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## Need for Personal Space: Legalizing Pornography in India

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India though being the birthplace of the ancient science of sex, it is really a matter of shame that the post British India, considers it a taboo, to talk and discuss it in the public. Like many other ancient scriptures and technologies that were all initiated by India, but are now used and further developed by the western world, India, in this case too only boasts itself of having just invented this, but, with little implications in their modern life. Like the *Vedas*, *Upansihadas*, Ayurveda, Yoga, Mathematics, *Kamasutra* or the science of sex, had also developed in this part of the world first, but, is considered obscene in present day India. What is even more insane is that there are numerous, monuments, buildings of the ancient and medieval history still present in this country, which openly depicts sex in the form of sculptures and paintings, and are popular tourist destinations, but watching the same over electronic media has been labelled illicit.

Keywords: Pornography, Internet, legal, social taboo, sex

Soon after the formation of the sixteenth Lok Sabha, the Government carried out the '*Swachh Internet Campaign*' a process of keeping an account of all the porn websites followed by asking the Internet Service Providers (ISPs) to block websites containing adult content pertaining to sex and pornography (Kumar, 2014). According to Ravi Shankar Prasad, the minister of Telecom and IT, of the present government, who has been instrumental in this campaign, had expressed that even though porn is legal in other countries, there is always a moral obligation towards the society from the context of Indian culture for which it needs to be regulated.

Indians are among the most productive buyers of web adult content on the planet, and expanding quantities of men and women are streaming it on their cell-phones. The numbers are quite staggering, close to 13 per cent of total global mobile users, who watch adult content is from India, which means 90 lakh out of 7 crore global mobile users who has access to adult content followed by watching it are Indians (Budki, 2012). So, it is quite a herculean job on the part of the campaign to restrict this, overnight, especially to ban millions of porn websites, where most of them are based outside India. As per one evaluation done by the Indian Computer Emergency Response, there are more than 40 million porn websites so far and the greater part of them works outside India, where porn is legitimate (Kumar, 2014) and there are numerous paths to access the blocked websites by proxy settings or even with a cloned Internet protocol address. Plus, there are always the sources of the video parlors which rents off the cassettes and disks of the same, and of which almost none are a recognized and controlled retail sector.

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These initiatives of banning pornography is probably an outcome of the petition filed by legal counsel Kamlesh Vasvani who had requested the Supreme Court to initiate a complete ban of porn because he argues pornography excites people to commit heinous activities like rape, harassment and molestations of women (Software Freedom Law Centre, 2014). However, such an argument is matter to be established in the court of law and would require much debate. In such a scenario, we have few questions in hand viz, Does Indian culture in the light of present scenario not ready for porn consumption? What is the situation and impact of porn industry in countries where its consumption as well as distribution is legal? Can we legalize this porn industry followed by bringing regulations in its usage? Why should an adult individual or an adult couple of this country play hide and seek, to consume something very natural like foods and toiletries and feel harassed for a "personal space"?

### **Pornography: Definition**

Pornography is defined as "representation of sexual behavior in books, pictures, statues, motion pictures, and other media that is intended to cause sexual excitement" (Encyclopedia Britannica, 2016). However, to go by this definition would classify many literary works of all times and from many countries including romantic novels, art, short stories and not the least media products as pornography (Ydersbond, 2012). It is quite absurd and on further investigation it is observed that art productions tend to create some degree of sexual excitement as a knock-on effect, however, they are seldom considered as pornography and more as erotica. The word erotica is usually considered for "works in which the sexual element is regarded as part of the larger aesthetic aspect" (Encyclopedia Britannica, 2016). However, in this paper as a major facet while we are discussing the functioning of pornography industry, we observe that the broad literature available in media discourses often use the words 'pornography' and 'erotica' loosely. Further many discussions and debates revolving around the media economics of pornography industry tend to consider the selling and purchasing erotica products a part of pornography industry. So, while exploring the ramifications of pornography industry, we are considering the characteristics of pornography and erotica to be interwoven into one another and conflated into a single understanding of the one which creates sexual excitement.

