, papers, writing, drawing, painting, the representation, or the figure is--
  - a. any publication which that is proved to be justified as being for the public well on the matter of that suc book, pamphlet, papers, writing, drwing, painting, representation or figure is the interest of science, literature, are of the basic learning or other object of general concern;
  - b. the other things which is kept or used bona fide for the religious motive;
- ii. the other representation shape, involved, painted or otherwise showing in any—
  - a. other ancient monument within the meaning of ancient Monuments and Archaeological States and Remains Act, 1958;
  - b. other than the Temple or any car used for any conveyance of Idols, or kept use for any religious motive;

In the decision from Supreme Court has accepted this test of the Ranjid Udeshi vs State.<sup>lxxvii</sup> From the decision of this case the appellant who was one of the 4 partners of the Company and also owning a book Stall, even the he convicted along with others sharer under the sec-292 of IPC, by the magistrate for keeping a banned book named ‘Lady Chatterley’s Lover’ in his stall for sale.

The High Court and the Supreme Court maintained his conviction. The Supreme Court observed that treatment of sex in such a way as to appeal to the carnal side or as to have a tendency towards that is obscene, and it must be seen as to whether such a matter is causes to defile and corrupt those whose though are express to such honour and into whose hands such remarkable is likely to collapse.

Obscenity which is offensive to modesty or decency cannot be protected on the ground of the Constitutional protection of the freedom of speech and expression which that granted under the Art- 19(1)(a)<sup>lxxviii</sup> the subject to reasonable restriction of the public interest, order, decency, or morality..

In **Chandrakant Kalyandas Kakodkar v. State**,<sup>lxxix</sup> the Supreme Court said that where the argument is that an allegedly obscene matter is actually a work of literary merit; the views of

leading literatures could always be sought. The court must take be the overall sight in the entire service and then decide whether it specific the goer are really obscene, bearing always in mind there are the number of honor of the book on the social morality of a coincident society.

Under the sec- 294 of IPC covers the following things against the offence-

- i. Forbidden any obscene act in the public place or,
- ii. Any types of signs, which is peruse or utters any obscene songs, balled or words in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine or with both.
- iii.

From the definition on the obscenity certain tests were laid down by Supreme Court which is applicable to online obscenity or cyber obscenity as well. But in practical view, the obscene thing causes the affection for the young persons. That's way should be consider the public interest first of all.

It was in 1997 in Vishaka Vs. State of Rajasthan and others,<sup>lxxx</sup> that for the first time sexual harassment had been explicitly- legally defined as an unwelcome sexual gesture or behaviour whether directly or indirectly as—

- iii. Sexually coloured remarks
- iv. Physical contact and advances
- v. Showing pornography
- vi. The requirement or the request for sexual support;
- vii. In other ineligible physical, verbal or non-verbal dealing being sexual in nature,

#### **2.4. Child Pornography Act in India**

The India government on Thursday has directed the internet service providers to block online child sexual abuse material by July 31, 2017. Last month, India's top court, the Supreme Court, had asked senior government officials to map out a way to stop child pornographic material from getting uploaded over the social media platforms.

A committee was formed to look into the matter with representatives of Google, Facebook, and Yahoo. The committee was granted 15 days to come out with a solution beginning from April 5. A Bench headed by Justice MB had asked committee that if it was unable to find a solution to the problem then it must be prepared with solid reasons as to why it wasn't possible to block uploading and circulating videos of rape, gang-rape and child pornography.

The court had formed a committee after a PIL was filed by an NGO which put light on the uploading and circulation of such videos. As per The Tribune, the NGO had sent two gang-rape videos and penned a letter requesting immediate action.<sup>lxxxix</sup>

The order is based on recommendations of an inter-ministerial committee set up following a 2013 Supreme Court directive. The committee noted that most online child sexual abuse materials are hosted by sites created outside India. The dynamic nature of these websites and URLs make them hard to track and block.<sup>lxxxix</sup> At present, India does not have a centralised mechanism to track online child sexual abuse imageries or pornography. Sites and URLs go into IWF's blocking list based on three categories:

- i. content showing penetrative sexual assault of a child,
- ii. Non-penetrative sexual assault and
- iv. Pictures of children in sexual poses and other offensive imagery.

The term 'child pornography' indicates any images, creation, or any pronounce or presentation of person, real or simulated, who is or who is delimited or present as being. Under the age- 18 years old, of any explicit or sexual in nature, whether that such images or description or presentation is intended to stimulate erotic or aesthetic feelings or not, including any such image or description of the particular person involve any of the followings—

- i. Any acts which constitutes the sexual offence;
- ii. Any acts which take part for sexual penetration
- iii. Any acts which is sexual violation;
- iv. Any acts which can help for masturbation;
- v. Any acts which is helped to the person for arousal or a stimulation;
- vi. Any acts which displaying the genital organs or anus of that person;
- vii. Any acts take part for stimulation of a sexual nature of that persons breasts;
- viii. Anything which help to involve in sexual hypnotic or lewd;
- ix. Anything which is help to involve in or subject to masochistic acts for sexual nature;
- x. Anything which is help to involve in any conduct or activity unusually associated with the sexual intercourse;
- xi. Anything which that express or describing over any such person—
  - a. To take part or assist or ensure facility others person to do this;
  - b. To presence of other person, who commits or other manner is responsible in any act contemplated.
- xii. Anything which is showing or describing the body, or parts of the body, of such person in a manner or in circumstances which, within the context, violate or offend the sexual integrity or dignity of that person or any category of persons

under 18 or is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person.

From the Computers and the Internet become universal, the children have rapidly improvement to become exposed to crimes such as pornography and stalking that make use to their private information. In the Information and Technology newly inserted of the Section-67B of the IT Act, for the purpose of attempts to safeguard the privacy of children below 18 years by the development of penalty for criminals who build up the intention over the children.

On the other side the images, real, or synthetic, however the made, depicting of a person, who is, or mention as being under the age- 18 years old, to involve in any sexual activity or to show any genital which that amounts to sexual exploitation, or involvement in, or helping another person to engage in sexual conduct which amounts to sexual exploitation or collapse of children.<sup>lxxxiii</sup>

However, in the performances, by whatever the means, of a child involve in any real or synthetic explicit sexual acts or any of the performance takes part for sex of a child for primarily sexual purposes.<sup>lxxxiv</sup>

Afterwards, in the Art- 1 of the Optional Protocol of the Convention to the Rights of the Children on the sale of children, child prostitution and the child pornography (OPSC) provides that “States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.” Article 2 defines the conduct prohibited in the Protocol and must be considered together with article 3, which lists acts that, as a minimum, should be “fully covered” by the criminal or penal legislation of States Parties.<sup>lxxxv</sup>

Under the sec- 67B of the IT Act:<sup>lxxxvi</sup> This Act basically discusses the following things-

- i. Any types of represent or transmit or causes to be represent or transmitted the material into any electronic form which depicts children involve in sexually manifest act or usages; or
- ii. The invent text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or deliver the material in any electronic form depicting children in obscene or nasty or sexually explicit manner; or

- iii. To cultivates, entices or inspire the children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or
- iv. To ensure the facilitates abusing children online, or
- v. To development the records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,

However, the punishment if any one involve in publishing or transmitting obscene material in electronic form: Punishment for publishing or transmitting of material depicting children in Sexually explicit act, etc., in electronic form shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent 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:

On the other hand, the Information and Technology Act,<sup>lxxxvii</sup> provided in the section- 67 and the section- 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in any electronic from--

- i. The number of the publication of which is verified to be justified as being for the public well on the ground that such book, pamphlet, paper, writing drawing, painting shown or figure is the interest of science, literature, art or learning or other motive of the ordinary concern; or
- ii. The protection system to kept or used for bona-fide heritage or religious purposes.

The main aim of this section to development of the protection system for “children” means a persons who has not completed the age of 18 years.

On the other things is that any publishing or transfer any obscene material which is relating to the children, there is possibility to commit any crimes, but also its collection, online viewing, downloading, promotion, to any exchange and apportions.

In the sec- 67 of IT: A big deal with the publishing or transmitting of any material to take part for sexually explicit act by in any electronic form. Contents of Section 67 when combined with the material containing sexually explicit material attract penalty under this Section.

Child Pornography has been exclusively dealt with under Section 67B.<sup>lxxxviii</sup> the delimitating about the most of children involve in sexually manifest activity, inventing text or digital images or advertising or promoting such material depicting children in obscene or indecent manner etc or facilitating abusing children online or inducing children to online relationship with one or more children etc., come under the sec-67B of IT Act. ‘Children’ means a person

who is not complete the 18 years old, for the purpose of this Section. Punishment for the first conviction is imprisonment for a maximum of five years and fine of ten lakh rupees and in the event of subsequent conviction with imprisonment of seven years and fine of ten lakh rupees.

In the case of State of **Tamil Nadu vs Suhas Katti**,<sup>lxxxix</sup> the strength of the Section and the reliability of electronic evidences were proved by the prosecution and conviction was brought about in this case, involving sending obscene message in the name of a married women amounting to cyber stalking, email spoofing and the criminal activity stated in this Section.

### **Under the section- 67: Publishing of obscene information in electronic form**

In this section indicate the any publishes or transmit or causes to be published in any electronic form, any of the material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstance, to read see or hear the matter contained or embodied in it, shall be punishable under the description imprisonment for a term may extent 5 years and with fine may extent to 1 lac and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extent to 10 years and with also fine may extent to 2 lac Rupees.<sup>xc</sup>

### **The Important Ingredients:**

The essential ingredients of the section-67 of the IT Act, which are relating to the pornography and any material in any electronic form shall be punishable—

- i. The 1<sup>st</sup> punishment which may extent upto 5 years and with the fine may extent to 1 lac rupees;
- ii. The 2<sup>nd</sup> punishment which may extent to 10 years and fine with 2 lac rupees.

In the case of **Avnish Bjaj**, there are 3 accuse person in the Delhi school boys and the kharag pur Ravi Raj and the service provider Avnish Bajaj. In this case consider the law on the subject is very clear. The sections slapped on the three accused were Section 292 (sale, distribution, public exhibition, etc., of an obscene object) and Section 294, of the Indian Penal Code, and Section 67, the publishing information which is obscene in electronic form of the Information Technology Act 2000. In addition, the schoolboy faces a charge under Section 201 of the IPC, to be considered as destruction of evidence, for there is apprehension that he had destroyed the mobile phone that he used in the episode. These offences invite a stiff penalty, namely, imprisonment ranging from two to five years, in the case of a first time conviction, and/or fines.



*The Supreme Court held that, the Service provider Avnish Bajaj was later acquitted and the Delhi school boy was granted bail by Juvenile Justice Board and was taken into police charge and detained into Observation Home for two days.*

## **2.5. The Protection of Children from Sexual Offences Act, 2012 (POCSO) of India**

The Protection of Children from Sexual Offences Act, 2012 Act, in this Act first of all define the “children” this term consider the person who is not complete the age of 18 years, and raised the age of consent from 16 years under the Indian Penal Code (IPC) to 18 years. The Act provides for a wide range of sexual offences including penetrative sexual assault, non-penetrative sexual assault which that consider as kissing, fondling, and non-contact based sexual acts such as sexual harassment. Unlike the IPC,<sup>xc1</sup> which treats any person who done sexual intercourse with his wife but wife age above the 15 years is consider as rape, even in the POCSO Act does not permit any exception. In fact, penetrative sexual assault and non-penetrative sexual assault by a person who is related to a child through marriage constitutes an aggravated offence.<sup>xcii</sup>

A plain reading of the Act suggests that:

- Any person, with including a child can be prosecuted for the involving in any sexual activity by the child irrespective of whether the latter on give the consent.
- A husband/wife can be prosecuted for engaging in a sexual act with his/her spouse below the age of eighteen years.
- The Act does not recognise consensual sexual acts among children or between a child and an adult.

In **State v. Suman Dass**,<sup>xciii</sup> In this case a 15-year-old girl left home and married a 22-year-old man. Her mother filed a complaint alleging that the man had kidnapped and sexually assaulted her. In court, the girl admitted to having gone willingly and to having sexual intercourse. Judge Dharmesh Sharma was of the view that a strict interpretation of the POCSO Act, therefore the POCSO penalises the sexual intercourse with a person below the age of 18 years old irrespective of their gender, age, marital status or even the consent. There is no exception unlike the sec-375 of the IPC. Relevancy with the sec- 42A of the POCSO also gives it an overriding effect over another law. However the court held that:

*“The term ‘Unobtrusive Sexual Assault’ used in the sec- 3 of the (POCSO) Act goes to suggest that where physical relationship or sexual intercourse had taken place with consent of a girl child which is not derived by coercion or not in the nature of an assault or use of criminal force, or which is not resulting in exploitation, or where the consent is not obtained for unlawful purpose, no offence within the ambit of Section 3 of POCSO Act can be said to have been committed.”*

## **2.6. Information Communication and Technology Act, 2006(Bangladesh)**

Section 57 of ICT Act<sup>xciv</sup>, the law criminalizes “publishing fake, obscene or defaming information in electronic form”:

Is any of the person intentionally publish or transmits or causes to be publish or transmitted in the online or in any electronic form, of any material, which is immoral or obscene, 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, or causes to deteriorate or creates possibility to deteriorate law and order, prejudice the image of the State or person or causes to hurt or may causes hurt to the religious belief or any of the instigate against any person or organization, next the acts of his will be consider as a offence.<sup>xcv</sup>

### **The ICT act should be re-written incorporating the following things:**

- i. Hacking or unauthorised entry into information systems
- ii. Virus introduction
- iii. Publishing or distribution of obscene content in electronic form
- iv. Tampering with electronic documents required to be kept under the law
- v. Frauds using electronic documents
- vi. Violation of privacy rights such as stalking
- vii. Violation of Copyright, Trademark or Patent design
- viii. Defamation through e-mail
- ix. Holding out threats through e-mail

The Internet technology is growing every day and new crimes are emerging and the law also should address the new challenges.<sup>xcvi</sup> Bangladesh is going to be the next hub of Internet outsourcing for the developed world and the young generations are preparing themselves. The law also should be updated accordingly to promote education and Internet business.

## **2.8. Anti- Pornography Act, 2012 of Bangladesh**

The Bangladesh government has approved a rigid new anti-pornography law. It is believed to be Bangladesh's first law specifically controlling the spread of pornography. Parliament has passed the Pornography Control Bill 2011 into law on February 28, 2012. The law bans production, preservation, transportation and marketing of any kind of pornographic materials.

Home minister Shahara Khatun on Jan. 29 placed the bill, aimed at curbing degradation of moral and social values, proposing strong punishment for the offenders.

To protect the women and adult from the sexual video, sexual harassment and also blackmailing and to prevent wide a spread of video, MMS, Picture through Mobile or any way but mentioned the internet. In the eight March, 2012 enacted the anti-pornography Act. However in the sec-2 mentioned the definition of pornography. Even there is no specific word which is not clear related with cybercrime.

But there is no specific provision of this Act and no any other special guidelines to prevent the child cyber-crime or actually the child pornography at all. In short I understand that- the Anti- Pornography Act, 2012 has been enacted by the Government of Bangladesh to make a restriction in the sharing and making pornography by the individual as it brings a devastated result not only for the individual involvement in it but also for the greater society. Section – 4 indicate that the production of pornography, storage, making, marketing, carry, supply, purchase, sell, hold or cannot be displayed. Section – 7 the investigation of any offence committed under this Act or any technical expert certified by the competent authority in the course of the offence has been committed to the Government, autonomous, semi-autonomous organization in charge of technical department of a license or authorization from the Government and private persons or any person or organization Technical competent institutions in charge of the accredited persons shall be treated as the opinions of experts from the comments received and it may be as evidence in court. Section – 10- offence committed under this Act, shall cognizable and non-billable. Section – 11- offence committed under this Act, shall be in accordance with the procedure described in the Code of Criminal Procedure. But this Act deals with the pornography only.

Under the Optional Protocol to the Rights of the Child on the sale of children, child pornography and child prostitution—the basic primary International tool serving as guidance for this Regional Study is the Under the Optional Protocol to the Rights of the Child on the sale of children, child pornography and child prostitution (hereafter also referred to as “OPSC”).<sup>xcvii</sup>

The OPSC may be deemed as one of the most important international legally binding instruments that can be used to analyse the legislative and regulatory approaches of Asian countries to address child pornography offenses in alignment with relevant international standards. The OPSC contains provisions mandating State Parties to criminalize illicit conduct in relation to child pornography, in addition to providing a definition of child pornography under its Article 2 (c) as stated below--

- Article 3(1) (c) of the OPSC requires State Parties to create offenses covering the acts of producing, distributing, disseminating, importing, exporting, offering, selling child

pornography or possessing it for the purpose of production, distribution, dissemination, importation, exportation, offer, or sale.

