

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. _____ OF 2013

IN THE MATTER OF:

Kamlesh Vaswani

... Petitioner

VERSUS

Union of India and others.

... Respondents

PAPER BOOK

(FOR INDEX, PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONER: VIJAY PANJWANI

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SYNOPSIS & LIST OF DATES

This writ petition is being filed before this Hon'ble Court under Article 32 of the Constitution of India in public interest challenging the Sections 66,67, 69,71, 72,75, 79,80 and 85 of the Information Technology Act 2000 as amended from time to time till amendment ,as ultra-vires of the Constitution of India , and recognize the harmful effects of Pornography fully described from para 35 to 45. There is no particular category of law in India that deals

specifically with pornography affecting Peace of mind, health and wellness, happiness and human potential are at risk, All relevant Sections are reproduced in Para 54 of the writ Petition. Absence internet laws encourage watching porn videos Since it is not an offence, whereas more than 20 Crores porn Videos/ porn Clippings are freely available in Indian market , which have directly been downloaded from Internet or Video CD"s /Video Tapes , The sexual content that kids are accessing today is far more graphic, violent, brutal, deviant, and destructive ,and has put entire society in danger so also safety threats to public order in India ,Petitioner most respectfully submits that most of the offences committed against women/girls/children are fuelled by pornography "The worrying issue is the severity and the gravity of the images is increasing. It is a matter of serious concern that prepubescent children being raped." This petition is also filed for enforcement of the fundamental rights of 75% of the Indian population including women/ Girls/ Children,

(House-Wife, working and non working women, Students)
as Innocent, susceptible, vulnerable women and children
of India, Offenders minds are mostly fuelled by
pornography, as the sexual offender or rapist achieves
his gratification, not from sexual release alone but also
from the thrill of domination, control and power. In the
December 2012 Delhi Gang Rape the girl was physically
and sexually tortured by a gang, She lost her life after
heavy resistance.

Petitioner submits that porn is always in demand and
seeing brutal form of porn increases appetite of
consumers .To ensure more profit, the criminals engaged
in organized crime ignore the fact whether the consent of
workers is voluntary or forced.

Pornography literature seeks to confirm that people are
objects. It confirms that people are capable of being sold
and bought in the market. Sex is a commodity, which is
being commercially exploited. When exploitation of sex is

accepted in society then all the characteristics attributable to commercial exploitation also become acceptable which is maximize profit and minimization of loss also becomes acceptable. To maximize profit by commercial exploitation, illegally, women, girls, children, child abuse and sexual offences are encouraged.

Pornography is nothing but the commercial exploitation of sex which has ample power to distort the basic structure of the community.

By way of this petition, the Petitioner is seeking intervention of this Hon'ble Court for an appropriate direction to the Respondents to block all websites showing Child porn, Virtual child porn, poser porn.

The issue of "Pornography" has national dimension as the porn industry is now taken shape of big profit making industry. The reason behind development of such huge concern is the display of advertisement of pornographic

websites without the permission of the viewer. Such uncontrolled display of porn advertisement banners usually come out while browsing the internet at home or business meetings and are sufficient to offend the people browsing internet. Pornography is like moral cancer that is eating our entire society at every second across country. It was also described as a trade more deadly than potassium cyanide.

One of the major cause with respect to crime against women porn videos/porn clippings in India is that watching porn is not offence , only its distribution, production and sharing of porn video and its Clipping is an offence. This calls for immediate new exhaustive anti-pornography law to be made. At best, Indian Penal code 1860, the Statute, only recognizes the offences of “Obscenity” “Kidnapping”, “Abduction, and other related offences, which are not sufficient to tackle the issue of .Pornography,Videos/Porn Clippings. Which is major

cause of Crime against Women/Girls/Children

The statistics are truly staggering. According to compiled numbers from respected news and research organizations, in the Year 2006-2007. Every second \$3,075.64 is being spent on pornography. Every second 28,258 internet users are viewing pornography. In that same second 372 internet users are typing adult search terms into search engines. Every 39 minutes a new pornographic video is being created in the U.S.

Petitioner Most respectfully Submits that Writ of declaration be issued as Sections 66,67,69,71,72,75,79,80 and 85 of the information technology Act 2000 be Ultravires of the constitution of india. and Since The Information Technology Act,2000,is primarily meant to be a legislation to promote e-commerce. It is not very effective in dealing with several emerging crimes like cyber, defamation, stalking and so on, These crimes are associated crimes of pornography.

Since inception the Act negligible cases have been registered so far and furthermore conviction rate is nearly Nil. Which speaks itself that the said IT Act 2000 need to be repealed as entire act is not practically viable and needs to be repealed.

Petitioner most respectfully submits that he had gone through judgements, wherein Hon'ble High Court of Bombay, has given verdict that watching porn is no offence, only its distribution, production and its sharing is an offence. It build the confidence among young children, and students, that it is legal to watch long porn videos/porn clippings through smartphones and laptops. Petitioner contacted many IT experts and came to know that more than 20 Crores long porn videos and porn clippings are available in Indian Market through overseas countries, where also watching porn is not an offence.

17-10-2000 The Information Technology Act, was notified on 17-10-2000. Since The Information Technology is

primarily meant to be a legislation to promote e-commerce. Wherein Section 67 of the Act penalizes publication of information which is obscene in electronic form but does not include sexually explicit act or conduct. It is not very effect in dealing with several emerging crimes like virtual pornagarphy, poser pornography, cyber, defamation, stalking and so on, These crimes are associated crimes of pornography.

27-10-2009. Amendment were made in the Information Technology (Amendment) Act , 2008,wherein 67A was introduced. Considering the fact that obscene materials that contain sexually explicit acts and conduct in electronic form are more severe in nature therefore they warrant higher punishment, and Section 67B which was inserted by way of amendment in 2008, attempts to deal with online child pornography, but is quite ineffective to deal with virtual pornography and poser pornography, which are far more graphic, violent, brutal, deviant, and destructive, wherein

children are exploited, and has put the entire Indian society in danger.

It is submitted that due to lack of proper legislation

Respondents are helpless to ban internet pornography

24-11-2010. Hon'ble high court of Bombay verdict in Criminal application No 2809/2010, wherein stated that personal watching of pornography is not an offence without watching the contents of videos. Petitioner strongly believes that most of the crimes against women/girls/children like gang rape and sexual assault are definitely fuelled by watching pornography.

16/12/2012 The Delhi Gang Rape was committed with a paramedical student, wherein a minor was also involved, as the pornographic material is abundantly available cheaply in market through internet and porn videos. which need to be banned by imposing a exhaustive anti pornographic law. Hence this Petition with an interim relief of blocking

immediately all child porn on internet including virtual
child porn, poser porn, animated, teen porn, adult porn.

24.01.2013 The petitioner sent representation to respondents
No.1 to 3 vide speed post on 24.01.2013.

19.02.2013 Hence, The Petitioner is filing this Writ Petition in
Public Interest seeking immediate intervention of this
Hon'ble Court in this regard.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. _____ OF 2013

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Kamlesh Vaswani
Uttamchand Vaswani.
R/o,B-3,shubham Appartment,
6/2, Racecourse road, Indore.
Madhya Pradesh.452001

S/o Shri

... Petitioner

VERSUS

1. Union of India

(through its Secretary)
Ministry of information and technology
North Block
New Delhi -110011

- 2 Union of India
(through its Chairperson)
Ministry of information and Broadcasting
91-E, Bharat Bhavan,
Walkeshwar Road,
Mumbai-400006
3. Union of India
(through its Secretary)
Ministry of Home Affairs
North Block
New Delhi
4. Internet Service Providers Association of India,
(Through its Chairperson),
612-A, Chiranjiv Tower,
43, Nehru Place,
New Delhi-110019

... Respondents

To

The Chief Justice of India and
His Companion Justices
Supreme Court of India
New Delhi

The Humble Petition of the Petitioner above-named

MOST RESPECTFULLY SHOWETH:

1. That the petitioner is an practicing Advocate bearing Registration Number M.P./2064/98.and Member of Supreme Court Bar Association, Member of High Court bar Association. M.P., Member of District Court Bar Association, Bhopal. M.P. having his Residence at B-3, Shubham Apartment ,6/2, Race Course Road, Indore. M.P. 452001, and also working in the field of protection of human rights and other violations, Petitioner has been working in this field for almost 14 years , i.e., since 1998. So far, the petitioner has never filed any Public Interest Litigation in any court or High court or Supreme Court As far as latest Delhi heinous gang rape case and crime against Women/girls/children is concerned, petitioner strongly believes that most of the crime against women/ girls/children are committed by offenders fuelled by pornography. Petitioner believes that due to easy availability through internet, C.D porn videos/ porn clippings are the root cause of most of the offences as well as crime against women/girls/children , as It is well known fact that porn

mafia's are very much active. The petitioner has got no personal interest direct or indirect in the present matter.

1A. That the petitioner sent representation to respondents No.1 to 3 vide post on 24.01.2013 and he has not received any reply on their behalf till date.

INFORMATION TECHNOLOGY ACT 2000 TO BE DECLARED ULTRAVIRES OF THE CONSTITUTION

2. Since The Information Technology Act,2000,is primarily meant to be a legislation to promote e- commerce. It is not very effective in dealing with several emerging crimes like cyber, defamation, stalking and so on, .These crimes are associated crimes of pornography, The preamble of The Information Technology Act, 2000,which Says" An Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, 1860, the Indian Evidence Act, 1872, the Bankers' Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto.

Whereas the General Assembly of the United Nations by resolution A/RES/51/162, dated the 30th January, 1997 has adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law; And whereas the said resolution recommends inter alia that all States give favorable consideration to the said Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information; And whereas it is considered necessary to give effect to the said resolution and to promote efficient delivery of Government services by means of reliable electronic records; Be it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:”

3. Petitioner is shocked to read the internet pornography statistics, wherein most shocking data are given , wherein every second 5000 porn sites were watched, since from 2005, More than 2 crore porn videos /porn clippings are being launched through Internet or porn videos each year, it estimates about more than 20 crores porn video/porn clippings including child pornography, are freely available in Indian market, source

(http://en.wikioedia.org/wili/internet_pornography_statistics.) and

[http://internet-filter-review.toptenviews.com/internet-pornography-](http://internet-filter-review.toptenviews.com/internet-pornography-statistics.html)

[statistics.html](http://internet-filter-review.toptenviews.com/internet-pornography-statistics.html). as the Internet is an international network and there are currently no international laws regulating pornography; each country deals with internet pornography differently.

