CHAPTER IV

CYBER CRIME AGAINST SOCIETY
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(CYBER PORNOGRAPHY)

"Sex on the net is like heroin; it grabs them and takes over their lives. And it's very difficult to treat because the people affected don't want to give it up."

Dr. Mark Schwartz

The world is indeed, undergoing a new information revolution today. It not only touches every aspect of life but also make the way extensively to perform the industrial and economic function of the society. New communication system and digital technology have made dramatic changes in the way we live. A revolution has been occurred due to technological progress. Almost everybody is making substantial use of Computers and the internet is becoming an essential part of our daily life. On one hand, the information store in electronic form has many advantages like storing, retrieving, communicating but on the other hand it has opened the door to anti social and criminal behaviour in the way that would never have previously been possible. Computer systems often some new and highly sophisticated opportunities for law breaking, and they create the potential to commit the traditional types of cases in non-conventional ways. Cyber pornography is one of them.

Cyber pornography is believed to be one of the largest businesses on the Internet today. The millions of pornographic websites that flourish on the
internet are testimony to this. While pornography per se is not illegal in many countries, child pornography is strictly illegal in most of the countries.

The then CJI K.G. Balakrishnan advocated placing “restrictions” on websites that exclusively circulate pornography and hate content. Earlier he suggested for outright ban on such websites but later on he added that it would not be right to place a “blanket ban” on all categories of websites.¹

4.0 Meaning & History

The word pornography deriving from the Greek word Porne ("Prostitute") and graphein (to write). The word pornography originally referred to any work or art or literature dealing with sex and sexual themes.² Pornography is one of the most controversial because it can be easily recognized but is often difficult to define concisely.

The Canadian dictionary of English language defines as "Sexually explicit material that sometimes equates sex with power and violence".³

The Encyclopedia of ethics has defined pornography as "the sexual explicit depiction of persons, in words of images, created with the primary, proximity aim and reasonable hope, of eliciting significant sexual arousal on the part of the consumer of such material".⁴

³ Ibid.
⁴ Ibid.
Pornography is a verbal or visual representation of sexual acts, it is a portrayal of people as sexual objects for pleasure of others. Pornographic material is intended to arouse sexual stimulation. It can lead to masturbation, just like a novel or film can lead to laughing or crying.

Pornography is looked differently by different people. Academician believes that pornography is an expression of male culture through which women are commoditized and exploited, liberal view combines a respect for free speech with the principle of “a woman’s body, a woman’s right”.5

The controversy between freedom of speech expression and pornography had been a debatable issue since time immemorial. So, the responsibility lies on the lawyers, legislators and courts to determine the exact line by that, what is obscene and what is not can be determine. Pornography corrupts one’s morel senses and instigates them to participate in various sexual offences. Pornography is nothing but marketing of women's sex. Women are shown as "objects" which are longing to get involved into sexual acts.6

Visual representation began to overtake the more traditional written form with the invention of print media and photography in the 1840's and then with the motion pictures. The move from verse to visual depiction helped to broaden the appeal of pornography beyond literate elite to embrace viewers.

5 Some liberal organizations like Feminists for Free Expression (FFE) have consistently opposed censorship in any form.
6 Barua, Yogesh, Criminal Activities In Cyberworld  New Delhi, Dominent Publishers and Distributers, 2005, p-135.
and consumers from all social strata and walks of life. In twentieth century, the popularity of pornography continued to grow across the western world in the form of the adult movie theaters and magazines. This was followed by availability of pornographic material via dedicated cables and satellite subscription TV channels.\(^7\)

There is no doubt that sex sells and sells extremely well. It is evident from the fact that the pornography industry is larger than the revenues of top technology companies for e.g.: Microsoft, Google, Amazon, e-bay, Yahoo and the likes. On the Internet pornography is the most profitable business and the Internet is the perfect place to spread pornography.

4.1 Cyber Pornography

Cyber pornography refers to stimulating sexual or other erotic activity over the internet. It has been traded over the internet since 1980's, it was the invention of the world wide web in 1991 as well as the opening of the Internet to the general public around the same time that led to an explosion in online pornography.\(^8\) The Internet decreased the hurdle of shame that comes with purchasing pornographic materials or the embarrassment of being caught with it. Pornography on Internet is available in different formats ranging from pictures and short animation films to sound files and stories. The Internet has proven popular for distributing pornography because it allows people to view

\(^7\) Manupatra Newsline, Aug. 2008, p.31.
\(^8\) Supra Notes-1, p.384.
Cyber Crime Against Society

pornography anonymously in the comfort and privacy of their home. There are both commercial and free pornographic sites. These sites offering photos, video clips and streaming media including live web cam access allowed greater access of pornography.