- Article 3 (3) of the OPSC obliges State Parties to make such offenses punishable by appropriate penalties that take into account their grave nature.
- Article 3 (4) of the OPSC mandates State Parties to take measures, whether appropriate, to establish liability of legal persons for offenses established in its Article 3 (1), subject to the provisions of their national laws and such liability may be criminal, civil, or administrative.
- Article 4 (2) of the OPSC stipulates that a State Party may take such measures as may be necessary to establish extraterritorial jurisdiction over the offenses referred to in Article 3(1) in one of the following cases: (a) when the alleged offender is a national of that State or a person who has habitual residence in its territory; or (b) when the victim is a national of that State.
- Article 7 (a) of the OPSC states that State Parties shall, subject to the provisions of their national law, take measures to provide for:-
  - i. the confiscation of assets used to commit or facilitate offenses under the present protocol; and
  - ii. the confiscation of proceeds derived from such offenses.

## **2.9. Case Analysis Relating to Pornography**

### **i. Bombay Case: Sunil Mahadev Patil vs The State Of Maharashtra,<sup>xcviii</sup>**

In the Assembly, former chief minister and senior Congress legislator Prithviraj Chavan demanded that Fadnavis should sack the minister immediately as he was caught misusing his position as a minister in the government to influence the election machinery. “It is the moral responsibility of the chief minister to oust the minister. Else his party’s public stance over corruption won’t have any meaning,” he said. Senior NCP legislators Jayant Patil and Dilip Walse-Patil also pointed out that Jankar had violated his oath as a minister that he would not favour anybody. “Fadnavis is supposed to have clean image which will get tarnished if he shields Jankar,” remarked Jayant Patil.

Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship.

Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioural pattern of teenagers, as biologically whenever the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities.

The Honourable High Court of Mumbai had reduced the term of the Marty couple who had offered to pay all the 6 victims on record a sum of Rs.1 lakh towards compensation. The appeal was rejected by the Honourable High Court and Advocate General himself took the decision of moving the Apex court to challenge the release of the couple on behalf of the State of Maharashtra.

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**ii. Bachpan Bachao Andolan vs Union Of India &Ors,<sup>xcix</sup> on 18 April, 2011**

Prevention programmes must target multiple settings and multiple risk factors particularly vulnerable children such as children of substance users, children injecting substances, street children, and children involved in child labour, trafficked children, children of sex workers and any other category most at risk. Basically the business of trafficking of women and children is increasing as result the business man got the more profit, even the prosecution rate

is very low. The women and children do not usually come to the brothels on their own will , but in the highly systematic, well organised and the illegal trafficking network system by the good experienced individual number of person, which that person buy, sell, and transport of the children into the prostitutions.

### **iii. Law Commission of India Submit Report No.259<sup>c</sup>**

It is suggested that some provision be brought so that the nutrition recommendations in Schedule II of the NFSA could be regularly revised in keeping with the latest scientific studies based on calorific value, age, sex and food items. The powers and responsibilities of the Council should be specified by law. Similar Councils to be established at State Level as well. The Philippines' ECCD (Early Childhood Care and Development) Council may be looked at as an example and adapted to the Indian context.

With regard to Section 6 of NFSA, there is need for evolving guidelines or some methods for identification of children suffering from malnutrition and for referring such children to appropriate healthcare providers. It is suggested that some provision be brought so that the nutrition recommendations in Schedule II of the NFSA could be regularly revised in keeping with the latest scientific studies based on calorific value, age, sex and food items. The Council may be empowered to periodically commission such studies from the appropriate research institutes or organisations.

### **iv. In Ms. C.B. Muthamma I.F.S. v. The Union of India and Others.<sup>ci</sup>**

In this case the petitioner is a member of the Indian Foreign Service contended that she had been denied permission to Grade I illegally and incidentally by practice of hostile discrimination against women while referring to the statutory rule and in particular to Rule 18(4) which forbids a woman as of right to be appointed to the service in case she is married, the Apex Court held thus:

"At the first blush this rule is in defiance of Article 16. If a married man has a right, a married woman, other things being equal, stands on no worse footing.

This misogynous posture is a hangover of the masculine culture of manacling the weaker sex forgetting how our struggle for national freedom was also a battle against woman's thraldom. Freedom is indivisible, so is justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-avis half of India's humanity, viz., our women is a sad reflection on the distance between Constitution in the book and law in action."

The Constitution of India given the rights for all citizens. But the thing is that the women did not equally treated in the job sectors. They are getting the illegal offer to do this job, if to this illegal after that can be possible to get the job. However, the Constitution of Indian forbidden

this types activity and also ensure the punishment for all. Though in practical situation did not existing the equality for all.

**v. In the Vasantha R. vs Union Of India and Ors. on 8 December,<sup>cii</sup>**

For the past two decades and over, various State Governments, Central Government, Universities, and Public Corporations are all trying to reverse the effects of past discrimination which was based on sex. To remedy the past discrimination, at times called "benign or reserve discrimination" and popularly known as "affirmative action," various measures have been taken for their own life. Surprisingly and perhaps certain statutes which make sexual classification which favour women, even if enacted solely to remedy past anti-female discrimination, are judged by exactly the same standard; the statute will be stricken if the sex based criterion is not substantially related to an important governmental objective. Further it is also to be pointed out that it is not always so easy to verify whether discrimination that is claimed to be "affirmative action" or "benign" whether really is and at times it is demonstrably established that such discrimination actually reinforces a negative and untrue stereotype of them. At times, some of the affirmative action plans are ordered by a Court as well to remedy past discrimination and such an order of the Court confirms the constitutional mandate which is yet to be tested or answered. In some cases, strict scrutiny of the provision is required either to remedy the past discrimination or to enforce the constitutional mandate of equality. Nalini Chidambaram, learned senior Counsel, it would be fit and proper for this Court to make the following guidelines and welfare measures for the female workers who come forward to work during the night shifts:

- i. The primary duty of the employer or the other responsible persons at the work places or institutions to prevent or to prevent the commission of acts of the sexual harassment and to provide the procedures for the resolution, statement or prosecution of acts of sexual harassment by taking all steps required.
- ii. The workers or persons in charge of work place or factory should take effective steps to for the prevention of sexual harassment;
- iii. Any pronouncement to publicity of the sexual harassment in any form such as unwelcome sexual consideration about the behaviour either directly, or by the implication, or advances or contact to gain contact or demand sexually favours or make sexually coloured remarks or showing pornography or any other unwelcome physic verbal or non-verbal contact of sexual nature;
- iv.
- v. The rules or regulations shall be framed by the factory managements relating to conduct and discipline to prohibiting the sexual harassment and provide for enough punishment for the violation of this rules against the offenders and also introduce amendments wherever necessary which are existing in the Standing Orders;

- vi.
- vii. Provide appropriate working conditions in the consideration of work, leisure, health and hygiene to ensure again that there is no unusual situation towards women at work places and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
- viii. The worker shall initiate appropriate action in accordance with the penal law without delay and also ensure that victims or witnesses are not victimised or discriminated while dealing with the complaints of sexual harassment and wherever necessary, at the request of the affected worker, shift or transfer the perpetrator, if circumstances warrant. The employer shall take appropriate disciplinary action if such conduct amounts to misconduct in employment.
- ix. The employer shall maintain a complaint mechanism in the factory itself and the said mechanism should ensure time-bound treatment of complaints. Such mechanism should be at any rate to provide, when necessary a Complaint Committee, a special counsellor or other support services including the maintenance of confidentiality.
- x. Such Complaint Committee should be headed by a woman and not less than half of its members should be women, besides a non-governmental organisation's representation in the committee. Such person should be familiar with the issues of sexual harassment.

**vi. In the Srinivas Rajan vs The Director of Matriculation.<sup>ciii</sup>**

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- i. The physical contact and advances;
- ii. a demand or request for sexual favours;
- iii. the sexually-coloured remarks;
- iv. to showing pornography;
- v. to any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Serious complaints made by teachers against the fifth respondent clearly bordering on sexual harassment were overlooked by the Commissioner in his report by stating that it is beyond the scope of warrant issued to him. But yet at the same time, while examining Rev.Fr.Rector, the Enquiry Officer had made all kinds of statements as can be seen below:

"EO:-I am going to make recommendations. My own project is one of healing process. Assuming for a minute, I give against this teacher then he leaves, is this institution going to be happy. Similarly I can say that parents who gave complaint I said vindictive, is children going to be happy. It is most important for the welfare of the Institution.



**vii. In Srishti School of Art, Design and Technology Vs. the Chairperson,<sup>civ</sup>**

The Court of Delhi, principles governing censorship in the several decisions handed down involving the censoring of documentary and feature films, the supreme court has interpreted the provisions of the cinematograph act, 1952 (ca), the guidelines under section 5-b thereof in light of articles 19 (1) (a) and 19 (2) of the constitution of India to the maturity of a democratic society by making an assumption that people would be led to disharmony by a free and open display of a cinematographic theme."

the documentary film 'aakrosh' focussed on the communal riots which took place in Gujarat in 2002. The CBFC declined to grant a sexual immorality which should attract the censor's scissors but how the theme is handled by the producer. it must, however, be remembered that the cinematograph is a powerful medium and its appeal is different. the horrors of war as depicted in the famous etchings of Goya do not horrify one so ..... .v. would be that there is likelihood that members of both the communities will rise in passion and anger against each other and take to acts which would lead to communal violence and riots ."

**viii. The Union of India v. Mahesh Bhatt & Anr.<sup>cv</sup>**

In this case the court given some advise to develop the morality. The decision of the court are more effective for the protection of our society and to stop the illegal activity. There number of case filed against the morality and relating to sexual activity but the court did not ensure the active responsibility to develop the decency and morality with sexual activity.

In this case mentioned the two major terms which is—

- i. The decency and morality. In the laws which is impose the reasonable restriction on the exercise of the right in the interests of the decency or morality is also saved by the clause(2) of Art- 19 of the Constitution,
- ii. The other term 'decency or morality' of relating to the sexual norms alone. In view of the expression 'in the interests of' and the context of election campaign for a free and fair poll, the right to contest the election being statutory and subject to the provisions of the statute, the words 'decency or morality' do not require a narrow or pedantic meaning to be given to these words. The dictionary meaning of 'decency' is correct and tasteful standards of behaviour as generally considered; conformity with current standards of behaviour or propriety; avoidance of obscenity; and the requirements of correct behaviour, 'conformity to the prevailing standards of propriety, morality, modesty, etc.: and the quality of being decent'.

**ix. The State Of Maharashtra & Anr vs Indian Hotel & Restaurants Assn. & ors.<sup>cvi</sup>**

The Government of Maharashtra, Home Department, on 10th December, 2002 passed resolution No. REH 012002/153/SE-5, noting therein :

*"It has come to notice that prostitution rackets are being run through pick up points in hotel establishments in which dance programmes are being conducted (Dance Bars) and that dance forms being presented therein are horrid and obscene and that criminals are being sheltered in such hotels. Such undesirable practices going on in hotel establishments have an adverse effect on society."*

It was resolved to form a committee to make suggestions for amending the rules to deal with:

- i. Remedial measures to check other undesirable practices going on in hotel establishments presenting dance programmes.
- ii. To prevent prostitution in hotel establishments
- iii. Remedial measures to see that criminals are not sheltered in hotel establishments;
- iv. To frame a code specifying what type of dance forms should be presented in hotel establishments.
- v. Creating a roving squad to check undesirable practices in hotel establishments and take strict action against owner of those establishments

**x. The case of Ranjit Udeshi v. State of Maharashtra,<sup>cvi</sup>**

The decision of lower court was upheld by the High court and Supreme Court. While dismissing the appeal, Justice Hidayatullah speaking through the court said:

*"There is no loss to society if there was a message in the book. The divagations with sex are not legitimate embroidery but they are the only attractions to the common man. When everything said in it's favour we find that in treating with sex the impugned portions viewed separately and also in the setting of the whole book pass the permissible limits judged of from our community standards and as there is no social gain to us which can be said to preponderate, we must hold the book to satisfy the tests we have indicated above. As regards, the contention of the petitioner that section 292, IPC violates Article 19(i) (a) of the constitution, since it puts restriction on the freedom of speech and expression, the court said in the negative"*

*Then chief justice Mohammad Hidayatullah began by observing that "it can hardly be claimed that obscenity which is offensive to modesty or decency is within the constitutional protection given to free speech or expression, because the article dealing with the right itself excludes it. That cherished right on which our democracy rests is meant for the expression of free opinions to change political or social conditions or for the advancement of human knowledge."*

**xi. In Bangladesh Society for the Enforcement of Human Rights v. Government of Bangladesh,<sup>cviii</sup>**

The petitioners in the present case, Bangladesh Society for the Enforcement of Human Rights (BSEHR) and several other NGOs filed a petition following an incident leading to the alleged illegal, forcible and violent ousting of sex-workers from their residence by the local administration and the police, to address the whole issue for protection and status of fundamental rights of citizens including women in prostitution and upholding the rule of law. The petitioners stated that on 23<sup>rd</sup> July, 1999 at night and in early morning on 24<sup>th</sup> July 1999 approximately at 3.00/4.00 AM while inmates of the area of Nimtali and Tanbazar, Narayanganj were asleep the police raided and barged into their rooms and without giving them any opportunity to change or organize, dragged them out, abused and beat them and pushed them and their children into the waiting buses and were subsequently kept in detention in Kashimpur Vagrant Home contrary to the provision of Vagrancy Act, 1950.

The respondents denied all the averments made by the petitioners and stated the Constitution, the Penal Code and the Children Act, 1974 and other laws, neither permitted prostitution nor prostitution related activities. Shifting of sex workers who were found vagrants was carried out through the process of law by producing them before the concerned Magistrate who declared some of them vagrants under the law and being satisfied were sent to the Vagrant Home.

The court stated that basically women in prostitution found in brothels are undoubtedly the ill-fated victims of circumstances, as some are kidnapped into it, some become victim of pretended love and then brought into brothel, some are brought there with allurements of job, some being frustrated not being able to obtain a job, and some are the off-springs of the prostitutes.

The court referred to relevant laws such as, Suppression of Immoral Traffic Act, 1933 (Bengal Act VI of 1933); Nari-o-Shishu Nirjaton Ain, 1995; Vagrancy Act, 1950; and Criminal Procedure Code.

The issues of the legal position of sex work arose in the context of eviction and detention of sex workers. The case related to police raids of several brothels, as a result of which sex workers and their children were evicted and detained in vagrant homes and government shelters.

**xii. The Indian case of Olga Tellis vs. Bombay Municipal Corporation,<sup>cix</sup>**

As the sex-workers are now confined in Vagrant Home illegally terming them to be Vagrant, the Court directed the respondents to release them forthwith so as to enable them to go on their own according to their choice, which is their fundamental right guaranteed under the Constitution. All the respondents should co-ordinate themselves with UNDP or other connected organizations formulating and adopting a durable rehabilitation scheme to start

with a pilot scheme for the purpose of the sex workers of the country with a sense of security and then the government should come out with legislation prohibiting prostitution and or soliciting prostitution and strictly enforce the laws in solemn observation of the constitutional obligation adopting effective measures to prevent prostitution.

In this case the Bombay Municipal Corporation illegally restricts the prostituted worker. After that they are violating the fundamental rights of the worker. Even the in this case also violate the Constitutional Article- 19(1), 21 and 23 of India. From this case indicate the rights to life for all without any interruption.

**xiii. In Sarmarsh Bose v. Amal Mitra<sup>cx</sup>**

The Supreme Court, holding a novel intended to expose the evils prevailing in the society with emphasis on sex and using slangs and unconventional languages notobscene , observed:

“A vulgar writing is not necessarily obscene. Vulgarity arouses a feeling of disgust and revulsion and also boredom but does not have the effect of depraving, debasing and corrupting the morals of any reader of the novel, whereas Obscenity is the tendency to deprave and corrupt those whose mind are open to such immoral things.

A novel which is intended to expose the evils of the society cannot be said to be Obscene merely because slang and unconstitutional language has been used in the book, in which there has been emphasis on sex and description of female bodies and there are narrations of feelings, thoughts and action in vulgar languages. Some portion of the book may appear to be vulgar and readers of cultured or refined tastes may feel shocked and disgusted. Equally in some portions, the words used and descriptions given may be not appear in proper taste... The author has written this novel for all class of readers and it cannot be right to insist that the standard should always be for the writer to see that the adolescent may not be in brought in contact with sex. If a reference to sex by itself in any novel is considered to be obscene and not fit to be read by adolescents; adolescent will not be in a position to read any novel and will have to read books which are purely religious”.