4.1 Generally, in the United States, if the act depicted in the pornographic content is legal in the jurisdiction that it is being distributed *from* then the distributor of such content would not be in violation of the law regardless of whether it is accessible in countries where it is illegal. This does not apply to those who *access* the pornography, however, as they could still be prosecuted under local laws in their country. Due to problems in anti-pornography laws over the internet, countries that prohibit or heavily restrict access to pornography have taken other approaches to limit access by their citizens, such as employing content filters.

[4.2] Respondents have not made clear specific special legislation in this regard and not given specific definition of obscenity and nudity, which prevents them to take appropriate criminal action against the offenders. Moreover, Respondents have not made it clear whether any authorized pornography either through internet or adult videos are available in market, if not so, then there was no need to put the amendment insertions in the

information technology act 2000, which speaks volume of non- application of mind while dealing with information technology act 2000.Only vague and uncertain elements have been inserted in the said Act, It seems Respondents have negligently taken not interest to see what degree of pornographic material is helpful for human health, what are the sources ,who produces, transmit or distribute through internet or adult videos of brutal graphics of women/girls/children, what amount of pornography material is being circulated or available in Indian market, In such absence of considering severity and gravity as well as such information, the said act stands to be void ab-initio.

[4.3] Petitioner is relying on the judgement passed by Hon'ble High court of Bombay. reported in Times of India, wherein Hon'ble High court of Mumbai held that watching porn is no offence under the information Technology Act, 2000, though the production, distribution and sharing comes under punishable offence, which directly encourages the offenders ,who are porn addicts. A copy of the order dated 24.11.2010 passed by Hon'ble High Court of Bombay in Criminal Application No.2809/2010 is Annexed herewith as marked with **Annexure P-1 [Pg.]**.

5. Petitioner most respectfully submits that the Information Technology Act 2000 is not compatible sufficient to deal with offences like crime against women, as rape, sexual assault, injury, harm, defamation, indecency, pornography, etc as provided in Indian Penal Code, to understand the implications of the information technology Act, 2000. The Act was enacted mostly pertaining to information stored as in digital technology. In the preamble of the Act we find as, "An Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of ` and storage of information, facilitate electronic filing of documents with the government agencies and further to amend the Indian penal code, the Indian Evidence Act, 1872, the Banker's Book evidence Act, 1891 and the reserve bank

of India Act, 1934 and for matters connected therewith or incidental thereto;.

Child Pornography, Virtual child pornography, Poser Pornography.

6. Petitioner submits that out of 20 Crores porn Video/, clippings , more than 20 Crores porn video/porn clippings are available in Indian market either through internet or Adult video, where Children are used in porn depictions , which is most shocking In 2007, the British-based foundation reported that child pornography on the Internet is becoming more brutal and graphic, and the number of images depicting violent abuse has risen hundred fold since 2003. The CEO stated "The worrying issue is the severity and the gravity of the images is increasing. We're talking about prepubescent children being raped." About 80 percent of the children in the abusive images are of female, and 91 percent appear to be children under the age of 12. Prosecution is difficult because multiple international servers are used, sometimes to transmit the images in fragments to evade the law.

7. Petitioner most respectfully submits that Child Pornography harms the children because it creates victims in its production but it also said that virtual child pornography is an alternative to preserve serious literary, artistic, political and scientific value of child pornography and should be protected under the free speech doctrine. Virtual child pornography has the

effect of encouraging child sex abusers and these facts are being completely ignored. The virtual porn is available in every form of media including, CD's,DVDs ,Television, Cartoons, animated pornography and internet.

Poser pornography:

8. It is very popular among the net surfers, In this form, pornography is made with the use of 3D computer graphics and made to represent people engaged in various sexual acts. The bodies of famous celebrities are also designed by 3D animation in a nude 3D image and made to act on the directions of the programme maker or any person authenticated by the programme to give such directions.

[9.1] However, no study in this regard ever seems to have been conducted by any government or public institution/law researchers/social scientists in India. Many activists and politicians have expressed concern over the easy availability of Internet Pornography, especially to minors.

[9.2] A variety of attempts have been made to restrict children's access to internet pornography such as the 1996 Decency Act in the United States.

Some companies use an Adult Verification System (AVS) to deny access to pornography by minors. However, most Adult Verification Systems charge fees that are substantially higher than the actual costs of any verification they do (for example, in excess of \$10/month) and are really part of a revenue collection scheme where sites encourage users to sign up for an AVS system, and get a percentage of the proceeds in return.

10. Many commercial porn sites exist that allow one to view pornographic streaming video. Recently (mid-2006), some Internet pornography sites have begun offering High Definition content in WMV HD format.

11. Petitioner has brought before the Court the grim picture of Indian society, where many males have been addicted to porn Videos/porn clippings across the country as higher capacity of hard disks, pendrives, smartphones are easily and cheaply available across the country. Our youth has been watching porn without taking any trouble and poisoning their brain. The demand of pornography is great, pornography, on the internet and in general, is so omnipresent you can scarcely avoid it if that is

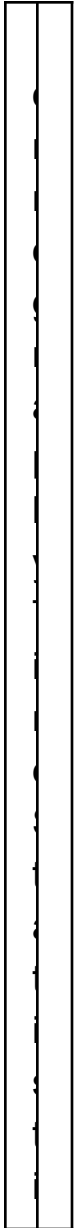
your aim. Internet statistics may seem to be as incomprehensible as the amount of pornography itself, but certain research and news organizations have taken the time to do the math when it comes to the facts about pornography consumption.

12. The statistics are truly staggering. According to compiled numbers from respected news and research organizations, every second \$3,075.64 is being spent on pornography. Every second 28,258 internet users are viewing pornography. In that same second 372 internet users are typing adult search terms into search engines.

13. Every 39 minutes a new pornographic video is being created in the U.S. However Internet pornography statistics are available till 2005, and till then statistics are staggering , and shocking ,increasing at the rate of 20% per year, and all the adverse effect comes to India as India is second largest populated country after China, that is why demand of Pornography is more in India,where ages of all people including children spend crores of rupees every day to second to satisfy their lust through internet and adult videos of pornography, Internet Service Providers, Telecom Companies, Cablewallas keep themselves busy in looting and befooling the Indian

people by way of deducting unreasonable, unauthorised charges.

14. Income from internet and mobile users ,which reaches to billions of Rupees every day as there is no specific internet legislation or special anti-porn legislation available in India. This establishes the clear connivance, conspiracy and malafide intentions among the respondents



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15. Petitioner most respectfully submits that Since the period of 2005-2006, the statistics have raised upto 100 folds ,and now every second 3 lakhs people are watching pornography through internet or adult videos. One can imagine the horrified picture availability of adult porn including child pornography in the country,

[15.1] Petitioner respectfully submits that united states , united kingdom and European earning revenue India (being the second largest populated country in the world) so the demand and market is rich in india,

Respondents have cleverly ignored the expression of pornography in Indian statute, and left it to the courts to adjudicate the pornographic issue, as to avoid new exhaustive law of anti pornography, This speaks volume of corruption and malafide intention of the respondents. Concerned citizens all over the nation are looking for solutions and the causes in hope of finding a cure, despite this why Indian government is constrained to not banning the porn contents from internet in Indian territory. Indian govt. is yielding billions of dollars/rupees through contractual aspect from Internet service Providers and Telecom companies. Others countries earn revenue through pornography, Respondents and their enforcement agencies have been interested to conduct raids with vested interests only in respect of seizing pirated CD/DVD of films or movies at the behest of film producer or distributors, to minimize loss or to compete in the market. These type of raids can be frequently conducted on the issue of pornographic materials, which speaks volume of connivance, conspiracy and indifferent attitude of respondents. Respondents are liable to be criminally prosecuted.

{15.2] The only reason that could be understood for not banning the internet porn and adult videos would be not to violet the constitutional

rights of freedom of expression and speech under Article 19. Whereas pornography is a unlawful conduct however it itself encourages the breach of constitutional law and constitutional duties enshrined in Article 51. Watching porn itself puts the country security in danger, encourages violent acts unacceptable behavior in society, exploitation of children and lowers the dignity of women.

17. With much ado about health, a growing concern for social problems, crime of all kinds and the safety of the future, as well as wars of all kinds, concerned citizens all over the nation are looking for solutions and the causes in hopes of finding a cure, or at least finding some peace.

18. Peace of mind, health and wellness, happiness and human potential are at risk, and there is a plague worse than any we could imagine which is near if not at the heart of this, and that is pornography. Most people know someone affected by this plague, the worst killer that has ever been devised.

19. Nothing can more efficiently destroy a person, fizzle their mind, evaporate their future, eliminate their potential or destroy society like pornography. It is so terrible that many do not even recognize it until it is too late, and most refuse to admit it. It is worse than Hitler, worse than AIDS, cancer or any other epidemic. It is more catastrophic than nuclear holocaust, and it must be stopped.

20. Petitioner most respectfully submits that Pornography cannot be considered to be a self regarding activity because it brings sex into public sphere. It commercializes sex. It depicts subordination and exploitation of women and children, women and children are those segments of Indian Society that need care and protection. It is doubtful that pornography makes any contribution in the healthy development of society but corrupts the minds of people by its low quality material which also diverts them from more worthy self-enhancing occupation.

21. Radcliff Richards, an eminent philosopher argues that if sex is accepted in private sphere then there is no reason to condemn it when it comes within public sphere and commercialized by market forces.

However, the publication of private activities by market forces is an important fact. Commercialization of sex means profit. The profit in pornography industry attracts organized crime that exploits workers in pornography industry.

22. Porn is always in demand and seeing brutal form of porn increases appetite of consumers .To ensure more profit, the criminals engaged in organized crime ignore the fact whether the consent of workers is voluntarily or forcefully obtained against their wishes.

23. Pornography literature seeks to confirm that people are objects. It confirms that people are capable of being sold and bought in the market. Sex is a commodity, which is being commercially exploited. When exploitation of sex is accepted in society then all the characteristics attributable to commercial exploitation also become acceptable which is to maximize profit and minimization of loss also becomes acceptable. To maximize profit by commercial exploitation, illegal acts of women, girls, children, child abuse and sexual offences are encouraged.