### **Existing Industry Dynamics Worldwide**

Sex sells and always will. So, if there is an attempt by the government to ban the purchase of sex it is totally illiberal as banning its sale (The Economist, 2014). Selling sex to human senses in one form or another has been one of the oldest businesses on the planet and it is also one of the fastest changing one (Venkatesh, 2010). Now, with the advancement in new media technologies, this business and the desire to consume it have never been as large as it is in the current age. With the inception of special websites and apps these mediums allow information to flow smoothly between the buyer and seller striking satisfactory deals (The Economist, 2014). In the space of such an era, an item that once was accessible in the back rear ways of enormous urban communities has gone organized mechanical, readily available and straight into the homes, hotels and meeting halls as a potential business force, through easy options of the Internet search engines. But what astounds us the most is that a whopping 40 million Americans visit porn sites regularly and 200,000 Americans are identified as porn addicts (Webroot, 2016). Internationally, porn is a \$97 billion industry, as indicated by Kassia Wosick, collaborator teacher of human science at New Mexico State College (Nykaza, 2015).

The exact estimate of the extent of the pornographic industry is quite impossible, as no fixed authenticated data could be found for the statistics of this industry. In 1975 the aggregate retail estimation of all the no-nonsense explicit entertainment in the U.S. was evaluated at \$5 to \$10 million (Amis, 2001). 1979 Update of the Government Criminal Code expressed that "*in Los Angeles alone, the erotica business does \$100 million a year in gross retail volume*" (Wikipedia). Reports collectively point to the fact that global porn purchase was estimated at twenty billion US dollars and half of the purchases were only made in American market with a figure roughly touching ten billion US dollars (Covenant Eyes, 2015). This is as much as they spend on going to watch professional sports, purchasing music or going out to the motion pictures. Today there are well more than 800 million rentals of adult tapes and disks in feature stores all across the United States (Leung, 2003). It is greater than the National Football League, the National Basketball Association games, bottling industry and major league baseball (Harvard Law School).

Despite the fact that the exact size of the porn industry in the United States is not quite clear, it unquestionably produces considerable income. At the point when these incomes are brought at par with the enormous accessibility of free porn on the Internet, the extent and effect of erotic entertainment is really stunning. According to Bill Lyon, a former lobbyist for the defense industry, it utilizes the labour force of 12,000 individuals in California whose employment needs gets fulfilled by this industry (Leung, 2003). The tax paid by the industry is also huge, in the state of California alone close to \$50 million in duties and taxes are consistently deposited by key players. Further in the same article (Leung, 2003) a rundown list made in 2002 specified that 900 little and huge organizations work in the business. In that year, big cable operators like Comcast has gathered revenues in \$100 million from grown-up programming. USA's biggest cable network administrators, from Time Warner to Cablevision, are in the business of providing sexual content to their interested subscribers. Even respectable hotels like Hilton, Marriot, Hyatt, Sheraton and Occasion Motel offer porn materials on in-room pay-per-view TV systems (Leung, 2003). This service is taken by an incredible 50 per cent of their visitors which accounts to 70 per cent of the in-room profits.

## **The Reach of Adult Industry**

The business capital of porn industry just like mainstream Hollywood is Los Angeles. So far there are thirty-four production houses in Los Angeles alone (Wikipedia). Pornographic organizations like Vivid Entertainment, a movie house with a stature in adult entertainment much similar to that of Paramount or Universal in mainstream motion pictures have offices here. Vivid is one of the world's largest adult entertainment studios with estimated revenue of \$100 million (Pulley, 2005). It is involved in legalized production of porn films, it also self manages its distribution over DVDs and CDs and also directly sells them to cable companies, hotel businesses and also controls its release over the Internet (Vivid Entertainment). The business is huge now. It's standard. It's truly the same as what Playboy was 30 years back. Purchases are made at all platforms where selling and distribution has reached.