**xiv. In Chandrakant Kalyandas Kakodkar v. State of Maharashtra<sup>cx</sup>,**

The appellant was the author of a short story. He faced a criminal charge under Section 292 IPC along with the printer, publisher and the selling agent. The three-Judge Bench referred to the Constitution Bench in Ranjit D. Udeshi and thereafter the Court referred to the plots and sub-plots narrated in the story, adverted to the emotional thread running in the story and eventually came to hold that none of the passages was offending Section 292 IPC and accordingly acquitted the accused persons. In that context the Court observed:-

*“The concept of obscenity would differ from country to country depending on the standards of morals of contemporary society. What is considered as a piece of literature in France may be obscene in England and what is considered in both countries as not harmful to public order and morals may be obscene in our country. But to insist that the standard should always be for the writer to see that the adolescent ought not to be brought into contact with sex or that if they read any references to sex in what is written whether that is the dominant theme or not they would be affected, would be to require authors to write books only for the adolescent and not for the adults. In early English writings authors wrote only with unmarried girls in view but society has changed since then to allow litterateurs and artists to give expression to their ideas, and emotions and objective with full freedom except that it should not fall within the definition of “obscene” having regard to the standards of contemporary society in which it is read. The standards of contemporary society in India are also fast changing.*

*The adults and adolescents have available to them a large number of classics, novels, stories and pieces of literature which have a content of sex, love and romance. As observed in Udeshi if a reference to sex by itself is considered obscene, no books can be sold except those which are purely religious. In the field of art and cinema also the adolescent is shown situations which even a quarter of a century ago would be considered derogatory to public morality, but having regard to changed conditions are more taken for granted without in anyway tending to debase or debauch the mind. What we have to see is that whether a class, not an isolated case, into whose hands the book, article or story falls suffer in their moral outlook or become depraved by reading it or might have impure and lecherous thoughts aroused in their minds. The charge of obscenity must, therefore, be judged from this aspect.”*

**xv. In Jagdisli Chavla v. Slate the Rajasthan,<sup>cxii</sup>**

The High Court observed that possession of obscene object is punishable under section 292 if the possession is for the purpose of sale, hire, distribution, public exhibition or circulation and, therefore, persons found viewing obscene film on television with the help of video cassette recorder cannot be charged for an offence under this section.

The High Court and the Supreme Court maintained his conviction. The Supreme Court observed that treatment of sex in such a way as to appeal to the carnal side or as to have a tendency towards that is obscene, and it must be seen as to whether such a matter is likely to deprave and corrupt those whose minds are open to such influences and into whose hands such material is likely to fall.

Obscenity which is offensive to modesty or decency cannot be protected on the ground of the constitutional protection of freedom of speech and expression guaranteed by Article 19 (1)

(a) as this freedom is subject to reasonable restrictions in the interest of public order, decency or morality.

The law of obscenity is to be interpreted in its proper perspective in the present day when India is required to take a realistic view of steps to be taken to check its population explosion. Emphasis on sex education and family planning has to be laid through books, posters and such other materials including audio and video cassettes in a little more open manner but without corrupting or depraving the morals. More latitude needs to be given to matters of interpretation so that the courts take a just and reasonable stand to eliminate pornography and vulgar sex from a correct public awareness towards sex education in national interest.

**xvi. Ranjit D. Udeshi vs State Of Maharashtra<sup>cxiii</sup>**

*Cockburn,. C.J. laid down the test of obscenity in these words "I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall it is quite certain that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character."*

No doubt this article guarantees complete freedom of speech and expression but it also makes an exception in favour of existing laws which impose restrictions on the exercise of the right in the interests of public decency or morality... the word, as the dictionaries tell us, denotes the quality of being obscene which means offensive to modesty or decency; lewd, filthy and repulsive. It cannot be denied that it is an important interest of society to suppress obscenity.

In the next paragraph, he went on to note:

*"Speaking in terms of the Constitution it can hardly be claimed that obscenity which is offensive to modesty or decency is within the constitutional protection given to free speech or expression, because the article dealing with the right itself excludes it. That cherished right on which our democracy rests is meant for the expression of free opinions to change political or social conditions or for the advancement of human knowledge. This freedom is subject to reasonable restrictions which may be thought necessary in the interest of the general public and one such is the interest of public decency and morality. Section 292, Indian Penal Code, manifestly embodies such a restriction because the law against obscenity, of course, correctly understood and applied, seeks no more than to promote public decency and morality."*

**xvii. In Uttam Singh v. Delhi Administration,<sup>cxiv</sup>**

The accused was convicted under section 292 for selling a pack of playing cards on the reverse side of which lurid obscene pictures of men and women in pornographic sexual postures were printed. Later two more such packs were recovered from his shop. On the other hand with due respect the appeal for the quantum punishment only, the Supreme Court held that he could not be given any benefit under section 4, Probation of Offenders Act, 1958 as his act had a tendency to corrupt the internal fabric of the mind and so deserved to be punished severely.

The case indicates the obscene material which is caused harm to the other persons. However, the particular persons are responsible to do this type of activity which that the law of India did not allow for business. It's also make bad impact to the teenagers, juveniles and young person. That's way the Government can stop of this activity.

**xviii. Raj Kapoor S/O Prithviraj Kapoor vs Laxman S/O Kishanlal Gavai<sup>oxv</sup>**

In this case the court held that, the Sublime titles of cinematograph films may enchant or entice and only after entry into the theatre the intrinsic worth of the picture dawns on the viewer. The experience may transform because the picture is great or the audience may lose lucre and culture in the bargain. Mere titles may not, therefore, attest the noxious or noble content of the film.

However, under the sec- 79 of the Indian Penal Code mentioned is that, nothing is an offence which is done by any person, who is justified by law in doing this, or who by the reason of mistake of fact with a good faith, believes himself to be justified by law, in doing it. The respondent-complainant alleged that the film Satyam Shivam Sundaram was by its fascinating title misleadingly foul and beguiled the guideless into degeneracy and that obscenity, indecency and vice were writ large on the picture, constituting an offence under s. 292 I.P.C. The Magistrate after examining some witnesses took cognizance of the offence and issued notice to the appellant-producer of the film. Thereafter the appellant appear before the High Court under the sec-482 of the Code of Criminal Procedure for the violation of criminal proceedings and that no prosecution could be legally sustained as the film has been duly certified for the public show by the Central Board of film Censors. The High Court however dismissed the petition. In the appeal to this Court it was contended on behalf of the appellant that once a certificate sanctioning public exhibition of a film had been granted by the competent authority under the Cinematograph Act, 1952, there was a justification for its display thereafter, and by virtue of the anti-dotal provisions in section 79 I.P.C., the public exhibition, circulation or distribution of the film, even if it be obscene, lascivious or tending to deprave or corrupt public morals, could not be an offence, s. 292 I.P.C. notwithstanding.

**xix. Devidas Ramachandra Tuljapurkar vs State Of Maharashtra &Ors,<sup>cxvi</sup>**

Often some individuals confuse the concept of obscenity as a freedom of expression on the strength of what might be prevailing in England or elsewhere, but there is no uniformity about it. It differs from country to country depending on the moral standards of contemporary society. I think the observation "what is considered as a piece of literature in France may be obscene in England and what is considered in both countries as not harmful to public order and morals may be obscene in our country", must always be adhered to.

There is constitutional limitation attached to it. In the context of obscenity, the provision enshrined under Section 292 IPC has its room to play. We have already opined that by bringing in a historically respected personality to the arena of Section 292 IPC, neither a new offence is created nor an ingredient is interpreted.

The concluding observations are remarkable: *"The judiciary evolved a test that 'contemporary community standards test' is a parameter for adjudging obscenity, and in that context, the words used or spoken by a historically respected personality is a medium of communication through a poem or write up or other form of artistic work (that) gets signification."*

**xx. Avnish Bajaj vs State,<sup>cxvii</sup>**

A reading of the above paragraphs shows that there are two elements to be satisfied in order to prove the offence under Section 292 IPC. The first is that the person accused of the offence had the knowledge that what was being offered for sale or exhibited or possessed was obscene. The second is that such person had the intention to commit any of the acts mentioned in Section 292 (2) IPC. In Ranjit D. Udeshi it was held that the prosecution did not have to prove that the accused had knowledge that the contents of the books being offered for sale were in fact obscene since the deeming provision in Section 292 (1) IPC stood attracted. However the prosecution was required to prove that the accused did intend to sell such obscene object.

The court observed that a prima facie case for the offence under Section 292 (2) (a) and 292 (2) (d) IPC is made out against the website both in respect of the listing and the video clip respectively. The court observed that "[b]y not having appropriate filters that could have detected the words in the listing or the pornographic content of what was being offered for sale, the website ran a risk of having imputed to it the knowledge that such an object was in fact obscene", and thus it held that as per the strict liability imposed by Section 292, knowledge of the listing can be imputed to the company.



However, as far as Avnish Bajaj is concerned, the court held that since the Indian Penal Code does not recognize the concept of an automatic criminal liability attaching to the director where the company is an accused, the petitioner can be discharged under Sections 292 and 294 of IPC, but not the other accused.

**xxi. Chandrakant Kalyandas Kakodar v. State of Maharashtra,<sup>cxviii</sup>**

The High Court, however, held the accused to be guilty of the charge and imposed in convicting the accused a fine. Against the judgement of the High Court, an appeal has been preferred to this Court. While dealing with the question of obscenity within the meaning of S. 292 I.P.C. this Court relied on the earlier decision in Ranjit D. Udeshi's case and referred to various observations made therein. This Court observed that:-

*"It is apparent that the question whether a particular Article or story or book is obscene or not does not altogether depend on oral evidence because it is the duty of the court to ascertain whether the book or story or any passage or passages therein offend the provisions of S. 292. Even so as the question of obscenity may have to be judged in the light of the claim that the work has a predominant literary merit, it may be necessary if it is at all required, to rely to a certain extent on the evidence and views of leading litterateurs on that aspect particularly when the work is in a language with which the Court is not conversant. Often a translation may not bring out the delicate nuances of the literary art in the story as it does in the language in which it is written and in those circumstances what is said about its literary quality and worth by persons competent to speak may be of value, though as was said in an earlier decision, the verdict as to whether the book or article or story considered as a whole panders to the prurient and is obscene must be judged by the courts and ultimately by this Court."*

**xxii. Jagdish Chavla And Ors. vs State Of Rajasthan,<sup>cxix</sup>**

In the instant case, it is not the allegation of the prosecution that the petitioners were found selling or doing any other thing as to bring the case in the first part of Clause (a). For the second part of Clause (a), the prosecution has to show that the obscene material was made, produced or kept in possession with the objective of any type of sell, hire, sharing, public exhibition, or publication. In other words, the possession of the obscene object is punishable under Section 292, IPC if the possession is for the purpose of sale, hire, distribution public exhibition or circulation. If the obscene object is kept in a house and is not for sale, hire,

public exhibition or circulation, the accused cannot be charged under Section 292, IPC. It is not the case for prosecution that the case falls under Clause (b), (c), (d) or (e) of Sub-section (2). Rather it was frankly conceded at the time of arguments that the case does not fall in Clauses (b), (c), (d) or (e).

However, our enjoyment of pornography may be trumped by countervailing public morality, which validates the IPC and IT Act's restrictions on manufacture, sale, public display, transmission, etc. of obscene or pornographic content. Such restriction, including of age limits, and non-legal methods of familial control and social disapprobation are amply justified. But to justify legal censorship, in a society where a presumption exists in favour of liberties, it must be shown that the potential harm from pornography is 'grave and uncontroversial'

### **xxiii. Zafar Ahmad Khan vs The State,<sup>cxv</sup>**

According to the learned counsel for the applicant in the present case annoyance, if any, was intended and caused to the two girls and since they have not been produced as witnesses there is lack of proof of the essential ingredient "annoyance" which constitutes the offence and the applicant should be acquitted. Put in other words, the learned counsel's contention is that under Section 294, I. P. Code annoyance caused to any person other than the intended victim of the obscene act is not sufficient to prove the offence. The contention, in my opinion, is not sound and it is contradicted by the words of Section 294, I. P. Code, which reads: From the words of the section it is plain that annoyance by the obscene act of the accused should be caused to others. The section does not limit the scope of the word "others" to mean the person who is the intended victim of the obscene act of the accused. It is enough that the obscene act is committed in public and causes annoyance to anybody, be he the contemplated victim of the offender or not. The section, it appears, is intended to prevent obscene acts being performed in the public to the annoyance of public at large.

From the words of the section it is plain that annoyance by the obscene act of the accused should be caused to others. The section does not limit the scope of the word "others" to mean the person who is the intended victim of the obscene act of the accused. It is enough that the obscene act is committed in public and causes annoyance to anybody, be he the contemplated victim of the offender or not. The section, it appears, is intended to prevent obscene acts being performed in the public to the annoyance of public at large. There can be a large number of acts which by their very nature are so offensive to morality and repugnant to sense of propriety and decency that, if done in public they would cause annoyance to any and every respectable member of the society regardless that the doer of the act has or has not any particular individual or individuals in his mind whom he wants to injuriously affect when doing the act.

**xxiv. Narendra H. Khurana And Ors. vs Commissioner Of Police And Anr.<sup>cxix</sup>**

Looking to the wording of the section, therefore, the question as to an act being to the annoyance of the others cannot be considered objectively without reference to the persons actually witnessing the act. It cannot be the intention of the Legislature that even if a particular obscene act done in a public place is enjoyed by all those witnessing the same without in any way getting annoyed thereby, it can still be considered to be an offence under the section, if looking at it objectively, the Court finds that it would have annoyed others who were not actually present to witness the said act. In my view, the wording of Section 294 does not admit of any such a wide interpretation. The Court will have to find out from the evidence whether any persons at a given time witnessing a particular obscene act was actually annoyed or not.

*The court held, "Obscene or indecent act is not sufficient but there must be a further proof to establish that it was to the annoyance to others. Annoyance to others is essential to constitute an offence under this section. Where there is no evidence recorded about the language used or act done causes annoyance to anybody, a conviction under this section cannot be sustained."*

**xxv. Amardeep Singh Chudha And Ors vs The State Of Maharashtra,<sup>cxix</sup>**

In the case in hand, even if the averments made in the F.I.R. lodged meticulously after conducting raid at the spot of incident are taken at their face value and accepted in their entirety, do not prima facie constitute an offence punishable under section 294 of I.P.C. Obscene act alleged in the F.I.R., as per averments made in the F.I.R., was not being conducted wp127-16 at a public place and that too to the annoyance of others.

Section 294 of I.P.C. is meant for punishing persons indulging in obscene act in any public place causing annoyance to others. As such, the places where such obscene act is committed needs to be a public place and meant for use of public at large. Public must have free access to such place so as to call it a public place. The place where public have no right rather a lawful right to enter into, cannot be said to be a public place for invoking the penal provisions of section 294 of I.P.C. for calling a place as a public place. It must be shown wp127-16 that public at large has a right to have free ingress to such place. Viewed from this angle, the flat / apartment in building owned by some private person meant for private use of such owner cannot be said to be a public place. It is not the case of respondents that any member of the public has free access to the flat bearing Flat No.C-201 located in Evershine Cosmic, Kureshi Compound, Andheri (W), Mumbai. For resorting to the penal provision of section 294 of I.P.C., the prosecution is obliged to make out that the obscene act were performed at a public place or singing, recitals, or utterances of any obscene song, ballad or words were done in any public place.

**xxvi. M/S. Influence Lifestyle vs Government Of Tamil Nadu<sup>cxviii</sup>**

The decision of the Andhra Pradesh High Court came to be quoted with approval by a Division Bench of this Court presided by P.Sadasivam, J (as he then was) vide its judgment in The Government of Pondicherry and another Vs. S. Muthukumaraswamy and another reported in 2007 Writ L.R. 267. Paragraphs 18 and 22 from the decision may be quoted below:

*"The above Division Bench decision of the Andhra Pradesh High Court is directly on the point and we are in respectful agreement with the said view since total prohibition underlined by way of policy decision is arbitrary and illegal and opposed to Article 19(1)(g) of the Constitution of India. It is made clear that obscenity and indecency being indulged in such performance cannot be tolerated and the same have to be eliminated with iron hand. However, merely because one or two stray instances being taken place, there cannot be a blanket restriction for grant of licence for performance of Indian classical and allied dances."*

The question then emerges whether regulation of video games violates the fundamental right to trade or business or avocation of the appellants guaranteed under Articles 19(1)(g) and 21. It is true that they have fundamental right to trade or business or avocation but it is subject to control by Article 19(6) which empowers to impose by law reasonable restrictions on the exercise of the right in general public interest. In applying the test of reasonableness, the broad criterion is whether the law strikes a proper balance between social controls on the one hand and the right of the individual on the other hand. The court must take into account factors like nature of the right enshrined, underlying purpose of the restriction imposed, evil sought to be remedied by the law, its extent and urgency, how far the restriction is or is not proportionate to the evil and the prevailing conditions at that time. The court cannot proceed on general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or a class of persons on whom the restrictions are imposed. However, in order to consider the reasonable restriction, the relation must be had, as stated earlier, the main objective of the business and the governing conditions in that trade or business which would differ from trade to trade. No hard and fast rules concerning all trades etc. could be laid. The said, with a view to prohibit illicit or unfair trade, or business which is causes to injury to the public health, or welfare, is empowered to regulate the trade or business appropriate to the conditions prevailing in the trade/business.

**xxvii. The Government Of Pondicherry vs S.Muthukumaraswamy<sup>cxviii</sup>**

In this case the Andhra Pradesh High Court is directly on the point and we are in respectful agreement with the said view since total prohibition underlined by way of policy decision is arbitrary and illegal and opposed to Article 19(1)(g) of the Constitution of India. It is made clear that obscenity and indecency being indulged in such performances cannot be tolerated and the same have to be eliminated with iron hand. However, merely because one or two

stray instances being taken place, there cannot be a blanket restriction for grant of licence for performance of Indian classical and allied dances.