24. Moreover Indian govt is earning revenue through credit cards and

other Monetary Transaction Modes as many of the porn websites demand online payments through credits cards and to encourage those payment websites with the help of internet service providers and Indian broadcasters, petitioner has filed this petition for declaring information technology Act 2000 as ultravires of the constitution ,as central govt failed to curb the free flow of porn websites and adult videos rental or personal lending and sharing, as our Information technology Act 2000 itself suggest that watching porn is not an offence, Bombay High Court has passed judgement in this regard(In Criminal application No. 2809/2010), which not only encourage men and women to watch free porn available to them through internet or adult videos but also encourage and fuel the committing of crimes against society and women/girls/children. and particularly of the porn Videos/Porn Clippings. The Petitioner, by way of this petition, is making an attempt to depict the grief of the Indian society especially for women/girls/children as they represent the 75% of the Indian population.

25. Porn Videos/Porn Clippings is an epidemic in India and petitioner seeks intervention of this Hon'ble Court for an appropriate direction to Respondents, inter alia to formulate an exhaustive anti pornography law

and a national policy to tackle the menace of porn addiction and also to define the term "Pornography", Porn Videos/Porn Clippings", which has not been defined so far in any statute. As it is clearly stated in the Information Technology Act, 2000, That, In case, any issue arises concerning the interpretation of the terms used by the Intermediary, which is not agreed to by the user or affected person, the same can only be adjudicated by a court of law".

26. Petitioner most respectfully submits that as information technology act 2000 is inefficient and not compatible to curb the menace of watching, sharing, distribution of porn video/ porn clippings, whereas child pornography is totally banned by many countries, except United States of America, as reason is obvious as United States of America is bound by the constitution as it violates their amendment of freedom of expression and moreover US govt earns billions dollars of revenue each second from all over the world, whereas the Indian culture and heritage is entirely different from those countries. Indian govt is generating income only through broadcasters, by way of levying fees from their broadcasters and internet broadcasters are immune to come under the preview of offence

under sections 66,67,69,71,72,75,79,80 and 85 of the information technology Act, 2000, which provide immunity to the intermediaries, service providers, broadcasters, whereas service providers could easily put the check measure to disseminate the porn videos.

27. The shocking fact is that preteen girls and children are being used in porn videos and porn clippings, whose age ranges between 14 to 17 years, whereas child pornography is almost banned in most of the countries.

28. Porn videos has made Indian adults and teens as porn addicts, petitioner further submits that finding pornography on the internet is as easy as Googling the word "sex," Critics worry about online pornography's effects on adults' work and family lives, but even more about its impact on children and teens. Despite the handwringing, however, only a handful of investigators have examined the validity of these concerns. Many are reluctant to explore the topic, thanks to its morally loaded nature, the methodological challenges of Web pornography's effects on children studying an underage population, the difficulty in showing whether exposure to online porn actually changes sexual attitudes and behaviour

Petitioner has gone through research papers and articles and studies on the issue of Porn Videos/Porn Clippings and the findings are very disturbing. In order to compile the report, petitioner collected information from various sources including by way of internet pornography statistics .It can be easily understood that why the crime against women/girls/children are increasing so rapidly in India .and surprisingly most of the offences and crime against women/ girls and children are unreported, Sexual offenders are mostly fuelled by pornography,. The facts and figures in this petition are based on personal knowledge and the report available by Wikipedia, the most trusted site, which is titled as internet pornography statistics .

Problems in tackling the menace of Pornography and Crime
Against women in India.

Pornography as an exception to Rule of Law.

29. Pornography is an exception to rule of law. Rule of law is a concept of jurisprudence that declare that everybody is equal under the law.

Pornography causes harm to society through social conditioning that fosters discrimination. The production of pornography industry goes far

beyond mere exploitation of gender and racial stereotypes, brazenly celebrating vicious and fundamentally immoral acts of misogyny, misanthropy and racism. Pornography creates stereotypes representation of women and becomes the basis behind unequal treatment of women in society. Rule of law is based upon equal treatment of individuals. Hence pornography clearly goes against the principle of rule of law and state that supports pornography clearly violets the principle of rule of law

30. Petitioner respectfully submits that the following are the problem in tackling the menace Pornography and Crime Against women_in India:

- (A) No clear cut definition of pornography in our legal system which leads to confusion as to how the related cases have to be treated.
- (B) No provision related to Porn Videos/Porn Clippings in Indian legal system.
- (C) No guidelines/directions mentioned for law and enforcement agencies-where to put the case of Porn Videos/Porn Clippings. This is one of the cause which leads to delay in registering the case by the

Police Department..

- (D) No proper machinery to record the number of registered, traced and untraced cases of Porn Videos/Porn Clippings.
- (E) Lack of coordination between the agencies dealing with the Crime against women/girls/children, although most crimes are unreported.
- (F) No central agency has all the required data.

Magnitude of problem of Pornography

31. India being the second largest populated country in the world after china, is the reason of high demand and supply of pornography material, which is frequently being dumped by other countries,

32. As per the information received from different states of Information technology Experts more than 20 Crores long porn video/Porn clipping, adult videos are easily available in market which are being consumed by the male population of India having age ranging from 9 years to 75 years.

33. Petitioner was Informed that , during the year 2008-2012, 20 Crores

Porn Videos/Porn Clippings have been circulated in Indian market either through internet or through storage gadgets ,where our IT Act is not enough to curb the menace of blocking those Porn sites or seizing the Porn material as our It act 2000, has itself given encouragement to watch freely as it does not contemplate watching those porn videos are offence, petitioner also informed that more than 20 Crores Porn Videos/Porn Clippings are also waiting to be available in market.. This information has been collected from the various IT Experts ,who are running Cyber diploma courses across country. And the most amazing thing is that IT Experts have nothing to do curb the menace of Porn Videos/Porn Clippings and Crime against Women/girls/ Children, mostly are fuelled by pornography resultantly more crimes reported or unreported . There are other cases, which are either not reported.

34. Petitioner most respectfully submits that if we look the harm of violence and the degradation of women/ girls/children after determine the nature, extent and impact on society of pornography in India, we will definitely find as usual that there is a casual relationship between exposure to sexually violent materials and an increase in aggressive behaviour

directed towards women/girls /children, we will reach to the conclusion confidentially that substantial exposure to sexually violent material bears a casual relationship to anti-social acts of sexual violence and, for some subgroups, possibly to unlawful acts of sexual violence.

Pornography; The Harm to Children

35. Petitioner most respectfully submits that the most significant potential harm in non –violent materials exist with respect to children.. Most parents think their kids are immune to the dangers online... that they are too innocent, too smart or too “good” to get involved with pornography. But ultimately any child could get caught up in pornography use. The content that kids are accessing today is far more graphic, violent, deviant, and destructive, much, probably most, and may be even all material in this category is harmful when it falls into the hands of children. Exposure to sexuality is commonly taken, and properly so, to be primarily the responsibility of the family. we should not hesitate in concluding that learning about sex from the kinds of sexually explicit material in this category is not the best way for children to learn about the subject, there

are harms to the children themselves , and to notions of family control over a child's introduction to sexuality as children learns by these that sex is public, that sex is commercial and that sex can be divorced from any degree of affection, love, commitment or marriage is the wrong message at the wrong time.

Pornography's harmful messages

36. Pornography negatively impacts the emotional and mental health of a child.

- (a) A child will often become desensitized and will seek out more deviant, bizarre, and even violent content.
- (b) Children struggle to distinguish between the pornography "fantasy" and the reality of authentic, intimate sexual relations.
- (c) Kids who view pornography will often act out the behaviours they have seen.
- (d) Pornography often depicts sex without love and commitment and often pushes the limits of what is possible.
- (e) Girls and boys who see pornography feel as if they can never

measure up and often struggle to perform like the porn stars they have seen online.

- (f) Mental images can never be erased.

The Harms Caused by Rapists fuelled by Pornography.

37. Petitioner most respectfully submits that most of the Studies published in newspaper suggested that most of the rapist used pornography depicting consenting sex to arouse themselves preparatory to seeking out a victim to rape. Many studies reveal that rapists and child molesters use pornography both immediately prior to their crimes and during the actual assault .Petitioner further states that where the experimental subjects are exposed to repeated presentations of hard-core non- violent pornography over a 1-2 months they develop an callousness toward women/girls/children and trivialize rape as a criminal offence and to some it was no longer a crime and view non- monogamous relationships are normal and natural behaviour”. An enormous amount of the most sexually explicit material as well as much of the material that is somewhat

less sexually explicit, is material that we would classify as 'degrading', the term we use to encompass the undeniably linked characteristics of degradation, subordination and humiliation, depicting people, usually women, as existing solely for the sexual satisfaction of others, usually men, or depicts women in decidedly subordinate roles in their sexual relations.. or depicts people engaged in sexual roles most people consider humiliating, And such depictions support the conclusion that degrading porn causes attitudinal changes in the psyche of those who consume it and that substantial exposure to materials of this variety is likely to increase the extent to which those exposed will view rape or other forms of sexual violence as less serious than they otherwise would have and will view the victims of rape and other forms of sexual violence as significantly more responsible and will increase the acceptance of the proposition that women like to be forced into sexual practices .

38. Petitioner most respectfully submits that after having gone into the details of the some research although few were available pertaining to the mentality of the sexual offenders, which suggest that the rapist achieves his gratification, not from sexual release, but from the of domination,

control and power.

39. People might define fantasy as a mental rehearsal of A desired event. This mental rehearsal plays a central role in enactment of sexual offenses. It serves as a kind of editing mechanism that allows the offender to focus on the details of the crime that are uniquely arousing to him.

40. Petitioner most respectfully submits that mentality of certain sexual offenders, who sexually assault on women/girls/children, some are Impulsive offender. Who is not an intelligent criminal. He is apt to be Dull witted and foolish and is least successful at Evading identification and apprehension. He lacks discipline and self-control. he makes poor decisions and carries out his crimes in an , unsophisticated manner.

Ritualistic offender.

41. The ritualistic offender is a connoisseur of his crime. He is thinking criminal. He spends enormous amounts of time in fantasy. Carefully working out the details before acting out the mechanics of his ritualized sexual offenses. This offender is not frequently encountered as the

impulsive criminal, perhaps because he is more successful in evading detection. The ritualistic offender is cunning, methodical and usually The two types of sexual offenders with the most characteristics in common are sexual sadists and Pedophiles and child molester often are used interchangeably but they are Pedophile in psychiatric usage describes an individual who preferentially attracted sexually to prepubescent child. However, a pedophile does not become a criminal until he child. A child molester is a legal term used to describe any person who sexually molests a child. All child molesters are criminals and a pedophile who acts out against a child consequently is a child molester. The adult male molester pedophile deliberately prays on children.