In the global context, Erotic entertainment has helped drive advancement of newest innovations in entertainment business for as long as 25 years. According to a report published in 2014 by Google, Sri Lanka and India have topped the list searching for the word 'sex' (Daily Mirror, 2014). For quite a long time, grown-up destinations like porn sites were the main to show profit on the Internet and hence make way for other businesses. Pornography sites have brought traffic which competes against the other popular sites

most viewed online, viz. Google and Wikipedia. For example, Xvideos, considered to be the world's biggest pornography site has a healthy data to speak for. It has 4.4 billion page views with a whopping 350 million unique visits every month (Pyne, 2015). Along with Xvideos, there are several other pornography sites which have spearheaded and served to create various mechanical leaps forward from online payment gateways to web streaming of the movies. Furthermore (Pyne, 2015) argues grown-up materials have discovered some way or another into diverse groups by distinctive means, whether it is by television, or it's by cable networks, individuals have become progressively agreeable with adult entertainment.

## Scenario in Other Countries

In the 1960s, Denmark sanctioned porn. According to an article titled 'Denmark: Pornography: What is Permitted is Boring' states that Denmark becomes the first state in modern history to abolish legal sanction against pornography for adults (Time, 1969). Due to this sanction, everything which is needed for the production of such films became legitimate. In most other European countries like Croatia, Cyprus, Czech Republic, Finland, Greece and Portugal production of pornography content is barred but purchasing and selling of pornography materials are legal. But most importantly what keeps the general populace sound and safe is the important prerequisites which come along with the legalization of pornography. Minors under the age of 18 are not allowed to be a part of the production and are also barred from purchasing or selling of pornographic materials (Pornography in Europe: Wikipedia, 2016).

Again, countries like Germany, Norway, Hungary, Russia and Spain along with distribution they pioneer in producing pornography materials. Turkey is considered to be the first Muslim country to legalize the production of pornographic materials (Pornography in Turkey: Wikipedia, 2016). But then according to the Turkish Penal Code, the country is quite strict regarding child pornography, as the offenders involved in such act would face five to ten years of imprisonment along with hefty fine (Turkish Penal Code, 2004). Porn is legal in France. In Sweden, broadband penetration is very high and fast speeds helps to create enormous wealth for web companies which distribute porn. New Zealand has a sound, lively and dynamic sex industry. It is continually switching to stay aware of the times.

In the United Kingdom, erotica as being what is indicated is not unlawful. It gets to be so if and when it qualifies as being indecent as indicated by the Obscene Publications Act 1959. The lawful test of indecency is the 'corruption and defilement' measuring stick (Obscene Publications Act, 1959). Some prominent countries in Europe, in which pornography is legitimate are Belgium, Germany, The Netherlands, Estonia, Finland, France, Latvia, Norway, Sweden etc. Whereas prominent countries from Europe which has not yet legalized it are Belarus, Lithuania, Ukraine, i.e. countries with the erstwhile influence of communism. Similarly, countries still under communism influence like China and Cuba have banned any kind of pornographic elements.

Countries in the Middle East and North Africa have also kept it under skepticism of prohibiting the adult content in visual media and over Internet. Further, in countries of Latin America, heavily under the catholic influence, possession of pornography and other literature related to sex is considered unlawful (Wikipedia, 2017)

Finally, there are countries which are ambiguous in their opinion like Australia, Iceland, Turkmenistan, Russian Federation, Japan and India (Wikipedia, 2017)

## Scenario in India

In the Indian context, these numbers are astounding too. The viewership trends of one of the popular porn sites Pornhub, observes that New Delhi tops in viewership with a presence of 39.2 per cent of porn traffic (Mohammed, 2016). Further there is a customization in the porn content which is mostly referred in colloquial language as 'desi' and there has been an increase of Indian search terms to explore the smut on Internet like "*Indian college girls*", "*Indian Bhabhi*", and "*Indian Aunty*" are widely used. Further this report also reveals the pattern of consumption of the Indian users (Mohammed, 2016). So, with the media innovations coming across in our day to day life, bringing a plethora of opportunities to consume pornography, it becomes indispensable to modify the existing laws and regulations shaping the future of the industry. It is also inevitable as a post-colonial nation that the current law controlling the fate of pornography and its actors stems out from the Victorian law especially from Section 292 of Indian Penal Code which was established in 1860.