Whether the policy decision taken by the Commissioner of Police, Hyderabad alleged to be in exercise of the provisions of the Hyderabad City Police Act, 1348-F and the Rules made thereunder not to grant or renew any amusement licences to the Bars and Restaurants to conduct singing, music and dance programmes from 25.2.2002 other than Four Star and Five Star Hotels and affirmed by the State of Andhra Pradesh would amount to unreasonable restriction offending the provisions of Article 19(1)(g) and Article 14 of the Constitution of India is the principal question that arises for consideration in these batch of writ petitions filed by various Bars and Restaurants of the Twin Cities of Hyderabad and Secunderabad.

**xxviii. Jaiveer Prasad Gautam And Another vs State Of U.P.<sup>cxxv</sup>**

The party has so far announced the names of 370 candidates. For remaining 30 seats, the party is in talks with its allies Apna Dal and Bhartiya Samaj Party. The election to the 403-member assembly will take place in seven phases from February 11, 2017 to March 08, 2017. The results for the elections will be declared on March 11, 2017.

The Court observing as under:

*"The cherished rights of freedom of speech or expression on which our democracy rests is meant for the expression of free opinions to change political or social conditions or for the advancement of human knowledge. This freedom is subject to reasonable restrictions which may be thought necessary in the interest of the general public and one such is the interest of public decency and morality. Section 292 Penal Code manifestly embodies such a restriction because the law against obscenity, of course, correctly understood and applied, seeks no more than to promote public decency and morality. The word obscenity is really not vague because it is a word which is well understood even if persons differ in their attitude to what is obscene and what is not."*

**xxix. State Of Maharashtra & Anr vs Indian Hotel & Restaurants Assn.<sup>cxxvi</sup>**

The Government of Maharashtra, Home Department, on 10th December, 2002 passed resolution No. REH 012002/153/SE-5, noting therein :

*"It has come to notice that prostitution rackets are being run through pick up points in hotel establishments in which dance programmes are being conducted (Dance Bars) and that dance forms being presented therein are horrid and obscene and that criminals are being sheltered in such hotels. Such undesirable practices going on in hotel establishments have an adverse effect on society."*

It was resolved to form a committee to make suggestions for amending the rules to deal with:

- i. Remedial measures to check other undesirable practices going on in hotel establishments presenting dance programmes.
- ii. To prevent prostitution in hotel establishments
- iii. Remedial measures to see that criminals are not sheltered in hotel establishments;
- iv. To frame a code specifying what type of dance forms should be presented in hotel establishments.
- v. Creating a roving squad to check undesirable practices in hotel establishments and take strict action against owner of those establishments.

**xxx. Devidas Ramachandra Tuljapurkar vs State of Maharashtra &Ors.<sup>cxvii</sup>**

Supreme Court:- While deciding an appeal filed by the publisher of the poem ‘Gandhi Mala Bhetala’ (I met Gandhi) wherein the publisher ,the printer and the author of the poem were charged under Section 292 of IPC, the main question raised was whether a historical personality can be connected to obscene situations by way of allusion in poems and is such connection protected by poetic license, the Division Bench of Dipak Misra and P.C.Pant, JJ., observed that, according to the evolved test of “contemporary community standards test” is the parameter of adjudging obscenity in write-ups where a historically respected personality is used as an allusion, therefore what can otherwise pass the contemporary community standards test for use of the same language, it would not be so, if the name of Mahatma Gandhi is used as a symbol. The Court further observed that there is no necessity for the issue to be referred to a larger Bench.

The meaning Obscene- Extremely offensive under contemporary community standards of morality and decency; grossly repugnant to the generally accepted notions of what is appropriate. Under the Supreme Court's three- part test, material is legally obscene - and therefore not protected under the First Amendment - if, taken as a whole, the material-

- i. appeals to the prurient interest in sex, as determined by the average person applying contemporary community standards;
- ii. portrays sexual conduct, as specifically defined by the applicable state law, in a patently offensive way; and
- iii. lacks serious literary, artistic, political, or scientific value.

Observing that in determining ‘obscenity’ under Section 292 IPC, the test evolved by the Apex Court, which holds the field today is the ‘contemporary community standards test’, the Court said, in that context, the words used or spoken by a historical ly respected personality is

a medium of communication through a poem or write-up or other form of artistic work gets signification.

### **CHAPTER-III**

#### **The effect and impact of pornography**

In this chapter will be discuss the effect of pornography, because everything has good side and bad side but it can be more or low rate. However the pornography consists more than effect on human life even most of the time to destroy the natural life. It is also through the impact over the social dignity, family relation, divorce, rape, child future, human morality etc. the truth is that all bad things make affection over this activity but good things or work most the people ignore always be. Basically there are in the effect and impact of pornography on the society-

- i. The number of abortion rate,
- ii. The number of teenage pregnancy rate,
- iii. The number of prevalence of sexually transmitted diseases,
- iv. The number of school and colleges drop out,
- v. The valuable time spent in procuring and watching of obscene materials,
- vi. The number of internet and pornography addiction,
- vii. To changing patterns of family,
- viii. The number child marriage rate,
- ix. To increase the impact on marriage,
- x. To increase the divorce rate,
- xi. To increase the domestic violence,
- xii. To increase the child and woman trafficking,<sup>cxxviii</sup>

#### **3.1. The Effects of Pornography**

Pornography, as an industry is gigantic in the country. Legalizing it would probably make government aware of all the black money and tax evasion practices that are abundant in such underground industries. Being closely linked to prostitution, pornography would help keep a check on illegal prostitution in various parts of the country. Making distribution of porn legal would only bring to the front what has always existed behind the backs. Local markets like Palika Bazaar in New Delhi are knows for selling sex toys- the sale of which incidentally, is

not allowed in the country. The open flouting of these rules undoubtedly makes them words written on paper and never implemented.<sup>cxxix</sup> A very major impact that such legalization would have is that people would be more inclined to film private video tapes and post them on sites where they get paid for every time the clip is viewed. This would make cyber crime profuse adding an unnecessary burden on the already over-burdened judicial system of India. Moreover, the incidents of child trafficking and molestation are definitely set to rise if such a move is supported.

This raises several pertinent questions. Pornography has been described as an individual in his blog as, “*A systematic practice of exploitation and subordination based on sex that differentially harms and disadvantages women through dehumanization. Pornography diminishes the worth and civil status of women and damages mutual respect between the sexes.*”

The danger of pornography use isn't about right and wrong. It's about the effects that pornography has on the user and the effects it has on the loved ones of the user. Pornography use has serious, negative side effects. There are number effects has, among them shown something in the below-

### **3.2.1. Effect on the Mind:**

Pornography significantly distorts attitudes and perceptions about the nature of sexual intercourse. Men who habitually look at pornography have a higher tolerance for abnormal sexual behaviours, sexual aggression, promiscuity, and even rape. In addition, men begin to view women and even children as “sex objects,”<sup>cxxx</sup> However, with regards to the former, a recent study in India, with the aim of assessing the impact of pornography on rates of sexual violence, found no difference in violence rates on women before and after the 1992 liberalization.

### **3.1.2. Effect on the Brain**

It seems to make common sense, that because pornography, and sex in general, feel so good, that they could become addictive. It also makes intuitive sense that, because sex releases neurochemicals in the brain, that those neurochemicals could act like drugs on the brain.<sup>cxxxi</sup> The idea that porn use causes erectile dysfunction is bunk, and is based on a simplistic, fear-based and gender-biased view of sex, porn, masturbation and the brain, fuelled by a desperate need to find an explanation for erectile difficulties. Porn will wreck the arousal process in your brain and end up wrecking your sex life in marriage. The same thing happens when we see porn. Porn stimulates the arousal centres in the brain. When it's accompanied by orgasm (sexual release through masturbation), then a chemical reaction happens and hormones are released. In effect, our brains start to associate arousal with an image, an idea, or a video, rather than a person.<sup>cxxxii</sup>



When an adolescent boy compulsively views pornography, his brain chemistry can become shaped around the attitudes and situations that he is watching. Sadly, pornography paints an unrealistic picture of sexuality and relationships that can create an expectation for real-life experiences that will never be fulfilled. Pornography shows us a world where relationships mean nothing and immediate sexual gratification means everything. Therefore, the adolescent viewer's brain is being wired to expect that sex and relationships are separate from one another, and that men and women's bodies should be sexually exaggerated as they are in porn--which can lead to shame about one's own body as well as failure to be aroused by the bodies of others.

### **3.2.3. Effect on the Heart:**

Pornography affects people's emotional lives. Married men who are involved in pornography feel less satisfied with their marital sexual relations and less emotionally attached to their wives. Women married to men with a pornography addiction report feelings of betrayal, mistrust, and anger. Pornographic use may lead to infidelity and even divorce. Adolescents who view pornography feel shame, diminished self-confidence, and sexual uncertainty.

Sex is no different from any other vigorous physical activity. During intercourse, your breathing rate, heart rate and blood pressure rises just as it would while climbing stairs or jogging. So, if you already suffer from heart disease or fatty deposits, romping can trigger chest pain or an attack, but it doesn't 'cause' it

### **3.2.4. Sex can wipe your memory clean**

Each year, fewer than 7 people per 100,000 experience "global transient amnesia," a sudden but temporary loss of memory that can't be attributed to any other neurological condition. The condition can be brought on by vigorous sex, as well as emotional stress, pain, minor head injuries, medical procedures, and jumping into hot or cold water.<sup>cxxxiii</sup> The forgetfulness can last a few minutes or a few hours. During an episode, a person cannot form new memories or remember very recent events. Fortunately, there seem to be no lasting effects.

### **3.2.5. Effect on the Body**

Pornography is very addictive. The addictive aspect of pornography has a biological substrate, with dopamine hormone release acting as one of the mechanisms for forming the transmission pathway to pleasure centres of the brain. Also, the increased sexual

permissiveness engendered by pornography increases the risk of contracting a sexually transmitted disease or of being an unwitting parent in an out-of-wedlock pregnancy.

It is more prevalent that young men are more self-conscious and are showing great concern to their bodies. This indicates a huge awareness of both self-appearance and importance to the body itself. In other words, young men tend to be worried about their figure just like young women are. This is present due to the media and the messages it commonly portrays; these messages are mostly targeted toward a younger age group which shows how media has influenced these age groups. According to an online article, it states that "The male body in the media has an impact on how males, especially developing males, perceive their own bodies," said Brennan. "Males are being exposed to the same extreme ideals of body perfection as females."

### **3.2.6. Effect on the Health**

People, who like porn, and watch porn, tend to also be people who enjoy sex. Sex is healthy and good for you, and so is masturbation, Even lots of sex and lots of masturbation.<sup>cxxxiv</sup> Some say it is perfectly healthy and natural, that it can be a learning experience, helping you to learn your own likes and dislikes and those of your partner. Some couples use it to facilitate intercourse in an exciting way. It can even help to relieve stress when no available lovers are on our radar.<sup>cxxxv</sup> People sometimes laugh and joke at the idea that pornography could become a harmful addiction. They might say, "Oh come on, I've never seen anyone become homeless or get lung cancer because of watching porn." "Nothing can more efficiently destroy a person, fizzle their mind, evaporate their future, eliminate their potential or destroy society like pornography," says the petition. "It is worse than Hitler, worse than AIDS, cancer or any other epidemic. It is more catastrophic than nuclear holocaust."<sup>cxxxvi</sup>

### **3.2.7. Effect on the Illegal Relationship with others wife**

I'm not just talking about relationships with a girlfriend or boyfriend; I'm talking about all relationships. You see, when someone is addicted to something, they're going to have addictive behaviours that are going to affect relationships and nearly every aspect of their life.<sup>cxxxvii</sup> From the social scenery I saw that the number of women or men, even they have husband or wife. But they are continuing their illegal relation with others. Because of-

- They are porn addicted.
- They are more interested on others.
- They did not get enough enjoy from his wife.

- They are fallen love with others.

**Deepalakshmi vs K.Murugesh Rep,**<sup>cxxxviii</sup> Justice Chauhan, writing the 41-page judgment for the Bench, said, "While it is true that the mainstream view in our society is that sexual contact should take place only between marital partners, there is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of 'adultery' as defined under Section 497 of the Indian Penal Code."

Section 497 provides, "Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case, the wife shall be punishable as an abettor."

### **3.2.8. Effect on the sexual violence or Rape**

Studies have shown no increase in rape or other sexual deviance due to porn viewing. There is also no apparent connection between excessive porn viewing and sex addiction.<sup>cxxxix</sup> This study aims to examine the relationship between the consumption of pornography and the subsequent increase in sexual violence, thus testing the hypothesis that increase in consumption of pornography is related to increased sexual crime, in the Indian scenario.<sup>cxli</sup> The problem is that, Indian women have always been abused, raped and molested. Very often by their own kith and kin. These are therefore not new to our culture. Just that women are a bit more liberated today and they do have the courage to believe that they can survive and overcome a rape. It can cause many negative effects when presenting the rape, abuse, incest and other sexual preferences as ordinary, everyday things.<sup>cxlii</sup> Whether viewing pornography can be directly tied to sexual violence or rape is highly debatable. A common criticism of pornography is that it has a lasting effect on the minds of regular viewers by shaping the way they think about sex and encouraging aggressive behaviour.<sup>cxlii</sup>

This argument is premised upon certain assumptions namely, porn causes sexual arousal and that sexual arousal leads to rape for achieving sexual gratification. But rape isn't about sex. In fact, the psychiatric definition of rape is that it is a pseudo sexual act that serves non sexual needs. In the book "Men who rape: The Psychology of the Offender" by Nicholas Growth, the study of sex offenders revealed that a significant majority of them experienced impotence, retarded ejaculation and premature ejaculation during the sexual assault. Many cases involved digital penetration or use of objects due to this impotence. In other words they found no sexual gratification but still perpetrated rape. Why? Because to them, rape was about

domination, power, control and anger. Sex was not the end, but the means to express their personality dysfunctions.<sup>cxliii</sup>

### **3.2.9. Creates emotional bond with artificial world**

All people have a critical need for human intimacy and emotional connection with others. When someone views pornography, they end up creating an intimate bond with an artificial, fake world and can actually lose the ability to bond with real people.<sup>cxliv</sup> Who are watching the porn in artificial world make a bond about this activity, but he don't think so about his real life or his family persons. Because this porn to build affection his mind, that's way when he watch this activity from net got the excitement and he enjoy only this particular activity. As a result day by increasing this problems, cause the number free internet and good electronic devise services, which that ensuring the all things in one devise.

### **3.2.10. Sex without intimacy**

Pornography is about sex being used for the wrong reasons. Because it is sex without emotional closeness, the underlying hunger remains unsatisfied. The viewer starts wondering what is wrong with their relationships and gets irritated or depressed. They end up feeling emotionally empty and disconnected from those around them.<sup>cxlv</sup> For this reason responsible

- i. 1<sup>st</sup> of all there is no understanding between the partner,
- ii. No love among them,
- iii. No trust among them,
- iv. No enough up time,
- v. Addict to others one love

### **3.2.11. Triggers addiction cycle in brain**

Studies show that actual brain function changes in someone who has an addiction and the changes are the same in all addiction: alcohol, drugs, or pornography. Because pornography use can become an actual addiction, viewers are not able to stop through their own will power. Pornography addicts will need to engage in the same difficult recovery process a drug addict has to go through.<sup>cxlvi</sup> They think so about increase of sex power for more sex period. Some people take drug; some are take energy tablet for tiger sex power. It is one kind of addiction over this type product.

After a brain is hardwired for addiction, “triggers” come into play. Triggers are the thoughts and feelings that induce drug cravings. If an addict can learn to identify triggers and stop them in their tracks – before they induce the phenomenon of craving – that person has a chance to stay sober, despite being triggered. It should be noted here that drug cravings are not the same as a non-addicted person craving a bag of potato chips or a scoop of ice-cream after a hard day at work. Drug cravings are more like the need for air after holding your breath for a minute or more. In other words, drug cravings, once they set in, are beyond conscious control. They escape reason and logic. They are so powerful that they simply overwhelm and take control of an individual’s thought process. When drug cravings set in, it is very, very difficult to stop the addictive cycle.

### **3.2.12. Great deception**

Initially, you were attracted to pornography because of the positive things it did for you. "I love the rush I feel," "This is my favourite pastime," "I feel lonely," "This is my reward to myself for making it through a rough day." Eventually, it will do just the opposite. "I no longer feel an emotional response to anything," "There is nothing in my life I enjoy doing," "I feel totally isolated from the world," "My anxiety and stress levels are at an all-time high".<sup>cxlvii</sup> When a person extremely involve in pornography, that ensure enough the knowledge about sex and how to make a cheating with others, few time it can be for sex, few time others purpose.

The majority of examples of sexual deception come from members of the orchid family, although examples from an iris and a daisy have recently been discovered, indicating that sexual deception is probably widespread over the entire planet. It has evolved independently on at least four continents, and its existence continues to perplex evolutionary biologists and botanists alike.<sup>cxlviii</sup> An initial question springs to mind: why would a plant want an animal to have sex with it? Plants require animals (or other interventions) to cross-pollinate, and sexual deception is thought to have evolved from plants that offer food rewards to pollinating insects. Except, in this instance, instead of receiving a food gift, the duped male suitor receives absolutely nothing.