Here is how a pedophile and sexual sadist are alike;

42. Both are ritualistic sexual criminals. They have Highly developed fantasy lives and carry out their crimes according to a script.

(a) Both are highly motivated and they invest a great amount of time, money and energy to their criminal behaviour.

- (b) Neither experience remorse or guilt, The Sexual sadist believes his victims deserve to suffer. The pedophile doesn't believe he has caused harm to the child.
- (c) Both are highly practiced at rationalizing their behaviour and consequently are poorly motivated to change
- (d) Both recognize that society abominates them, and they take steps to study their deviate desires and behaviours to better understand them and to evade arrest.
- (e) Both collect theme-oriented pornography and or erotica that serves to complement their pre-existing fantasies They possess average or better intelligence and social skills. They mesh well in society, friends and associates are surprised and supportive of them when they are identified.
- (f) Both are likely to commit incest with their natural children and will molest step-children or other minor relatives.
- (g) They record their criminal sexual acts. This Provides them with a means of

reliving and improving on their criminal acts.

- (h) Their rate of recidivism is much greater than for other sexual offenders. They tend to be model prisoners and consequently are released more quickly and having learned nothing from their punishment quickly begin practicing sexual deviance again. Both are highly narcissistic.
- (i) Both have a low threshold for sexual boredom and involve their victims in progressively offence and demeaning behaviour.

Most sexual criminals slow down with age. There is no burn out age for the two offenders.

- (j) They have greater numbers of victims than other Sexual offenders. Once these men began to act out criminally, they will assault until caught.
- (k) The sexual component of a crime is not always self evident. The behaviour may be blatant, or it may be so subtle that it escapes detection. Then again, some crimes may only seem to be sexually motivated.

- (l) Some people preferentially act out their desires With prepubescent children (pedophiles) teenagers(hebephiles)or the elderly (gerontophiles). Others select age mates as their victims and a few will sexually assault victims of any age.
- (m) Certain offenders commit exclusive homosexual crimes, others limit themselves to offences against heterosexuals, and others attracted to either genders.
- (n) Some sexual crimes involve the sense of sight (voyeurism and exhibitionism) only the sense of hearing (telephone) or only the sense of touch (frotteurism). However, most offenders will employ all the available senses. Many offenders are aroused by a victim's suffering(sadists) while others are excited by their Own pain(Masochists), then there are sadomasochists, who may be aroused in either way simultaneously or in separate.

43. Highly ritualistic behaviour marks some type of sexual crimes. While others are characterized by impulsiveness at times. Strange mixes of

both ritualism and spontaneity.

- (a) A victim's torment may be heightened by extended captivity
conversely, as in cases involving comatose patients, those under
anesthesia or victims who have been given date rape drug
rohypenol, the target might be completely unaware of what is
happening.
- (b) The larger a sexual offender fantasizes prior to committing his crimes,
the more specific his desired victim's characteristics will be.
- (c) Thinking criminals are keen students of their own crimes, honing their
skills with offense, learning from their mistakes. But they also reach
out for enlightenment wherever it may be found.

44. **LATEST FACTS AND FIGURES: AN EYE OPENER**

45. The petitioner sought information regarding the status of Porn Videos/Porn Clippings in India from internet Wikipedia , the most trusted internet site for the purpose of making the largest effort of its kind for data collection on the nature and magnitude of the problem of Crime against Women mostly fuelled by Pornography. but now that figure has increased alarmingly.

**EXISTING LEGAL FRAMEWORK IS INADEQUATE TO TACKLE
THE MENACE OF PORN VIDEOS/PORN CLIPPINGS**

46. The term “Pornography” has not been defined anywhere in any statute in India. Only obscenity has been defined through some Statutes. The legal requirement is that the rule should be in accordance with the Parent Act. But, nowadays, we find that most of the rules are ultra vires the parent Act. The Information Technology (Intermediaires Guidelines) Rules, 2011, is a clear-cut illustration of this trend, which needs to be curbed by the

Hon'ble Supreme Court.

47. Petitioner would like to state one important thing. Petitioner is not against any regulation on internet, but Petitioner is against the control on internet. What is the difference between regulation and control? Recently, Justice Markandey Katju correctly made a distinction between control and regulation. In control, there is no freedom. In regulation, there is freedom within the reasonable restrictions given under our Constitution. The Information Technology (Intermediaries Guidelines) Rule is an attempt to control the cyber space. but the Respondents have failed grossly to implement them.

48. We have not enough legal provisions to regulate the internet. The I.T. Act, 2000, has a very feeble provision to regulate internet. Section 69 of the Act. Section 69 (1) gives powers to issue direction for blocking, for public access, any information through any computer resource. This Section has not clearly specified what the offend able things are. Now, quote Section 69 (1): "If satisfied that it is necessary or expedient so to do in the interest of the sovereignty or integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing

incitement to the commission of any cognizable offence, relating to above, it may subject to the provisions of sub-section (2).” But, in addition to that, Section 69 (3) talks about intermediaries. What are intermediaries? Now, when we use the I-pad in Parliament, we get the internet access through the MTNL. So, that is an intermediary. Likewise, Google and Yahoo are intermediaries.

Facebook and Twitter are intermediaries. Web hosters are intermediaries. These are intermediaries. In the Act itself there are Weak provisions to control these intermediaries. 69 A (3), “The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years”. Section 69 A (3) is a not a very strong provision in the Act itself. the Government has made rules on the basis of Section 69, i.e. the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009. if the formulation of procedure is not correctly framed, then, how can the content be blocked by an intermediary? The designated officers are there. Specific Committees are there. Reviewing Committees are there and as per this Rule, there is a vague provision to

control the intermediaries also. A provision to not only regulate, but even to 'control the intermediaries' is there in the Act itself. Then, there are too many criminal provisions in the IT Act. While coming to Section 66 A of the IT Act, "causing annoyance or inconvenience electronically has a penalty of three years and does not require a warrant to arrest." The IT (Amendment) Act, 2008 amended Section 79 of the IT Act, 2000 to provide for safe harbour protection to intermediaries. The safe harbour protection available to intermediaries is conditional upon their observing "due diligence" while discharging their duties under the Act and observing guidelines issued by the Government in this regard. , these guidelines prescribing "due diligence" to be observed by intermediaries were notified in April 2001 in the form of IT (Intermediaries Guidelines) Rules 2011. These rules are ultra vires to the parent Act. Section 79 intended to give harbour protection to the intermediaries. The purpose of Section 79, amended Section, is to give harbour protection to the intermediaries from other liabilities,

49. Any information that is grossly harmful, harassing, blasphemous, defamatory, obscene, pornographic, pedophilic, libellous and there are several things has to be informed to the computer users. It is neither

defined in the Rules nor is defined in the Act. But, Section 69 of the Act specifically defined unlawful content. The correct formulation of Section 69 specifically defined unlawful content which came under the purview of Article 19(2) of the Constitution. But, Rule 3(2) of the Intermediaries Guidelines goes beyond the Act which is a clear violation of the Act.

50. Petitioner point on the ultra vires of the parent Act is Section 69. ,Section 69 of the Act gives power to the Government to issue direction for interception or monitoring or decryption of any information through any computer resource. Section 69(2) provides for procedures and safeguards subject to which such interception or monitoring may be carried out. The executive has made a rule on the basis of Section 69. It clearly specifies what are the provisions and procedures followed by the executive to take information with regard to the user. But, Sub-Rule 7 of Rule 3 of the Intermediaries Guidelines mandates the intermediary to provide information of any such assistance to Government agencies without any safeguards. This is a clear violation of the Act.

In the Act itself, there is a provision to constitute an Advisory Committee. Information Technology, cyber space, etc., are new sectors and hence

expertise is required. So, the Government has framed Section 88 in the IT Act to constitute Cyber Regulations Advisory Committee to advise the Government for framing the rules. These rules, without seeking any advice from the Committee, have been framed. It is because even after one decade this body has not yet been formed. The advisory mechanism or body to guide the Government on framing the rules has not yet been constituted even after one decade of the Act! This is a very serious thing.

Article 19(1) of the Constitution ensures the right to freedom of speech and expression. Article 19(2) of the Constitution specifically defines the 'reasonable restrictions'. But, Rule 2 goes beyond article 19(2) of the Constitution.

51. In case any issue arises concerning the interpretation of the terms used by the Intermediary, which is not agreed to by the user or affected person, the same can only be adjudicated by a court of law".

52. To illegalize and total ban on the porn websites and Pornography is not a very serious attack on the freedom of speech and expression. As pornography is neither speech nor expression, it is purely a conduct, Anti

–societal factor, merely insertion of term pornography as unlawful without expressing the definition of Pornography, This is a very clear violation of the parent Act, which is ultra vires to the parent Act, and ultra vires to the Constitution. This is against the principles of natural justice.

INDIAN PENAL CODE 1892

53. There are legislations which prohibit pornography like Indian Penal Code;-

“Section 292 Sale, etc. of obscene books, etc. :-

[(1) For the purposes of sub-section (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 taken as a whole, 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.]

[(2) Whoever- 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 (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 known 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 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 [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, 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 purposes.]

Explanation I- For the purposes of this section, the word "scurrilous" shall be deemed to include any matter which is likely to be injurious to morality or is calculated to injure any person :

Provided that it is not scurrilous to express in good faith anything whatever respecting the conduct of-

- (i) a public servant in the discharge of his public functions or respecting his character so far as his character appears in that

conduct and no further; or

- (ii) any person touching any public question, and respecting his character, so far as his character appears in that conduct and no further. Explanation II- In deciding whether any person has committed an offence under this section, the Court shall have regard, inter alia, to the following considerations:

- (a) The general character of the person charged, and where relevant, the nature of his business;
- (b) the general character and dominant effect of the matter alleged to be grossly indecent or scurrilous or intended for blackmail;
- (c) any evidence offered or called by or on behalf of the accused person as to his intention in committing any of the acts specified in this section" [Vide Tamil Nadu Act XXV of 1960, Sec. 3 (9th November, 1960).]

Ins. by Act 36 of 1969, Sec. 2.

