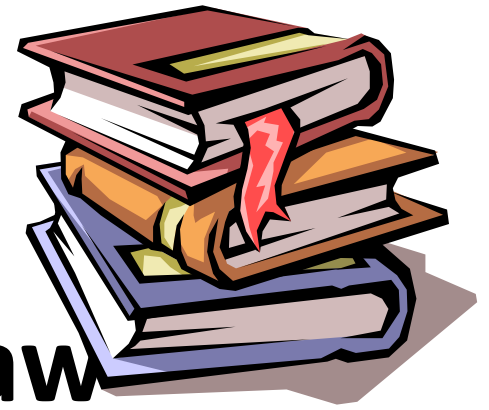




Media & Criminal Law

by Dr KVK Santhy

NALSAR

Santhy.nalsar@gmail.com

volume of the problem

- Broadcast Audience Research Council, (BARC) India : TV viewership grew by 9% in India in 2020.
- Non-Prime Time (NPT) ,General Entertainment Channels (GEC), News and Kids, grew by 16%, 26% and 31% respectively in 2020 compared to 2019 (TV viewership in India grew by 9% in 2020: BARC, 2021).

Concerns with Crime Media

- Impact on jurors through the media trials
- • Rise of fear of crime in consumers
- • Creation of an image of degraded view of society
- • Stimulating crime through ideas than just reporting it
- • Availability of options to record content is available such that it can be viewed subsequently as well as repeatedly as per one's discretion.
- Impact on vulnerable communities like women, people with mental illness and minorities
- • Portrayal of police, often in a negative manner
- • Stereotyping in terms of images of an “ideal victim” as helpless and innocent while the “ideal criminal” as lacking essential human qualities
- • Distortion of public opinion
- • Real life violence as a consequence of media representations of violence



Colorado mass shooting incidence on 20 July 2012 during the screening of the movie Batman: The Dark Knight

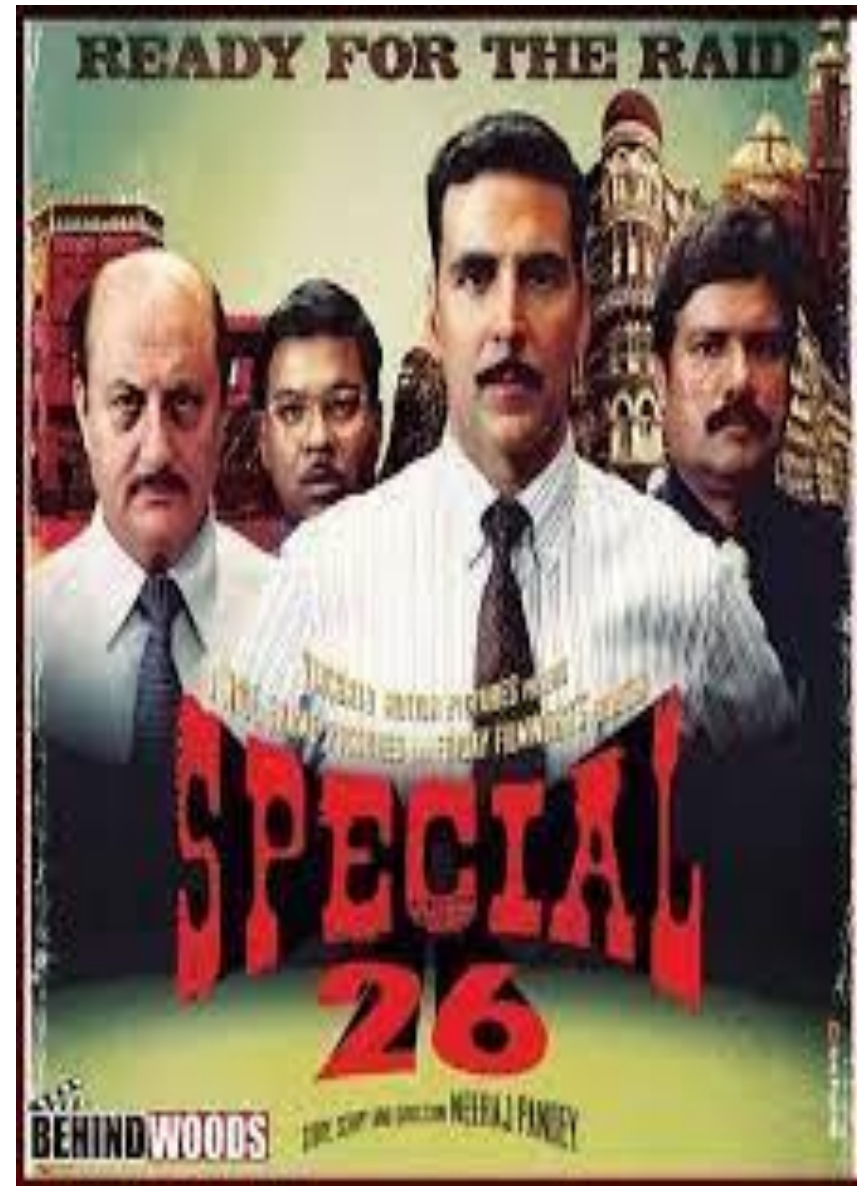
The convict James E. Holmes came in wearing a ballistics helmet, bulletproof vest, bulletproof leggings, a gas mask and gloves.

He detonated multiple smoke bombs before shooting the unsuspecting crowd of hundreds of attendees. 10 died at the scene, while 2 died at local hospitals. 70 were

injured. Within a few minutes after the incidence, Holmes was arrested. He stated that he was 'The Joker', the villain in the second instalment of the "Batman" movie trilogy, "The Dark Knight." Investigations found large quantities of ammunition at his home (Jacobo, 2017).



- US state of Maryland, a 28-year-old male threatened to shoot a former employer while comparing himself to the “Joker” when police took him into custody (Gorman 2012).
- Inspired by the Hindi movie Special 26, a gang of 5 people disguised themselves as CBI officials and robbed Rs 36 lakh, jewellery and foreign currency from a doctor’s house in Northwest Delhi (27 March, 2021).



SUSHANT SINGH RAJPUT CASE (2020)



- Sushant Singh Rajput, a Bollywood actor, was discovered dead in his Mumbai flat on June 14, 2020. The
- Mumbai police initially concluded that the death was caused by suicide.
- Rajput's family alleged foul play and demanded a more detailed investigation. As a result, the case was transferred to the Central Bureau of Investigation (CBI) in August 2020. Other agencies, including the Narcotics Control Bureau (NCB) and the Enforcement Directorate (ED), were also involved in the investigation of drug-related offences and financial irregularities.
- The NCB arrested Rajput's girlfriend, Rhea Chakraborty, on drug-related charges, but she was subsequently released on bail.
- The case remains contentious, raising concerns about mental health awareness, transparency in investigations, and the role of law enforcement.
- **The Sushant Singh Rajput case is without a doubt the largest media trial in Indian broadcast media history.**

Rhea .. the devil

- 'Rhea' is the only news that India's
- major media outlets wanted to discuss after Sushant's death. Rhea stood as a faulty and convicted woman with
- all the allegation and allegations flung at her. News channels ruthlessly broadcasted aggravating and
- infuriating headlines about her, such as "Sushant par Rhea ka kaala jaadu"