Most systems of sexual deceit are species-specific: a single insect species, for example, will pollinate a single orchid species. This is in direct contrast to the systems of food-gifting pollinators, which may have a wide variety of pollinating insects helping to spread their seeds. It would appear that having a single pollinator is more effective, since less pollen is lost or deposited on the wrong species.

### **3.2.13. Always hungry**

Because this is an addictive substance, it creates an appetite for itself. This appetite increases over time as you spend more and more time viewing pornography. The time spent viewing pornography can jeopardize work, relationships and interest in healthy pastimes.<sup>cxlix</sup> The porn or sex video web site enough to damage the work time or future plan. Because it create an affection over this video. No nutrition scientist would ever make this analogy, but think of it like sex. If you're attracted to someone, a kiss is only going to fan the flames of your desire. In the same way, a few bites of food can "activate" the parts of your brain and gut that drive your hunger for more.

It's one thing to notice an uptick in appetite if you've been training hard at the gym, or if you're pregnant or PMS-ing. But when you always feel like a bottomless pit for no obvious reason, then something's definitely up. "Hunger is the physiological need for calories, water, and salt, and it's driven by a mix of factors, including your diet, appetite hormones, and emotional factors, such as stress,"

### **3.3. The Impact of Pornography**

We live under the society with some responsibility and dignity. The number of persons, who is conscious for their child, evens their life. From the practical knowledge, which is not good enough for our daily that is make attractive to see or watching, late on make bad impact on our life, among them the pornography is one. The huge number person's life was destroyed by the sex or porn with illegal way done by him or her. There few impact of porn given below-

#### **3.2.8. Impact on Children**

In a country where 40 per cent of the population is poor, vulnerability to various forms of deprivation potentially affects almost one in two children.<sup>cl</sup> The impact of a parent's use of pornography on young children is varied and disturbing. Pornography eliminates the warmth of affectionate family life, which is the natural social nutrient for a growing child. Other losses and traumas related to the use of pornography when a child is young include:

- i. encountering pornographic material a parent has acquired;
- ii. encountering a parent masturbating;
- iii. overhearing a parent engaged in "phone sex";

- iv. witnessing and experiencing stress in the home caused by online sexual activities;
- v. increased risk of the children becoming consumers of pornography themselves;
- vi. witnessing and being involved in parental conflict;
- vii. exposure to the commodification of human beings, especially women, as “sex objects”;
- viii. increased risk of parental job loss and financial strain;
- ix. increased risk of parental separation and divorce;
- x. decreased parental time and attention—both from the pornography addicted parent and from the parent preoccupied with the addicted spouse.<sup>cli</sup>

### 3.2.9. Impact on Adolescents

The pornography indicate of important notes over the younger and teenager disorients then the period of improve mental phase when they have to learn how to handle their sexuality and when they are most vulnerable to uncertainty about their sexual beliefs and moral values.<sup>clii</sup> A study of 2,343 adolescents found that sexually explicit Internet material significantly increased their uncertainties about sexuality.<sup>cliii</sup> The study also showed that increased exposure to sexually explicit Internet material increased favourable attitudes toward sexual exploration with others outside of marriage and decreased marital commitment to the other spouse.<sup>cliv</sup> Another study found that adolescents exposed to high levels of pornography had lower levels of sexual self-esteem.<sup>clv</sup> A significant relationship also exists between frequent pornography use and feelings of loneliness, including major depression.<sup>clvi</sup>

Finally, viewing pornography can engender feelings of shame: In a study of high school students, the majority of those who had viewed pornography felt some degree of shame for viewing it. However, 36 percent of males and 26 percent of females said they were never ashamed of viewing pornography, giving some idea of the level of desensitization already reached in society.<sup>clvii</sup>

High adolescent consumption of pornography also affects behaviour. Male pornography use is linked to significantly increased sexual intercourse with non-romantic friends,<sup>clviii</sup> and is likely a correlate of the so-called “hook-up” culture. Exposure to pornographic sexual content can be a significant factor in teenage pregnancy. A three year longitudinal study of teenagers found that frequent exposure to televised sexual content was related to a substantially greater likelihood of teenage pregnancy within the succeeding three years. This same study also found that the likelihood of teenage pregnancy was two times greater when the quantity of that sexual content exposure, within the viewing episodes, was high rather than low.<sup>clix</sup>

However, the present time sex or porn video impact day by day increases among the teenagers and adolescence. This impact not only in Indian but also in Bangladesh existing in between the adolescence. There are number of laws existing to prevent and stop this activity

but unfortunately there is no effective enforcement. That's way the Government should be duty to take initiative step against the sex or porn video, cause it's a one kind of drug for the young generation.

**Federation Of Hotel & Restaurant vs Union Of India & Ors,**<sup>clx</sup> Where the adultery is alleged to have been committed in a hotel or a boarding house with an unknown person, the court views such case with suspicion. There is need in some cases for the petitioner to prove a background of an adulterous association. The court makes a finding of adultery where a hotel bill is produced and a witness from the hotel is called to say that the respondent and a person of the opposite sex were in bedroom together.

### 3.2.10. Impact on Marriage

Marital Dissatisfaction Pornography use undermines marital relations and distresses wives.<sup>clxi</sup> Husbands report loving their spouses less after long periods of looking at and desiring women depicted in pornography. Pornography which is usually viewed in private often leads to deception in marriage and which may, later on, affect their family life.<sup>clxii</sup>

In many cases, the wives of pornography users also develop deep psychological wounds, commonly reporting feelings of betrayal, loss, mistrust, devastation, and anger in responses to the discovery or disclosure of a partner's pornographic online sexual activity.<sup>clxiii</sup> Wives can begin to feel unattractive or sexually inadequate and may become severely depressed when they realize their husbands view pornography.<sup>clxiv</sup> The distress level in wives may be so high as to require clinical treatment for trauma, not mere discomfort. Viewers of pornography assign increased importance to sexual relations without emotional involvement,<sup>clxv</sup> and consequently, wives experience decreased intimacy from their husbands.

The emotional distance fostered by pornography and "cybersex" interactive computer contact with another regarding pornographic sexual issues can often be just as damaging to the relationship as real-life infidelity,<sup>clxvi</sup> and both men and women tend to put online sexual activity in the same category as having an affair. The estrangement between spouses wrought by pornography can have tangible consequences as well: when the viewing of pornography rises to the level of addiction, 40 percent of "sex addicts" lose their spouses, 58 percent suffer considerable financial losses, and about a third loses their jobs.<sup>clxvii</sup>

The porn or sex video addict makes impact over the marriage. In India has number of person they are not interested to marriage to other. Just they like to sex with different types of young sex worker. Even they are interested on marriage with a single person. Though they are thinking if I got after that will start a bonding and painful life for ours, but in this life there is no pain. Most of the wife did not consider her husband illegal sex activity with others women. That's we want to lead a life with freely.



In a study on the effects of “cybersex”—a form of sexually explicit interaction between two people on the Internet—researchers found that more than half of those engaged in “cybersex” had lost interest in sexual intercourse, while one third of their partners had lost interest as well, while in one-fifth of the couples both husband and wife or both partners had a significantly decreased interest in sexual intercourse. Stated differently, this study showed that only one-third of couples maintained an interest in sexual relations with one another when one partner was engaged in “cybersex.”<sup>clxviii</sup>

Prolonged exposure to pornography also fosters dissatisfaction with, and even distaste for, a spouse’s affection.<sup>clxix</sup> Cynical attitudes regarding love begin to emerge, and “superior sexual pleasures are thought attainable without affection toward partners.” These consequences hold for both men and women who have had prolonged exposure to pornography, with the decline in sexual. The huge number of person has they did not like short time of sex with his partner but are few has they like just a short time of sex with his partner. Moreover, the long time sex increases the affection among them, even they got the extreme satisfaction after the end of sex among them but in the period they are totally shown dissatisfaction. From the medical knowledge the long-time sex with partner is not good for health; it’s always throwing the bad impact on human body.

**Tilak Raj vs. State of Himachal Pradesh,**<sup>clxx</sup> In this case, Trial Court had acquitted the accused from all the charges. On appeal, High Court though did not interfere with the findings of Trial court as regards the offence of rape, convicted of the accused under the Section- 420 and Section- 506 of the Penal Code of India, 1860. The Supreme Court said that the Trial Court rightly observed the following “*The prosecutrix has said a line in her examination-in-chief, but her cross-examination shows that no doubt the two were in relationship, but the question of marriage apparent... apparently had not been deliberated upon by any of the two. After the sexual contact, come talk about marriage had cropped up between the two. Thus, it also cannot be said that the consent for sexual intercourse had been given by the prosecutrix under some misconception of marriage.*”

### 3.2.11. Increased Infidelity

The study use of pornography frequently leads to abandonment of fidelity to their girlfriends.<sup>clxxi</sup> Steven Stack of Wayne State University and colleagues later showed that pornography use increased the marital infidelity rate by more than 300 percent.<sup>clxxii</sup> Another study found a strong correlation between viewing Internet pornography and sexually permissive behaviour. Stack’s study found that Internet pornography use is 3.7 times greater among those who procure sexual relations with a prostitute than among those who do not.<sup>clxxiii</sup> “Cybersex” pornography also leads to much higher levels of infidelity among

women. Women who engaged in “cybersex” had about 40 percent more offline sexual partners than women who did not engage in cybersex.<sup>clxxiv</sup>

**Separation and Divorce** Given the research already cited, it is not surprising that addiction to pornography is a contributor to separation and divorce. In the best study to date (a very rudimentary opportunity study of reports by divorce lawyers on the most salient factors present in the divorce cases they handled), 68 percent of divorce cases involved one party meeting a new paramour over the Internet, 56 percent involved “one party having an obsessive interest in pornographic websites,” 47 percent involved “spending excessive time on the computer,” and 33 percent involved spending excessive time in chat rooms (a commonly sexualized forum).<sup>clxxv</sup> Cybersex, which often takes place in these chat rooms, was a major factor in separation and divorce: In over 22 percent of the couples observed the spouse was no longer living with the “cybersex” addict, and in many of the other cases spouses were seriously considering leaving the marriage or relationship.<sup>clxxvi</sup>

### **3.2.12. Impact on Study**

At the same time, attempt towards the introduction of sex education at school level in India met with opposition from the fundamentalists arguing that it may degrade the tender minds and destroy the rich family systems in India. Furthermore, some teachers and principals were threatened that, “if you don’t stop sex education, neither will you remain in the jobs, nor will your schools survive”. However, the other side of the coin (*pro for sex education*) reflects supportive campaign towards introduction of sex education that may help to reserve the rich heritage and culture of India. Adolescents should be scientifically educated about the facts and myths related to sexual activities that may lead to number of health related risks. Being vulnerable to various changes associated with physical, emotional and psychological transitions, adolescents/youth must have proper knowledge of sex education that may empower them into healthy, productive and responsible adults.<sup>clxxvii</sup>

Though few politicians and religious leaders have opposed the introduction of sex education in schools, studies have shown that Indian adolescents and youth do not have sufficient information about sexual matters, thereby increasing the possibility of falling prey to various forms of sexual violence. TARSHI (Talking about Reproductive and Sexual Health Issues), a non-governmental organization running a helpline on sexual information, received over 59,000 calls from men, seeking information on sexual anatomy and physiology.<sup>clxxviii</sup>

Education in light the human and it is develop the human conduct with others. That’s way education need for all but the present time study system also develop, as a result all are try being collect the study material from online. When student collect the material that’s time browse another web site that is porn or sex video site. This video is not good enough for the

student, it makes impact on study. That's way student should be duty to stop this types of web site browse.

### 3.2.13. Impact on Divorce

After the analysis of the divorce person's life background, majority of the person tell me we have another illegal relation. Most of the time spent for her another love, because from here got the huge sexual enjoy but I did not get from my wife. The other lady doing good behave with me, that is I like most. After the long time consideration she divorce me, even she noticed to me remove or stop your activity otherwise I will back to my father house.

"Pornography corrupts the mind and causes sexual excitement to grow," said Vijay Panjwani, the lawyer who argued the petition on behalf on Mr. Vaswani in front of the Supreme Court last week. *"When a release is not found it leads to acts of sexual violence against women."*<sup>clxxix</sup>

**Rajeev Kumar Vs Vidya Devi,**<sup>clxxx</sup> Denying sex to husband for a long time without any justification amounts to mental cruelty and is a ground for divorce, Delhi High Court has said. The verdict came on a petition by a husband seeking divorce, complaining that his wife had subjected him to mental cruelty by not allowing him to have physical relations for four-and-a-half-years though she was not suffering from any physical disability.

While allowing the husband's appeal, the high court granted a decree of divorce to him noting that the wife in a trial court had not specifically denied the allegation.

*"In view the foregoing discussion, we are of the considered view that the husband has fully established that he was subjected to mental cruelty by the wife by denying sex to him for a long period despite living under the same roof, without any justification and though she was not suffering from any physical disability," a bench of Justices Pradeep Nandrajog and Pratibha Rani said.*

### 3.2.14. Impact on Family Relation

Many a relationship has been harmed by a man hiding his viewing from his wife or girlfriend, only to have his secret interests revealed in an inopportune way. But other than that situation (which has much more to do with communication than porn), is porn really bad for you?<sup>clxxxi</sup> Pornography interferes with interpersonal relationships and in the moral development of all people who see it can lead people to rape and sexual child abuse

When porn users do, their problems relate primarily to their relationships, their culture, their morals and their personal functioning, not to porn. Porn use may sometimes be a symptom of problems, but no research yet shows us that it is a cause of problems.<sup>clxxxii</sup>

**Om Prakash Vs Dil Bahar,**<sup>clxxxiii</sup> It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. The Indian women has tendency to conceal such offence because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members has courage to go before the police station and lodge a case. In the instant case the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after scuttling her own prestige and honour.

### **3.2.15. Impact on Future and Work**

Evaluating on a social platform, there being major outsourcing of work to India better cost efficiency, there exists a class who are exploited and violated due to their ignorance or helplessness. A grave question of counting on the future citizens to build a great tomorrow arises.<sup>clxxxiv</sup> Basically who is porn addict or spent huge time for watching sex video in online; he is not responsible about his future and work. Because of all-time thinking about sex or sex video, how can watch sex video or how can perform in sex or sexual intercourse with others. For this activity he lost future and there is possibility of lost his job.

## **CHAPTER-IV**

### **How to over from the Pornography Problem**

There are number of porn addict in our society not only in India but also Bangladesh. Some people or Spector mention a important talk that is “Nothing is Impossible” but need hard and soul contribution to change the life. Pornography addictions are now one of the largest causes of divorce. Porn is wrecking marriages. It’s also wrecking men’s libidos, and it’s one of the largest causes of men’s reduced sexual interest. In one study I read recently, college aged males were having far less sex with actual people because they were so addicted to porn. Now, of course, I don’t want college aged males to be promiscuous with actual women, either, but the point is that here’s a group that is notorious for sleeping with many partners, and yet they’ve stopped because porn is easier. And once you become addicted to porn, you tend not to want the real thing. Pornography is a widespread and serious problem. It hurts your spirit and infects your mind with unclean thoughts. It damages your relationships. Looking at pornography causes you to lose the companionship of the Holy Ghost.

Pornography has devastating effect on children. The connection between juvenile sexual behaviour and exposure to pornography is undeniable and often dangerous. That is why it is widely accepted that subjecting a child to pornography is a form of child sexual abuse. But is internet porn to blame or poor parent child relationships? The primary duty of the family or parents to back their child from porn or sex addiction. Thereafter the Government can take effective step to stop the child from porn or sex video. The porn or sex video is enough to destroy the life and future, an addict person did not think anything without sex or porn. The guardian can develop their take care for their child, otherwise day by day this problem comes to a big amount.

#### **4.1. Sex Addiction**

*“A compulsive preoccupation with any activity is called addiction. When an obsession reaches an extent that major aspects of life and relationships get affected, it is classified as an addiction. Sexual addiction therefore implies an inability to control one’s sexual behaviour despite negative consequences,”<sup>clxxxv</sup>.*

Sex addiction isn’t just a convenient excuse to hide a person’s infidelities, but a real medical concern “Sex addiction or hyper sexuality is a term used for individuals who suffer from repeated thoughts about sex most of the day, leading to sometimes harmful sexual behaviour.

A rare instance of judicial recognition of this issue is reflected in a judgement of the Supreme Court in *Suchita Srivastava versus Chandigarh Administration*.<sup>clxxxvi</sup> The Punjab & Haryana High Court had ordered the termination of the pregnancy of an adult young woman who had not given her consent for abortion. The High Court had ordered the termination without her consent as the woman had been categorized as as ‘mentally retarded’. Reversing the order of the High Court, the Hon’ble Chief Justice of India observed-

*“this case also presents an opportunity to confront some social stereotypes and prejudices that operate to the detriment of mentally retarded persons. Without reference to the present*

*proceedings, we must admit that even medical experts and judges are unconsciously susceptible to these prejudices.” The CJI went on to perceptively observe: “It would also be proper to emphasize that persons who are found to be in a condition of borderline, mild or moderate mental retardation are capable of being good parents.”*

In this case indicate the accused person is a porn addict person. The boy makes love relation with this lady after that continue his illegal sex relation with her. But the thing is that unfortunately one day feel the lady something is wrong. That’s way the court given some direction in this case against the of this particular activity.