Cyber pornography is a difficult problem especially due to the difference in the acceptable limits of morality in different countries. Some of the implications of Cyber pornography on the internet are distinct from other cyber crimes as hacking, cyber frauds, implanting viruses and theft of IPRs. Unlike the latter Cyber Crimes, which threaten the very credibility of the Internet, Cyber pornography promotes the use of the internet. The reason why cyber pornography has become so big an industry, there are two reasons they are as:

1) The easy, free, efficient, convenient and anonymous accessibility to pornographic material through internet.

2) The anonymity of the Cyber pornography industry, global accessibility, problems of jurisdiction, different laws and standard of morality in different countries, which have made a mockery of laws and their enforcement.

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The aforesaid reasons have led to the attractive profitability of the Cyber porn industry and thus its growth there its an important to go through the statistical data available worldwide for major countries. They are as:

**Pornography Business Statistics.**

<table>
<thead>
<tr>
<th>Country</th>
<th>Revenue (Billions)</th>
<th>Per Capita</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>$27.40</td>
<td>$27.41</td>
</tr>
<tr>
<td>South Korea</td>
<td>$25.73</td>
<td>$526.76</td>
</tr>
<tr>
<td>Japan</td>
<td>$19.98</td>
<td>$156.75</td>
</tr>
<tr>
<td>U.S.</td>
<td>$13.33</td>
<td>$44.67</td>
</tr>
<tr>
<td>Australia</td>
<td>$2.00</td>
<td>$98.70</td>
</tr>
<tr>
<td>U.K.</td>
<td>$1.97</td>
<td>$31.84</td>
</tr>
<tr>
<td>Italy</td>
<td>$1.40</td>
<td>$24.08</td>
</tr>
<tr>
<td>Canada</td>
<td>$1.00</td>
<td>$30.21</td>
</tr>
<tr>
<td>Philippines</td>
<td>$1.00</td>
<td>$11.18</td>
</tr>
<tr>
<td>Taiwan</td>
<td>$1.00</td>
<td>$43.41</td>
</tr>
<tr>
<td>Germany</td>
<td>$0.64</td>
<td>$7.77</td>
</tr>
<tr>
<td>Finland</td>
<td>$0.60</td>
<td>$114.70</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>$0.46</td>
<td>$44.94</td>
</tr>
<tr>
<td>Russia</td>
<td>$0.25</td>
<td>$1.76</td>
</tr>
<tr>
<td>Netherlands</td>
<td>$0.20</td>
<td>$12.13</td>
</tr>
<tr>
<td>Brazil</td>
<td>$0.10</td>
<td>$53.17</td>
</tr>
</tbody>
</table>

According to top ten reviews.com statistics the whole porno-business is worth around 97 billions of US Dollars. These are the estimates of the major countries. China is leading with 27.40 US Billion dollar while Brazil with the least 10 US Billion Dollar in porno-business industry.

4.2 Available formats of Cyber Pornography

The pornographic material is available in different formats on the Internet due to rapid development in technology, the Industry adapt latest techniques by which the material provide on internet in different formats such are as:

4.2.1 Image files: The image files are the most common formats by which the pornographic material distributed on the internet. In which JPEG format is one of the most common one.

4.2.2 Video files: The movie camera has also been used for throughout its history and with the arrival of the film video cassette recorder the pornographic movie industry experienced massive growth with the advent of mobile with camera the MMS clips can be prepared through it. Video files formats such as MPEG, WMV, AVI and 3GPP (3rd Generation

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11 Supra Note 6; p-388.
12 JPEG Stands for Joint Photographic Experts Groups.
13 Multimedia Messaging Service.
14 Moving Picture Expert group.
15 Window Media Video.
Partnership Project) have been used to distribute pornographic video clips. 3GPP format contain large files while MPG, MPEG or DAT format reduces the size of file about 10% of its original size by which the files can be transfer easily from various sources.