Section 292 was re-numbered as sub-section (2) of that section by Sec. 2, by Act 36 of 1969.

Subs. by Act 36 of 1969, Sec. 2, for certain words.

Subs. by Sec. 2, by Act 36 of 1969 for Exception.

Section 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 offer or attempts so to do, shall be punished [Or. 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].

Subs. by Act 36 of 1969, Sec. 2, for certain words.

Information Technology Act, 2000

54. Section 67 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 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.

Information Technology Act, 2000

Substitution Of New Sections For Sections 66 And 67:-

For sections 66 and 67 of the principal Act, the following sections shall be substituted, namely: 66. Computer related offences If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both.

Explanation: -- For the purposes of this section: (a) the word "dishonestly" shall have the meaning assigned to it in section 24 of the Indian Penal Code (45 of 1860); (b) the word "fraudulently" shall have the meaning assigned to it in section 25 of the Indian Penal Code.(45 of 1860); 66A. Punishment for sending offensive messages through communication

service, etc. Any person who sends, by means of a computer resource or a communication device: (a) any information that is grossly offensive or has menacing character; or (b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill will, persistently by making use of such computer resource or a communication device; or (c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages, shall be punishable with imprisonment for a term which may extend to three years and with fine.

Explanation: -- For the purposes of this section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.

66B. Punishment for dishonestly receiving stolen computer resource or communication device Whoever dishonestly receives or retains any stolen computer resource or communication device knowing or having reason to believe the same to be stolen computer resource or communication device,

shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to rupees one lakh or with both. 66C. Punishment for identity theft Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh. 66D. Punishment for identity theft Whoever, by means of any communication device or computer resource cheats by personation, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees. 66E. 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. Explanation: -- For the purposes of this section: (a)"transmit" means to electronically send a visual image with the intent that it be viewed by a person or persons; (b) "capture", with respect to an

image, means to videotape, photograph, film or record by any means; (c) "private area" means the naked or undergarment clad genitals, public area, buttocks or female breast; (d) "publishes" means reproduction in the printed or electronic form and making it available for public; (e) "under circumstances violating privacy" means circumstances in which a person can have a reasonable expectation that: (i) he or she could disrobe in privacy, without being concerned that an image of his private area was being captured; or (ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.

66F. Punishment for cyber terrorism (1) Whoever: (A) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people by: (i) denying or cause the denial of access to any person authorised to access computer resource; or (ii) attempting to penetrate or access a computer resource without authorisation or exceeding authorised access; or (iii) introducing or causing to introduce any computer contaminant, and by means of such conduct causes or is likely to cause death or injuries to persons or damage to or destruction of property or disrupts or knowing that it is likely to cause damage or disruption of supplies or services essential to the life of the

community or adversely affect the critical information infrastructure specified under section 70; or (B) knowingly or intentionally penetrates or accesses a computer resource without authorisation or exceeding authorised access, and by means of such conduct obtains access to information, data or computer database that is restricted for reasons of the security of the State or foreign relations; or any restricted information, data or computer database, with reasons to believe that such information, data or computer database so obtained may be used to cause or likely to cause injury to the interests of 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, or to the advantage of any foreign nation, group of individuals or otherwise, commits the offence of cyber terrorism. (2) Whoever commits or conspires to commit cyber terrorism shall be punishable with imprisonment which may extend to imprisonment for life. 67. Punishment for publishing or transmitting obscene material in electronic form Whoever publishes or transmits or causes to be published or transmitted 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 with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh 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 ten lakh rupees. 67A. Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form 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. 67B. Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form Whoever: 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 (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or (c) cultivates, entices or induces children to 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 (d) facilitates abusing children online; or (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 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 in the interest of science, literature, art or learning or other objects of general concern; or (ii)

which is kept or used for bona fide heritage or religious purposes.

Explanation: -- For the purposes of this section, "children" means a person who has not completed the age of 18 years. 67C. Preservation and retention of information by intermediaries (1) Intermediary shall preserve and retain such information as may be specified for such duration and in such manner and format as the Central Government may prescribe. (2) Any intermediary who intentionally or knowingly contravenes the provisions of sub-section (1) shall be punished with an imprisonment for a term which may extend to three years and shall also be liable to fine.

Section 71 Penalty for misrepresentation :-

Whoever makes any misrepresentation to, or suppresses any material fact from, the Controller or the Certifying Authority for obtaining any licence or Digital Signature Certificate, as the case may be, shall be punished with imprisonment for a term which may extend to two years, or with fine which extend to one lakh rupees, or with both

Section 72 Penalty for breach of confidentiality and privacy:-

Save as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made there under, has secured access

to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

Section 75 Act to apply for offence or contravention outside India :-

(1) Subject to the provisions of sub-section (2), the provisions of this Act shall apply also to any offence or contravention committed outside India by any person irrespective of his nationality. For the purposes of sub-section (1), this Act shall apply to an offence or contravention committed outside India by any person if the act or conduct constituting the offence or contravention involves a computer, computer system or computer network located in India.

Section 79 Network service providers not to be liable in certain cases :-

For the removal of doubts, it is hereby declared that no person providing any service as a network service provider shall be liable under this Act, rules or regulations made there under for any third party information or data made available by him if he proves that the offence or contravention

was committed his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention. Explanation. For the purposes of this section, (a) "network service provider" means an intermediary; (b) "third party information" means any information dealt with by a network service provider in his capacity as an intermediary.

Section 80 Power of police officer and other officers to enter, search, etc :-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any police officer, not below the rank of a Deputy Superintendent of Police, or any other officer of the Central Government or a State Government by the Central Government in this behalf may enter any public place and search and arrest without warrant any person found therein who is reasonably suspected or having committed or of committing or of being about to commit any offence under this Act.

Explanation. For the purposes of this sub-section, the expression "public place" includes any public conveyance, any hotel, any shop or any other place intended for use by, or accessible to the public.

(2) Where any person is arrested under sub-section (1) by an officer other than a police officer, such officer shall, without

unnecessary delay, take or send the person arrested before a magistrate having jurisdiction in the case or before the officer in-charge of a police station.

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall, subject to the provisions of this section, apply, so far as may be, in relation to any entry, search or arrest, made under this section

Cinematograph Act, 1952

(55) Section 5A Certification Of Films :- [(Note:- Subs. by Act 49 of 1981 (w.e.f. 1-6-1983) (1) If, after examining a film or having it examined in the prescribed manner, the Board considers that -The film is suitable for unrestricted public exhibition, or, as the case may be, for unrestricted public exhibition with an endorsement of the nature mentioned in the proviso to clause (l) of subsection (1) of Section 4, it shall grant to the person applying for a certificate in respect of the film a "U" certificate or, as the case may be, a "UA" certificate ; or(b) The film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults or, as the case may be, is suitable for public exhibition restricted to members of any profession or any class of persons, it shall grant to the person applying for a certificate in respect of the film an "A" certificate or,

as the case may be, a "S" certificate ; and cause the film to be so marked in the prescribed manner : Provided that the applicant for the certificate, any distributor or exhibitor or any other person to whom the rights in the film have passed shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film for which certificate has been granted under clause (a) or clause (b).]. A certificate granted or an order refusing to grant a certificate in respect of any film shall be published in the Gazette of India.

(3) Subject to the other provisions contained in this Act, a certificate granted by the Board under this Section shall be valid throughout India for a period of ten years.

Section 5B Principles For Guidance In Certifying Films:- A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of [(Ins. by Act 49 of 1981 (w.e.f. 1-6-1983) the sovereignty and integrity of India] the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence. Subject to the provisions contained in sub-section (1), the Central Government may issue such

directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition. Notes Censorship in India has full justification in the field of the exhibition of cinema films. It is in the interest of society. The censorship of films including prior restraint is justified under the Constitution. It has almost universally recognised that the treatment of motion pictures must be different from that of other forms of art and expression.

Therefore classification of films into categories of "U" films "A" films is a reasonable classification. It is not elements of rape, leprosy, sexual immorality which should attract the censors scissors but how the theme is handled by the producer. Section 5c Appeals:-

(1) Any person applying for a certificate in respect of a film who is aggrieved by any order of the Board –

- (a) Refusing to grant a certificate ; or
- (b) Granting only an "A" certificate ; or
- (c) Granting only a "S" certificate ; or
- (d) Granting only a "UA" certificate ; or
- (e) Directing the applicant to carry out any excisions or modifications, may, within thirty days from the date of such order, prefer an appeal to the

Tribunal :

Provided that the Tribunal may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the aforesaid period of thirty days, allow such appeal to be admitted within a further period of thirty days.

(2) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a brief statement of the reasons for the order appealed against where such statement has been furnished to the appellant and by such fees, not exceeding rupees one thousand, as may be prescribed

CUSTOMS ACT, 1962

(56) Section 11 Power to prohibit importation or exportation of goods. :-

If the Central Government is satisfied that it is necessary so to do for any of the purposes specified in sub-section (2), it may, by notification in the Official Gazette, prohibit either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification, the import or of goods of any specified description.

(a) The purposes referred to in sub-section (1) are the following: (a) the maintenance of the security of India;

- (b) the maintenance of public order and standards of decency or morality;
- (c) the prevention of smuggling;
- (d) the prevention of shortage of goods of any description;
- (e) the conservation of foreign exchange and the safeguarding of balance of payments;
- (f) the prevention of injury to the economy of the country by the uncontrolled import or export of gold or silver;
- (g) the prevention of surplus of any agricultural product or the product of fisheries;
- (h) the maintenance of standards for the classification, grading or marketing of goods in international trade;
- (i) the establishment of any industry;
- (j) the prevention of serious injury to domestic production of goods of any description ;
- (k) the protection of human, animal or plant life or health;
- (l) the protection of national treasures of artistic, historic or archaeological value;
- (m) the conservation of exhaustible natural resources;
- (n) the protection of patents, trade marks and copyrights;

- (o) the prevention of deceptive practices;
- (p) the carrying on of foreign trade in any goods by the State, or by a Corporation owned or controlled by the State to the exclusion, complete or partial, of citizens of India ;
- (q) the fulfilment of obligations under the Charter of the United Nations for the maintenance of international peace and security;
- (r) the implementation of any treaty, agreement or convention with any country;
- (s) the compliance of imported goods with any laws which are applicable to similar goods produced or manufactured in India;
- (t) the prevention of dissemination of documents containing any matter which is likely to prejudicially affect friendly relations with any foreign State or is derogatory to national prestige;
- (u) the prevention of the contravention of any law for the time being in force;
- (v) any other purpose conducive to the interests of the general public.

