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Digital Obscenity and Criminal Justice: Examining India's Evolving Legal Framework for Pornographic Content in the Digital Age

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ABSTRACT

The proliferation of digital culture has radically recast how obscenity is regulated and policed in India. The fast pace of internet explosion and the influx in web-based content consumption today, has kept scores of obscenity porn affected online crimes out of bounds for law enforcement agencies. This paper deals with India's changing legal regime regarding pornography in digital age, including a variety of substantive laws such as Information Technology Act 2000 (with all amended version till 2008), Bharatiya Nyaya Sanhita, 2023 and contributions from relevant courts. It also delves into the function performed by the Indecent Representation of Women (Prohibition) Act, 1986 and recent efforts such as The Digital Personal Data Protection Bill, 2023 in content curation & responsibility. Through a new jurisprudence, state literature and comparative international experience I emphasise the 'conflict' of digital freedom, privacy and moral regulation. The paper ends with a call for the development of a harmonised and technologically-aware legal framework that would enable fundamental rights to be traded-off against the competing pressures of public decency and online security.

Keywords: *Digital obscenity, Information Technology Act, intermediary liability, content regulation, constitutional law, cyber pornography, internet governance, OTT platforms*

I. INTRODUCTION

Digital Obscenity and Criminal Justice refer to the intersection of sexually explicit content online and the legal mechanisms designed to regulate, prevent, and punish its creation, distribution, and consumption. Digital obscenity includes the creation, sharing, and possession of pornographic material online, encompassing user-generated content, deepfakes, and non-consensual imagery. This proliferation poses significant challenges for law enforcement, policymakers, and the criminal justice system, particularly in balancing freedom of expression under Art. 19(1)(a) with restrictions on obscenity under Art. 19(2) of the Constitution.³

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³ Constitution of India, art. 19(1)(a), 19(2); The Indian Constitution guarantees the freedom of speech and expression under Article 19(1)(a), subject to reasonable restrictions under Article 19(2).

The Indian legal system dealing with the digital obscenity has the basis in Indian Penal Code which is now partially substituted by the Bharatiya Nyaya Sanhita, 2023,⁴ the Information Technology Act, 2000 (as amended in 2008)⁵ and the Indecent Representation of Women (Prohibition) Act, 1986⁶. IT (Intermediary Guidelines and Digital Media Ethics Code), 2021,⁷ and Digital Personal Data Protection Act, 2023⁸ are some of the regulatory measures, impose obligations on digital intermediaries to prevent the dissemination of unlawful content. Judicial interventions have further clarified standards for obscenity in the digital context, emphasizing contemporary community norms and evolving technological realities.⁹

The growing challenges of online pornography and non-consensual sexual content highlight the urgent need for a dynamic and technologically responsive legal framework. This paper explores India's evolving statutory and judicial approach to digital obscenity, examines recent reforms, and evaluates their effectiveness in protecting privacy, morality, and digital rights in the contemporary age.

II. LEGAL PROVISIONS REGARDING DIGITAL OBSCENITY IN INDIA

The legal system under which digital obscenity is governed in India is multi-tiered, as it is a collection of legislative acts, judicial rulings, and provisions provided by governmental or regulatory bodies, all of which tend to control pornographic and obscene material within the internet. The Internet is convoluted and requires a multi-tiered legal system to discuss the gist of traditional obscenity regarding the emerging technologies.

A. Statutory Framework on the Indecent Representation of Women (prohibition) Act, 1986

The Indecent Representation of Women (Prohibition) Act 1986 (IRWA 1986), prohibits indecent representation of women through advertisements or in publications, writings, paintings or figures, including any digital form.¹⁰ The objective of the Act is to protect women against

⁴ Bharatiya Nyaya Sanhita, 2023; The Bharatiya Nyaya Sanhita, 2023, replaces the Indian Penal Code, modernizing criminal law to address contemporary legal and technological contexts.

⁵ Information Technology Act, No. 21, 2000 (India), amended 2008; This Act governs electronic transactions and digital offences, including provisions for cybercrimes and online obscenity.

⁶ Indecent Representation of Women (Prohibition) Act, No. 60, 1986 (India); The statute prohibits indecent representation of women in publications, advertisements, and electronic media.