## Current Laws and Regulations in India

In India while consuming pornography there is no offence, however, the law forbids in the production, publication and transmission of pornography materials (Mitta, 2011). Further according to Section 67 of The Information Technology Act 2000, the law of the land states "*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 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*" (The Information Technology Act, 2000).

The user can be convicted if there is anything beyond consumption of pornography, so in the innermost possibility of sharing a pornography related material among close friends can lead the user to imprisonment (Section 67 of The Information Technology Act, 2000). In this scenario the user is safe either when the content is accessed through one's personal device or when downloaded (by proper means of purchase and not pirated), watched only in her/his private space.

## Economic Opportunity by Legalization of Pornography

American grown-up amusement industry has developed impressively in the course of recent years by persistently changing and growing to speak to new markets, however the creation is thought to be low-profile and surreptitious. There is a supply plan; there is likewise an interest timetable very much alike to the essential financial model of value determination in a business. The porn content is charged on premium rates because of the huge taboo it is in the society. Furthermore, in light of the fact that you can charge a premium for it, the net revenue is higher. The margins in the business are high henceforth and the profitability is huge for the companies which have vertical integration across the entire stream of business.

While a hit porno motion picture can acquire much revenue, grown-up films have a long time span of usability and hence a very long shelf life thus can continue offering for quite a long time after their starting discharge, most entertainers see little of the benefits.

They are from time to time paid residuals, and regularly get just a level expense. The charges differ from \$350 to \$1,000 for a routine sexual moment to a couple of thousand dollars for more compelling sex (DiVirgilio, 2013). The interest for porn stays solid, because of its generally inelastic nature. Products and administrations have value versatility. An elastic product is one for which there is a substitute decent; for instance, as pen costs climb, the cross versatility of interest would bring about shoppers purchasing more pencils. An inelastic product is one for which there are few or no substitutes, for example, tickets to significant brandishing occasions or unique works by acclaimed craftsmen. As porn costs climb, purchasers would have next to zero substitutes for their self-gratification or love making needs. Generally, as the music business battles with persuading web clients that unlawful record offering and downloading is harming everybody, so to the porn business must persuade purchasers that illicit downloading and web robbery is likewise harming the whole market. As benefits lessening, fewer makers will be eager to use funding to make the merchandise and porn content, prompting diminished supply and a general diminishing in quality. Again, as the same music, in most cases is not soothing to ears, time and again, similarly, the same porn clip might not arouse the same excitement if viewed repeatedly, so there is always scope for newer production.

Pornhub, one of the world's biggest grown-up adult entertainment providing sites, has given access to their information to research agency Quartz, in laying out India's sexual inclination and porn propensities, pretty much as the administration researches the likelihood of presenting web channels on explicit substance. The information was accumulated between September, 2013 and September, 2014. India, which is most likely to have the second largest number of web clients on the planet very soon, and are fifth currently regarding the most number of day by day guests to the site, says Pornhub (Patel, 2014).