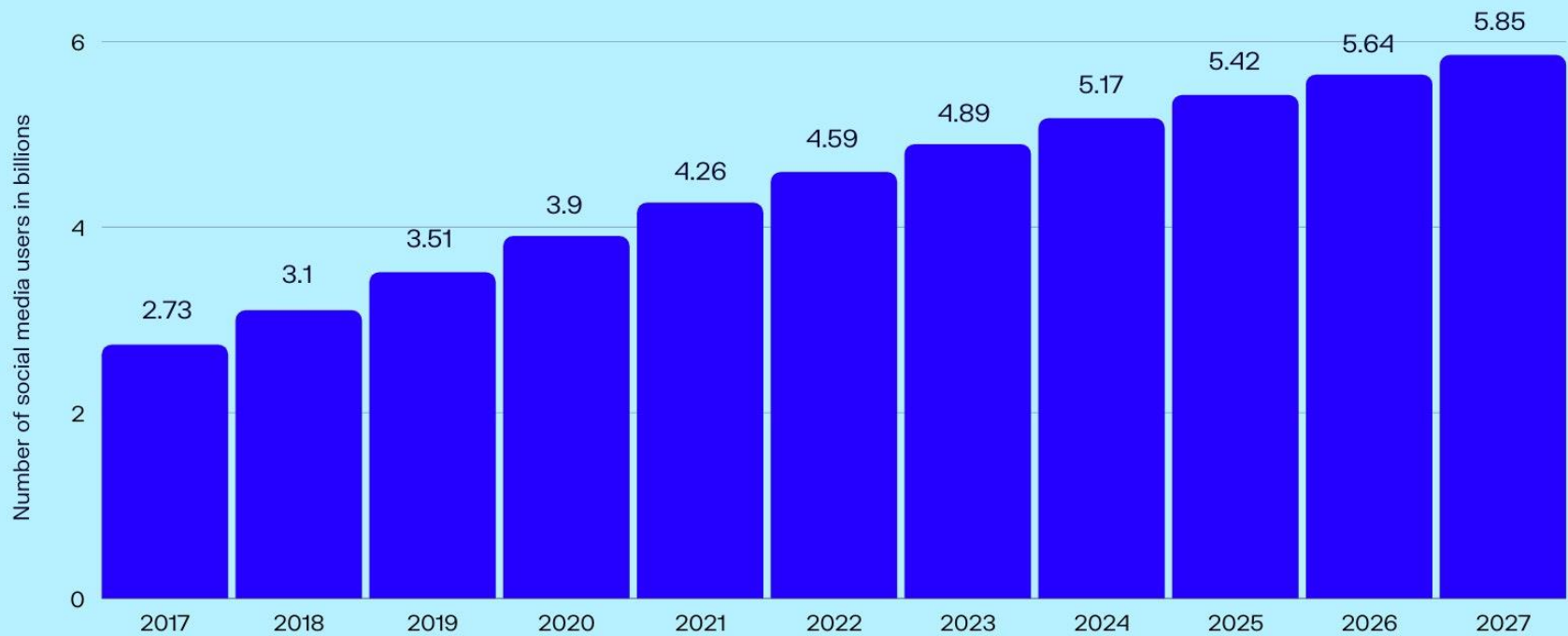


Media - Criminal Law

points of convergence

- Sedition 124A
- Obscenity 292-294
- Incitement to offence or abetment ss 107-120
- Promoting enmity between groups 153A
- Imputation prejudicial to national integration 153B
- Identity of Rape Victim 228A
- Media by trial

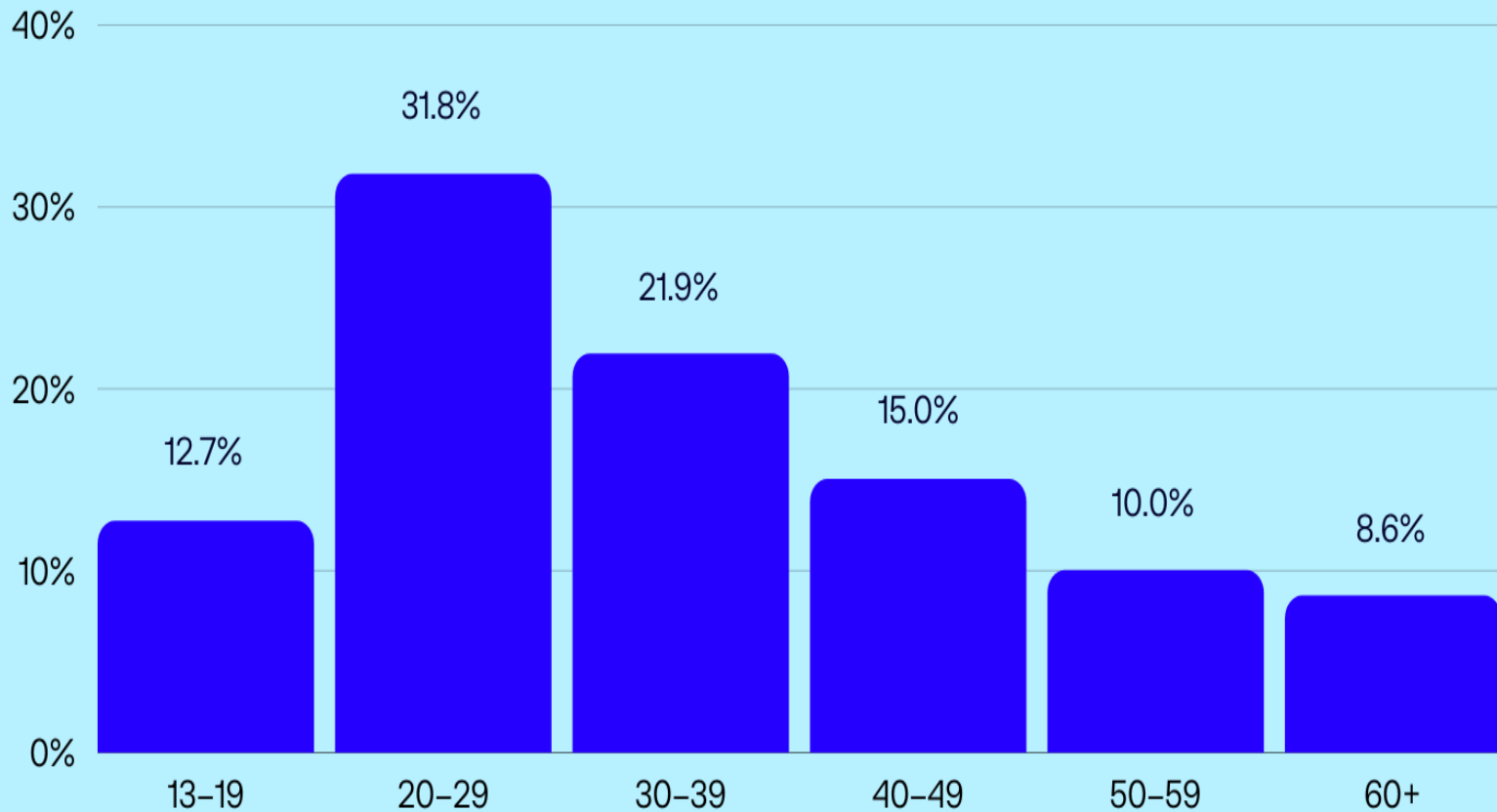
Global Social Media Users (2017 to 2027)



Source: Statista

OBERLO

Social Media Age Demographics

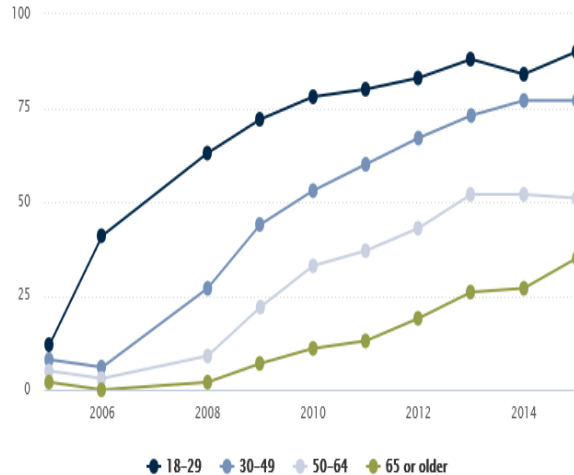


Source: DataReportal

OBERLO

Social Media Use is Rising

Among all American adults, % who use social networking sites, by age



Social Media usage 2015:

- 90% of adults 18-29 yrs.
- 77% of adults 30-49 yrs.
- 51% of adults 50-64 yrs.