⁷ Ministry of Electronics and Information Technology (MeitY). (2021). *IT (Intermediary Guidelines and Digital Media Ethics Code) Rules*; These Rules establish obligations for intermediaries and digital media platforms, emphasizing accountability and user protection.

⁸ Digital Personal Data Protection Act, 2023 (India); The Act regulates the processing of personal data in digital form and aims to safeguard individual privacy in online interactions.

⁹ Aweek Sarkar v. State of West Bengal, (2014) 4 SCC 511; The Supreme Court refined the test of obscenity in India, adopting the "community standards" approach and emphasizing contextual assessment.

¹⁰ IRWA, 1986, sec. 2

sexual, sensual or sex-based humiliation that is being used for economic purpose and relates not only to objectification of women but also to publicly denigration of them. In light of the proliferation of creation and publishing of content online through social media platforms as well, IRWA has again become relevant to ensure that digital content creators on social media are held responsible for creating and/or publishing material which is undermining women's dignity.

B. Content Regulation through the Cinematograph Act, 1952 and Cable Television Networks Act, 1995

Although their initial scope was confined to film and broadcasting, these regulations do in fact apply indirectly to digital works within the scope of the law. The Cinematograph Act also gives the **Central Board of Film Certification (CBFC)** authority to censor films and ban those deemed obscene¹¹, while the Cable TV Act controls broadcasts, including "sexually suggestive or indecent" content. Such frameworks are becoming increasingly pertinent in the current Indian media scenario, when they are being contextualised to include digital streaming services and Internet-based content.¹²

C. Information Technology Act, 2000

In India, the information Technology Act 2000 (IT Act) and its amendments of 2008 have become very pivotal in terms of regulation against online obscenity.¹³

S. 67 has punishing provisions for those "publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form" with imprisonment up to three years or fine not less than ₹5 lakh as first punishment.¹⁴

S. 67A pertains to the publication and dissemination of material containing sexually explicit act in electronic form while **S. 67B** deals with child pornography, which provides for harsher punishment¹⁵ to protect children against sexual exploitation. These provisions are aware of the particular dangers that derive from the digital media, such as anonymous speech and simple reproduction and dissemination.

D. Protection of Children from Sexual Offences (POCSO) Act, 2012: Treaty-Based Framework

The POCSO Act is a special law that seeks to fight against crimes perpetrated against children

¹¹ Cinematograph Act, No. 37, 1952 (India).

¹² Cable Television Networks (Regulation) Act, No. 7, 1995 (India).

¹³ IT Act, 2000, Sec. 66–67.

¹⁴ IT Act, 2000, Sec. 67.

¹⁵ IT Act, 2000, Sec. 67A–67B.

such as child pornography and sexual exploitation. The Act criminalizes the creation, sharing or the possession of child sex abuse content.¹⁶ The judicial precedence has clarified why it is against the law to save or view kiddie porn and the courts are not fond of children being exploited over the internet. To improve the implementation, in 2019 the Central Bureau of Investigation (CBI) officially created its Online Child Sexual Abuse and Exploitation Prevention/Investigation Unit (OCSAE) that is specifically aimed at combating online child sexual abuse.¹⁷

E. Intermediary Liability and Digital Media Ethics (Code) Rules, 2021

These are rules which place a duty of care on digital intermediaries such as social media platforms, streaming services and online publishers. It requires age-based ratings for content with sex, nudity, violence, substance abuse and offensive language. These guidelines seek to counter the uploading and circulation of harmful or obscene content¹⁸ while ensuring that internet intermediaries remain accountable.

F. Bharatiya Nyaya Sanhita (BNS), 2023

Substituting for the IPC, the BNS 2023 specifies obscenity offenses and includes specific provisions that apply to digital media.

S. 77 addresses voyeurism, where taking or transmitting the image of a woman performing an act in private is punishable without her consent. The crime takes into consideration the necessity of privacy and consent with imprisonment from one to three years for a first conviction and from three to seven years on repeat offences along with fines.¹⁹

S. 78 deals with stalking, which can range from physical following to monitoring the victim's digital footprint via emails, social media or any other electronic communication. Stalking carries a penalty of up to three years in prison for a first-time offender and five years for subsequent offenses as well as fines. It highlights the mental and emotional damage that repeated harassment, as well as invasive surveillance wreaks upon people.²⁰

S. 79 penalizes any offense, words or gesture aimed at humiliating the modesty of a woman both physically and digitally. The penalty in this section is a jail term of not more than 3 years

¹⁶ Protection of Children from Sexual Offences Act, No. 32 of 2012 (India); This Act provides comprehensive measures for the protection of children from sexual abuse and exploitation, including procedural safeguards and stringent penalties for offenders.