Also, India's first porn cartoon network started around 2008 with the iconic "*Savita Bhabhi*", by the Indian Porn Enterprise, which was later christened as Kirtu.com. The initial responses were so high that soon the producers, introduced a whole lot of new series, apart from the main character i.e. *Savita Bhabhi* and quite naturally have become a premium site, from the erstwhile free network. Further, it has integrated its chief competitor "*Velamma*". Altogether, it now runs some seven to eight series of pornographic comics, with purely Indian background and claims to have over 1 lakh viewership daily. It now even accepts partnership and subscription is very nominal and through a valid and safe payment gateway, with all leading cards being accepted. (Deshmukh, 2016)

It was under the circumstances, in the year 2012 and later again on 2015, the Government of India attempted to ban Internet pornography which raised many eyebrows and there were innumerable voices of concerns (Deshmukh, 2012). It was found from the Internet Service Providers that a healthy percentage of 30-70 per cent total browsing was on pornography. Further with the growing surge of mobile communications, voice services like Bharti Airtel Ltd. and Reliance Jio were hopeful to deploy higher speed 4G wireless Internet across the country. Interestingly this was backed up by large growth in data revenue where services like Bharti Airtel Ltd. reported a 59 per cent rise in data revenue by earning a whopping amount of 3085 crore Indian rupees (Ghosh, 2015). With 3G data services around, the sheer growth in data revenue and consumption of Internet is pertinent. The average usage per customer grew to 656 megabytes (MBs) along with an increase of data customer base to 46.3 billion.

Finally, it has to be kept in mind, that there is altogether a parallel fraternity of film industry, who are involved in the entire operation process of casting, production, post production and distribution, specialized in this sector, thereby feeding a good percentage of the population in the United States and parts of Europe. (Gradus, 2017, NetFlix)

## Cultural Impacts of Porn Legalization

Grown-up stimulation is so lucrative and productive that it's ended up a piece of the standard society - promptly accessible, effectively available, and everything except difficult to administer away. The most widely recognized worry about explicit entertainment is that it by implication harms women by empowering sexism, raising sexual desires and subsequently hurting compassionate relationships. Some individuals stress that it may even instigate viciousness against women. However these arguments don't prove to be true all the time as it has been observed that with the arrival of Internet porn there is a decline in sexual irresponsibility. As discussed in the earlier part of this article, that even in India, a considerable number of porn viewers are women. According to a report published by the Centers for Disease Control and Prevention (CDC), since 1990 USA's abortion rate has gone down by 41%. Further with the inception of Internet porn teen sex and rape have declined. Teen birth rate has fallen to 33 per cent and the sexual assault rape has gone down to 44 per cent (Castleman, 2009).

In 2007 analysts at the College of Zagreb in Croatia overviewed 650 youthful men about their erotic entertainment purchases and sexual behavioral preferences. As they reported in the files of sexual conduct, the researchers found that clients of standard, nonviolent porn were sexually as normal as non-users (Moyer, 2011). The same strives for different nations: as access to erotic entertainment developed in once prohibitive Japan, China and Denmark in the previous 40 years, assault insights plunged. Inside the U.S., the states with the slightest Web access somewhere around 1980 and 2000—and subsequently the minimum access to Web smut encountered a 53 per cent expansion in assault frequency, while the states with the most get to encountered a 27 per cent drop in the quantity of reported assaults, as per a paper distributed in 2006 by Anthony D'Amato, a law educator at Northwestern College.

## Legitimization in India

Despite being a multi-cultural country, this has been the common issue in every part of India and has information from history in almost all the ancient Indian scriptures. It has remained the oldest form of recreation, so, what if the pornography is legalized. It has to be kept in mind that, meeting the sexual desires by reaching out to a sex worker is always not feasible either due to medical concerns attached to the hygiene and infections of the cheaply available sex workers, or due to the high payment demanded by the posh and sophisticated call girls and gigolos. Further, there are cases, when a person has to spend a large part of life in solitude, may be due to job or any other concerns and don't have a partner. But, sex is like any other normal habits of food, urination or sleep. In such cases, such people gets subjected to the use of some low quality pornographic literature or videos, which in turn might lead to the deterioration of physical or mental health. It is actually in these cases that legalization of porn can be of help.