YOUNG PERSONS (HARMFUL PUBLICATIONS) ACT, 1956

(57) Definitions :-

In this Act,- "Harmful publication" means any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told

with the aid of pictures or without the aid of pictures or wholly in pictures being stories portraying wholly or mainly-

(i) the commission of offences; or

(ii) acts of violence or cruelty; or

(iii) incidents of a repulsive or horrible nature; in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences or acts of violence or cruelty or in any other manner whatsoever;

"State Government" in relation to a Union Territory, means administrator thereof;

(c) "young person" means a person under the age of twenty years.

Section 3 Penalty for sale, etc. of harmful publication :-

(1) If a person-

(a) sells, lets to hire, distributes, publicly or in any manner puts into circulation, any harmful publication, or for purposes of sale, hire, distribution, public exhibition or circulation, prints, makes or produces or has in his possession any harmful publication, or advertises or makes by any means whatsoever that any harmful publication can be procured from or through any person, he shall be punishable with imprisonment which

may extend to six months, or with fine, or with both. On a conviction under this section, the Court may order the destruction of all the copies of the harmful publication in respect of which the conviction was had and which are in the custody of the Court or remain in the possession or power of the person convicted.

POST OFFICE ACT, 1898

58. Section 20 Transmission by post of anything indecent, etc., prohibited :-

No person shall send by post-

(a) any indecent or obscene printing, painting, photograph, lithograph, engraving, book or card, or any other indecent or obscene article, or any postal article having thereon, or on the cover thereof, any words, marks or designs of an indecent, obscene, seditious, scurrilous, threatening or grossly offensive character.

INDECENT REPRESENTATION OF WOMEN PROHIBITION) ACT, 1986

59. Definitions :-

In this Act, unless the context otherwise requires,-

(a) "advertisement" includes any notice, circular, label, wrapper or other document and also includes any visible representation made by means of

any light, sound, smoke or gas;

(b) "distribution" includes distribution by way of samples whether free or otherwise;

(c) "indecent representation of women" means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals;

(d) "label" means any written, marked, stamped, printed or graphic matter, affixed to, or appearing upon, any packages;

(e) "package" includes box, carton, tin or other container;

(f) "prescribed" means prescribed by rules made under the Act.

Section 3. Prohibition of advertisements containing indecent representation of women :-

No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.

Section 4. Prohibition of publication or sending by post of books, pamphlets, etc., containing indecent representation of women :-

No person shall produce or cause to be produced, sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form: Provided that nothing in this section shall apply to-

(a) any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, 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, slide, film, writing, drawing, painting, photograph, 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;

(b) any representation sculptured, engraved, printed or otherwise represented on or in

(i) any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958; or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose;

(c) any film in respect of which the provisions of Part II of the

Cinematograph Act, 1952 will be applicable.

DRUGS AND MAGIC REMEDIES (OBJECTIONABLE ADVERTISEMENTS) ACT, 1954

60. Section 3. Prohibition of advertisement of certain drugs for treatment of certain diseases and disorders :-

Subject to the provisions of this Act, no person shall take any part in the publication of any advertisement referring to any drug in terms which suggest or are calculated to lead to the use of that drug for -

(a) the procurement of miscarriage in women or prevention of conception in women; or

(b) the maintenance or improvement of the capacity of human beings for sexual pleasure; or

(c) the correction of menstrual disorder in women; or

¹[(d) the diagnosis, cure, mitigation, treatment or prevention of any disease, disorder or condition specified in the Schedule, or any other disease, disorder or condition (by whatsoever name called) which may be specified in the rules made under this Act:

PRESS COUNCIL ACT, 1978

61. Section 14. Power to censure :-

(1) Where, on receipt of a complaint made to it or otherwise, the Council has reason to believe that a newspaper or news agency has offended against the standards of journalistic ethics or public taste or that an editor or a working journalist has committed any professional misconduct, the Council may, after giving the newspaper, or news agency, the editor or journalist concerned an opportunity of being heard, hold an inquiry in such manner as may be provided by regulations made under this Act and, if it is satisfied that it is necessary so to do, it may, for reasons to be recorded in writing, warn, admonish or censure the newspaper, the news agency, the editor or the journalist or disapprove the conduct of the editor or the journalist, as the case may be: Provided that the Council may not take cognizance of a complaint if in the opinion of the Chairman, there is no sufficient ground for holding an inquiry.

(2) If the council is of the opinion that it is necessary or expedient in the public interest so to do, it may require any newspaper to publish therein in such manner as the Council thinks fit, any particulars relating to any inquiry under this section against a newspaper or news agency, an editor or a journalist working therein, including the name of such newspaper, news agency, editor or journalist.

(3) Nothing in sub-section (1) shall be deemed to empower the Council to hold an inquiry into any matter in respect of which any proceeding is pending in a court of law.

(4) The decision of the Council under sub-section (1), or sub-section (2) as the case may be, shall be final and shall not be questioned in any court of

CONSTITUTIONAL PROVISIONS

62. Article 1 of the Universal Declaration of Human Rights provides that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2 provides that everyone, which includes fallen women and their children, is entitled to all the rights and freedoms set forth in the Declaration without any distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3 provides that everyone has the right to life, liberty and security of person.

Article 4 enjoins that no one shall be held in slavery or servitude; slavery

and the slave trade shall be prohibited in all their forms. The fallen victims in the flesh trade is no less than a slave trade.

Article 5 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The fallen/trapped victims of flesh trade are subjected to cruel, inhuman and degrading treatment which are obnoxious, abominable and an affront to Article 5 of the Universal Declaration and Article 21 of the Indian Constitution. Equally, Article 6 declares that everyone has the right to recognition everywhere as a person before the law. The victims of flesh trade are equally entitled before the law to the recognition as equal citizens with equal status and dignity in the society.

Article 7 postulates that all are equal before the law and are entitled, without discrimination, to equal protection of the law. So, denial of equality of the rights and opportunities and of dignity and of the right to equal protection against any discrimination of fallen women is violation of the Universal Declaration under Article 7 and Article 14 of the Indian Constitution.

Article 8 of the Universal Declaration provides that everyone has the right to an effective remedy by the competent national tribunals for acts

violating the fundamental rights granted by the Constitution or the law. The Supreme Court of India, which is the sentinel in the qui vive, is enjoined to protect equally the rights of the poor, the deprived, the degraded women and children trapped in the flesh trade, kept in inhumane and degrading conditions, and to grant them the constitutional right to freedoms, protection, rehabilitation and treatment by the social engineering, in law, Constitution and appropriate administrative measures so as to enable them to work hand-in-hand to live life with dignity and without any stigma due to their past conduct tagged to them by social conditions, unfounded customs and circumstances which have become blot on the victims and their children. They too are entitled to full equality, fair and adequate facilities and opportunities to develop their personality with fully grown potentiality to improve their excellence in every walk of life. Article 51-A of the Constitution enjoins duty on every citizen to develop the scientific temper, humanism and the spirit of inquiry and reform and to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.

Preamble to the Declaration of the Right of the Child adopted by the UND

on November 20, 1959, provides that the child by reason of his or her physical or mental immaturity, needs special safeguards and care including her appropriate legal protection before as well as after birth. Recalling the provisions of Declaration on Social and Legal Principles relating to Protection and Welfare of the Children with Special Reference to Foster or Placement and Adoption Nationally and Internationally; the General Assembly Resolution 41/85 of December 3, 1986; the United Nations adopted Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) dated November 29, 1985. India is a signatory to the Declaration and has the same and effectively participated in bringing the Declaration in force.

Article 3(1) postulates that in all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of law, administrative authorities or legislative bodies, the best interest of the child shall be the primary consideration.

Article 3(2) enjoins to ensure the child such protection and care as is necessary for his or her well- being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally and all the appropriate measures in that behalf shall be taken by the State.

Article 3(3) postulates that the State shall ensure the availability of institutional services and facilities responsible for the care or protection of children, shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their self as well as competent supervision. Article 4 obligates by appropriate legislative, administrative or other measures, implementation of the rights recognized in the Convention.

The State has undertaken to implement economic, social and cultural rights, such measures to the maximum extent of the available resources and where needed within the framework of international co-operation.

Article 6 postulates that State Parties recognise that every child has the inherent right to life which is already granted by Article 21 of the Constitution of India which has been interpreted expansively by this Court to make the right to life meaningful, socially, culturally, economically, even to the deprived segments of the society with dignity of person and in pursuit of happiness. Article 6(2) enjoins to ensure development of the child and

Article 7(2) postulates that the State shall ensure implementation of these rights in accordance with law and their obligations.

Article 9(3) envisages that the State shall respect the right of the child who is separated from her parents to maintain personal relations and contact with her parents on regular basis.

Article 14(2) provides that the State shall respect the rights And duties of the parents, and when applicable, legal guardians, provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

Article 17(2)(e) enjoins the State to encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well being bearing in mind the provisions of Articles 13 and 18.

Article 18(1) provides that the State shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents and State have the primary responsibility for the upbringing and development of the child.

The best interests of the child will be their basic concern. Sub-para (2) postulates that for promoting the rights set forth in this Convention, parents, legal guardian or the State in the performance of their child-rearing responsibilities, shall ensure the development of institutions,

facilities and services for the care of children.

Article 19(1) provides that the State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child. Equally, sub- para (2) of Article 19 postulates protective measures, as may be appropriate, should include effective procedure for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child as well as for other forms of prevention etc.

Article 20 which is material for the purpose postulates as under : "1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interest cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, Kafala or Islamic

Law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious cultural and linguistic background." Article 28 recognises the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, the State shall in particular:

(a) make primary education compulsory and available free to all; (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) make higher education accessible to all on the basis of capacity by every appropriate means; (d) make educational and vocational information and guidance available and accessible to all children; and (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Article 29 envisages that the State Parties agree that the education of the child shall be directed to: (a) the development of the child's personality,

talents and mental and physical abilities to their fullest potential; (b) the development of respect for human rights and fundamental freedoms and for the principles enshrined in the Charter of the United Nations; (c) the development of respect for the child's parents, his or her own cultural identity, languages and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and (e) the development of respect for the natural environment.

Article 32 recognises the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Articles 34, 36 and 37(a) are equally relevant and read as under : "34.