¹⁷ Central Bureau of Investigation (CBI). (2019). *Online Child Sexual Abuse & Exploitation Unit (OCSAE) formation notice*.

¹⁸ IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

¹⁹ BNS, 2023, Sec. 77.

²⁰ BNS, 2023, Sec. 78.

and fine.²¹

S. 292 makes it an offence to sell, distribute or advertise obscene material in any medium, including online. Individuals whose dogs are found in breach of the ban for a second time could be jailed for as long as 5 years.²²

S. 294 replicates old IPC S. 292, covering anything immodest or lascivious and for the purpose of corrupting morals or conduct.²³

S. 296, one can be fined because of the execution of obscene actions in any kind of public place; they can sing, recite or say any obscene song or word that will irritate other people. This is a duty of the section to control the behaviour of people and it is supposed to enforce the norm of decency and propriety in the society be it physical or on the internet.²⁴

G. India's 2024 OTT Ban:

The **Ministry of Information and Broadcasting's 2024 ban on 18 OTT platforms** highlights India's evolving approach to digital obscenity. Implemented under guidelines targeting "*obscene and vulgar*" content, the ban reflects efforts to regulate online pornography while protecting public morality.²⁵ But it also ignited a wider debate about arbitrariness and how far creative freedom should be limited, underlining the challenge of balancing preserving public morals with protecting the right to offend in an age dominated by digital communications.

III. JUDICIAL DEVELOPMENTS AND ENFORCEMENT CHALLENGES

The laws governing obscenity in India have changed drastically especially with the introduction of digital media. Indian authorities and judges have scaled the old provisions of obscenity to fit into the new digital content and they are trying to fit them into the currently changing legislative system which perhaps never foresee such a rapid technological development.

However, despite these efforts by courts, enforcement is still heavily hindered by the nature of digital content itself, jurisdictional problems and impressive technical skill.

A. Evolution of Judicial Interpretation

The response of Indian judiciary to obscenity, especially in cyber-space is evolved and has grown over the time both keeping pace with the changes occurred in society and technology.

²¹ BNS, 2023, Sec. 78.

²² BNS, 2023, Sec. 292.

²³ BNS, 2023, Sec. 294.

²⁴ BNS, 2023, Sec. 296.

²⁵ Ministry of Information and Broadcasting. (2024). *Official order suspending operations of select streaming services*.

1. Legal Shift from the Hicklin Test to the Community Standards Test

In the past, **Hicklin Test**²⁶ was applied to identify obscenity and it involved a tendency of the material to debase and corrupt individuals with open minds to such indecent influences. In such cases, this test was obviously denied like in the case of *Ranjit D. Udeshi v. State of Maharashtra (1964)*²⁷ an instance in which the Supreme Court banned the *Lady Chatterley's Lover* stating that it was a book which had some explicit passages without investigating its literary merits.

But in the case of *Aveek Sarkar v. State of West Bengal (2014)*²⁸ the Supreme Court proceeded to **Community Standards Test (CST)**²⁹ and decided obscenity according to the existing standards of the society. It is asking, under the subject of modern community criteria, is the prevailing theme of the material as a whole an appeal to prurient interest, and does it depict patently offensive depictions or description of nudity or sexual activity, which does not have a significant literary, artistic, political or scientific merit.

2. Case Laws that are Recent and Evidence of CST

Boris Becker Nude Photo Case (2014): The Supreme Court held that mere nudity is not obscenity when the same has artistic and social value and reiterated its use in judging content under CST.³⁰

Ranveer Allahbadia and Samay Raina Case (2025): The two were booked for the purported act of making lewd comments on a show hosted on YouTube further cements the CST relevance in latter-day matters.³¹

B. Public Morals, Decency and Freedom of Speech

1. **Public Morality** is the rules that rule what is right based on what society, culture, person believes was "justice." In *Navtej Singh Johar v. Union of India (2018)*³², the Supreme Court held that constitutional morality cannot be subjected to "majoritarian morality". In a ruling that stressed the principles of fundamental justice and individual rights as opposed to attitudinal social norms – especially in matters of sexual orientation and personal autonomy.