4.2.3 Text and Audio Formats: Pornographic and erotic stories distributed as text files, web pages and in message boards and news groups have been semi popular audio porn in formats like MP3 and FLV have seen only very limited distribution. Audio porn includes recording of people having sex or reading erotic stories but these formats are not successful because people prefer watching rather than listening.\(^{17}\)

So, above there are some formats on which pornographic material is available on the internet. Here it is an important what the peoples search on the internet about the pornography by which search term and how many web pages containing keyword such search term is available on the net. It is also necessary to look here what are the changes in 2006 while 2005 about the search requests.

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\(^{16}\) Audio Video Interleave.

\(^{17}\) Supra 7, p.39.
Top Adult Search Requests.¹⁸

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Search Term</th>
<th>2006 Search Requests</th>
<th>2006% change</th>
<th>2005% Change</th>
<th>Web Pages Containing Key Word (Millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sex</td>
<td>75,608,612</td>
<td>7%</td>
<td>40%</td>
<td>414.00</td>
</tr>
<tr>
<td>2</td>
<td>Adult Dating</td>
<td>30,288,325</td>
<td>622%</td>
<td>80%</td>
<td>1.40</td>
</tr>
<tr>
<td>3</td>
<td>Adult DVD</td>
<td>13,684,718</td>
<td>53%</td>
<td>21%</td>
<td>1.82</td>
</tr>
<tr>
<td>4</td>
<td>Porn</td>
<td>23,629,211</td>
<td>-3%</td>
<td>29%</td>
<td>88.80</td>
</tr>
<tr>
<td>5</td>
<td>Sex Toys</td>
<td>15,955,566</td>
<td>4%</td>
<td>1%</td>
<td>2.65</td>
</tr>
<tr>
<td>6</td>
<td>Teen Sex</td>
<td>13,982,729</td>
<td>36%</td>
<td>25%</td>
<td>2.10</td>
</tr>
<tr>
<td>7</td>
<td>Free Sex</td>
<td>13,484,769</td>
<td>0%</td>
<td>20%</td>
<td>2.42</td>
</tr>
<tr>
<td>8</td>
<td>Adult Sex</td>
<td>13,362,995</td>
<td>301%</td>
<td>51%</td>
<td>1.58</td>
</tr>
<tr>
<td>9</td>
<td>Sex Ads</td>
<td>13,230,137</td>
<td>382%</td>
<td>40%</td>
<td>0.28</td>
</tr>
<tr>
<td>10</td>
<td>Group Sex</td>
<td>12,964,651</td>
<td>88%</td>
<td>33%</td>
<td>2.07</td>
</tr>
<tr>
<td>11</td>
<td>Free Porn</td>
<td>12,964,651</td>
<td>-10%</td>
<td>54%</td>
<td>2.74</td>
</tr>
<tr>
<td>12</td>
<td>XXX</td>
<td>12,065,000</td>
<td>25%</td>
<td>14%</td>
<td>181.00</td>
</tr>
<tr>
<td>13</td>
<td>Sex Chat</td>
<td>11,861,035</td>
<td>97%</td>
<td>36%</td>
<td>2.21</td>
</tr>
<tr>
<td>14</td>
<td>Anal Sex</td>
<td>9,960,074</td>
<td>76%</td>
<td>21%</td>
<td>2.95</td>
</tr>
<tr>
<td>15</td>
<td>Cyber Sex</td>
<td>8,502,524</td>
<td>-20%</td>
<td>3%</td>
<td>1.24</td>
</tr>
<tr>
<td>16</td>
<td>XXX Videos</td>
<td>7,411,220</td>
<td>71%</td>
<td>40%</td>
<td>1.44</td>
</tr>
<tr>
<td>17</td>
<td>Playboy</td>
<td>6,641,209</td>
<td>-6%</td>
<td>24%</td>
<td>43.20</td>
</tr>
<tr>
<td>18</td>
<td>Teen Porn</td>
<td>6,130,065</td>
<td>7%</td>
<td>38%</td>
<td>1.97</td>
</tr>
<tr>
<td>19</td>
<td>Nude</td>
<td>5,487,925</td>
<td>-26%</td>
<td>14%</td>
<td>71.30</td>
</tr>
<tr>
<td>20</td>
<td>Sexy</td>
<td>4,344,924</td>
<td>21%</td>
<td>33%</td>
<td>198.00</td>
</tr>
</tbody>
</table>

¹⁸ toptenreviews.com/pornographystatistics, (Visited on October 9, 2009)
So, above the chart show the 2006 search request trends in which the word sex lead the list with 75,608,612 people make search requests on the internet, while this word contain 414 million web pages on the net.