52% of online adults use multiple Social Media sites

70% of Facebook users engage daily

45% of Facebook users engage multiple times per day

Andrew Perrin. "Social Networking Usage: 2005-2015." Pew Research Center. October 2015. Available at: <http://www.pewinternet.org/2015/10/08/2015/Social-Networking-Usage-2005-2015/>

Duggan, M., Ellison, et. al. "Social Media Update 2014," Pew Research Center, January 2015. Available at: <http://www.pewinternet.org/2015/01/09/social-media-update-2014>

SOCIAL MEDIA USERS OVER TIME (YOY)



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Important Characteristics of Social Media Technology

- Communicative in Nature
- Easy to Generate Content
- Easy to Share & Re-share Information
- High Speed
- Widely Accessible
- Low Resource/Cost Investment
- Multimedia (photographic, text, video)
- Long Data-Retention
- Informal/Conversational



Communication Style & Characteristics

- Traditional Written
 - Permanent or Semi-permanent
 - Formal
 - Lacks responsiveness
 - Less emotional
 - Costly in time and resources to create
 - Rigid
 - Unlikely to be distorted

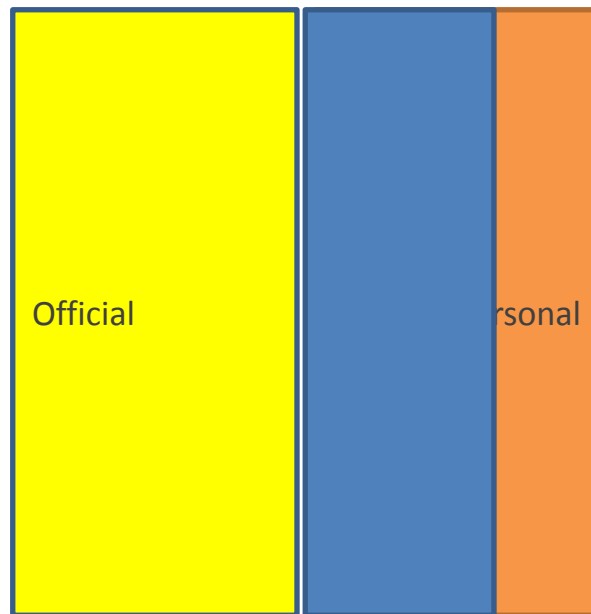
- Social Media
 - Permanent or Semi-permanent
 - Informal
 - Responsive
 - Can include emotional appeal
 - Low cost in time and resources
 - Somewhat flexible
 - Potential for distortion

- Traditional Verbal
 - Not Permanent
 - Informal
 - Highly Responsive
 - Can Include emotional appeal
 - Low cost in time and resources
 - Flexible
 - Potential for distortion

Based on <http://thebusinesscommunication.com/difference-between-oral-and-written-communication/>

COMM

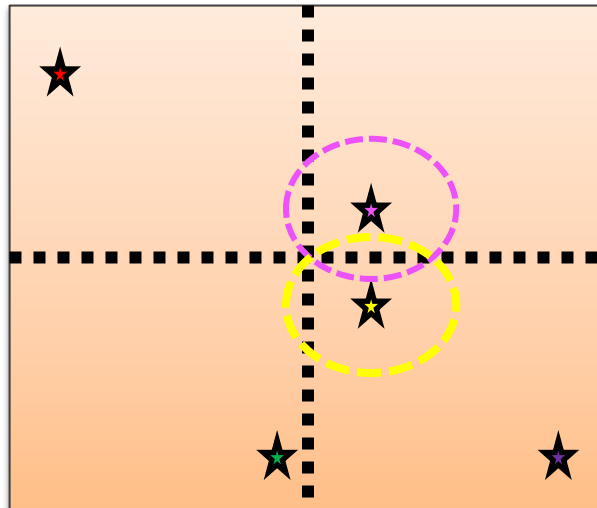
Social Media Identity: Blurring of Personal & Official



- Separation of identities becomes increasingly hard in the digital-age
- Social media allows users to present integrated identities, blurring the distinction between official & personal
- Communications on social media, whether in personal capacity or official, can effect public's view of individual in professional capacity
- Attribution issues may arise

See, e.g., Matthew DeCamp, et. al., *Social Media and Physicians' Online Identity Crisis*, 310 J. Am. Med. Assoc. 581 (2013).

Social Media Identity: Blurring of Personal & Official



SUMMIT

**Not all communal riots are NATIONAL.
Social media is now making them national
Social media has changed 'traditional
models' of communal violence. Riots in
Delhi can now help a party win an election
in Assam and West Bengal.**

Violence on Social Media Platforms

Instance #	Link	Date of Publication	Views/Likes (as of May 15, 2021)
1	https://www.instagram.com/p/COK7JGChjW_/?igshid=131effkeaixxf	April 27, 2021	1,60,723 likes
2	https://www.instagram.com/tv/CNmldFlhGis/?igshid=1gj4g9k19c5p0	April 13, 2021	2,79,560 views
3	https://www.youtube.com/watch?v=b_33ZEfWmz0	April 07, 2021	90,203 views
4	https://www.youtube.com/watch?v=VAAliJPlcCk	July 19, 2017	26,96,318 views
5	https://www.youtube.com/watch?v=G_F8MujyqEE	June 03, 2015	28,52,996 views

Instance 1

Old and unrelated images are being attributed to the recent communal violence in Tripura, 2021



Violence against Muslims continues India, with riots by Hindu extremist groups in Tripura, one of India's eastern states. Twelve mosques in five districts have been vandalized in the past five days. Muslim shops are burning, there is a BJP government and the police are spectators





A2 FROM THE COVER

Social media a tool to incite communal violence in India

BLASPHEMOUS POST, IMAGE FROM BHOJPURI FILM PART OF A SMOKE SCREEN TO FOMENT UNREST

NEW DELHI

BY KARUNA MADAN
Correspondent

In the last one month, there have been as many as seven communal flare-ups in West Bengal (WB), all triggered by an unduly aggressive social media. The latest communal disruption in North 24 Parganas district of West Bengal is yet another grim reminder of how the social media has become an agent provocateur for communal and social unrest.

On July 2, a blasphemous post on Facebook by a 17-year-old boy against the Prophet Muhammad (PBUH) triggered communal riots in Baduria village of North 24 Parganas. The irate mob torched around 12 police vehicles, looted and ransacked several houses in the area.

Stirring a hornet's nest

The situation prompted the state government to rush 400 troops of the paramilitary Border Security Force (BSF) to contain the situation and suspend internet services for over a week.

Also, last week, Kolkata Police arrested a person for sharing an image from a Bhojpuri film called 'Aurat Khilona Nahi' and passing it off as an incident during the North 24 Parganas riots.

Interestingly, on Monday, Bharatiya Janata Party (BJP) spokesperson Nupur Sharma

🔴 Last week, BJP lawmaker from Hyderabad T. Raja Singh posted a venomous message on Facebook accusing West Bengal Chief Minister Mamata Banerjee of allowing rioters to run amok in the state.

🔴 The latest communal disruption in North 24 Parganas district of West Bengal is yet another grim reminder of how the social media has become an agent provocateur for communal and social unrest.

came under fire from Twitter users for passing off a picture of the 2002 Gujarat riots as that of the violence in West Bengal's Basirhat.

"Since trolls spent a sleepless night covering up Basirhat violence, sharing media pics of the riots. Hope they report this to West Bengal Police too," Sharma had tweeted attaching an image of charred vehicles along with it.

However, the social media users correctly pointed out to her that the image was from 2002. Defensive, Sharma then said the picture reflected the reality of Bengal, irrespective of the place.

"I received a flyer from organisers of Save Bengal protests and I put it out. This has woken up the people in Lutyen's Delhi who have maintained a stoic silence on Bengal till now," she told media.

Not just in West Bengal or Gujarat, social media is being used across the country to foment communal unrest.

The state of Jammu and

Kashmir added almost 200,000 new mobile subscribers every month between February 2017 and April 2017. However, the Valley faced several internet bans in last six months causing huge losses to telecom companies and bringing inconvenience to common people.

Drastic measures

"The ongoing internet suspension in Kashmir is the 33rd since 2012. Internet services were shut 31 times in the state between 2012 and April 2017, and again banned in May 2017. The idea was to prevent rumour-mongering and check violence," Software Freedom Law Centre (SFLC), a Delhi-based not-for-profit organisation, said in its recently released report.