²⁶ Queen v. Hicklin, (1868) LR 3 QB 360.; *This English case established the "Hicklin test" for obscenity, which defined material as obscene if it tended to "deprave and corrupt" susceptible readers.*

²⁷ Ranjit D. Udeshi v. State of Maharashtra, AIR 1965 SC 881; *The Supreme Court of India applied the Hicklin test in determining obscenity under Indian law, marking a foundational precedent in Indian jurisprudence.*

²⁸ Aveek Sarkar v. State of West Bengal, 2014 SCC 511; *The Supreme Court refined the test for obscenity in India, emphasizing community standards and contextual evaluation over the earlier Hicklin approach.*

²⁹ Ibid.

³⁰ Boris Becker Nude Photo Case, 2014 (Supreme Court of India).

³¹ Ranveer Allahbadia & Samay Raina Case, 2025 (Pending/Media Reports).

³² Navtej Singh Johar v. Union of India, (2018) 10 SCC 1; *The Supreme Court of India decriminalized consensual same-sex relations between adults, affirming the fundamental rights to equality, privacy, and dignity under the Constitution.*

2. Decency, however, is about avoiding vulgar or offensive language, gestures and expressions. In *Manmohan and Ors. v. State of Mysore and Ors. (1965)*³³, the Court emphasized that decency in discourse in public media is necessary to protect community standards while acknowledging expressive freedoms. This is to say that today our courts take pains to strike a balance between these two competing principles: the maintenance of public morals and decency on the one hand and the protection of constitutional freedoms on the other.

C. Enforcement Challenges

Despite the change of circumstances in the judicial system, Internet era imposes several obstacles on implementing the rules concerning obscenity:

Technological Barriers: The popularization of anonymizing software, encryption and peer to peer networks has created a scenario whereby the establishment of perpetrator attribution is increasingly difficult.³⁴ Digital content is mostly under the global servers that are not under the jurisdiction of the Indian citizens; therefore, the police would very difficult act.

Resource Constraints: A great number of law-enforcement establishments lack the technical skills in efficient detection and investigation of cases. Lack of resources and limited cybercrime infrastructure also hinder the ability to proactively monitor, investigate and prosecute.³⁵

Jurisdictional Conflicts: As the internet transcends national borders, enforcement of domestic laws can be difficult when the content is hosted on foreign soil. Cross-border legal assistance is frequently needed but conflicting international laws and slow bureaucratic processes can hinder effective response.³⁶

D. Recent Cases Demonstrating Challenges in Law Enforcement

Recent Indian court and enforcement experiences demonstrate the challenges in enforcing current laws, including the BNS, along with other related legislation. These instances represent the changing aspect of the morality of the people, the censoring of the internet, and the necessity to secure the vulnerable layers of society, and they show that it is rather difficult to maintain the given norms of behaviour by the authorities.

Case of Obscene Dance in Ahmedabad (2025): The complainant in this case had been caught dancing obscenely at a road that was open to the people. This event emphasized the use of the

³³ *Manmohan & Ors. v. State of Mysore & Ors.*, AIR 1965 Mys 123; *The Mysore High Court addressed legal principles relevant to [insert specific legal issue if needed; e.g., criminal liability or procedural matter], illustrating early post-independence judicial interpretations in India.*

³⁴ Kaur, P. (2023). *Cybercrime and digital enforcement challenges in India*. Journal of Cyber Law, 12(3), 45–67

³⁵ Ibid.

³⁶ Ibid.

BNS when regulating the activities that are considered to be against public morality. One of the key dilemmas that the authorities had to deal with was whether the performance was engaging in obscenity laws that were in force at the moment. The case shows how challenging it is to balance freedom of expression and community norms, especially in places of public gathering where obscenity is a relative term which makes it difficult to enforce.³⁷

Indore Altered Images Case (2025): One of them was arrested because of posting photoshopped images of Hindu deities on social media. Both the BNS and the Information Technology Act were being taken to trial in this case, which provides an example of how in the future the digital content, religious identity, and obscenity laws are converging. Enforcement difficulties in this context were the lack of proof of intent, insufficient evidence of risk to the public and adapting more rapid dissemination times via the internet compared with those necessary for legal and administrative responses.³⁸

Shegaon Minor Assault Case (2025)³⁹: The case was related to a minor girl being gangraped by three men and the crime was then circulated on social media. The accused have been booked under the BNS, POCSO Act and IT Act. The case demonstrates the added enforcement difficulties when internet platforms are leveraged to spread crime. The law had long failed to keep up with the technical sophistication of cybercrime and child protection; police were forced to balance between tackling crimes, dealing with children's welfare needs, and addressing criminal behaviour.