First, the proper habits been reflected in the videos of having proper hygienic sex and sober ways of love making. Second, the videos will be helpful, in avoiding damage to the genitals, under the impact of any rough usage. Third, even if a person is alone, it can help to ignite the excitement and help in ejaculation, by means of masturbation, as semen and other genital fluids needs timely removal from body, for the better health and proper sleep (Herbenick, 2010). Fourth, once it is made legal business, it would require a registration from the administration and hence would be reflected in the revenues of the administration, either in the form registration duty, tax or any other form, as seems suitable by the authority.



Fifth, it would help the cyber police or even the normal cops of the land, to have a better vigil, as all the source of production, sale and distribution of such films will be known. Further, the illegal and piracy can be dominated in a better fashion. Sixth, the same can be used in a broader sense of sex education of pupils in the graduating standards, with of course a bit of censorship. Seventh, the adult movie industry, in the United States, has now started producing ancillary products like sex toys and dolls. Though still not popular in India, with growing stiff competition and work culture, these might well become the source of stress buster for melancholic Indians, without involving any eye of the society, in the safe closet of one's room. Finally, this entire gamut of enterprise would hopefully lead to better developments in the society and would not actually objectivize women as mere sex elements. But, yes, the legalization should be only up to personal or private viewing or for reasons of medical education and strictly not for viewership into public in auditoriums, parlors or theatres or for minors.

### Safety Standards

But, with every good opportunity, come great responsibilities. Erica Lust – producer and director of adult movies, and an avid speaker of the internationally proclaimed TEDEX–Vienna Chapter, talks about the good content in such movies that would arouse sensuality and not spread harshness to women. She even backs that the teenagers can be best taught of sex education only by the interactive videos, and not just on paper and pen, as the whole subject is of physicality and requires demonstration, if not in reality but in virtually. Same are the opinions of adult film cinematographer, veteran Randall and famous porno actress Lisa Ann. (Jones, 2017; NetFlix).

There are also serious issues of human trafficking which can happen to young girls, falling prey to the unregistered agencies, which might lead them to flesh trading in the guise of offers of porn acting, or webcam strippers, which have caused the disappearance of several girls in reality, from the society and surrounding. (Salvarez, 2017, NetFlix) These cases should also be taken care of by proper law enforcement.

### Conclusion

With the impregnation of broad communications in our day today life, basically the web, reality of porn and the porn business in India can't be ignored. These are simply few of the famous indigenous porn sites. With access to any site facilitated anyplace on the planet, viewing porn over the web is less demanding than a stroll in the recreation center. Throughout the most recent decade, we have supported the methodology of teaching youngsters and grown-ups alike regarding sex training and encouraged sex education at all levels, however we despise the subject of expressing our needs by substance consumption such as porn. We have rebuked the individual who talks about it, hated the individual who has viewed it, and relaxed in the comfort of refusal to stay aware of our fickle rational soundness. We accuse porn for assaults however never suspected that the genesis of such criminal acts is only the degenerate personalities that have lost their own sense for other reasons, much of which needs to be understood by reflection on our social fabric. The economic losses incurred, opportunity costs wasted, employment options left unfulfilled and taxes not accounted for so far are good reasons for us to reflect on the choices that we have made and for the choices we are on the verge of making as a free market supporting democracy. When reflecting on the choices we have made and further we have to make it becomes indispensable to argue over legalization of porn industry in India. It may sound cliché;

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however, the truth cannot be ignored. But with legalization of porn industry, comes additional regulations too, as with great power comes greater responsibility. Safety of children has to be given much importance followed by implementing stringent laws where freedom of expression is not abused by the cynical. Further to avoid any skepticism among the various social actors involved in the pornography industry including the production house to porn actors, legalization of the pornography industry will make it certain that the system falls in place creating harmony in between the community and the pornography industry. And, as it is said, "*it takes only a poison, to kill a poison*", so should be in this case, at least the start should be in this manner.

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