#### **4.2. The Symptoms of Porn addict**

According to Dr. Soni, the symptoms of addiction include preoccupation with thoughts of sex, indulging in multiple partners, unsafe sex, obsession with pornography, phone or computer sex, extramarital affairs, prostitution, exhibitionism, sexual harassment, rape and obsessive dating.<sup>clxxxvii</sup>“People who suffer from sex addiction have no emotional attachment to their sexual partner. For them, sexual activity is just an act that brings satisfaction to their physical need and desire,” she says. “Those who suffer from mood disorders, personality disorders or extreme levels of stress can also fall prey to the problem.”

#### **4.3. Understand that Porn Use Can Be an Addiction**

When men say “it’s got nothing to do with you”, they honestly mean it. Men are wired much more so than women, to be aroused visually, and so pornography is a huge temptation for them. And it’s so easy to access today. Once they start watching, though, they tend to need more and more to get the initial high that comes with it, in the same way that an alcoholic needs more and more drinks to feel tipsy.<sup>clxxxviii</sup>

If your husband has a porn addiction, you’re going to be angry when you learn. You’ll feel disgusted, ashamed, and probably a little vengeful. That’s only natural. But when you calm down, try, as much as you can, to also feel a bit of sympathy. Listen to your husband’s heart. If he is repentant, but doesn’t know how to stop, then help him. If he isn’t repentant, then lay down some pretty firm rules and an ultimatum. A marriage can’t survive a porn addiction long-term. It is cheating, whether he admits it or not. He may not think of it that way, but it is stealing his sexual interest from you, and it is undermining the whole basis for your marriage.

**While Anurag Kashyap’s latest *Uda Punjab*,**<sup>clxxxix</sup> is surrounded with controversies with the Censor Board, the Bollywood fraternity has witnessed a marvellous turn of events. Not willing to offend the Punjabi community, the Board suggested the removal of the title ‘Punjab’ from the movie. But did the film really hurt the sentiments of Punjabi’s? We guess not!

Punjab's youth being addicted to drugs isn't an unknown fact. And while the youth is stuck in drug abuse, Anurag Kashyap decided to showcase this vital problem with his film. Since it is an issue that pertains not just in Punjab, but the country as a whole, does the Censor intend to rather stay ignorant to the whole issue than deal with the same?

With the row of *Udta Punjab Vs Censor Board* having reached the Court,<sup>cx</sup> this isn't the first time that the CBFC has proved its hypocrisy. While several movies have been banned on the pretext of having sexually explicit content, several other cheap sex comedies have been released by the Board without a second thought. No wonder our Bollywood aims at making filthy movies; cause issues of concern can't be spoken about openly!

#### **4.4. Signs of Pornography Addiction**

How would you determine if pornography use is harmful to you? The following are signs your use is problematic:

- i. The use of pornography feels out of your control. You are unsuccessful in your efforts to limit your use or stop.
- ii. You experience a cycle of excitement and stimulation before and during use, followed by intense shame, guilt, remorse or depression.
- iii. You go out of your way to hide your use from others, frequently delete your internet browsing history, or lie about your use.
- iv. You spend considerable time thinking about pornography when you are not using it, as well as taking time to plan when you will use it again.
- v. The time you spend watching pornography increases to the point of taking precedent over other responsibilities, hobbies or relationships.
- vi. Your use of pornography has negative consequences in your life. For example, you may participate in increasingly risky behaviours that may cause you or others physical or emotional harm. Your use may negatively impact your academics, job performance, or even place you at risk to lose a job if caught.
- vii. Your pornography use or other sexual behaviours cause problems in intimate relationships, create emotional distance between you and others you care about, or cause people in relationships with you to feel neglected or distrustful.

#### **4.5. Ideas for Changing Pornography Usage**

- i. Change routines and environments that lead to pornography usage. Avoid high-risk situations.
- ii. Make a list of the positive and negative consequences of using versus not using pornography.

- iii. Spend less time alone. Review the status of your friendships and relationships. Are they meaningful and satisfying? If not, what would make them more fulfilling?
- iv. Learn new ways of coping with strong feelings like anxiety, loneliness, anger, depression and boredom.
- v. Identify activities that can help you relax, enjoy yourself and feel refreshed.

#### **4.6. Help end the Porn Addiction.**

You need to take some action to end the addiction. It would be nice if he could stop all on his own, but it's rarely that easy. We don't ask an alcoholic to stop drinking when there is still a ton of alcohol in the house. In the same way, your husband can't just stop his porn addiction without removing the internet lure.<sup>cxc</sup>

So either drop the internet temporarily altogether, or get filters installed. Talk to him about this. He may be leery at first, but make it clear that if he wants to stay in the marriage, he needs to take these steps. And please, try to do it in a loving way. I know you're angry, but if you blame him and lecture him you'll just drive him away. How much better to tell him instead that you want to work towards rebuilding your sex life, and making it satisfying for both of you. You want to achieve true intimacy. You want your marriage to be rich and close and beautiful, and this is the first step towards that.

Rebuild your sex life—it is possible to have great sex after giving up porn. Here's the hard part. Pornography, fantasy, and masturbation go hand in hand. For males, you rarely have one without the other. So if a man tells you that he's addicted to pornography, it also means that he fantasizes and that he masturbates. It's gross to think about it, I know, but it's true.<sup>cxcii</sup>

To get out of that cycle so that his physical desire is channelled towards you again is often a very long process. Understand that from the outset. Rediscovering intimate sex after porn is not going to be an easy road, but it is one you can travel together.

You must recognize that what you are doing is wrong. Addicts find a way to justify their problem in their mind. For all that is in the world, the lust of the flesh and the lust of the eyes and the boastful pride of life, is not from the Father, but is from the world.<sup>cxciii</sup>

#### **4.7. Development of Rehabilitation system**

Sex addiction is characterized by a strong sex drive and obsessive sexual behaviour. Sex addicts often have trouble concentrating on work, or when they are spending time with their family and on daily activities. Preoccupation with sex dominates their thoughts and makes it difficult for them to maintain healthy relationships. Individuals living with this disease can



receive help from a sex addiction rehab facility. Rehab programs are designed to identify and alter addictive behaviours.<sup>cxciv</sup>

Sex-addicted individuals with long-term or serious dependency often receive the greatest benefit from inpatient treatment. Residential sex addiction rehab centres offer the highest level of care. Trained specialists and medical professionals are available 24 hours a day to treat sex addicts at these centres.

Outpatient clinics are less formal. The patient usually attends sessions during the day and then returns home in the evening. Those who have successfully completed inpatient programs often choose outpatient services as a follow-up treatment

The length of treatment is dependent on many factors:

- Severity of addiction
- Needs of the patient
- Recommendations of medical personnel
- Length of addiction
- The patient's progress

#### **4.8. Development of family care**

Individuals who suffer from sexual addictions often come from dysfunctional families and have often been abused by others in the past. Studies have also found a large number of sex addicts have family members who also suffer from other types of addiction. CNN reports as many as 80 percent of sex addicts have experienced emotional trauma or sexual abuse.<sup>cxcv</sup>

*“Through the study, we found out that 4-7 % of the respondents were behavioural addicts to technology related activities like watching porn, gambling, shopping and many more”* says Dr Sharma, who has been one of the primary innovators of SHUT clinic which deals with addiction to technology. After the ICMR study was completed, Dr Sharma and his colleagues proposed the idea to NIMHANS and SHUT was thrown open in August 2014.<sup>cxcvi</sup>

#### **4.9. Finding Support and Understanding**

As with other addictions, recovering porn addicts tend to do best with the support of others who are also in the process of healing. To this end, sex and/or porn addiction-focused group therapy is often useful. In most groups for sex/porn addiction, a treatment specialist (sometimes more than one) works with between six and 10 addicts. Addicts learn that their problem is not unique, which helps with the shame, guilt and remorse almost all feel, and that triggers their desire to act out. Group therapy is also ideal for confronting and overcoming the denial that drives porn addiction the rationalizations and justifications that addicts rely on to make their behaviour seem OK in their own minds.<sup>cxcvii</sup>

#### **4.10. Development of punishment system for Child**

In February 2009, the Parliament of India passed the *Information Technology Bill* which made creation and transmission of child pornography illegal. The newly passed Information Technology Bill is set to make it illegal to not only create and transmit child pornography in any electronic form, but even to browse it. The punishment for a first offence of publishing, creating, exchanging, downloading or browsing any electronic depiction of children in “obscene or indecent or sexually explicit manner” can attract five years in jail and a fine of Rs. 10 lakh.<sup>cxcviii</sup>

#### **4.11. Development of Wife care**

Not all marriages experience this, but slowly but surely a man who is addicted to porn becomes less interested in sex with his wife. When he is interested, he tends to want to try more extreme things. And he also has difficulty making love without fantasizing, because what porn has done is rewire his brain to think of images as erotic, as opposed to relationship.

#### **4.12. Sexual Addiction Therapists**

Sexual addictions usually are revealed in stages: Preoccupation: continual fantasies about sexual prospects or situations, which can trigger episodes of sexual "acting-out"; Ritualization: a preferred sexual activity or situation is often stereotyped and repetitive; Sexual Compulsion: continual engagement in sexual activity despite negative consequences and desire to stop; Despair: guilt or shame over inability to control behaviour or feel remorse; and, Other behavioural problems, particularly chemical dependency and eating disorders.

Sex addiction or love addiction in marriage is a common and inevitably leads to betrayal and hurt. Overcoming and recovery from sexual addiction starts with recognizing that you are out of control.<sup>cxcix</sup>

Last week, the Supreme Court received a plea from a distressed Mumbai woman. Her Complaint? That her 55-year-old husband was addicted to pornography and it was ruining their married life. She sought a blanket ban on all websites with pornographic material and argued that if an educated man like her husband, and a person of advanced years, could succumb to online pornography; it could have a worse effect on the youth.

This isn't the first time the Supreme Court of India has received such a request. Back in 2013, Kamlesh Vaswani, a public advocate, filed public interest litigation in the Supreme Court seeking a complete ban on all porn websites, arguing that internet pornography led to an increase in sex crimes. In August 2015, the government ordered a ban on more than 800 porn

websites. However a week later, after public outrage, the government lifted the ban partially and blocked only those sites that contained child pornography.

For a country in which sex is ironically one of the most taboo subjects, the land of Kamasutra consistently finds itself in the list of top countries that visit Pornhub, one of the largest pornography websites on the internet. In 2015 and 2016, India stood third and fourth respectively, in terms of traffic to the website. When Patna became the first station in Bihar to offer free WiFi, within a week the maximum number of internet searches were for porn sites. Our politicians enjoy watching porn too, and they don't worry about the content being NSFW, as was evident when politicians were caught watching porn during state assemblies in Karnataka and Gujarat in 2012.

Easy access on the internet has made porn addiction a real condition. "Around 20 per cent of my patients are addicted to porn," says Dr Meena Kasargod, consultant psychiatrist. While more men report the condition, women are known to be addicted to pornography as well, says Dr Gaurav Kulkarni, consultant psychiatrist. "More patients confess that they spend long hours watching pornography. Many women don't say it because of hesitation and fear."

## **CHAPTER-V**

### **THE COMPARISION BETWEEN INDIA AND BANGLADESH LAWS**

Basically there is no difference between the Indian law and Bangladeshi laws relating to Pornography. The main thing of these laws is that in India try to proper implementation or enforce but in Bangladesh there is no practical enforcement of this laws. If we see the practice of these laws, the number of case or petition filed against the sex or pornography.

There the number of laws relating to pornography in India Bangladesh among them the Penal Code of Indian and Bangladesh most of term are same discussion about obscene. But in the Constitution of India only discuss the reasonable restriction on obscene but in the Constitution of Bangladesh discuss over the prostitution to ban this sex worker, even the number of institution given recognition by the Supreme Court of Bangladesh.

However, moving further the Information and Technology Act, and Information and Communication Technology Act same discuss over the obscene material. Moreover in the Anti- Pornography Act of Bangladesh directly discuss against the pornography, but the similar Act not exists in India. India has only protection child from sexual activity Act.

An understanding of these provisions makes the following conclusions about the law of cyber pornography in India extremely clear:--

- i. Viewing Cyber pornography is legal in India. Merely downloading and viewing such content does not amount to an offence.
- ii. Publication of pornographic content online is illegal.
- iii. Storing Cyber pornographic content is not an offence.
- iv. Transmitting cyber pornography via instant messaging, emails or any other mode of digital transmission is an offence.

## 5.1. The Constitution of India

Article-19: Protection of certain rights regarding freedom of speech, etc. Sub-sec-

All citizens shall have the right-(g) to practise any profession, or to carry on any occupation, trade or business.<sup>cc</sup>

Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of<sup>cci</sup>[the sovereignty and integrity of India,] the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular,<sup>ccii</sup> nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

- i. the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

- ii. the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

In *Chandra Raja Kumar v. Police Commissioner Hyderabad*,<sup>cciii</sup> it has been held that the right to life includes right to life with human dignity and decency and, therefore, holding of beauty contest is repugnant to dignity or decency of women and offends Article 21 of the Constitution only if the same is grossly indecent, scurrilous, obscene or intended for blackmailing.

The High Court of Madras in **Public Prosecutor vs. A.D. Sabapathy**,<sup>cciv</sup> has opined that the word “obscene” must be given its ordinary and literal meaning, that is, ‘repulsive’, ‘filthy’, ‘loathsome’, ‘indecent’ and ‘lewd’. The learned senior counsel has also referred to the judgment of Supreme Court. The Commissioner of Customs, Calcutta,<sup>ccv</sup> by the Calcutta High Court wherein certain publications were imported by the petitioner which were meant for sale only to adults. The High Court took note of the change in the society as well as similar articles and works readily being available in newspapers and magazines and stated thus:-

*“As mentioned earlier, moral standards vary from community and from person to person within one society itself. The morals of the present day in our society also do not represent a uniform pattern. The variations and the variables inside a certain society are also crucial considerations while judging whether an object comes within the mischief of obscenity. We cannot shut our eyes to the changes that are taking place in our society as we cannot be blind to the kind of advertisements, newspaper articles, pictures and photographs which are regularly being published and most certainly with a target viewers and readership in mind. Any closer observer will definitely reckon the vast changes that have taken place around us, particularly in the field of audio and visual representations which are dinned into our ears or which arrest our ocular tastes. A certain shift in the moral and sexual standard is very easily discernible over the years and we may take judicial note of it. The appellant has produced many articles of high circulating newspapers and reputed magazines which are freely available in the market. Judged by that, these items which were produced in courts, do not appear to be more sexually explicit than many of those which are permitted to be published in leading journals and magazines”.*

**Ranjit D. Udeshi v. State of Maharashtra**,<sup>ccvi</sup> Before the Constitution Bench a contention was canvassed with regard to the constitutional validity of Section 292 IPC on the ground it imposes impermissible restriction on the freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution and being not saved by clause 2 of the said Article. The Constitution Bench referred to Article 19(2) and held thus:-

“7. No doubt this article guarantees complete freedom of speech and expression but it also makes an exception in favour of existing laws which impose restrictions on the exercise of the right in the interests of public decency or morality. The section of the Penal Code in dispute was introduced by the Obscene Publications Act, 1925 (7 of 1925) to give effect of the International Convention for the suppression of or traffic in obscene publications signed by India in 1923 at Geneva. It does not go beyond obscenity which falls directly within the words “public decency and morality” of the second clause of the article. The word, as the dictionaries tell us, denotes the quality of being obscene which means offensive to modesty or decency; lewd, filthy and repulsive. It cannot be denied that it is an important interest of society to suppress obscenity. There is, of course, some difference between obscenity and pornography in that the latter denotes writings, pictures etc. intended to arouse sexual desire while the former may include writings etc. not 42 (1965) 1 SCR 6557 intended to do so but which have that tendency. Both, of course, offend against public decency and morals but pornography is obscenity in a more aggravated form. Mr Garg seeks to limit action to cases of intentional lewdness which he describes as dirt for dirt's sake and which has now received the appellation of hard-core pornography by which term is meant libidinous writings of high erotic effect unredeemed by anything literary or artistic and intended to arouse sexual feelings.