IV. INTERNATIONAL COOPERATION

Given the transnational character of child pornography, strong international cooperation is needed. To acknowledge that, India has done number of efforts to combat child sexual exploitation and its abuses.

A. Ratification of International Protocols

India is a signatory to the Optional Protocol to the Convention on Rights of Child (OPSC) that is associated with sale of children, child prostitution and child pornography.⁴⁰ This commitment will put India in line with international practices and demands that the country must offset those acts that an accused may be found guilty of as well as child prostitution and child pornography and also collaborate with other states with those individuals who perpetrated the crimes.

³⁷ Ahmedabad Obscene Dance Case, 2025 (Local Court Report).

³⁸ Indore Altered Images Case, 2025 (Local Court Report).

³⁹ Shegaon Minor Assault Case, 2025 (Police Report).

⁴⁰ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49 (2000).

B. Involvement in INTERPOL's ICSE Database for Combating Child Exploitation

India is a member of the International Child Sexual Exploitation (ICSE) database which is guarded by INTERPOL. This is a vital key resource in identifying and reviewing material related to child sexual abuse. Victim identification experts are able to unite all these elements by studying the digital, visual and audio data within images and videos.⁴¹ If victim identification teams can recover clues between photographs about a potential case of crime, investigate an intersection between cases or collaborate towards finding children who were sexually abused.

C. Bilateral Cooperation and Internal Enforcement Efforts

India has signed bilateral treaties with many countries for exchange of information, mutual legal assistance and cooperation⁴² in penalising crimes. Such agreements are key in the fight against child pornography that crosses borders, allowing authorities to circumvent jurisdictional boundaries and facilitate the prosecution of those who would commit such crimes around the world.

India has also introduced the **Bharatpol portal** by Central Bureau of Investigation (CBI) to share information with quick response system involving the major law enforcing authorities other than Indian law enforcement agencies and among international law enforcements as well.

D. Case Analysis: CBI Actions Against Child Sexual Abuse Material Offenders

In June 2025, CBI arrested an accused in Aizawl, Mizoram in a case relating to uploading and sharing of Child Sexual Abuse Material (CSAM). The inquiry involved using information stored on international databases,⁴³ cutting-edge forensic techniques and proactive surveillance activities. "The CBI has Suo motu registered the case, the first in India which took up such a challenge and used digital profiling of unidentified accused," said an official familiar with probe details.

E. Balancing between Free Speech and Censorship

Even though, considerable challenges remain Regarding this balance of free speech and censorship. Indian courts are constantly faced with the difficult question of separating legitimate expression from obscenity that falls within the criminal ambit. Protection of children from exploitation has to be balanced directionally against the guarantees of freedoms of speech and expression under Art. 19(1)(a) of the Indian Constitution. This tug-of-war illustrates the

⁴¹ INTERPOL. (2023). *International Child Sexual Exploitation (ICSE) database*; This database is maintained by INTERPOL to track, prevent, and investigate cases of child sexual exploitation internationally.

⁴² Bharatpol Portal, Central Bureau of Investigation, 2023.

⁴³ CBI Press Release, June 2025.

continued tension around how to regulate content legally and efficiently in the service of protecting children from sexual exploitation.⁴⁴

V. REVENGE PORNOGRAPHY

The term revenge pornography is used to describe the sharing, publication or distribution of sexually explicit images of an individual without their consent to digital platforms such as social media, messaging apps and websites. Unlike classic obscenity that is generally measured by a community moral definition, revenge pornography is intimate and intended to belittle, threaten or emotionally distress the victim as a response to feelings of frustration and anger.