State Parties undertake to protect the child from forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures

to prevent : the inducement or coercion of a child to engage in any unlawful sexual activity;

(b) the exploitative use of children in prostitution or other unlawful sexual practices; (c) the exploitative use of children in pornographic performances and materials.

36. States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

37. State Parties shall ensure that :

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age;"

63. Article 8 of the Declaration on the Right to Development provides that the State shall undertake at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic

and social reforms should be carried out with a view to eradicating all social injuries.

64. The Convention on the Elimination of All Forms of Discrimination Against Women, 1979 enjoins by Article 1, prohibition of discrimination of women. Article 5 enjoins to modify social and patterns of conduct of men and women with a view to achieving elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of the sexes or on stereotyped roles for men and women. Article 12 prescribes discrimination against women in the field of health care in order to ensure on the basis of equality of men and women, access to health care services, including those related to family planning. Article 13 prescribes discrimination and directs that the State Parties shall eliminate discrimination against women in other areas of economic and social life in order to ensure on the basis of equality of men and women, the same rights, in particular, the right to family benefits, the right to participate in recreational activities, sports and all aspects of cultural life. Article 16(d) enjoins the State to ensure on the basis of equality of men and women, the same rights and responsibility as parties, irrespective of their marital status, in matters relating to their children; in all

cases the interests of the children shall be paramount. In *Madhu Kishwar v. State of Bihar*, (1996) 5 SCC 125 : (1996 AIR SCW 2178), this Court considered the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) and held the same to be integral scheme of the Fundamental Rights and the Directive Principles. Article 2(e) of CEDAW enjoins the State Parties to breathe life into the dry bones of the Constitution, international Conventions and the Protection of Human Rights Act, to prevent gender- based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights. Article 2(f) read with Articles 3, 14 and 15 of the CEDAW embodies concomitant right to development as an integral scheme of the Indian Constitution and the Human Rights Act. Section 12 of the Protection of Human Rights Act charges the National Commission with duty to ensure proper implementation as well as prevention of violation of human rights and fundamental freedoms.

65. Human Rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are

interdependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth _ cultural, social and economical. All forms of discrimination on ground of gender is violative of fundamental freedoms and human rights. It would, therefore, be imperative to take all steps to prohibit prosecution. Eradication of prostitution in any form is integral to social weal and glory of women hood. Right of the child to development hinges upon elimination of prostitution. Success lies upon effective measures to eradicate root and branch of prostitution.

a. Article 14 provides equality before the law or equal protection of the laws within the territory of India.

b. Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth, or of any of them.

c. Article 15(3) provides for positive discrimination in favour of women and Women/Children. It states that, nothing in this article shall prevent the

state from making any special provision for women and Women/Children.

d. Article 16 (1) provides equality of opportunity in matters of public employment.

e. Article 21A provides that the state shall provide free and compulsory education to all Women/Children of the age of six to fourteen years in such manner as the state may, by law, determine.

f. Article 23 prohibits traffic in human beings and forced labour.

g. Article 23(1) specifically prohibits traffic in human beings, beggar and other forms of forced labour.

h. Article 38 enjoins the state to secure a social order for the promotion of welfare of the people.

i. Article 39 enumerates certain principles of policy to be followed by the state. Among them being right to adequate means of livelihood for men and women equally and equal pay for equal work.

j. Article 39(f) provides that the Women/Children should be given opportunities and facilities to develop in a healthy manner and conditions of freedom and dignity and that childhood should be protected against exploitation and against moral and material abandonment.

k. Article 46 directs the state of promote the educational and economic

interests of the scheduled castes, scheduled tribes and other weaker sections (in which women are included) and that it shall protect them from social injuries and all forms of exploitation.

66. That the petitioner sent representation to respondents No.1 to 3 vide post on 24.01.2013 and he has not received any reply on their behalf till date. True Copy of representation dated 24.01.2013 sent to the Respondents No.1 to 3 is annexed herewith as **Annexure-P-2 [Pg. 102-104]**.

67. This Petition in being filed by the Petitioner on, inter alia, following grounds:

GROUNDS

(A.) Petitioner most respectfully submits that porn industry is now taken shape of big profit making industry. The reason behind development of such huge concern is the display of advertisement of pornographic websites without the permission of the viewer. Such uncontrolled display of porn advertisement banners usually come out while

browsing the internet at home or business meetings and are sufficient to offend the people browsing internet. Pornography is like moral cancer that is eating our entire society at every second across country.

(B) The term “Pornography” has not been defined in any statute of the Country. Hence the problem of Pornography, Child Pornography, virtual Pornography, Poser Pornography as well as Crime against Women/girls/Children” which are mostly fuelled by Pornography is not recognised by the statute.

(C) That the respondents are responsible for ensuring that all Women/Children are protected in India and all offenders are prosecuted and punished at the earliest. The respondents are also responsible to ensure the proper psycho-social counselling and rehabilitation of victims and ensure education to all the Women/Children. But the Respondents have failed to enforce even the existing laws to the detriment of rights of members of society to lead a peaceful moral life..

(D) The centre has ignored the promises of welfare made to our children.

(E). While delivering the judgment in the matter of M C Mehta versus State of Tamil Nadu (1996 (6) SCC 756), this Hon'ble Court, in closing lines, observed:

“We part with the fond hope that the closing years of the twentieth century would see us keeping the promises made to our Children by our Constitution about a half-century ago. Let the child of twenty-first century find himself into that "heaven of freedom" of which our poet laureate Rabindranath Tagore has spoken in Gitanjali.”

Although this judgment was delivered with a hope that the new century will bring hope and better life for the future of tomorrow, the state of affairs have not been able to strive to achieve this goal so far.

(F) Further, in the metropolitan cities, such as Delhi, Mumbai, Kolkata and Chennai, the Investigating Officer should immediately verify the Cyber-cafe, downloading shops in their areas and try to find out porn video availability.

If porn video availability is found, it's possession be taken

68. That the petitioner has not filed any petition for Special Leave Petition or writ petition before this Hon'ble Court or High Court or any other Court, or Tribunal earlier praying for the relief as prayed by him in this petition.

PRAYER

In view of the facts and circumstances of this case, Petitioner herein seeks intervention of this Hon'ble Court as under:

- (a) Writ of declaration be issued to declare Section 66,67,69,71,72,75,79,80 and 85 of the Information Technology Act, 2000 *ultra vires in terms of* Article 14,19,21 of the Constitution of India;
- (b) For an order or direction in form of an appropriate writ to the respondents No.1 to 3 to formulate a National Policy and draft an action Plan on the issue of Pornography;
- (c) For direction to the Respondents No.1 to 3 to prepare a separate law on pornography exhaustively to curb the growing problem of

pornography.

- (d) For direction to the Respondents No.1 to 4 to treat watching of porn videos and sharing as non-bailable and cognizable offence;
- (f) Pass such other order or orders as deem fit in the facts and circumstances of the case.

And for this act of kindness, petitioner as in duty bound shall ever be grateful.

Drawn by
Kamlesh Vaswani
Advocate

Filed by:

(VIJAY PANJWANI)
Advocate for the Petitioner

New Delhi

Drawn on: 15.02.2013
Filed on: 19.02.2013:

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL WRIT JURISDICTION

WRIT PETITION (CIVIL) NO. _____ OF 2012

IN THE MATTER OF:

Kamlesh Vaswani

...

Petitioner

VERSUS

Union of India and others

...

Respondents

AFFIDAVIT

I, Kamlesh Vaswani S/o shri Uttamchand Vaswani aged about 41 years having my Residence at B-3, Shubham Appt, 6/2, Racecourse Road, Indore 4520001, Presently at Flat No.39,SFS, Shakti Appt.,Ashok Vihar-3, Delhi-110052.do hereby solemnly affirm and state as under:

1. That I am the petitioner in the present Writ Petition and as such I am competent to swear this affidavit.

2. I further state that I have drafted the writ petition and am aware of the facts and circumstances of the petition and have also read and understood the contents of the Synopsis and List of Dates at Pages B to ____ and contents of accompanying writ petition in paragraphs 1 to ____ at pages 1 to ____ and state that the contents are true and correct to the best of my knowledge and belief and states that the contents thereof and I state that the contents are true and correct to the best of my knowledge and belief.

3. I further state that the annexures annexed with the petition are true and correct copies of their respective originals.

DEPONENT

VERIFICATION:

Verified at new Delhi on ____th day of February 2013 that the contents of the affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed thereof.

DEPONENT

ANNEXURE P-2

[LAW RESOURCE INDIA](#)

Urgent need to ban porn websites: Chief Justice of India

Posted in [MEDIA ISSUES](#), [MEDIA LAW](#) by NNLRJ INDIA on January 31, 2010

BY IANS

NEW DELHI – Chief Justice of India (CJI) K.G. Balakrishnan Sunday said there was an urgent need to ban websites that circulate pornography and hate speeches and emphasized the need for cyber law enforcement. The government can place bans on websites that exclusively circulate

pornography and hate speeches. However, it would not be right to place a blanket ban on all categories of websites. It is also important to distinguish between intermediaries such as Network Service Providers, website operators and individual users for the purpose of placing liability for wrongful acts, the chief justice said.

Websites are created and updated for many useful purposes, but they can also be used to circulate offensive content such as pornography, hate speech and defamatory materials. In many cases, the intellectual property rights of authors and artists are violated through the unauthorized circulation of their works. “There has also been an upsurge in instances of financial fraud and cheating in relation to commercial transactions conducted online, the CJI emphasized at a Cyber Law Enforcement Programme and National Consultation meeting here.

Citing how more and more people are victimized because of increasing cyber crimes, the CJI said:, There have been numerous reports of internet users receiving unsolicited e-mails which often contains obscene language and amounts to harassment. Those who post personal information about themselves on job and marriage websites or social networking websites are often at the receiving end of cyber-stalking. Women and minors who post

their contact details become especially vulnerable since lumpen elements such as sex-offenders can use this information to target potential victims. Speaking on the occasion, Union Minister of Law and Justice M. Veerappa Moily said: Cyber law enforcement is the need of the hour as the use of technology is increasing by leaps and bounds. We are able to optimize the use of Information Technology (IT) industry only when our cyber law is strictly enforced.