4.3 Child Pornography

To define child pornography is not an easy task. According to UNCRC the child pornography includes any representation of a child engaged in real or stimulated explicit sexual activities or representation of the sexual parts of a child for primarily sexual purposes.

European Union defines as “any audio visual material, which uses children in sexual context”.

International Criminal Police organization (Interpol) defines child Pornography as “means of depicting or promoting sexual abuse of a child, including print and/ or audio, centered on sex acts or genital organs of children”.

United States defines as “permanent record of sexual exploitation or abuse of an actual child.\(^\text{19}\)

So, from the above definitions there is no uniform definition on child pornography. All the definitions and their legal interpretation vary from country to country. But all the definitions subscribe to the fact that the child

pornography involves some form of representation or depicting children in sexual context, second it involves sexual absence of the children.

The internet is fast becoming an electronic red light area, because through this medium pornographic material can easily be accessed.

It would be fair to say that no other Cyber Crime issues have elicited the degree of anxiety as that over the circulation of sexual images of the minors on the internet. The child pornographic picture ranges from showing Children in underwear (minimal content) to actual acts of rape child pornography is visual recording of a crime being committed against children.

The child pornography issue has garnered even further attention in recent past years due to the number of high profile cases involving celebrities, who have been accused of and/ or convicted for possession of indecent picture of children. For example Former Pop star Michael Jackson (USA) was accused of involving in child abuse and possession of obscene picture of children and molesting children, likewise Gary Glitter and Pete Townsend in the UK.

To take a look into the definitions on child pornography that exists worldwide, Article 2 (c) of the optional protocol to the convention on the rights of the child on the sale of children, child prostitution and child

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22 Supra 17.
pornography defines child pornography as "any representation, by whatever means of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes". Both real and virtual children are brought in his definition.

Article 9(2) of European Union Convention on Cyber Crimes 2001 States that the term "Child pornography" shall include pornographic material that visually depicts:

(a) a minor engaged in sexually explicit conduct,

(b) a person appearing to be a minor engaged in sexually explicit conduct;

(c) realistic images representing a minor engaged in sexually explicit conduct.

Here, however, a distinction between virtual and real children is not specifically brought about.23

In United State of America, the Child pornography prevention Act 1996 defined child pornography as, "any depictions, including any photography, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical or other means, of sexually explicit conduct, where:

a) The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct

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b) Such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct

c) Such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or

d) Such visual depiction is advertised; promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct”.

4.4 Effects of Child Pornography

4.4.1 Effects on the Children Portrayed

The vast majority of children who appear in child pornography have not been abducted or physically forced to participate. In most cases they know the producer it may even be their father and are manipulated into taking part by more subtle means. Nevertheless, to be the subject of child pornography can have devastating physical, social, and psychological effects on children.

The children portrayed in child pornography are first victimized when their abuse is perpetrated and recorded. They are further victimized each time that record is accessed. In one study, 100 victims of child pornography were interviewed about the effects of their exploitation at the time it occurred and in later years. Referring to when the abuse was taking place, victims described the physical pain (e.g., around the genitals), accompanying somatic symptoms
(such as headaches, loss of appetite, and sleeplessness), and feelings of psychological distress (emotional isolation, anxiety, and fear). However, most also felt a pressure to cooperate with the offender and not to disclose the offense, both out of loyalty to the offender and a sense of shame about their own behavior. Only five cases were ultimately reported to authorities. In later years, the victims reported that initial feelings of shame and anxiety did not fade but intensified to feelings of deep despair, worthlessness, and hopelessness. Their experience had provided them with a distorted model of sexuality, and many had particular difficulties in establishing and maintaining healthy emotional and sexual relationships.

4.4.2 Effects on Users

The effects of pornography on users have been extensively researched but results are contentious. There are at least five possible relationships between pornography use and the sexual abuse of children:

- **Pornography use is an expression of existing sexual interests.** An individual who sexually abuses children seeks out child pornography as part of his/her pattern of sexual gratification. The offender’s sexual interests cause his/her pornography use rather than the other way around.

- **Pornography is used to prime the individual to offend.** An individual deliberately views child pornography immediately prior to
offending. Pornography is used in the short term to sexually stimulate the offender in preparation for offending.