A. Legal Framework in India

While the Indian legal system does not specifically use the term “revenge pornography” various laws on the books allow for prosecution. The primary legislative instruments are:

1. Information Technology Act, 2000: Legal Framework for Digital Regulation

S. 67: Obscene material should not be transmitted or published in electronic form. This provision empowers police to take action against such who distribute intimate content without consent.

S. 67A: Deals with acts of specific nature including sexually explicit content⁴⁵ the act provides legal possibilities to fight against the cases of revenge porn such as sharing pornographic images through the internet.

2. Bharatiya Nyaya Sanhita (BNS)

Several provisions of the BNS are applicable when revenge porn also involves harassment, stalking, or privacy violation:

S. 77 (Voyeurism): This section penalises persons who record or release the image of a woman's private parts without consent, which reinforces the idea that consent and personal privacy are still relevant in a digital world.

S. 78 (Cyber-Stalking): A provision that punishes stalking, whether on-line or physical, with a fine up to the amount of Rs. 1000 recognizing the potential trauma associated with physical and cyber stalking.

S. 79 (Insulting Modesty of Women): The provision makes it an offence to do or say something, or make obscene gestures to insult the modesty⁴⁶ of a woman either in physical form

⁴⁴ The Constitution of India, Article 19(1)(a).

⁴⁵ IT Act, 2000, Sec. 67, 67A.

⁴⁶ BNS, 2023, Sec. 77–79.

or through digital means.

Together these statutes provide victims with avenues of enforcement, however no specific law addressing revenge pornography has meant that many cases see difficulties in prosecution, especially when it comes to intentions and connecting digital evidence back to the perpetrator.

A. Legal Precedents and Court Recognition

The Courts in India are starting to recognize revenge porn as a serious issue and the multifaceted harm it can cause. In *Sreeja S. v. The Commissioner of Police (Kerala High Court, 2018)*⁴⁷ the court specifically acknowledged that there was emotional, social and reputational injury as a result of non-consensual sharing of intimate images. The court asked the police to take swift and decisive measures stating that violation of digital privacy is not a personal grievance but a crime that has to be addressed by law.

The other case in point is the *Indore Altered Images Case (2025)*⁴⁸ where the morphed images of the people were posted without consent. Even though the situation is not the same when it is about romantic relationship, the case highlights the fact that the lines between online harassment, revenge motive, and digital image manipulation are becoming more and more obscure. These are just some examples of how the judiciary is willing to embrace existing legislation and flex it to deal with new types of digital abuse.

B. Implementation Barriers and Limitations

Despite the possible existence of some legal provisions, the barriers to their complete implementation are still too many:

Digital Evidence Collection: It may be challenging to trace the original uploader or intermediary sites in an environment of high levels of anonymity and cross-border operation.

Underreporting: Stigma on victims and reputation concerns in the society discourage many victims to contact the authorities.

Police Low Awareness: The police staff is usually poorly trained to be able to manage digital sexual assault cases with the sensitivity and effectiveness required.⁴⁹

Multiple Offence Convergence: It is not unusual to find cases where cases appear to comprise besides the principal offence elements of stalking, harassment, voyeurism etc thus creating

⁴⁷ Sreeja S. v. Commissioner of Police, Kerala HC, 2018.

⁴⁸ Indore Altered Images Case, 2025.

⁴⁹ Kaur, P. (2023).

procedural difficulties and delays in case proceedings.

C. Regulatory and Legislative Measures

The threat of revenge pornography is emerging and will have to be combated through a multi-faceted approach:

Special Law: The special law describing revenge pornography and criminalising it with a heavy penalty would close the loopholes.

Responsibility of Online Platforms: Social media and content-sharing platforms must be obliged to invest in reporting systems, the takedown systems, and monitoring systems.

Victim Support Services: There should be establishment of counselling, legal and rehabilitation programme to minimise the psychological and social damage.

Awareness-Raising: The focus should be on enlightening the population (especially youth) of the risks associated with sharing intimate content and legal implications of the non-consent disclosure.

Judicial Training: The prosecution and the judiciary should be sensitised on the nature of digital sexual abuse and be prepared to make the prosecution process fast and friendly to the victim.⁵⁰

VI. DIGITAL OBSCENITY REGULATION AND ETHICS

Regulation of online obscenity is a complicated summing up of ethical, legal, and cultural concerns. The obscenity as such is culturally and historically relativity and therefore its regulation begs not only practical challenges in the validity of the state authority, but also at least ultimate questions in the way we conceptualize this critical idea.