Last week, BJP lawmaker from Hyderabad T. Raja Singh posted a venomous message on Facebook accusing West Bengal Chief Minister Mamata Banerjee of allowing rioters to run amok in the state.

A video showing Singh ex-

horting Hindus of the state to wake up and give a befitting reply also surfaced three days ago.

"Hindus of West Bengal should give a befitting reply, just like the Hindus of Gujarat had earlier done in 2002. They should stand up against those who killed Hindus in 2002," Singh said in the video posted on Twitter.

In April, he was seen in a weapons training session. In another video in May, he had said he would behead those opposing the construction of a Ram temple in Ayodhya in Uttar Pradesh.

"To those who warn of dire consequences if Ram temple is built, we were waiting for you to say this so we can behead you," he tweeted.

He also stirred a controversy when he tweeted that Dalits (those belonging to lower castes) were flogged in Gujarat's Una last year because they slaughtered cows.



Look for more content on our social media channels. Log on to Facebook to be part of the discussion. Follow us on Instagram @GulfNews. Tweet us @GulfNewsReaders

Do you think the social media has become an agent provocateur for communal and social unrest? Write to us at readers@gulfnews.com



THE LIE

A BJP spokesperson, Nupur Sharma, and one of its national joint secretaries, Shivprakash, posted a photo claiming it was from the West Bengal riots.

“As a majority of the youth are tech-savvy and spend most of their time on social media, it is important that they act responsibly and practise self-censorship while posting content on their pages.”

Anirudh Mishra |
34, civil engineer

“I believe Delhi Police are mulling over the possibility of monitoring random Facebook posts, tweets and blog posts. Any post that is likely to cause trouble should be deleted immediately, and action taken..”

Manika Sharma |
29, architect



THE TRUTH
It is an image from the 2002 Gujarat riots



THE LIE
This image was circulated by a senior Bharatiya Janata Party leader, Vijeta Malik. Unverified claims of "Hindu sisters and daughters being raped" in Baduria were made even by BJP general secretary Kailash Vijayvargiya after violence broke out in the town.

THE TRUTH
In reality, the picture is a still from a Bhojpuri movie.

“India has the largest number of social media users. That makes it very important for the government to monitor what is being posted by some misguided elements or people with vested interests.”

Aradhna Malik |
26, fashion designer

“It is unfortunate that some states of India, particularly Jammu and Kashmir, and more recently West Bengal saw a series of episodes of street violence just because someone behaved irresponsibly.”

Samyukta Chaudhry |
42, software engineer

“Social media works fast and any inflammatory post/comment made by any user triggers faster reactions. It is sad that some people are misusing social media sites to spread hatred and disharmony in the society.”

Karan Kapoor |
33, trader

33
times the internet has been suspended in Kashmir

12
police vehicles torched in Baduria by a mob incited by a FB post

It's time to rein in social media

New German law cited as a way to bridle social media that is being used to create division and unrest in India

NEW DELHI
BY KARUNA MADAN
Correspondent

That social media is being excessively used in India to spread hate, divide people and incite social unrest is an alarming fact.

"It is really unfortunate that such things are happening in a secular country. We feel shocked and ashamed. West Bengal recently saw a series of incidents of communal violence, all triggered by irresponsible social media posts," secretary of the West Bengal Minority Youth Federation Mohammad Kamruzzaman told *Gulf News*.

Last week, West Bengal Director-General of Police Surajit Purakayastha appealed to the people to refrain from sharing communally provocative posts on social media.

"We would appeal to everyone not to share or like any provocative posts on social media that might disrupt the communal harmony and create a divide among people. If anyone shares any such provocative posts, the onus would be on them," Purakayastha warned.

He requested the people to help the North 24 Parganas district administration in reinstating peace and harmony.

He told *Gulf News* that "at some places, an amount of tension and confusion was created due to these posts. The state

administration took necessary action in all these volatile areas. On behalf of the administration, I requested everyone to help us reinstate the environment of peace and prosperity".

"It is neither Hindus nor Muslims who are trying their utmost to destroy the social fabric of our country, it's the politicians who should be condemned for their divisive policies. The easiest way to be a popular is to divide people. We have millions of people in our country who have blind faith in such leaders," says Delhi-based software engineer Rajiv Malik.

Every month, Delhi Police receive at least 1,000 complaints of people uploading sensitive content on various social media sites such as YouTube, Facebook and Twitter.

"We track the users and try to find their origin. There is a dedicated team that cleans such posts. There are many WhatsApp groups where videos, audios and images of rioting are being circulated. Action is being taken on a regular basis against such groups," a senior Delhi Police officer told *Gulf News*.

Recently, the German Parliament voted in favour of a law that includes the provision to levy fines of up to €50 million on social media companies if they fail to remove hateful posts in a time-bound manner.

"The German law will come into effect in October. It requires social media platforms to trace and delete posts containing abusive material within 24 hours to avoid being penalised. Can't we do this in India where social media usage is much higher?" asks political commentator Satish Sharma.

Muzaffarnagar riots: fake video spreads hate on social media



on 24 February, 2021, in the throes of Hindu-Muslim riots in northeast Delhi, various videos of the Delhi Police started going viral. One video showed the police harassing young, injured Muslim men. This kind of evidence helped cement the popular perception that the Delhi Police had either been complicit or negligent in failing to contain communal violence.



Addressing the Challenges

- Establish Social Media Policies & Best Practices
- Focus on Social Media in Ethics Training
- Understand Application of the Standards of Conduct to Typical Social Media Use

Establish Social Media Policies & Best Practices

- Establish comprehensive social media policies for official accounts: Ethics, Compliance, Pub. Rel., etc.
- Consider whether to update “limited use” policies to address personal social media on Gov. time/property
- Consider adding a social media “disclaimer” to official sites:

“This is an Official U.S. Government Account”

- Contact OGE to determine whether a policy needs to be incorporated into a Supplemental Regulation. See OGE LA-11-07.



Retrieved from <https://www.mcnc.org/policies>

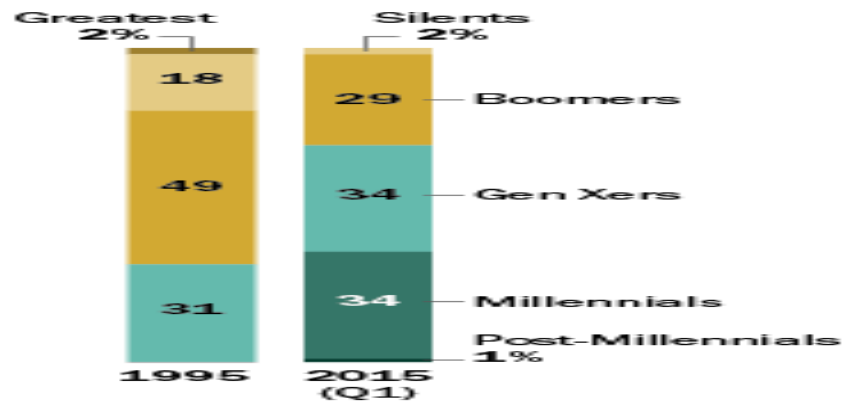
Focus on Social Media in Ethics Training



Millennials represent **16%**
of the total Federal workforce

Labor Force Composition by Generation

% of the labor force



OPM, *Millennials: Finding Opportunity in Federal Service*,
available at
http://www.fedview.opm.gov/2014FILES/FEVS_MillennialsReport.pdf

<http://www.pewresearch.org/fact-tank/2015/05/11/millennials-surpass-gen-xers-as-the-largest-generation-in-u-s-labor-force/>

SUMMIT

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 [updated as on 28.10.2022]