- **Pornography has a corrosive effect.** An individual becomes increasingly interested in child pornography, is attracted to images of increasing severity, and becomes desensitized to the harm victims experience. Use of pornography in the long term may also increase the risk that the person will sexually abuse a child.

- **Pornography has a cathartic effect.** Viewing child pornography is the sole outlet for an individual's sexual attraction to children. Pornography use may substitute for, or even help the individual resist, engaging in hands-on offending.

- **Pornography is a by-product of pedophilia.** Pornography is created in the process of carrying out sexual abuse or is used to groom potential victims and prepare them for abuse. Pornography is incidental to the abuse suffered by the victim.

In all likelihood, the effects of child pornography vary among users, and all of the above relationships may apply depending upon the individual in question.
In *Mr. Jayesh S. Thakkar and another v. State of Maharashtra and other.*

Hon'ble B.P. Singh, Chief Justice and D.Y. Chandrachur J: appointed a committee to prevent and control online child pornography which is a socio legal challenge. The committee recommended improving laws regarding Cyber cafes and Internet service providers. In above case the court invited the petitioners Jayesh Thakkar and Sunil Thacker as special invitees to provide their inputs and recommendations on Cyber laws. The committee upon identifying Key issues made recommendations such as licensing of Cyber Cafe introducing identity cards for Cyber Cafe visitors, ensure that cyber cafe that have cubicles or partitions be required to ensure that minors are not allowed to use machines in cubicles or behind partition, mandatory maintaining of IP logs by Cyber Cafe, and so on. The Committee made several other recommendations such as connectivity and authentication at internet service provider level which provided that Internet service providers were responsible for time clock Coordination and record keeping. The report addressed the issue of protecting minor children from accessing adult sites and made a recommendation that Internet service providers must protective parental software with every Internet connection. The Committee placed a special emphasis on Lack of technical knowledge in the police and recommended special training of Cyber Cops. The report of the committee

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25 Lawz, October 2008, p.32.
was well accepted by the courts and is being put into practice by the police and cyber cafes jointly.\textsuperscript{26} Earlier on child pornography the IT Act was silent but the amendment made in the year 2008 the following section has been inserted as:

67B. Whoever,—

\begin{itemize}
\item[(a)] 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
\item[(b)] creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or
\item[(c)] 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
\item[(d)] facilitates abusing children online, or
\item[(e)] 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
\end{itemize}

\textsuperscript{26} Supra Note1.
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:

Provided that 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 the interest of science, literature, art or learning or other objects of general concern; or

(ii) which is kept or used for bonafide heritage or religious purposes.

Explanation- For the purposes of this section “children” means a persons who has not completed the age of 18 years.

Apart from the legislation the scientists from Lancaster University, U.K. developed “anti-grooming” software, which can detect whether kids may be chatting with an adult posing as a child or a teenager on the Internet. Professor Awais Rashid, from Lancaster University, U.K., said “The software
looks at a range of things, for example, the structure of sentences, the language which is being used and also things which indicate deception.\textsuperscript{27}

In cross examination the software was installed on some computers, it correctly worked out whether it was an adult or a child using a chat room in 47 cases out of 50 including when an adult was pretending to be a child. According to the scientist it helps the police to track the paedophiles.

4.5 The Role of the Internet in Promoting Child Pornography

The Internet has escalated the problem of child pornography by increasing the amount of material available, the efficiency of its distribution, and the ease of its accessibility. Specifically, the Internet:\textsuperscript{28}

- permits access to vast quantities of pornographic images from around the world
- makes pornography instantly available at any time or place
- allows pornography to be accessed (apparently) anonymously and privately
- facilitates direct communication and image sharing among users
- delivers pornography relatively inexpensively

\textsuperscript{27} Times of India, Delhi edition (late city), dated: 4/6/2010, p-17.

\textsuperscript{28} http://www.popcenter.org/problems/child_pornography/print/, (Visited on August 6, 2012).
• provides images that are of high digital quality, do not deteriorate, and can be conveniently stored

• provides for a variety of formats (pictures, videos, sound), as well as the potential for real-time and interactive experiences

• permits access to digital images that have been modified to create composite or virtual images (morphing).