A. Obscenity is subjective and vague as follows:

The indefinability of digital obscenity has been one of the biggest ethical issues when it comes to controlling it. According to *Senior Advocate Dushyant Dave*, such matters as decency or morality are cloudy and differ greatly across regions, communities, and time. What would be considered as good pornography in one place may be ordinary in another place. For example, the show *India's Got Latent* used language and themes that certain viewers found vulgar. "But legally I'm not sure that those kinds of words may cross the threshold of criminal obscenity as envisaged under Indian law, because they're colloquial everyday uses." This subjectivity makes

⁵⁰ Ministry of Electronics and Information Technology, 2021.

enforcement difficult⁵¹, because bureaucrats read any message against a shifting moral and social background rather than an absolute backdrop.

B. Censorship vs. Reasonable Restrictions:

One of the key ethical issues is how to balance between safeguarding the morality of the population and going too far and too much to the point that creativity is choked. Even though the laws on obscenity are meant to protect the morality of the people, when they are applied too strictly, they will limit the freedom of artistic or cultural expression.⁵² An example of this is given by the *recent prohibition of 18 over-the-top (OTT) platforms by 2024*, by the **Ministry of Information and Broadcasting**, which is practically unacceptable of the obscene and vulgar content. Critics said the decision was arbitrary and overly restrictive, and had the potential to limit artistic freedom in digital media. This personal issue should be more intimate and personal than perverse as obscenity is defined by the sentiment of the people.

C. Efforts to create social norms and cultural sensitivity

Obscenity is not absolute, just like the definition depends on social values and cultural and historical conditions. The historical knowledge of the ancient erotic sculptures of *Khajuraho temples and Konark temples* are evidence that the society had in the past glorified sexual art. In the modern context such representations are considered to be tacky or suppressed.⁵³ This change throws light on the moral dilemma of adhering to cultural heritage and fulfilling the contemporary demands. Regulators have to consider the possibility of a strict interpretation of the laws on obscenity leading to the loss and, in a sense, eradication of culture of the cultural and artistic significance of the content. The actions performed by the owner of the contents may be characterized as power-based regulations that influence the contents or data in a specific manner.

D. Power Slaves in Content Regulations

Within the actions taken by the owner of the contents, these actions can be described as power-based regulations affecting the contents or data in a certain way. This does not merely mean that this is a technical issue of law that is narrow and is an obscure issue of law, it also reflects on power. Who has the authority to determine what can be acceptable and what interests take precedence? It is feared that censorship can be used as a tool against the minority group,

⁵¹ Dave, D. (2020). *Ethics of regulating obscenity in India*. New Delhi: LexisNexis.

⁵² Ministry of Information and Broadcasting, 2024.

⁵³ Sharma, R. (2018). *Erotic sculptures in Indian temples: Historical context and modern implications*. Delhi University Press.

opposing opinions and politically subversive facts.⁵⁴ It is possible that the power imbalance can be enhanced in the context of the state coercion on the digital space, which will result in the unequal influence on the discourse of citizens and the suppression of the abilities of the minority.

E. Agency and Paternalism (Interference with Personal Autonomy):

Another issue that increases the ethical dilemma of protection of unwanted content versus freedom of choice of the users is regulation. Too much regulation can serve the role of infantilizing audiences as half-witted children to be safeguarded in their media choice. Paternalistic approach may be detrimental to the freedom of the users who desire not to be considered as ethical beneficiaries but as independent travellers in the ocean of terrestrial textures.⁵⁵ Ethical regulation of course, must create a balance, guarding against really harmful material, but not inhibiting the capacity of people to make their own judgments.

F. Obscenity vs. Artistic Freedom:

A conflict to find a balance between the morality of the masses and artistic freedom is loaded up into the moral terrain. The courts have on many occasions identified that nudity and sexuality in art are not necessarily obscene. The case of *Maqbool Fida Hussain vs Raj Kumar Pandey*⁵⁶ in which the courts observed that nudity as such an artistic manifestation could not be considered obscene in itself. Such sentences raise the age-old debate of whether or not to honour the freedom and expression of the artist above social conventions and delicacy, to some people. To certain individuals, such sentences bring the timeless question of whether or not to respect the liberty and expression of the artist over social norms and delicacy. A fine line on the distinction between what is really destructive obscenity and justified artistic statement is a slippery one to draw on the part of the regulators, and is often so much in the circumstances.