- **DUE DILIGENCE BY INTERMEDIARIES AND GRIEVANCE REDRESSAL MECHANISM 3.**
- **(1) Due diligence by an intermediary: An intermediary, including social media intermediary and significant social media intermediary, shall observe the following due diligence while discharging its duties, namely:—**
- **[(a) the intermediary shall prominently publish on its website, mobile based application or both, as the case may be, the rules and regulations, privacy policy and user agreement in English or any language specified in the Eighth Schedule to the Constitution for access or usage of its computer resource by any person in the language of his choice and ensure compliance of the same;**
- **(b) the intermediary shall inform its rules and regulations, privacy policy and user agreement to the user in English or any language specified in the Eighth Schedule to the Constitution in the language of his choice and shall make reasonable efforts to cause the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that**

deep fakes

- The intermediary shall, within twenty-four hours from the receipt of a complaint made by an individual or any person on his behalf under this sub-rule, in relation to any content which is prima facie in the nature of any material which exposes the private area of such individual, shows such individual in full or partial nudity or shows or depicts such individual in any sexual act or conduct, or is in the nature of impersonation in an electronic form, **including artificially morphed images of such individual**, take all reasonable and practicable measures to remove or disable access to such content which is hosted, stored, published or transmitted by it:



Intermediary Liability

- the intermediary shall, as soon as possible, but not later than seventy two hours of the receipt of an order, provide information under its control or possession, or assistance to the Government agency which is lawfully authorised for investigative or protective or cyber security activities, for the purposes of verification of identity, or for the prevention, detection, investigation, or prosecution, of offences under any law for the time being in force, or for cyber security incidents:

INDIA –Section 67B Information Technology Amendment Act 2008

Whoever,- (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or



(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



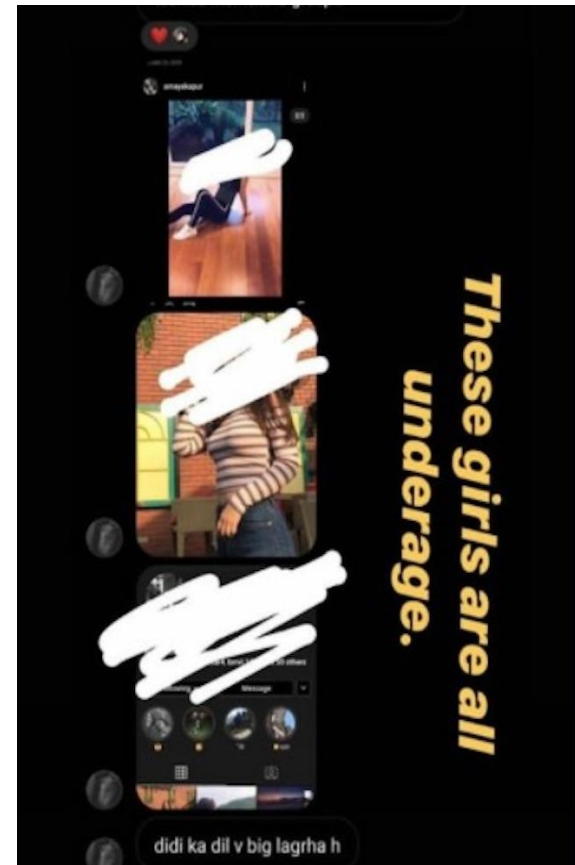
(e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,

Intermediary liability: Information Technology Amendment Act 2008

- 'Intermediary'— means ISP , telecom service provider, cyber café...
- Section 67 C—intermediary to preserve information – **Punishment— 3 yrs + fine.**
- Section 70B--CERT-In can Call for information and give direction to the **service providers, intermediaries, data centers, body corporate, and any other person**
- *Failure to provide the information called for or comply with these directions*
- ❖ *Punishment— 1 year + Rs. 1 lakh fine*
- ❖ *Intermediaries can no longer escape liability for providing access to obscene/child abuse material if it is done knowingly*

Bois Locker Room Incident, Delhi

Bois Locker Room was an [Instagram](#) scandal, allegedly involving a chat room of teenage boys from [Delhi](#). It was started on 3 May 2020, when a member leaked chats from the group, including obscene images of around 15 girls.[[] The controversy flared after several social media users led by Instagram user Niska Nagpal posted screenshots of the leaked chats and morphed photos of young girls on Instagram and [Twitter](#).[[] On Sunday, 6 May 2020 the hashtag [#boyslockerroom](#) was retweeted over 30,000 times. The [Delhi Commission for Women](#) chief [Swati Maliwal](#) and the [National Commission for Protection of Child Rights](#) took notice of the issue and issued various notices to Instagram as well as [Delhi Police](#) for further information on the scandal.



Face Book - CSA

- In light of Facebook's, and especially Messenger's, massive share in reporting CSAM to NCMEC, in February 2020, 129 signatories [had urged](#) the company to resist introducing end-to-end encryption on Facebook's messaging platforms, and their subsequent integration. End-to-end encryption, which is already the default on Facebook-owned WhatsApp, disallows anyone, except the sender and the receiver, to monitor the communication in any way, thereby turning all communication opaque to any automated or manual monitoring for CSAM



Facebook allowed child abuse posts to stay online for more than a year, Indian court hears

Post advertising rape videos was also permitted to stay online despite being reported several times

- The page featured pictures of women and girls taken in public, apparently without consent, under which users left graphic comments describing sexual acts they wanted to commit.
- Only when the court asked Facebook to remove some of the posts, more than a year after the page was reported, were they finally taken down, according to Aparna Bhat, a lawyer arguing the case for the Indian anti-trafficking NGO Prajwala.
- The court also heard the company declined to remove a post listing a mobile phone number users were told they could call to access a video [depicting the sexual assault of an actor](#) who was kidnapped in Kerala state in February.
- Yet another page, which the court heard was reported but not initially judged to violate community standards, was being used to [run a child-sex ring](#) in Kerala state, police allege. More than 40 children were rescued and at least 39 people arrested after the page was reported to Indian authorities.

Rajya Sabha Committee

- To curb online child sexual abuse material (CSAM), an ad hoc Rajya Sabha Committee [has recommended](#) that law enforcement agencies be permitted to break end-to-end encryption to trace abusers, and that internet service providers give parents family-friendly filters. The ad hoc Committee, headed by Jairam Ramesh, made 40 recommendations to prevent sexual abuse of children and prohibit access and circulation of child pornography on social media in its report to M. Venkaiah Naidu on January 25.
- The Committee heard from Ministries of Women and Child Development, Electronics and IT, and Home Affairs. It also heard from National Commission for Protection of Child Rights, TRAI, Google, Facebook, WhatsApp, ByteDance (TikTok), Twitter and Sharechat. HERD Educational and Medical Research Foundation, Centre for Child Rights and Internet Freedom Foundation also made their representations. The Committee was formed by Naidu on December 12.

- **Amend the Information Technology Act, 2000:**
 - **Make intermediaries responsible** for proactively identifying and removing CSAM, and for reporting it to Indian and foreign authorities, and for reporting, to the designated authority, the IP address/identities of people who search for or access child porn and CSAM
 - **Make gateway ISPs liable** so that they can detect and block CSAM websites.
 - Prescribe punitive measures for those who give pornographic access to children and those who access, produce or transmit CSAM.
 - Allow Central Government through “its designated authority” **to block and/or prohibit all websites/intermediaries that carry CSAM**. The designated authority has not been specified.
- **Allow law enforcement to break end-to-end encryption** to trace distributors of child pornography.
- **Mandate CSAM detection for all social media companies** through minimum essential technologies to detect CSAM besides reporting it to law enforcement agencies.
- **Separate adult content section** on streaming platforms like Netflix and social media platforms such as Twitter and Facebook where children are not allowed.
- **Age verification and gating mechanisms** on social media to restrict access to “objectionable/obscene material”.
- **Manage children’s access to internet:** To do that, make apps that monitor children’s access to porn mandatory on all devices in India, and make such apps/solutions freely available to ISPs, companies, schools and parents. Also, ISPs should provide family-friendly filters to parents to regulate children’s access to internet.