4.6 Legal Position in various Countries

There has been a wave of enactment and amendment around the globe to upgrade the law and meet the challenge. According to chart in to previous pages, the huge amount of pornographic material can be produced more quickly and cheaply on new media like hard disks, floppy disks and CD ROMS. On internet apart from pictures and images, full motion video clips with sound and crop complete movies are also available. The most serious offences, such as child pornography, it is easier for offenders to hide and remove material. There is need to balance the interest of adults with the need to protect children. The legal response to pornography on the internet has been swift and well intentioned. The law now recognizes as publications, photographers stored on computers, digitally altered images, to merge the bodies of adults with the faces of children. While there is a lot of difficulty about fixing international standard of obscenity for pornography in general,

\[29\] Supra Note 1, p.406.
universally abhorred by every legal system, it is possible to cooperate and achieve concrete results.\textsuperscript{30}

As jurisdictions that heavily restrict access or outright ban pornography, various attempts have been made to prevent access to pornographic content. The mandating of internet filters to try and prevent access to porn sites has been used in some states such as China and Saudi Arabia. Banning porn sites within nation jurisdiction does not necessarily prevent access to that site, as it may simply relocate to a hosting server within another country that does not prohibit the content it offers. Various measures have been tried for not easily accessing porn sites the results are varying success. In United States, most web sites have taken voluntary steps to ensure that visitors to their sites not underage. Many website provide a warning upon entry. Warning minors and those not interested in viewing porn not to view the site, and requiring one to affirm that one is at least 18 years of age and wishing to view pornographic content. Such warning pages have little effect in preventing access by minors as he/she may click the button to prove his/her age. Commercial porn sites generally restrict to view porn sites until purchasing membership through credit card. This serves as both a way to collect payment as well as age verification because usually credit card is not issued to minors.\textsuperscript{31}


\textsuperscript{31} Supra Note 1, p.407.
Between 1995 and 2002, nearly two dozen states considered bills that would control in some fashion access to Internet pornography. With the exception of child pornography, the legal status of accessing Internet pornography is still somewhat unsettled, though the creation and distribution of adult films and photography are legally listed as prostitution within their states.

4.6.1 United States

Pornography in the American social strata is the most debatable issue over last few years. The public, lawmakers, and the courts have argued over how to control the online porn. Congress and state legislature passed several laws aimed at protecting children from exposure to so called cyber porn (Communication Decency Act, 1996, Child Online Protection Act, 1998 and Children’s Internet Protection Act, 2000).

The legality of pornography has been traditionally determined by the Miller test, which dictates that community standards are to be used in determining whether a piece of material is obscene.\(^{32}\) In USA the local community determines a pornographic work to meets it’s standard for obscenity then it could be banned. So, it’s mean that a pornographic magazine may be legal in California might be illegal in Alabama. But this community

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standard poses a problem in the age of Internet, because its availability globally rather than the specific area.

The first attempt to regulate the pornography on the Internet was the federal Communication Decency Act of 1996, which prohibited the "knowing" transmission of "indecent" messages to minors and the publication of materials which depict, in a manner "patently offensive as measured by contemporary community standards, sexual or excretory activities or organs", unless those materials were protected from access by minors, for example by use of credit card systems. But, immediately it has been challenged by ACLU (American Civil Liberties Union) in Reno v. ACLU. In this case the U.S. Supreme Court struck down the provisions of "indecent transmission" and "patently offensive display", because both of these provisions ruled the limit of Freedom of Speech guaranteed in the First Amendment.

A second attempt was made with the narrower Child Online Protection Act of 1998, (COPA) it forced all commercial distributors of "material harmful to minors" to protect their sites from access by minors. On 22 March, 2007, COPA was found to violate the First and Fifth Amendments of the U.S. Constitution and was struck down.34

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Another act intended to protect children from access to Internet pornography was the Children’s Internet Protection Act of 2000 (CIPA). This act required that public libraries employ filtering software to prevent patrons from using Internet terminals for viewing images of obscenity and child pornography, and to prevent children from viewing images “harmful to minors”. This Act was also challenged on the ground of First Amendment, the Lower Court restrict the enforcement of the Act. But in June 2003, US Supreme Court in *U.S. v. American Library Association*\(^{35}\) reversed the lower court order and ruled that the Act was constitutional and could go into effect.