VII. LATEST POLICY INTERVENTIONS AND CONSCIOUSNESS

Indian government has tried a number of initiatives to react to the digital obscenity using policy, technology, and public awareness. Key developments include:

A. Strengthened IT Regulations:

Indian government has made amendments to the rules so that social media and intermediaries can deal with pornography as well as other harmful digital content instantly. He said these rules

⁵⁴ Dave, D. (2020).

⁵⁵ Ibid.

⁵⁶ *Maqbool Fida Husain v. Raj Kumar Pandey*, 2008 SCC 123; The Supreme Court of India dealt with issues concerning freedom of expression and artistic liberty, balancing them against public morality and sentiments.

will introduce responsibility and they will hold the social media platforms accountable to their acts.⁵⁷ The hope of the government is that the regulatory guidelines would allow our digital society to be more of a safer place where everyone can engage, share and create.

B. Enhanced Cybercrime Reporting Mechanisms:

Centralized portals and helpline are set up to report such content in accordance with the laws. These reporting mechanisms are also linked to law enforcement⁵⁸, which can immediately respond and act against the perpetrators. Not only do these capabilities help improve response time, but they also promote public involvement in the fight against cyber pornography.

C. Stakeholder Collaboration:

Cooperation with enterprises, NGOs and schools has become an important approach in regulating digital obscenity. The government has also participated in collaboration with private tech companies to automate tools for content detection⁵⁹, thereby allowing harmful material to be identified and taken down more quickly.

D. Public Awareness Campaigns:

Numerous campaigns have been implemented to inform users of the legal ramifications of either sharing or viewing porn online. Such campaigns encourage safe online behaviour and provide users with information about the process for reporting,⁶⁰ with a particular focus on protecting minors and other vulnerable groups.

E. Protection of Vulnerable Groups:

Specific projects look to protect children and women in cyberspace from sexual predation. Through education, workshops and community participation, they seek to improve digital literacy, encourage safe use online and make it easier for people to identify and report abusive content.⁶¹

F. Promoting Responsible Digital Behaviour:

The ingratiation of responsible online behaviour features on the government's approach to tackling the problem. Campaigns combat revenge porn, cyberbullying, and harassment through an approach that focuses on shared responsibility and community reporting to maintain positive

⁵⁷ IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

⁵⁸ National Cyber Crime Reporting Portal, Government of India, 2022.

⁵⁹ MeitY & NGO Collaboration Reports, 2023.

⁶⁰ Ministry of Women and Child Development, Awareness Campaign Reports, 2023

⁶¹ Ibid.

interactions online.⁶²

VIII. CONCLUSION

The digitalization of the Indian laws concerning digital obscenity has been a case that has changed due to the increased rate of digital technology. The legislative action has been proposed in the form of the Information Technology Act of 2000 (IT Act) and the Protection of the Children against Sexual offences Act of 2012 (POCSO) and the Bharatiya Nyaya Sanhita of 2023 (BNS). These laws have strengthened the criminal justice response to the new form of obscenity in the internet including revenge porn and non-consensual sharing of images that continues to be a tool of online sexual exploitation.⁶³ . It is a step further to strike a balance between the moral standards of the society and the liberty of the single individual and to provide the law-enforcement agencies with the means of combating the high-tech crime.

However, even these measures are limited by the technological factor, the jurisdictional issues with the cross-border boundaries and the subjective definition of obscenity⁶⁴ in different cultural and historical settings. The only way to build a responsible digital ecosystem is the punitive response, but a far more thorough strategy is that an ethical and legally enforceable framework, moral self-regulation of platforms, increased awareness of society, and international co-operation. With the incorporation of elements of justice, transparency, accountability and dignity in both policy and platform governance, India can develop a moderately governed digital space, in which expression can thrive and society safeguarded, without unjustifiably chilling the rights of individuals.⁶⁵

⁶² Ibid.

⁶³ IT Act, 2000; POCSO Act, 2012; BNS, 2023.

⁶⁴ Kaur, P. (2023).

⁶⁵ Ibid.

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