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BAN OF PORNOGRAPHIC WEBSITES IN INDIA

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“When there is a will there is a way, ban has made nothing but complexity.”

INTRODUCTION

We have seen many times that if a person is addicted to something, he will try to achieve that thing by any possible means. Few months ago, Indian government has directed Internet Service Providers (ISP) to block 827 websites that host pornographic content following an order by the Uttarakhand High Court. While the Uttarakhand High Court has asked to block 857 websites, the Ministry of Electronics and Information Technology (Meity) found 30 portals without any pornographic content. Government's this action has cause chaos in people's mind, social media, newspaper, magazine etc. and has been in debate for weeks criticizing the government action. Many such questions like what is the main cause behind this ban? Does the government has authority to curtail individual liberty and is right in doing so? Can the habit of an individual be changed in one day? These questions arise out of courtesy of a person and need to be answered.

This article includes discussion and analysis about the basic idea of ban of pornographic websites by government of India. How one can think that Indians will immediately give up watching porn? Looking into this, one should not forget that India is familiar with a term that is “*Jugaag*” which is innate in almost every Indian. So, basically there are many ways to access these banned websites in India. Then there is app like UC browser, virtual private networks (VPN) and one of the biggest adult content sites Pornhub has plans to dodge this blanket ban, it has created a new mirror site at Pornhub(.)net instead of Pornhub(.)Com where one can easily access to porn. But there is a high risk of a ban being counterproductive in that, it will compel individuals to access websites with lax security or shoddy VPNs.

LEGAL FRAMEWORK

There are no laws against pornography in India and watching adult content privately. It's evident that the Indian government does not have a solution to very serious and systematic problem in the country, and is using adult sites as a scapegoat. Google searches for “vpn” in India boomed right after the ban was enforced in and have remained higher than usual ever since. A Lawyer *PK Rajagopal* from madras HC, said in a mature democracy, decision about what to watch should be left to viewers. Banning child porn or violent content is acceptable. But a ban on nudity or porn amounts to moral policing. He said, our freedom of expression and right of different content is protected by Article 19 of the Constitution. Viewing porn is not illegal but publishing obscene content, which pornography can be construed as, is illegal under the IT¹ Act, 2000 Section 67.

¹ Information Technology Act, 2000

Section 67A of IT Act details punishment for publishing or transmitting of material containing sexually explicit acts but there are no reasonable criteria to decide obscenity of the content, it depends what is obscene for one person may not be for other. This section also includes "causes to be published" and prohibits Internet Service Providers from transmitting adult content. But no ISP blocks adult content on their own. They prefer to invoke Section 79(3) (B), to block only on the direction of the government. The law as it pertains to pornography or "obscenity" is laid down in Section 292 of the Indian Penal Code, 1860 which was amended by the IT Act to include electronic data. Further, Section 293 also makes the sale of obscene objects to minors illegal.

An Indore based Lawyer Kamlesh Vaswani filed a PIL² in the Supreme Court of India demanded for a separate law to govern online pornography since the general cyber laws were insufficient to curb the circulation of pornographic content and the PIL also sought a ban on access to such online pornography websites. "*Nothing can more efficiently destroy a person, fizzle their mind, evaporate their future, eliminate their potential or destroy society like pornography,*" wrote Vaswani in the petition filed. He argued that pornography encourages violence against women and it threatens the social security of the country. The Supreme Court rejected his demand for introducing a ban on pornography stating that adults in India have right to peruse pornographic material if they wanted to as long as they did it within the four walls of their homes. He further rightly said that such a ban would be a violation of Article 21 of Constitution of India which safeguards a person's right to personal liberty. He provided list of pornographic sites to the Government and accordingly ISPs blocked them for 5-days in August 2015. The ISPs violating this direction will lose their licence as per Section 25 of the IT Act. Due to huge loss of revenue to ISPs, government softened its stance and instructed to block only child pornography, which is enumerated in Section 67B of IT Act and criminalize child pornography including browsing, downloading, creation, and publishing child pornography. In an another Supreme Court Bench headed by the then Chief Justice *R.M. Lodha*, called for a combined effort between the DoT, Information and Broadcasting Ministry and Home Ministry to deal with the issue, especially the aspect of curbing access to child pornography which is an offence under section 67B of IT Act. He said that there must be a "*synthesis between law and technology*" to control the abundant availability of pornographic material on the Internet.

Recently Uttarakhand High Court in the case of *In Re v State Of Uttarakhand And Others*³, gave orders to revive the 2015 ban on adult websites and asked the Centre to impose a strict ban on pornographic websites, after taking *suo motu* cognizance of news reports pertaining to the gang rape of a minor girl in a boarding school in Dehradun. The four accused students are charged under Sections 376 and 201 of the IPC and various provisions of the Protection of Children from Sexual Offences Act, 2012. According to news reports, the accused boys watched pornographic movies before sexually assaulting the minor girl. A division bench comprising Acting Chief Justice *Rajiv Sharma* and Justice *Manoj Tiwari* has issued directives for ISPs to implement the ban. The order cites no scientific evidence to link pornography with sexual assault. In Oct 2018, Internet Service Providers of India banned popular porn websites as per the directions of Uttarakhand High Court which imposed a strict ban on pornographic websites.

² *Kamlesh Vaswani vs. Union of India and ors 2013 (diary 5917-2013)*

³ Writ petition (PIL) No. 158 of 2018 in the High Court of Uttarakhand at Nainital

CONCLUSION

To conclude, such type of ban is almost impossible to execute owing to the fact that India is the Kama sutra land, banning porn is not the answer here, watching porn is a personal choice. No doubt there may be some reasonable restriction on the content of porn like banning of child pornography and watching porn in public place etc. The Supreme Court itself in 2015 stated that you cannot stop citizens from watching porn within their own homes. This was prior to the *Puttaswamy*⁴ judgment, and now that the right to privacy has been declared a right, banning porn websites can be argued as a violation of it. When it comes to adverse consequences on children, parents should have control. When we ban something, the curiosity increases and there are many sources for this kind of content on the Internet. Children are curious or under peer pressure to watch such videos. This can result in addiction later on, if there is no one to tell them where to draw the line. Parents should keep a watch on kids isolating themselves and spending too much time alone.

The other side of watching porn is that the acts shown in pornographic videos are more like fantasy, not really achievable in reality. When one wants to fulfill the fantasy, the other partner might not be okay with it. This affects a lot of relationships as shame and guilt are induced. It leads to aggression, disgust and rejection. There is a rise in the number of cases of pornography addiction, especially among single men. Also, the concept of multiple partners in a sexual act was introduced through pornographic videos and is leading to disorder and violence in real life. There is ample evidence to show there is no connection between access to pornographic material and incidents of sexual assault. If the question is of prevention, Government might strengthen sex education in the country. As People have to resort to videos on the Internet to clarify their doubts which can lead to adverse effect on their mind. Sex-positive education should be included in school curriculum and campaign should be organized to spread awareness related to sexual activity. It has to eventually accept that the new generation is ready and able to balance their traditions as well as their freedom of choice and expression.

⁴ *Justice K.S. Puttaswamy (Retd) vs Union Of India*, Writ Petition (Civil) No. 494 of 2012 (Sup. Ct. India Aug. 24, 2017)