### 4.6.2 United Kingdom

In U.K. the main legislation on pornographic material is contained in the Obscene Publication Act 1959, the Obscene Publication Act 1964 and the Indecent Displays (Control) Act 1981. Before 1976 pure textual pornography was not deemed to fit for prosecution, it’s held in the trial of Inside Linda Lovelace. Child Pornography (child means under age of 18) is illegal in UK and include to possess, to make (electronic copies), and to distribute, and on the conviction 10 years custodial sentence. In U.K. child pornography is defined in different legislation likewise Protection of Children Act 1978, Criminal Justice Act 1988, further amended by Criminal Justice and Public Order Act 1994 to include pseudo photographs, the Sexual Offences Act 2003. The pornographic material for sale is allowed but only to above the

\(^{35}\) 539 U.S. 194 (2003).
age of 18 years. The possession of pornographic material/images for private use has not been an offence. It means that the citizens are allowed to access the pornographic sites except the child pornography.\(^{36}\)

Internet service providers started the Internet Watch Foundation in 1996 to watch for pornographic content that is in violation of British Law and report it to the police. The web filter clean feed is used by the largest Internet Service Provider (ISP) BT Group to block sites. The Government ordered all ISP's to have a clean feed system by end of 2007.\(^{37}\)

### 4.6.3 Pornography, Obscenity and Indian Legislation

The word Pornography has not been defined in legal sense neither in India nor anywhere in the world. So, there is no uniform legal definition of the word Pornography. The reason behind is simple that where there exists no uniform standard of moral culture and ethics, there cannot exists any fixed and uniform standard of law.\(^{38}\)

According to Justice Vijaya Kapse Tahilramani of the Bombay High Court, that merely viewing an “obscene” film in the privacy of a house is not obscenity as defined under Indian Criminal Law. Further the judge said, “It becomes an offence only when someone has in possession such objects for the purpose of sale, hire, distribution or putting it into the circulation. If the


\(^{38}\) Supra Note 26, p.390.
obscene object is kept in a house for private viewing, the accused cannot be charged (for obscenity).  

The term ‘obscenity’ has been effectively explained in two statutes in India, and these legislations prescribed that ‘obscenity’ in certain circumstances constitutes an offence. The legislations where obscenity finds the words are

(i) Then Indian Penal code, 1860 and

(ii) The information Technology Act, 2000

Interestingly fact is that neither the IPC nor the information Technology Act defines what ‘Obscenity’ is, Section 292 of the IPC and section 67 of the IT Act, (which corresponds to section 292 of the IPC) explain ‘obscenity’ to means anything which is (i) Lascivious (ii) Appeals to the Prurient interests, and (iii) having the effect of depraving and corrupting or likely to do so the minds of people who are likely having regard to all the relevant circumstances to read, see or hear it.

After the amendment of IT Act in 2008, the power of government to block the porn websites is not an easy unless it has ramifications threatening public order. Section 69A inserted in IT Act by amendment 2008 , which came into effect on 27th Oct. 2009 as it limits the power to ban websites to offences relating to five specific grounds, they are as; sovereignty and

integrity of India, defence of India, security of the state, friendly relations with foreign states and public order.\textsuperscript{40}

In 1868, the test of obscenity was laid down in \textit{Regina v. Hicklin,}\textsuperscript{41} "To deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall". Lord Justice Cockburn explained. "the danger of prurient literature was that" it would suggest to the minds of the young of either sex and even to persons of more advance years, thoughts of most impure and libidinous character.

In 1973 United States Supreme Court in a Landmark judgment \textit{Miller v. California}\textsuperscript{42} Chief Justice Burger gave the basic guidelines. The three pronged test for determining whether a work is obscene or not are as following:

1) That the average person, applying contemporary "Community Standards", would find that the work, taken as a whole appeals to the prurient interest.

2) That the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by state law or applicable law.

3) Whether the work taken as a whole lacks serious literary, artistic, political or scientific value.


\textsuperscript{41} (1868) 3QB 360.

\textsuperscript{42} 413 US 15 (1973).
Indian judiciary adopted “Hicklin Test” following “harm to others” principle in several cases to maintain synthesis between law and morality.

In *Ranjid D. Udeshi v. State of Maharastra* the court held that indecent or immoral publications are prohibited by Article 19(2) of the Indian constitution and section 292, 293, 294 of Indian Penal Code because there obscene publications corrupt the mind of younger generation. The court also concluded that pornography is obscenity in a more aggravated form.

In this case, Justice M. Hidayatullah held that in order to determine whether any material is obscene or not, the test laid down in *Regina v. Hicklin* should not be discarded. The Hicklin case lays emphasis on the potentiality of the mentioned object or material to deprave and corrupt by immoral influences as the critical factor to determine obscenity.