- **Use blockchain to trace buyers of child porn:** MeitY should coordinate with blockchain analysis companies to trace users who use cryptocurrencies to purchase child porn online.
- **Ban all payments to porn websites:** Online payment portals and credit cards be prohibited from processing payments for *any* pornographic website.
- **Amend the Prevention of Children from Sexual Offences (POCSO) Act, 2012:**
 - **Prescribe a Code of Conduct for intermediaries** (online platforms) to maintain child safety online, ensure age appropriate content, and curb use of children for pornographic purposes.
 - Make “advocating or counseling” sexual activities with a minor through written material, visual media, audio recording, or any other means, an offence under the Act.
 - Make **school management responsible** for safety of children within schools, transportation services and any other programmers with which the school is associated.
 - Make **National Cyber Crime Reporting Portal** the national portal for all report related to electronic material.
- **Make National Commission for Protection of Child Rights (NCPCR) the nodal agency** to deal with the issue. It should have “necessary” technological, cyber policing and prosecution capabilities. Each state and UT should also have a Commission for the Protection for Child Rights that mirrors NCPCR.

- **Appoint e-safety commissioners** at state level to ensure implementation of social media and website guidelines.
- **National Crime Record Bureau (NCRB) must record and report** cases of child pornography of all kinds annually. Readers should note that the [last annual report](#) from NCRB was for 2017 and was released in October 2019.
- **National Tipline Number** where citizens can report about child sexual abuse and distribution of CSAM.
- **Awareness campaigns** by Ministries of Women and Child Development, and Information and Broadcasting on recognising signs of child abuse, online risks and improving online safety. Schools should also conduct training programmes for parents at least twice a year.



Media: Accessory To The Crime?



SOMETHING FOR THE MEDIA TO THINK ABOUT

- A [mob of about a hundred people](#) arrived at my house at 11 this morning (Sunday, October 31, 2010.) They broke through the gate and vandalized property. They shouted slogans against me for my views on Kashmir, and threatened to teach me a lesson.
- The OB Vans of **NDTV, Times Now and News 24** were already in place ostensibly to cover the event live. TV reports say that the mob consisted largely of members of the BJP's Mahila Morcha (Women's wing). After they left, the police advised us to let them know if in future we saw any OB vans hanging around the neighborhood because they said that was an indication that a mob was on its way.
- In June this year, after a false report in the papers by Press Trust of India (PTI) two men on motorcycles tried to stone the windows of my home. They too were accompanied by TV cameramen.

Arindhati Roy questions media

- What is the nature of the agreement between these sections of the media and mobs and criminals in search of spectacle?
- Does the media which positions itself at the “scene” in advance have a guarantee that the attacks and demonstrations will be non-violent?
- What happens if there is criminal trespass (as there was today) or even something worse?
- Does the media then become accessory to the crime?
- This question is important, given that some TV channels and newspapers are in the process of brazenly inciting mob anger against me.
- In the race for **sensationalism** the line between **reporting news and manufacturing news** is becoming blurred.
- So what if a few people have to be sacrificed at the altar of TRP ratings? s

Offences Against Religion

- 1. Uttering words with deliberate intent to wound religious feelings s 298
- 2. Criminal intimidation s 503
- 3. Intentional insult to provoke breach of peace 504
- 4. Statements causing public mischief 505
- 5. Insulting the modesty of women 509

Uttering words with deliberate intent
to wound religious feelings s 298



- Thousands of believers flocked to a suburban street in the west of Mumbai in March, when drops of water began to fall from the feet of Jesus on the cross, drinking the prized liquid in the hope that it had holy powers.
- Sanal Edamaruku, president of the Indian Rationalist Association, said he inspected the site and found the source of the water to be leaking toilet drainage, making it dangerous to imbibe.
- “Any kind of miracle-mongering is ultimately to get money and power.”
- Accusing him of spreading “anti-Catholic venom” during televised debates on the crucifix, outraged religious groups in Mumbai have filed police complaints that could see **Edamaruku jailed for up to three years under India’s blasphemy law. 2012**

Paalghar Incident - Arnab Goswami

- Republic TV on 16 April 2020 and R Bharat on 21 April 2020 in relation to an incident which took place in Gadchinchle village of Palghar district in Maharashtra. During the course of the incident which took place on 16 April 2020, three persons including two sadhus were brutally killed by a mob, allegedly in the presence of the police and forest guard personnel. The incident was widely reported in the print and electronic media. The petition states that a video recording of the incident is available in the public domain. In his news show titled "Poochta hai Bharat" on 21 April 2020 on R Bharat, the Petitioner claims to have raised issues in relation to the allegedly tardy investigation of the incident
- Arnab Ranjan Goswami vs. Union of India (UOI) and Ors. (19.05.2020 - SC) : MANU/SC/0448/2020

- <https://www.youtube.com/watch?v=C2i4MMpKu9I>



Background...

- Palghar has been a flashpoint for clashes between Christian missionaries and Hindu right-wing outfits.
- In the past, attacks and lynchings fueled by rumours on WhatsApp have occurred in India, where the fast propagation of fake news has led to violent outcomes. Often the fake news involves rumours of child kidnapping or roaming bandits.
- After rumours spread in the village about the possible activity of organ harvesting gangs and kidnappers in the area at night, the villagers formed a vigilante group.
- According to the Gadchinchale Sarpanch (village head) a rumour had been floating in the village from the messaging app WhatsApp, claiming a gang of child thieves harvesting organs was active in the area during the lock-down.
- India was under a countrywide lockdown due to the coronavirus pandemic at the time of the incident. The arrival of the vehicle at night caused the villagers to suspect that the passengers were members of the gang of child thieves.

Freedom and social interest

- Das, J., “social interest in individual liberty may well have to be subordinated to other greater social interests.” *AK Gopalan v. State of Madras*, AIR 1950 SC 27.
- Sections 292 and 293 of the Indian Penal Code deal with obscenity. They were added in accordance with the resolution passed by the International Convention for the Suppression and Circulation of and Traffic in Obscene Publications signed at Geneva on 12 September 1923

XXX vs. State of Kerala (05.06.2023 - KERHC) : MANU/KE/1215/2023

- a 33-year-old women's rights activist who made her mark in Kerala through her progressive stances, posted a video on her social media platforms showing her two minor children, a boy (aged 14) and a girl (aged 8), painting on her semi-nude torso carrying the hashtag 'Body Art and Politics'. The video, uploaded on YouTube and shared through her personal Facebook account, has triggered massive outrage, with several people slamming her for subjecting her children to what they considered to be an obscene and vulgar act and then posting the same for the world to see. The petitioner, on her part, defended her actions as a form of self-expression and an attempt to break free from social and cultural taboos that constrain women's bodies. The police registered a case against her, allegedly succumbing to the public outcry. After investigation, the final report was filed at the Additional Sessions Court (For the trial of cases relating to Atrocities and Sexual Violence against Women and Children), Ernakulam (for short 'the Court below') for the offences punishable under Sections 10 r/w 9(n), 14 r/w 13(b) and 15 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act"), Section 67B (a),(b),(c) of the Information Technology Act, 2000 (for short "IT Act"), and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "JJ Act").

- The next offences charged against the petitioner are under Sections 67B(a)(b) and (c) of the IT Act, which criminalises the publishing or transmitting of material depicting children in sexually explicit acts. Sub-section (a) is attracted only when the said material depicts children engaged in sexually explicit acts. As stated already, no sexually explicit act has taken place in the facts and circumstances of the case. No evidence for the same exists anywhere. Painting on the naked upper body of a person, whether a man or a woman, cannot be stated to be a sexually explicit act. Sub-section (c) cannot have application at all since the prosecution does not have a case that there is any cultivation or enticement or inducing of children into an online relationship with one or more children for any sexually explicit act. Sub-section (b) is attracted when the said material depicts children in an obscene or indecent, or sexually explicit manner. Let me consider in detail whether the video in question depicts the children of the petitioner in an obscene or indecent manner as alleged

held

- Painting on the upper body of a mother by her own children as an art project cannot be characterised as a real or simulated sexual act, nor can it be said that the same was done for the purpose of sexual gratification or with sexual intent. To term this innocent artistic expression to be 'usage of a child in real or simulated sexual act' is harsh. There is nothing to show that the children were used for pornography. There is no hint of sexuality in the video. In the accompanying message, the petitioner has declared the purpose of the video as to make a political point against the default sexualisation of women's body. Therefore, the offence under Section 13(b) r/w 14 is not made out

- What is Objectionable?
- Obscenity and pornography

Richard A. Spinello observes, Internet its remarkable growth "is not without its social costs".