8. Speaking in terms of the Constitution it can hardly be claimed that obscenity which is offensive to modesty or decency is within the constitutional protection given to free speech or expression, because the article dealing with the right itself excludes it. That cherished right on which our democracy rests is meant for the expression of free opinions to change political or social conditions or for the advancement of human knowledge. This freedom is subject to reasonable restrictions which may be thought necessary in the interest of the general public and one such is the interest of public decency and morality. Section 292 of the Indian Penal Code manifestly embodies such a restriction because the law against obscenity, of course, correctly understood and applied, seeks no more than to promote public decency and morality. The word obscenity is really not vague because it is a word which is well understood even if persons differ in their attitude to what is obscene and what is not.” Emphasis added and again,

“9. It is always a question of degree or as the lawyers is accustomed to say, of where the line is to be drawn. It is, however, clear that obscenity by itself has extremely poor value in the propagation of ideas, opinions and information of public interest or profit. When there is propagation of ideas, opinions and photographs collected in book form without the medical text would may become different because then the interest of society may tilt the scales in favour of free speech and expression. It is thus that books on medical science with intimate illustrations and photographs, though in a sense immodest, are not considered to be obscene but the same illustrations and

photographs collected in book form without the medical text would certainly be considered to be obscene. Section 292 of the Indian Penal Code deals with obscenity in this sense and cannot thus be said to be invalid in view of the second clause of Article 19.”

In the **Lakshmi Kant Pandey v. Union of India**,<sup>ccvii</sup> in this case the Court emphasising the importance of children has expressed his view thus:

*“It is obvious that in a civilized society the importance of child welfare cannot be overemphasized, because the welfare of the entire community, its growth and development, depend on the health and well-being of its children. Children are a ‘supremely important national asset’ and the future well-being of the nation depends on how its children grow and develop.”*

The State Governments and the Governments of Union Territories should set up a separate Advisory Committee within their respective zones consisting of the Secretary of the Social Welfare Department or Board, the Secretary of the Law Department, sociologists, criminologist members of the women’s organisations, members of Indian Council of Child Welfare and Indian Council of Social Welfare as well as the members of various voluntary social organisations and associations etc., The main objects of the Advisory Committee shown their suggestion for protection of future generation, among them given below - -

- i. The measures to be taken in eradicating the child prostitution, and
- ii. The social welfare programmes to be implemented for the care, protection, treatment, development and rehabilitation of the young fallen victims namely the children and girls rescued either from the brothel houses or from the vices of prostitution.

## **5.2. The Constitution of Bangladesh**

Article- 18- Public health and morality-

The sub- art- 2. The State shall adopt effective measures to prevent prostitution and gambling.

In the another landmark case of **Prof. Nurul Islam V State**,<sup>ccviii</sup> The Court referring paragraph 3 of the preamble of the Constitution states that the preamble glorified the pledge of the nation to establish a society where the rule of law, fundamental human right, living with dignity will be secured for all the citizens.

Bangladesh Society for the Enforcement of Human Rights (BSEHR) and Ors Vs. Government of Bangladesh and Ors, As the sex workers are now confined in Vagrant Home

illegally terming them vagrant, the respondents have to release them forthwith so as to enable them to go on their own which is their fundamental right guaranteed under the Constitution.

In writ jurisdiction the Court is unable to give any direction on the house owners except observing a caution that nobody should take the law in their hands violating the rights protected under the law and the fundamental rights under the Constitution.

### 32. Protection of right to life and personal liberty-

No person shall be deprived of life or personal liberty saves in accordance with law.

**BLAST vs. Bangladesh,**<sup>ccix</sup> Md. Fazlul Karim J: This Rule was issued calling upon the respondents to show cause as to why the lifting of the sex workers in the early hours of 23.7.1999 from their residence at Tanbazar and Nimtali, Narayanganj by the District Administration with the help of the police and dislodging them and taking some of them to the Kashimpur Vagrant Home in the name of rehabilitation should not be declared to be taken/done in violation of their fundamental rights as to residence, profession, trade, calling, etc. and why their confinement in Vagrant Centre should not be declared illegal directing that the sex workers in custody be brought before the Court so that it may satisfy itself that they are not being held in custody without lawful authority or in an unlawful manner

**Bangladesh National Women Lawyers Association (BNWLA) Vs Government of Bangladesh and Others.**<sup>ccx</sup> In the backdrop of our discussion and observations made above, and in view of the inadequacy of safeguards against sexual abuse and harassment of women at work places and educational institutions whereby noble pledges of our Constitution made in so many articles to build up a society free from gender discrimination and characterized by gender equality are being undermined every day in every sphere of life, we are inclined to issue certain directives in the form of guidelines as detailed below to be followed and observed at all work places and educational institutions till adequate and effective legislation is made in this field. These directives are aimed at filling up the legislative vacuum in the nature of law declared by the High Court Division under the mandate and within the meaning of article 111 of the Constitution.

Extent. These guidelines shall apply to all work places and educational institutions in both public and private sectors within the territory of Bangladesh.

Aims and objectives: The aims and objectives of these guidelines include-

- i. to create awareness about sexual harassments;
- ii. to create awareness about the consequences of sexual offences;
- iii. to create awareness that sexual harassment is punishable offence.



#### iv. Duties of employers and authorities

In my country, Bangladesh, Article 43 of our constitution clearly states that “Every citizen shall have the right, subject to reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health- (a) to be secured in his home against entry, search and seizure and (b) to the privacy of his correspondence and other means of communication.”

Privacy should be addressed with special care to retain human rights, principles and norms both by government and corporate agencies, especially in an information economy. However, there is no specific privacy policy in a significant number of the organisations who collect people’s private data. It is largely a gray area. Most people are uninformed about the purpose of data collection; whether it is stored safely or not; even whether it will be handed over to a third party without their consent or not.

### 5.3. The Penal Code of India

In India lots of crime happening everyday which that crimes cover the Penal Code of India discusses the lots of term relating to the obscene material. Even ensure the enough punishment against the obscene activity all over the India. However, if we see the comparative study in Bangladesh, India has huge number of implementation of the IPC sections relating to this activity, among the section-292, 293, 294 etc.

Under the section- 292<sup>1</sup> of the IPC: Sale, of obscene books, etc.--

1. For the purposes of subsection (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt person, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or Embodied in it.

#### 4. Whoever-

a. sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

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<sup>1</sup> Sec-292 of IPC,1860 of India.

b. imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

c. takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

d. advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

e. offers or attempts to do any act which is an offence under this section,

shall be punished 140[on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.

**Exception-** This section does not extend to-

a. any book, pamphlet, paper, writing, drawing, painting, representation or figure-

- 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 of learning or other objects of general concern, or
- ii. which is kept or used bona fide for religious purposes;

b. any representation sculptured, engraved, painted or otherwise represented on or in-

- i. any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or
- ii. Any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

### **Sale, etc., of obscene objects to young person**

Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished,<sup>140</sup> on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a 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 five thousand rupees.

#### **294. Obscene acts and songs:**

Whoever, to the annoyance of others-

- a. does any obscene act in any public place, or
- b. Sings recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

#### **5.4. Penal Code of Bangladesh**

In the Penal Code of Bangladesh also discuss against the obscene material and their punishment. However, in practical enforcement there is no implementation under the mentioned sections. Even if we see there is no case filed against of this section.

Under the section- 292<sup>2</sup>. Sale, etc, of obscene books, etc.:

Whoever—

- i. sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or
- ii. imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or
- iii. takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or
- iv. advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or

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<sup>2</sup> Section- 292 of PC, 1860 of Bangladesh.

- v. offers or attempts to do any act which is an offence under this section, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.<sup>ccxi</sup>

### **Exception.-**

This section does not extend to any book, pamphlet, writing, drawing or painting kept or used bona fide for religious purposes or any representation sculptured, engraved, painted or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

293. Sale, etc, of obscene objects to young person:

Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.<sup>ccxii</sup>

## **5.5. The Information Technology Act of India**

In this law cover the lots of offence which that did not cover the Penal Code. However, the punishment is comparatively more with Penal Code. It's also noted that with effective punishment cannot be possible to stop the crime. The other important thing is that effective enforcement of law.<sup>3</sup>

### **Salient Features of I.T Act:**

The salient features of the I.T Act are as follows –

- ❖ Digital signature has been replaced with electronic signature to make it a more technology neutral act.
- ❖ It elaborates on offenses, penalties, and breaches.
- ❖ It outlines the Justice Dispensation Systems for cyber-crimes.

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<sup>3</sup> The IT Act, 2000 of India.

- ❖ It defines in a new section that cyber café is any facility from where the access to the internet is offered by any person in the ordinary course of business to the members of the public.
- ❖ It provides for the constitution of the Cyber Regulations Advisory Committee.
- ❖ It is based on The Indian Penal Code, 1860, The Indian Evidence Act, 1872, The Bankers' Books Evidence Act, 1891, The Reserve Bank of India Act, 1934, etc.
- ❖ It adds a provision to Section 81, which states that the provisions of the Act shall have overriding effect. The provision states that nothing contained in the Act shall restrict any person from exercising any right conferred under the Copyright Act, 1957.

### **Highlights of the Amended Act:**

The newly amended act came with following highlights –

- ❖ It stresses on privacy issues and highlights information security.
- ❖ It elaborates Digital Signature.
- ❖ It clarifies rational security practices for corporate.
- ❖ It focuses on the role of Intermediaries.
- ❖ New faces of Cyber Crime were added.

Under the section- 66E of the IT ACT<sup>ccxiii</sup>: Punishment for violation of privacy—

Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.

The main objective of this section is that, to private area<sup>ll</sup> means the naked or undergarment clad genitals, pubic area, buttocks or female breast;

However, in the section of- 67<sup>4</sup> of IT Act<sup>ccxiv</sup>: Publishing of information which is obscene in electronic form:

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction

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<sup>4</sup> Sec- 67 of the Information and Communication Technology Act, 2006.

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.

In this section mentioned the information Act against the publish any material or information which obscene. The information publishes in internet which make bad impact to others life. The Act directly ensures the punishment to the wrong dower for this type activity.

The Punishment for publishing or transmitting of material containing sexually explicit act:

Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent 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.<sup>ccxv</sup>

Under this section consider the lots of things which punishable of this Act, that such activity or work done in any devise from of electronic system, by the name of--

- 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, or learning or other objects of general concern; or
- ii. which is kept or used bona fide for religious purposes

**Janhit Manch & Ors. v. The Union of India,**<sup>ccxvi</sup> 10.03.2010 Public Interest Litigation, The petition sought a blanket ban on pornographic websites. The NGO had argued that websites displaying sexually explicit content had an adverse influence, leading youth on a delinquent path.

In the section—67B<sup>5</sup>: Cover the Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form:<sup>ccxvii</sup>

Which is consider---

- i. publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct or
- ii. 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

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<sup>5</sup> Section- 67B of ICT Act, 2006.

- iii. cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource or
- iv. facilitates abusing children online or
- v. records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,

shall be punished on first conviction with imprisonment of either description 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: Provided that the provisions of section 67, section 67A and this section does not extend 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 or learning or other objects of general concern; or
- iii. which is kept or used for bona-fide heritage or religious purposes

Even the main purpose of this section is that the "children" means a person who has not completed the age of 18 years.

## **5.6. The Information and Technology Communication Act, 2006 of Bangladesh**

With a global population of almost 7.5 billion and an Internet population of 42%, solving cybercrime is one of the world's current digital challenges. Many times people may be confused as to the classification of what constitutes cybercrime. Although this classification is somewhat confusing, due to the relative novelty field or lack of tangible nature, cybercrime refers to any illegal action that is committed through an electronic-based medium or targets a computer-based platform.

The cybercrime in Bangladesh is a very popular word in digital world. What is Cybercrime? Basically, Cybercrime is defined as a crime in which a computer is the object of the crime (hacking, phishing, spamming) or is used as a tool to commit an offense (child pornography, hate crimes). Cybercriminals may use computer technology to access personal information, business trade secrets, or use the Internet for exploitive or malicious purposes. Criminals can

also use computers for communication and document or data storage. Criminals who perform these illegal activities are often referred to as hackers.

The parliament of Bangladesh passed a bill increasing penalties for cyber-crimes setting a minimum of seven years' imprisonment and a maximum of 14 years or a fine of Taka- 1 crore or both, ignoring protests by civic forums and rights groups. The information and communications technology minister, Mostafa Faruque Mohammad, moved the Information and Communication Technology (Amendment) Bill 2013 proposing ten amendments to the ICT Act 2006. The bill made offences under Section 54, 56, 57 and 61 of the 2006 act cognisable and non-boilable, empowering law enforcers to arrest anyone accused of violating the law without a warrant, by invoking Section 54 of the Code of Criminal Procedure. In the 2006 act, all such offences were non-cognisable.<sup>6</sup>

The minister in the objectives of the bill said that it was placed to ensure the widespread use of information and communications technology, to contain the misuse of ICT and to meet the necessity of amending some sections the Information and Communication Technology Act 2006.

To define and amend certain parts of law relating to legal recognition and security of information and communication technology and related matters the Information and Communication Technology Act-2006 was enacted. According to the ICT Act the cybercrime shall be treated as non-cognizable offence that is why the police can't arrest the criminals without warrant except some cases.

Under the Chapter eight section 54 to 67 of the ICT Act 2006 describe the cybercrimes both civil and criminal matters. The followings shall be treated as crime;--

- i. Unauthorized copying, extracting and downloading of any data, database
- ii. Introduction of virus
- iii. Damage and disruption to computer system and computer network
- iv. Denial of access to authorized person to computer
- v. Providing assistance to make possible to commit to crime
- vi. Hacking with computer system Tampering computer source documents
- vii. Electronic forger for the purpose of cheating and harming reputation
- viii. Using a forged Electronic record
- ix. Publication of digital signature certificate for the fraudulent purpose
- x. Confiscation of computer, network etc.
- xi. Publication of information which is obscene in electronic form
- xii. Misrepresentation and suppressing material facts for obtaining digital signature certificate- Breach of confidentiality and privacy
- xiii. Publishing false digital signature certificate.<sup>ccxviii</sup>

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<sup>6</sup> The ICT Act, 2006 of Bngladesh.



Under the section- 63<sup>7</sup>: Ensure the Punishment for disclosure of confidentiality and privacy:<sup>ccxix</sup>

If any person done the following acts, and which is punishable under this Act, among them the activity to--

1. Save as otherwise provided by this Act or any other law for the time being in force, no person who, in pursuance of any of the powers conferred under this Act, or rules and regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material shall, without the consent of the person concerned, disclose such electronic record, book, register, correspondence, information, document or other material to any other person shall be regarded as an offence.

2. Whoever commits any offence under sub-section (1) of this section that person shall be punishable with the imprisonment for a term of 2 years or with fine which is may not extend 2 lac or with both.

Under the Section 57 of the Information and Communication Technology Act, which has come under severe criticism recently-

According to the section, if any person deliberately publishes or transmits false, obscene and derogatory information in a website or in any other electronic form, he or she will be sentenced to seven to 14 years' imprisonment and fined up to Taka one crore.<sup>ccxx</sup>

After the Amendment of the Section 57 of the ICT Act,<sup>8</sup> 2013 define that, if any person knowingly publish any material in electronic form that is take part to collapse the law and Order, sacrament the picture of the State or person or causes to hurt in the religious belief, the offender will be punished for maximum 14 years and minimum 7 years imprisonment. It also suggested that the crime is non-boilable.<sup>ccxxi</sup>

Punishment for publishing fake, obscene or defaming information in electronic form.—

1. If any person deliberately publishes or transmits or causes to be published or transmitted in the website or in electronic form any material which is fake and obscene 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, or causes to deteriorate or creates possibility to deteriorate law and order, prejudice the

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<sup>7</sup> Section- 63 of ICT Act, 2006.

<sup>8</sup> Section- 57 of the ICT Act, 2006.

image of the State or person or causes to hurt or may hurt religious belief or instigate against any person or organization, then this activity of his will be regarded as an offence.

2. Whoever commits offence under sub-section (1) of this section he shall be punishable with imprisonment for a term which may extend to ten years and with fine which may extend to Taka one crore.

### **5.7. The Protection of Children from Sexual Offences Act, 2012 of India**

Under the sec-2 of this Act:--

1. In this Act, unless the context otherwise requires, —

- a. "Aggravated penetrative sexual assault" has the same meaning as assigned to it in section 9
- b. "Aggravated sexual assault" has the same meaning as assigned to it in section 7;
- c. "Sexual assault" has the same meaning as assigned to it in section 11;
- d. "Sexual harassment" has the same meaning as assigned to it in section 11;
- e. "Shared household" means a household where the person charged with the offence lives or has lived at any time in a domestic relationship with the child;

Under the section- 3<sup>9</sup>: Penetrative sexual assault<sup>ccxxii</sup>: A person is said to commit "penetrative sexual assault" if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person or;

(d) He applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

(j) "Sexual harassment" has the same meaning as assigned to it in section 11;

(k) "Shared household" means a household where the person charged with the offence lives or has lived at any time in a domestic relationship with the child;

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<sup>9</sup> Sec- 3 of POCSO Act, 2012.

(l) "Special Court" means a court designated as such under section 28;

(m) "Special Public Prosecutor" means a Public Prosecutor appointed under section 32.

(2) The words and expressions used herein and not defined but defined in the Indian Penal Code, the Code or the Acts.

3. Penetrative sexual assault: A person is said to commit "penetrative sexual assault" if—

(a) He penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person or;

(d) He applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

Under sec- 4: Aggravated Penetrative Sexual Assault<sup>10</sup>:

(a) Whoever, being a police officer, commits penetrative sexual assault on a child —

(i) Within the limits of the police station or premises at which he is appointed; or

(ii) In the premises of any station house, whether or not situated in the police station, to which he is appointed; or

(iii) In the course of his duties or otherwise; or

(iv) Where he is known as, or identified as, a police officer; or

(b) Whoever being a member of the armed forces or security forces commits penetrative sexual assault on a .

