

SEXUAL EXPLICITNESS IN THE AGE OF INTERNET

Nirmal Rallan* & Dr. Komal Vig**

* PhD scholar, Amity University, NOIDA.

** Associate Professor and PhD Supervisor, Amity University, NOIDA

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ABSTRACT: *Information technology has brought people closer. Communication channels have opened up like never before. The whole world has become a community and geographical borders are diminishing. Cultural exchanges have become the order of the day. Communications are instant and irrevocable. However, there are no taboos or restrictions and also no pre-censorship of the content on the Internet. Cyber world has become a free zone for any type of content. Sexually explicit content is uploaded and freely circulated in the cyber space without much restriction. The law makers and law enforcers are increasingly finding it difficult to control such circulation in the cyberspace. The researcher tries to analyse the problem and explain as to why such content cannot be a part of free speech.*

Key Words:

In the pre-internet age, the 'sexually explicit' materials or objects or content were generally confined to private spaces. Not everybody had access to such content. Printed material could be confiscated and publisher could be fined or put behind the bars for the objectionable content. 'When the focus shifted from print to visual display, there was a simultaneous shift from elite culture to mass circulation. The new media had a potential to reach much wider audience than before.'¹In this kind of media there was a provision for pre-censorship i.e. classification of content into adult and universal viewing. But this kind of prior check is not quite possible in case of Internet.

The growth of Internet has been phenomenal thanks to the contributions of sexually explicit material.²The internet has the potential to reach every home and every person across the world regardless of his or her age. Any sexual content available on the internet has the ability to reach a vast majority within no time. The advent of information technology has created new challenges for the law enforcers. There are innumerable ways in which communication can take place through new technologies without getting detected.

The Internet pressurizes the users to expose rather than hide. Baudrillard writes, "It is no longer then the traditional obscenity of what is hidden, repressed, forbidden, or obscure; on the contrary, it is the obscenity of the visible, of the all-too-visible, of the more-visible-than-visible. It is the obscenity of what no longer has any secret, of what dissolves completely in the information and communication."³

The technological advancement has also impacted the behavioral norms in the society. Technological boom, on the pretext of information-sharing has brought about lifestyle changes where acceptance for the banned content is being generated in the name of modernisation. There is consistent cultural exchange in terms of fashion, food habits, literature, cinema, etc. All this has had its influence on the sexual side of life too. 'Sexual revolution is visible in large sections of our society as regards freedom to dress up, freedom to expose body parts in public, etc. But the vast majority of population still maintains some conception of limits imposed by decency and some notion of a boundary line beyond which lies the impermissible.'⁴

¹Also see Susanne Kappeler, *The Pornography of Representation*, 28 (University of Minnesota Press, Minneapolis, 1986).

²Amy E. white, *Virtually Obscene: The Case for an Uncensored Internet* 3 (McFarland & Company Inc., Publishers, Jefferson, North Carolina, 2006).

³Baudrillard, Jean. [1978] 2007. *In the Shadow of the Silent Majorities*, trans. Paul Foss, John Johnston, Paul Patton, and Andrew Berardini. Los Angeles: Semiotext(e). as cited in Margret Grebowicz, *Why Internet Porn matters* 34 (Stanford University Press, California, 2013).

⁴See Harry M. Clor, *Obscenity and Public Morality* 9-10 (The University of Chicago Press, 1969).

'In this era of 'no-secrecy', cyber pornography has moved on from being embarrassing and obscene to just a sort of honest sexual expression and is widely defended as freedom of speech. Internet has come to be accepted as a medium of sexual expression. Pornography is one of the major component of the world economy. According to toptenreviews.com, over \$3,000 is spent every second across the world on pornography.⁵ The actual figures may be many times more. No doubt, Internet has become the major vehicle for generation and transmission of more and more porn.

In the pre-internet age, physical checks across the geographical borders was possible. Local community standards came handy to pin-point exactly whether the content was obscene or not. But things are not so in cyber world. Internet is characterized by individual approach with hardly any checks and balances as in case of other types of media. Television and films have proper checks in place with institutional set up in place.

'Citizens around the world are increasingly dependent on privately-owned spaces for carrying public discourse. We read our news, engage in political debate, write blog posts. But the more dependent we become on online platforms to exercise our right to free speech, the worse we'll feel it when the rug is swept out from under us.⁶ As a result whenever any attempt is made by the State to control or regulate cyber obscenity, the move is opposed by many in the name of free speech.

It may be recalled that the noble ideals of freedom were enshrined in our Constitution for a purpose. The purpose was to participate in governance, to question the authorities for any autocratic move, to choose our government representatives in a fair and transparent manner. It no way envisaged 'free sex' as part of our culture. Reasonable restrictions were put in place for maintaining *public order and decency*. It is submitted that unrestricted sexual depictions in public domain may promote a '*rape culture*' with selfish unreciprocated sexual behavior and sexual violence.

With the growth of information technology, there is an increased *democratization* of society with more and more claims on *free speech*. But then this free speech has a different face than what used to be in the pre-internet age. This free speech is omnipresent, thanks to social media. There is non-stop sharing of ideas, views and information 24x7. Governments all over the world are struggling hard to tame the beast but with growing technological advancements, this is a big challenge. With easy access and huge availability of online sexual content is perhaps taken as a legally permissible content by the common man. Moreover, the legal definition of 'obscenity' also provides no help to the law enforcers and the common man alike.⁷

No doubt, decency is the pre-condition to a civilized social order. Decency entails that sexual energies of the population is suitably channelized and not directed to unproductive ends. Therefore excessive exposure to sexual-explicitness needs to be curtailed by proper legal mechanism. Harry M. Clor says that "Mere prevention of crime is not the only function of law. Legislation seeks not merely to prevent the worst evils, but also to promote such higher forms of conduct and character as will serve the higher purposes of the community."⁸

⁵www.economywatch.com/world-industries/porn-industry.html visited on April 17, 2016.

⁶Jilian York, "The US Government Should Not Pressure Companies to Censor WikiLeaks" in Margaret Haerens and Lynn M. Zott (eds.), *Internet Censorship: Opposing Viewpoints* 56 (Greenhaven Press, Farmington Hills, 2014).

⁷Sec.292(1) Indian Penal Code (IPC) and Sec.67 of the Information Technology Act 2000 give a vague and ambiguous definition of 'Obscenity'.

Section 292(1) reads as "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, if taken as a whole, such as to **tend to deprave and corrupt person**, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.]

⁸ Harry M. Clor, *Obscenity and Public Morality* 183 (The University of Chicago Press, 1969).