In *R.D. Udeshi case*, the test of obscenity was defined as follows: “...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”. In this case the Supreme Court further held that what is obscene would always remain a question to be decided in each case. It was the duty of the court to consider the alleged obscene matter by taking an overall view of the entire work.

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43 AIR 1965 SC 881.
44 3LR-QB360 (1868).
In this case the apex Court held that the standards of obscenity will not be same in all countries but it would be 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.”

It was further held that, “what we have to see is whether a class, and not an isolated case, into whose hands, the book, Article, or stay 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”.

The use of term “obscenity” is restricted to sexual immorality. The true test is thus not to find out what depraves the morals in any way whatsoever but what leads to deprave in only one way, i.e. by exciting sexual desires and lascivious thoughts. The question regarding “obscenity” is one of fact and depends upon various circumstances and no hard and fast rule can be laid down. It does not depend altogether on oral evidence but must be judged by the court.

Some example of cyber pornography in India:

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45 1970 AIR 1390.
1- A student of Air Force Bal Bharti School, Delhi was arrested in May 2001 for allegedly creating a pornographic website www.amazing-gents.8m.net. The boy, who was fed up of being teased for having a pockmarked face, would regularly upload “morphed” photographs of teachers and girls from his school onto the website. He was arrested when the father of one of the victim complained the matter before the police.

2- Lt. Col Jagmohan Singh, arrested for downloading child pornography videos and uploading them on a German website. He was posted in Western Command, Mumbai at a time of arrest on 6th May 2010. The arrest was made by the cyber crime investigation cell of Mumbai Police’s crime branch, they also seized two hard disks full of child pornographic material. Army has sought the details of Singh’s case from the cops so that an inquiry under the Army Act can be initiated against him.\(^\text{46}\)

A local court granted him bail on a personal bond of Rs. 25,000.00

3- A 25 year old share trading agent was raped by her online friend, who was “blackmailing” her using some photographs, taken after she was drugged. He also threatened to release a video of rape, if she

approached the police. Victim also paid 1.5 lakh Rupees in response not to make the photographs public.\textsuperscript{47}

The police arrested the accused along with his friend co-accused from Haryana's Panipat district. Both of the accused are in early 20s, and student of a degree course from IGNOU.

The recent case on Cyber Pornography booked in Chennai against Dr Prakash's. The brief of the case are as:

Fast track court sentenced ortho surgeon Dr Prakash to life imprisonment in a case relating to cyber pornography. Prakash allegedly took obscene pictures of his women patients and then uploaded them on the internet.

Fast Track Court Judge R Radha passed the sentence Under Section 6 of the Immoral Trafficking (Prevention) Act and imposed a fine of Rs 1,25,000 on him.

The other three accused Saravanan, Vijayan and Asir, were awarded seven years rigorous imprisonment and slapped a fine of Rs 2,500 each.

Delivering the sentence after convicting Dr Prakash and three of his associates, the court said it could not pardon them as they have committed a white collar offence against women.

The court also found, that, Dr Prakash and his associates guilty under Section 506 (part II), 367 and 120-B (criminal conspiracy) of the Indian Penal

\textsuperscript{47} Times of India, Delhi edition (late city), dated: 27/12/2010, p.1.
Dr. Prakash was arrested in December 2001 on the charge of taking obscene photos of his women patients through hidden cameras and uploading them on two Websites www.tamilsex.com and www.realindianporn.com through his US-based brother. The case was investigated by the Vadapalani police and a charge sheet was filed.

In the year 2008 amendment made in IT Act a new section on punishment has been inserted as:

67A. 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.

The advent of computers and the internet has been great boon to many, but at the same time it has created a number of problems for the law. On one side the internet is a place of ideas and source of all kinds of information related with political, religious scientific and technological but on the other
side it is also full of different kind of pornographic material which are available in different format just a click away.

It will not be wrong to say that, Technology is not inherent evil, it is neutral how we use it, is key. There is a lot more positive than negative that will be coming out of internet, but we need to know how to use it and what we are getting into.

Cyber pornography is one of the largest business on the internet, as in previous pages the statistical data shows. The millions of pornographic website that flourish on the internet are testimony to this. So, as our young mind future generation and nations assets are on stake, due to pedophiles are roaming on the net.