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<sup>10</sup> Section- 4 of POCSO Act, 2012.

- (i) Within the limits of the area to which the person is deployed; or
  - (ii) In any areas under the command of the forces or armed forces; or
  - (iii) In the course of his duties or otherwise; or
  - (iv) Where the said person is known or identified as a member of the security or armed forces; or
- (c) Whoever being a public servant commits penetrative sexual assault on a child; or
- (d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or
- (e) Whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or
- (f) Whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution, or;

Explanation.—

When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

- (g) Whoever commits gang penetrative sexual assault on a child?
- (h) Whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or
- (i) Whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or
- (j) Whoever commits penetrative sexual assault on a child, which—
- (i) Physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently; or
- 14 of 1987

- (ii) In the case of female child, makes the child pregnant as a consequence of sexual assault;
- (iii) Inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or Infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or
- (k) Whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or
- (l) Whoever commits penetrative sexual assault on the child more than once or repeatedly; or
- (m) Whoever commits penetrative sexual assault on a child below twelve years; or
- (n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or
- (o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or
- (p) Whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or
- (q) Whoever commits penetrative sexual assault on a child knowing the child is pregnant; or
- (r) Whoever commits penetrative sexual assault on a child and attempts to murder the child; or
- (s) Whoever commits penetrative sexual assault on a child in the course of communal or sectarian violence; or
- (t) whoever commits penetrative sexual assault on a child and who has been previously convicted of having committed any offence under this Act or any sexual offence punishable under any other law for the time being in force; or
- (u) Whoever commits penetrative sexual assault on a child and makes the child to strip or parade naked in public, is said to commit aggravated penetrative sexual assault.

#### 6. Punishment for aggravated penetrative sexual assault:

Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

## 7. Sexual assault:

Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

### Under the sec- 8: Punishment for sexual assault:

Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.<sup>11</sup>

### Under the section-13<sup>ccxxiii</sup>: the uses of Child for the Pornographic Purposes--

In this Act basically mentioning the uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes—

- (a) Representation of the sexual organs of a child;
- (b) Usage of a child engaged in real or simulated sexual acts (with or without penetration);
- (c) the indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes.

Explanation.—

For the purposes of this section, the expression “use a child” shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material.

In the section—14<sup>12ccxxiv</sup>: The Punishment for using Child for the purpose Pornographic—the acts can be consider if done—

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<sup>11</sup> Sec- 8 of POCSO Act, 2012.

<sup>12</sup> Sec- 14 of POCSO Act,2012.

- i. By the use of a child or juvenile for the purpose of pornographic, it shall be punishable with imprisonment of either description which may extend to five years and shall also be liable to fine 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 be liable to fine.
- ii. By the person, who involve the using of child for the purpose of pornographic, it will be consider amount to an offence under the referred section-3 of this Act, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shallnot be less than 10 years but which may extend to imprisonment for life, and shall also be liable to fine.
- iii. By the person using any child for the purposes of pornographic, which is amount to an offence under the referred sec-5 of this Act, by directly participating in Pornographic acts, he shall be punished with rigorous imprisonment for life and shall also be liable to fine.
- iv. By the person using child for the purposes of pornographic that is amount to an offence referred in the sec-7 of this Act, by directlyparticipating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than six years but which may extend to eight years, and shall also be liable to fine.
- v. By the person using child for the main purposes of pornographic that is amount of an offence refereed under the sec-9 of this Act, by directly participating in pornographic acts, he shall be punished with imprisonment of either description for a term which shall not be less than eight years but which may extend to ten years, and shall also be liable to fine.

Under the section-15 of this Act: The Punishment for the Storage of Pornographic Material Involving Child—

Any person, who has Possession or Stores, for the purpose of any pornographic material in any form involving a child, for this shall be punishable with the imprisonment for term of 3 years or with fine, or with both of them.

However, in the section-20 of the POCSO Act: The obligation of media, studio, and Photographic Facilities--

In this section basically cover the any personnel of the media or hotel or lodge or hospital or club or any studio or any photographic facilities, that is called by the name, even it is irrespective of the number of persons employed therein, shall, on coming the across any material or the object which is sexually exploitative of the child including the pornographic,

sex video related or making obscene representation of a child or teenagers through the use of any medium, shall provide such that information is so special for the special juvenile Police Unit or the local police.<sup>13</sup>

## **5.8. The Anti-Pornography Act, 2012 of Bangladesh**

The main purpose of this has been enacted to prevent depreciation of the social and moral values with special focus on the women and children. The definition of pornography includes production and dissemination of video documentary, audio-visual materials, graphics, books, periodicals, sculpture, cartoon, left and imaginary statue using uncivil dialogue and picture, body movement, naked dance, etc., which may create sexual appeal. This Act strongly prohibits the production, preservation, marketing, supply, buying and selling and dissemination of all forms of pornographic items.<sup>14</sup>

Under the section- 2<sup>ccxxv</sup>: The definition of pornography according to the pornography Act: talking, gesture, acting nude or half nude dance video or still picture, magazine, book, statue, cartoon, lift late which increase sexual desire and has no use in case of education and arts will be consider as pornography.

Section -3: The enforcement of the act on the crimes and aspects: related to pornography; although clauses of other act might conflict with it on some aspect. The act has utmost priority on any issue related to pornography.

Under the Section -4: The detainment, distribution and promotion of porn or erratic stuff are abandoned.

Under the Section-8: In pornography act capturing video or still picture of sexual intercourse or behaviour that increase sexual sensation with or without consent of the parties: whose are in sexual interaction; is considered as crime under section 8 of anti-pornography Act, 2012 for the crime is maximum 8 years imprisonment and 2 lac taka fine under section 8 of this Act.

In this Sec-8(6): According to minority Act 1878 a minor is belongs to any age bellow 18 years and making a porn video with minor is major crime and for this criminal will be convicted for 10 year of imprisonment and 5 lac taka fine.<sup>15</sup>

Under the Sec- 8(3)<sup>ccxxvi</sup>: Distribution of pornography via any electronic device, internet, and social communication site or hand to hand is punishable under this Act. For such types of crime he will be gone into imprisonment for utmost year and Lac taka fine.

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<sup>13</sup> Section- 20 of POCSO Act, 2012 of India.

<sup>14</sup> Section- 2 of the Anti- Pornography Act, 2012 of Bangladesh.

<sup>15</sup> Section-8(3) of Anti- Pornography Act, 2012 of Bangladesh.



The anti-pornography Act is enough to control and prevent the child and young person from sex or porn video. But in the practical enforcement there is no responsibility against the porn or sex video or immoral obscene activity. There are number of person are involve to this business, but the Government or Civil Service did not take any action over such types activity. However, the present scenario in Bangladesh day by day increase the obscene activity in different places, like- Shah bag ( TSC in Dhaka University) incident is one of the example. All the video foots shown who do this activity, but the police did not take any action over this activity they are zig zag of their passion.

The Pornography Control Act of 2012 bans the production, transportation and marketing of any kind of pornographic material. It establishes that if a person produces pornography using a child, and prints, distributes and publishes such material, or sells, supplies or exhibits child pornography, he/she will be punished with up to 10 years of rigorous imprisonment and a fine of up to BDT 500,000 (USD 6,500). The law also provides maximum five years of rigorous imprisonment for anyone attempting to blackmail or trying to damage a person's social or individual reputation through the use of porn; this carries a fine up to BDT 200,000 (USD 3,000). He/she would be punished similarly for producing any pornography or forcing or luring any man, woman or child into making pornography and/or taking pictures, video or film with or without their knowledge.

The Government of Bangladesh whether responsible against the porn video that's come up from the speech: "The government has the technology to track the internet addresses of the suspects,"<sup>ccxxvii</sup> " says Shorful Alam, CEO of Aamra Network Ltd, a leading IT firm in Dhaka. "But those involved in the porn business tend to be smarter and a step ahead of the officials.

## **CHAPTER-VI**

### **SUGGESTION AND CONCLUSION**

#### **6.1. Suggestion**

The Internet, social media, mobile phones, tablets, and movies have become a noticeable part of daily family life. With all the benefits of being digitally connected, there are also some challenges for parents. There is little suggestion against the pornography problems-

##### **6.2.1. To ensure safeguard for children**

Avoiding the subject is not a means of protecting your children. Just as we talk to our kids about "stranger danger," we need to teach them about the dangers of pornography. The Utah Coalition against Pornography (UCAP) suggests expressing your concerns about pornography to your children

and having open discussions about it. Bring it up. Talk about it. It may be awkward at first, but it is necessary. Open the discussion saying that sometimes kids see it accidentally and ask if they've seen it before. Make sure they feel safe talking to you, and that you're not going to be angry with them if they have seen it.

### **6.2.2. Development of internet security system**

The internet, media, electronic products are crucially involve in our daily fine. We cannot do or think anything without internet. Every day the number of persons or institution commit crime or offence by the use of internet. Even there is no proper security system to scrap the offender. Anther other important thing is that the number of porn or xxx video web side any one can usually browse, watching, and down lord sex video from online. No one development the internet security system. That's way should be duty the authority to impose reasonable restriction use or browse porn or sex related video. After impose of restriction for user of internet then it can be possible to solve the problem.

### **6.2.3. Establish rules for Internet or phone use**

With Facebook, Twitter, text messages and image use rampant with youths, we have to be responsible to monitor and teach our children to be safe. These, and other modes of communication, are not monitored by the entities themselves but is left to the discretion of the users. Sending or receiving explicit text messages or images, viewing them online or scrolling through apps are just some of the ways your child can be exposed to this dangerous "new drug." But, what starts out as an innocent accident can turn into a horrible addiction if not properly handled.

### **6.2.4. The mandatory of sex worker registration**

The registration is another important suggestion to minimise the sex worker from our present society cause the number porn star has they have no porn profession registration or license. The Government and law enforce agency should be duty to impose restriction for registration of porn or sex worker, who working in prostitution, hotel, home, etc. The authority throw the huge amount of registration fee for doing this profession later on it can be possible to solve the porn problem without quite impossible do this.

### **6.2.5. Ban of sex or Porn video Web site**

The great important suggestion to solve the pornography problem that is to ban the porn web site for internet users. It is the duty of Government and IT Minister of India and Bangladesh to ban the porn web site for the save children and men and women from this addiction. The

authority has power to stop or ban the web site for the better for our upcoming generation. Most of the we see that the parents are responsible for their child.

#### **6.2.6. To impose restriction on Child Pornography**

The number of problem has in our present World relating to pornography among them the child pornography is one. The child pornography is great measure to make affection on sex, porn video watching from different sources. The child always is under the vulnerable situation. The porn video of child make different affection in brain, mind, blood circulation, who watch the porn video, after that want to try sex with any one. But when got the extreme affection for sex, then he involve in sex, rape, or illegal relation with others. That's way should be impose restriction on child pornography.

#### **6.2.7. To stop the Child Prostitution**

There are number of prostitution in India and Bangladesh, here the huge number of sex worker working, who is enough mature or who are not enough mature that means child sex worker. Even it's a great problem cause, who wishes to sex with the young girl or immature and want to spent big amount of money to sex with child sex worker. That's way should be duty to impose restriction on child sex worker. The garment and guardian can take active part to stop the child from sex work.

#### **6.2.8. Mandatory of national and bank card number**

The world day by day changing with globalization, the security system developing with the change of time. At present time increase the porn user in India and Bangladesh. The Government or the authority can impose some restriction to browse sex video web site. For the solution of pornography should be include the national ID and Bank ID number not only browses this web side but also better security setup. After that we can trace anyone who is involved in offensive activity.

#### **6.2.9. Development of law enforce system**

Efficient and accountable law enforcement machinery at all levels (administration, government, police and judiciary) is needed. The law enforce agency has great power to effective implementation and enforce the laws, which are relating to pornography to solve this problems. The law inforce agency are more than involve to the victim person, but they are not enough conscious about the porn or sex related activity. The authority can take the

responsibility to find out all the offensive mater from different sources, if they do this then we called it's a great enforcement of law.

#### **6.2.10. Change in mind set of the judiciary**

This is the need of the day. Indira Jaising, Additional Solicitor General of India, aptly stated “It's time for India's courts to gaze inward and throw out deeply embedded patriarchal notions that stop judgments from being fair to women. Sexism within the system has to go before it does more damage in the country.” A High Court judge in Orissa in his judgment once famously held “It was not possible for a man, acting alone, to rape a woman in good health.”

#### **6.2.11. Amendments in existing legislations**

The Hindu Marriage Act (1955):<sup>ccxxviii</sup> Mental illness may be removed from conditions of Hindu marriage. Not informing about past illness of mental illness should not be a ground for nullity of marriage. There are number of offensive activity has between the husband and wife which that did not cover the previous laws. That's way the law makers authority should be duty to amendment the laws to ensure the extreme service for the society.

#### **6.2.12. To make inspiration on Pray**

The power of prayer is indescribable; it gives us the strength to withstand adversity and come off conqueror. If you seek Heavenly Father in prayer, He will give you the strength to free yourself from temptation. As you read the scriptures daily, you will be strengthened even more. If you trust in the Lord and not in your own strength, He will free you from the chains that bind you. It is through the Atonement that you can be healed.

We know that pray can change the life from all the immoral things. There after the pray make happy to any one life, that's way the reformation basic to lead a good life. Even we can do to inspire others how they solve their problem from porno or sex addiction. On the other hand everyone knows that nothing is impossible in life, just need to hard work to complete the purpose.

#### **6.7. The development of Sing a Hymn**

Pornography is not of God. The repentance process is long and painful, but it is possible! You have to have the desire to change, to perceive the gravity of the sin, and above all to seek help from Heavenly Father. To avoid falling into temptation, I have a picture of Jesus Christ

beside my computer. He is always there watching me! Whenever pornographic images or music comes into my mind, I sing a hymn and soon these evil things are forgotten.

### **6.8. To increase the Read Scriptures**

Pray for strength. Enos prayed for an entire day, supplicating the Lord for his sins to be forgiven, and through his faith, he felt great peace and the guilt disappeared. Read the scriptures to obtain the Holy Spirit, since when you have His companionship, you will not think or do impure things. Keep busy: do sports, go out and have clean fun, and don't let yourself be influenced by supposed friends. When temptations come, be decisive and reject them. Remember that Heavenly Father knows everything you think and do.

### **6.9. Preventing and Combating the Trafficking of Girls**

There are number of person involve to the child or girl trafficking system. The civil service of Police most of the time to held to do this type activity because money. From this trafficking sale the girl for huge amount of money to the prostitution agency. It is a great problem in India as well in Bangladesh by this introduce big dream for this victim. That's way the Government should be duty to stop of this particular activity from our society by the ensure enough punishment for the offenders.

### **6.10. to increase Population control**

Last, but not the least, If we are sincere we will get the results. Let us all say "No" to violence against women. Now a days the population is another problem to solve the problem, if one person try live with fresh mind but other person try to make unhappy situation to the others person. In that situation Government cannot take any proper decision for the civilians. That's way we have to duty to co-operate to the Government to solve the pornography problem from our society.

## **6.2. Conclusion**

A survey conducted in 10 city colleges to assess the extent of porn addiction among students presents some alarming findings. According to the survey, 21,000 students start watching rape porn every year in Chennai. Forty-four per cent of boys watch rape and gang rape online videos.

Youngsters in 16-21 age group make 2.7 lakh visits to such sites every day. “Rape porn fuels human trafficking. Eighty four per cent of the students said consumption of porn escalates, leading to more violent porn,” said Abishek Clifford, CEO of Rescue, an NGO that carried out the study.<sup>ccxxix</sup>

The pornography is one of the problem not only national problem but also international problem. In India and Bangladesh are living most of the persons Muslim, even the Islam did not allow the porn. So, everyone should be duty to avoid this things cause it also decrease the responsibility, morality, honour, respect between the persons. And we have to duty to help the government to ban and abolish the pornography and prostitutions from the society, after that can be possible to make standard level among the persons.

**Public awareness needs to be created with respect to the following:**

- ❖ Women need protection but those with mental illness need more care and protection.
- ❖ The real problem is not mental illness, but the negative attitude toward it.
- ❖ Many medical illnesses create more problems in marriage, than mental illnesses.
- ❖ There should no double standard? If a woman can continue the marriage after her husband develops a mental illness, so can the husband. Similarly, people should be made to understand that if it is right to marry a son or daughter with mental illness, then the reverse is also true. A daughter in-law with mental illness should also be accepted.
- ❖ Good family support greatly improves the prognosis.
- ❖ Many women with mental illness prove to be better marriage partners and daughter-in-law's than those without mental illness.
- ❖ If the husband's family accepts the woman with mental illness, the society will also follow
- ❖ Woman with mental illness should be accepted with her illness.
- ❖ Violence is not the solution. Mental illness in the victim (e.g. depression) or perpetrator (e.g. alcoholism or schizophrenia) should be promptly treated

## **ANNEXURE**

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