Triple-ex-ministers?



Amul
Never adult-rated

The three ministers, LaxmanSavadi, C CPatil and J Krishna Palemar, caught on camera viewing obscene clips on the floor of Karnataka legislative Assembly could face jail and one of them even a non-bailable arrest-warrant. As the law stands today Mr.Savadi and Patil **can be booked under Section 292 of IPC for public exhibition, etc.**, of an obscene object. The third minister J Krishna Palemar, who was in possession of the mobile phone, could face a non-bailable warrant if a complaint is registered against him.Palemar can be convicted with **imprisonment up to five years and penalty up to Rs 5 lakh under IT Act**

Indian Test of obscenity

Ranjit D.Udeshi V State of Maharashtra (AIR 1965 SC.P.881)

- F) The test of obscenity as laid down in **Hicklin's** case.

Whether the matter is likely to deprave or corrupt those whose minds open to such immoral influences-if the material suggests to the minds of the young or old, thoughts of most impure and libidinous character...It has to be decided on a case by case basis...

Difference between Obscenity and Online Objectionable content/porn

- A book or material shall be deemed to be obscene, if it is,-
- A) lascivious
- B) appeals to the prurient interest
- C) tends to deprave or corrupt persons
who are likely to read, see or hear the material.

Defences

- A) The publication of which is proved for the public good (sex education) or in the interest of science, literature, art or learning.
- B) If it is used for bonafide religious purpose.
- C) Scriptures, engravings or paintings located in Ancient monuments or Archeological sites.
- D) Materials in temples, temple cars or kept of religious purpose.

Is Porn a form of speech and expression

- A) Even though Art:19 (1) (a) guarantees freedom of expression, existing laws like sec 292 IPC, imposing reasonable restriction in the interests of public decency and morality.
- B) Obscenity means something which is offensive to modesty or decency, lewd, filthy and repulsive.

Difference between obscenity and pornography:

Ranjit D.Udeshi V State of Maharashtra (AIR 1965 SC.P.881)(contd)

- The later is intended to **arouse sexual** desire and the former do not intend to do so, but may have that tendency.
- Pornography is more aggravated form of obscenity.

Ranjit D.Udeshi V State of Maharashtra (AIR 1965 SC.P.881)(contd)

- D) Prosecution need not prove knowledge on the part of the accused.
- E) If the sale of obscene book is proved (Actus Rea), the prosecution and need not prove Mens Rea or intention by positive evidence. The law against obscenity imposes strict criminal responsibility.
- Where as Sec 67A and B emphasize on Intention of the accused.

Child pornography

- Child pornography is identified as a heinous crime that may operate as a gate to further crimes, like sex tourism and sexual abuse, aside from being a record of a sexual assault on a child
- There is a steady rise in the number of child pornography cases registered and arrests in India. According to minister of state for home M Ramachandran as told to Lok Sabha, across India, the number of cases stood at 99 in 2007, 105 in 2008 and 139 in 2009
- study conducted on child abuse by the Ministry of Women and Child Development, 30.22% of children surveyed reported they had been exposed to dirty pictures.
- INTERPOL has **cited Germany** as one of the major producers of child pornography, with the Netherlands and the United Kingdom as the major distribution centres. United States is one of the largest markets of demand for child pornography
- Ninety-four of 187 [Interpol](#) member states had laws specifically addressing child pornography as of 2008
- **67B (2008) amendment**

International Conventions and Child Porn

- The **United Nations Convention on the Rights of the Child** says in **Article 34** that **countries** are required to take all appropriate national, bilateral and multilateral measures to prevent the exploitative use of children in pornographic performances and materials
- The **Convention** carries with it an **Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography**, adopted by the United Nations General Assembly in 2000 and in force since 18th of January of 2002. Article 1 declares that states are to protect the rights and interests of child victims of trafficking, child prostitution, child pornography.

What constitutes obscenity in electronic form?

- Section 67 of the IT Act is the most serious Indian law penalizing cyber pornography.
- **Lascivious is something that tends to excite lust.**
- **Appeals to, in this context, means “arouses interest”.**
- **Prurient interest is characterized by lustful thoughts.**
- **Effect means to produce or cause.**
- **Tend to deprave and corrupt in the context of this section**
- **means “to lead someone to become morally bad”.**
- **Persons here refers to natural persons (men, women, children)**
- **and not artificial persons (such as companies, societies etc).**

To understand....

- it must tend to excite lust, or
- it must arouse interest in lustful thoughts, or
- it must cause a person to become morally bad.
- **Sameer launches a website that contains information on sex education. The website is targeted at higher secondary school students. Pooja is one such student who is browsing the said website. Her illiterate young maid servant happens to see some explicit photographs on the website and is filled with lustful thoughts**

Some illustrations

- **Publishes means “to make known to others”.**
- Sameer has just hosted a website containing his articles written in English.
- **Sameer has not published the articles.**
- An automated software released by an Internet search engine indexes Sameer’s website.
- **Sameer has still not published the articles.**
- A Chinese man, who does not understand a word of English, accidentally visits Sameer’s website.
- **Sameer has still not published the articles.**
- Pooja, who understands English, visits Sameer’s website and reads some of his articles.
- **Now, Sameer has published his articles.**

Contd....

- Transmits means to pass along, convey or spread. It is not necessary that the “transmitter” actually understands the information being transmitted.
- Sameer has just hosted a website containing his articles. Pooja uses an Internet connection provided by Noodle Ltd to visit Sameer’s website. Noodle Ltd has transmitted Sameer’s articles to Pooja. However, Noodle employees are not actually aware of the information being transmitted by their computers.

Avnish Bajaj vs. State (N.C.T.) of Delhi

- An obscene MMS clipping was listed for sale on Baazee.com on 27th November, 2004 in the name of “DPS Girl having fun”.
- Whether it amounts to publication?
- actual recording was not viewable on the website.
- The Item's description "DPS Girl having fun" should have raised alarm.
- Avnish Bajaj is the CEO of Baazee.com, a customer-to-customer website, which facilitates the online sale of property. Baazee.com receives commission from such sales and also generates revenue from advertisements carried on its web pages.

Publishing cyber pornography (Summary)

- **Actions covered Publishing**

- **Penalty First offence:**

- **Subsequent offence:**

- **Relevant authority**

- **Appeal lies to**

- **Investigation Authorities**

- **transmitting cyber pornography causing to be published**

- **Simple or rigorous imprisonment up to 5 years and fine up to Rs 1 lakh**

- **Simple or rigorous imprisonment up to 10 years and fine up to Rs 2 lakh**

- **Court of Session**

- **High Court**

- **1. Controller of Certifying Authorities (CCA)**

- **2. Person authorised by CCA**

- **3. Police Officer not below the rank of Deputy Superintendent**

Should we NO

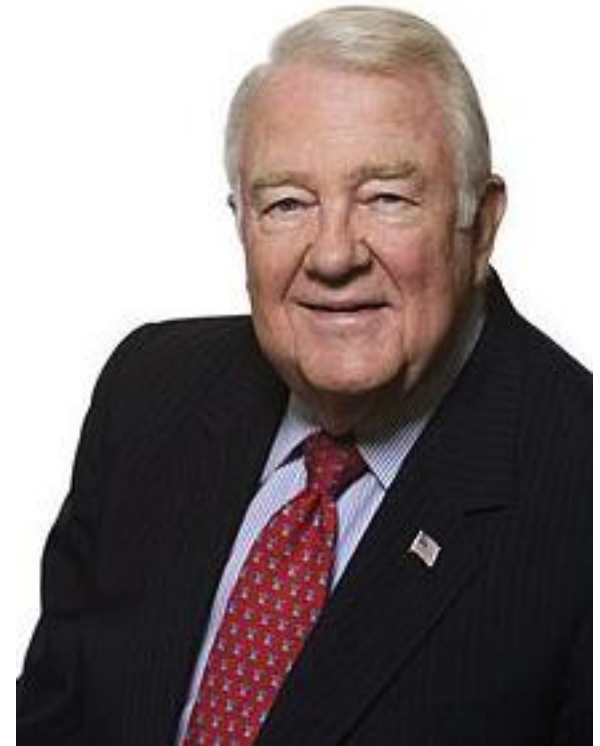
- **Ronald Dworkin** says that no conduct should be suppressed by law unless it can be shown to harm some one without any persuasive evidence of the causal influence.
- **John Stuart Mill** felt that we do not know in advance what social, moral, or intellectual developments will turn out to be possible, necessary or desirable for human beings and for their future and **free expression** intellectual and artistic something which may need to be fostered and protected as well as merely permitted is essential to **human development as a process** which does not merely happen but so far as possible is rationally understood.
- Since human beings are not just subject to their history but aspire to be conscious of it the development of human individuals, of society and of humanity in general is a process itself properly constitutes in part by **free expression and the exchange of human communication**.