Highlighting how misuse of technology can lead to personal attacks on the individual, Moily said: In many cases, images or videos are created without the consent of the persons involved and they are unscrupulously circulated for commercial gain. Such practices are a blatant invasion of privacy as well as an attack on an individuals dignity. However, there are inherent difficulties in using criminal laws to clamp down on them, so there is need of cyber law enforcement.

True Copy

ANNEXURE P-2

IN THE HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL

APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO 2809 OF 2010

Vinay Kumar & Ors

.....Applicants

Vs

The State of maharashtra

.....Respondent.

With

CRIMINAL WRIT PETITION NO.1577 OF 2010

CHANDRAKANT MANSARAM MORE

....PETITIONER

VS

THE STATE OF MAHARASTRA

.....RESPONDENT

WITH CRIMINAL WRIT PETITION NO.1578 OF 2010

AJAY KUMAR SHANMUGHAN

..... PETITIONER

VS

THE STATE OF MAHARASTRA

.....RESPONDENT

WITH CRIMINAL WRIT PETITION NO.1579 OF 2010

SABEEL KARUNAN

..... PETITIONER

VS

THE STATE OF MAHARASTRA

.....RESPONDENT

WITH CRIMINAL WRIT PETITION NO.1580 OF 2010

SHANKARSAN KRISHNU MUNDA

..... PETITIONER

VS

THE STATE OF MAHARASTRA

.....RESPONDENT.

Mr, Adhik shirodkar i/b Mr.Rajendra shirodkar for the Applicant in Cri,
Application No.2809 of 2010.

Mr. Samir A, vaidhya for the petitioners in writ petition Nos. 1577 of 2010,
1578 of 2010, 1579 of 2010 and 1580 of 2010

Mr. S.A. Shaikh, APP for the State.

Coram; SMT. V.K.TAHILRAMANI, J

RESERVED ON ; 29TH OCTOBER 2010

PRONOUNCED ON ; 24TH NOVEMBER, 2010

AT 2.40 P.M. IN CHAMBER

P.C;

1. Heard learned counsel for the applicant/petitioners original accused and learned APP for the State.
2. The applicant/Petitioners are seeking quashing of C.R. No 25 of 2008 of Lonawala Shahar Police station and the proceedings relating thereto being RCCNo. 483 of 2008 which is pending before the learned JMFC, Vadgaon, Maval, Lonaival,
3. Learned counsel for the applicant/petitioner stated that at present, they are only seeking quashing of offence under section 292 of IPC and they are seeking liberty to prefer a separate petition for quashing of the offence under the Bombay prohibition Act. liberty as prayed for is granted. Thus, these petitions/Applications are being considered only in relation to the prayer for quashing of offence under Section 292 of IPC.
4. The brief facts of the case may be stated as under;

On 26.08.2008, information was received at Ionavala Shahar police station that about 25 men and 10-12 women had gathered at taj cottage at frichhly Hill. These people were intoxicated and they were watching obscene film and dancing and the men were throwing notes on the women, hence, the police along with panchas went to the spot, On entering the bungalow, they saw that in one room, some of the other men and women were watching obscene film in the laptop. In all, they found about 28 men and 11 women in the bungalow. hence, all the persons in the bungalow came to be charged under section 292 of IPC, and Section 65(c) and 82 of the Bombay prohibition Act.

5. Learned counsel for the applicant/petitioners submitted that there was no public exhibition and whatever activities took place at the bungalow were for private viewing of the persons who were in the bungalow at the relevant time. He further submitted that none of the accused were selling or letting or hiring or distributing or publicly exhibiting or circulating the obscene film. it is contended that the petitioners/ accused are not involved in the process of production, distribution and exhibition of obscene film; and private viewing of the same by the petitioners at a private place on personal

computer does not constitute an offence punishable under Section 292 of IPC.

6. In reply, the learned APP submitted that the said bungalow is lodge and as such it is public place , hence, it can be said that the accused persons were publicly exhibiting the obscene film, To support this contention, the learned APP placed reliance on the statement of laxman, who was working as gardener in the bungalow. The gardener has stated that there are nine rooms in the bungalow. The said rooms are given on rent and the business in relation to renting the rooms is looked into by one shafi, On 28.08.2008, he was in for there was a birthday party in the bungalow and about 10 to 12 people were coming for the birthday party.

In turn, learned counsel for the applicant/petitioners drew my attention to the statement of another witness i.e. Mr,Mahammadshafi Bhati.Mr. Bhati has stated that on 22/08/2008. He had purchased the said bungalow from ajjibhai Merchant, The possession of the said bungalow was handed over about 1 ½ month to 2 months prior to the sale for repairing of property and for care taking purpose. They had appointed one laxman to work as a gardener in the said bungalow. he has specifically stated that he had not

instructed the care taker Mahammadshaffi Khan to give the bungalow on rent. He has further stated that on 26.08.2008, mahammadshafi Khan had not spoken to him about giving the bungalow on rent and he was not aware of any party in the said bungalow on 27.08.2008. After making inquiries , he learnt that on request of an old customer of mohammadshafi Khan, Mohammadshafi Khan had given some rooms in the bungalow to the friends of his old customer.

Thus, the statement of the witness of the prosecution shows that the bungalow was not in fact a lodge as contended by the learned APP but it was a private bungalow, Even otherwise, it is not the case of the prosecution that anyone from the public could walk into the bungalow at any point of time. As such, the spot, where the activities took place could not be said to be a public exhibition of obscene films in the bungalow.

7. the learned counsel for the petitioner/applicant vehemently contented that even assuming that there was a cassette of obscene film, the petitioners cannot be charged for the offence under section 292 of IPC as they had not kept the same in the house for sale, hire, distribution, public exhibition or circulation where upon the learned APP submitted that the act

of the accused falls within the mischief of section 292 of IPC and there is no good ground for quashing the proceedings.

8. In view of the argument addressed by the learned counsel for both sides, the short question that arises for consideration is;

Whether private viewing of obscene film constitutes an offence punishable under Section 292 of IPC?

9. Before answering the question, it would be useful to excerpts Section 292 of IPC for Immediate reference , which reads as under;

"292 Sale, etc. of obscene books, etc. :-

[(1) For the purposes of sub-section (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 taken as a whole, 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.]

[(2) Whoever- 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 (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 known 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 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 [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, 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 purposes.]

10. Here , I am only concerned with Sub-Section 2(a) of Section 292, It is not the prosecution case that Sub-Section (b), (c), (d)or (e) are attracted in the present case. A reading of clause (a) of sub-Section (2) makes it clear that offence is committed if either someone sells , lets to hire, distributes , publicly exhibits, or in any manner puts into circulation, or he for the purposes of sale, hire, distribution, public exhibition or putting in circulation,

makes produces or keeps in possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object. simpliciter viewing of an obscene object is not an offence under clause (a). It becomes an offence only when someone has in possession such object for the purposes of sale, hire, distribution, publicly exhibiting or putting into circulation. Thus even assuming that it was in the computer and was on the screen at the time the raiding party reached the bungalow, in my opinion, the petitioners cannot be charged under Section 292 of IPC.

11. In the present case, it is not the allegation of the prosecution that the petitioners were found selling, hiring distributing or putting into circulation the cassette of obscene film. It appears from the contention of the learned APP that it is their case that the accused were publicly exhibiting the film. This contention cannot be accepted because the bungalow cannot be said to be a public place, especially as no member of the public could freely walk into the bungalow. For the second part of clause (a) of sub-Section 2, the prosecution has to show that the obscene material was made , produced or kept in possession for the purpose of sale, hire, distribution, public exhibition or circulation. In other words, the possession of the

obscene object is punishable under Section 292 of IPC only if the possession is for the purpose of sale, hire, distribution public exhibition or circulation . If the obscene object is kept in a house for private viewing and is not for sale, hire, public exhibition or circulation, the accused cannot be charged under Section 292 IPC.

12. Identical question arose before the madras High Court in the case of V.Sundarrajan Vs State of Madr as Cr.P.C. No 376 of 1978) decided on 28.11.1979 which was a case under Section 292-A of IPC, Section 292-A is the state amendment in Tamilnadu, Clause (b) of Section 292-A, IPC is more or less same as Clause (a) of Sub- sec (2) of section 292, IPC,.The learned judge of the Madras High Court has held that if a blue film is found in the possession of the accused, he cannot be convicted simply on the ground of possession unless it is further proved that the purpose of keeping the same was for selling or letting for hire.

13. Thus, the Madras High Court in V. Sundarrajan (Supra) has held that if a blue film is found in the possession of the accused, he cannot be convicted simply on the ground of possession mentioned in section 292 (2) (a) of IPC, A man cannot be convicted for the offence under Section 292 of

IPC. The decision rendered by the Rajasthan High Court in Jagdish Chavla (1999 Cri. L.J.2562). In Jagdish Chavla's case, it was alleged that on 17.08.1993, the Circle Inspector received some information and he raided a house situated in Jawahar Nagar, Sri Ganganagar, belonging to Charanjit at 5.30 p.m, and noticed that four persons including one lady, were viewing obscene film on the television with help of VCR. He therefor, seized the cassette, television set and the VCR and registered a case under Section 292 of IPC. In this decision, the point arose for consideration whether possession of the obscene object is punishable under Section 292 of IPC. In the said Decision, it was held that if the possession is for the purpose of sale, hire, distribution, public exhibition or circulation, offence under Section 292 is made out but 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 of IPC.

14. It is not the case of prosecution that the accused were possessing the obscene files for the purpose of sale, hiring, distributing or circulating as mentioned in clause (a) of the Section 292 of IPC. I have already observed

that the act of the accused of privately viewing the obscene film on the laptop in the bungalow does not amount to public exhibition. Therefore, the act of the accused of privately viewing the obscene film does not constitute an offence under Section 292 of IPC .Clause (a) of sub-sec(2) of Section 292 of the IPC makes it clear that without proving the purpose of possession mentioned in the clause, a person cannot be convicted for the offence. As far as the aspect of obscene dance by some people in the bungalow is concerned , the said dance was not for the purpose of viewing by the general public. The people were dancing among themselves. The same was not for public exhibition. In such case, Section 292 cannot be attracted. That being so, the continuance of the proceedings against the petitioners shall only be abuse of the process of the court. It is, therefore, deemed proper to quash the charge under Section 292 of IPC against the present petitioners/applicant.

15. Consequently, the petitions succeed. The charge against the petitioners/applicant under Section 292, IPC is quashed. All the application/petitions disposed of in above terms.

{SMT. V.K.TAHILRAMANI, J.]

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