Meese Commission Report:

1982 comprehensive investigation into [pornography ordered by U.S. President Ronald Reagan.](#)

- *"there was insufficient evidence that exposure to explicit sexual materials played a significant role in the causation of delinquent or criminal behavior."* In general, with regard to adults, the Commission recommended that legislation "should not seek to interfere with the right of adults who wish to do so to read, obtain, or view explicit sexual materials." .

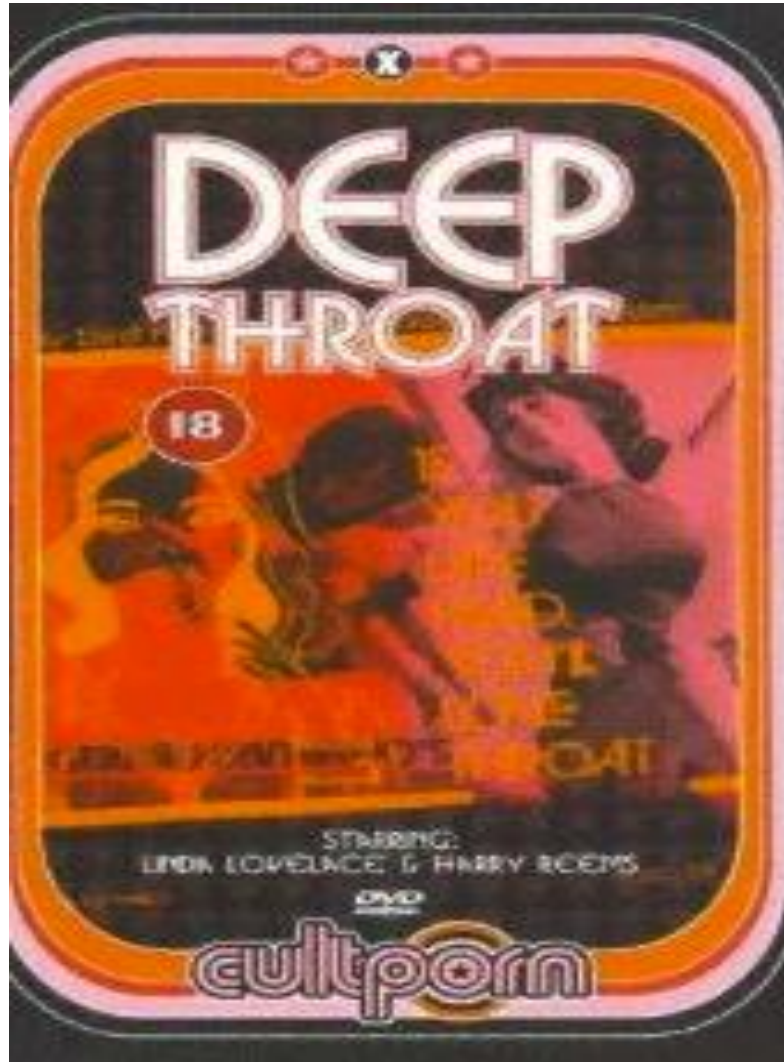


Meese
75th [United States Attorney General](#)

Yes:

- ✓ *MacKinnon* argues that it is this inequality that makes pornography sexy:
 - Inequality between men and women is what is sexy about pornography - the more unequal the sexier.
 - Pornography is defamation, gender discrimination and new terrorism.
- ✓ *Andrea Dworkin*
- ✓ *Civil rights issue*
- ✓ argue that pornography sexualises and maintains inequality by promoting women as inferior and subordinate to men.
 - It does this associating women with feminine, men with masculine and by showing the masculine (male) as dominant and women (feminine) as inferior objects to be used, controlled, and violated for male sexual pleasure. pornography is a sexually discriminatory act and should be legally actionable as such

1. Harms to persons used in pornography



- Every day I either got raped, beaten, kicked, punched, smacked, choked, degraded or **yelled** at. Sometimes, I got all of the above. Strangely enough, what bothered me the most was the endless verbal abuse. He never let **up**.

Linda Lovelace (Deep Throat)

Evelina Giobbe, a survivor of pornography and prostitution
stated:

- I am a rare survivor. Most women who have shared my experiences are not as fortunate. It took close to 20 years to undue [sic] the physical and emotional trauma of being used in prostitution and pornography. Today I am an activist in the feminist anti-pornography movement. But the pornography that was made of me still exists. I know the men who made it. I know where some of them are. But there is nothing I can do about it. I live knowing that at any time it could surface and **be** used to humiliate me and my family. It can **be** used to ruin my professional life in the future. Because pornography is a profitable multi-billion-dollar-a-year industry, I also know that what happened to me will continue to happen to other women and girls. **They** will continue to **be** used and hurt in the same way that I was. And if they should **be** fortunate enough to escape, they will live under the same threat of exposure and blackmail that I do.

2. Indirect Harm:

State v Herberg:

324 NW 2d 346, 347 (Minn, 1982) (American case)

- ✓ On July **17, 1981**, David Herberg forced a 14-year-old girl into his car, tied her hands with his belt, and pushed her to the floor. With his knife, he cut her clothes off, then inserted the knife into her vagina, cutting her. stick a safety pin into the nipple of her own breast, and ask him to hit her. He then orally and anally raped the girl.
- ✓ He made her bum her own flesh with a cigarette, defecated and urinated in her face, and compelled her to eat the excrement and to drink her own urine from a cup.
- ✓ He strangled her to the point of unconsciousness, cut her body several times, then returned her to the place where he had abducted her.
- ✓ **In reviewing Herberg's criminal appeal, the Supreme Court of Minnesota noted that when Herberg committed these acts, he was 'giving life to some stories he had read in various pornographic books.'** **Officials seized these books from him during his arrest.**

Canadian Supreme Court case of *R v Butler*, [1992] 1 SCR the 452 (*Butler*)

- The Women's Legal Education and Action Fund (**LEAF**), argued that pornography was an issue of sex discrimination which caused systemic gender inequality and the subordination of women within society.
- Verdict: there was a 'causal relationship between obscenity and the risk of harm to society at large' and that 'the relationship between pornography and harm was sufficient to justify Parliament's intervention

Harm Continues....

- ✓ A further harm to pornography's 'actors' is the substantial risk to actors of contracting sexually transmitted diseases
 - John Holmes, a famous pornography 'actor', who died of AIDS related complications in March 1988.
- ✓ Diana E H Russell, *Against Pornography: The Evidence of Harm* (1993). In this book Russell provides commentary on over 100 pornographic photographs and cartoons. Many of the photographs show women bound, gagged, being raped, tortured, penetrated by objects and animals and in obvious pain and distress

Michale Evans (Australia)

- **A** high percentage of non-incarcerated rapists and child molesters have said that they have been incited **by** pornography to commit crimes;
- Pre-selected normal healthy male students say they are more **likely** to rape a woman after just one exposure to violent pornography;
- **A** high percentage of male junior high school students, high school students, and adults in a non-laboratory survey report imitating X-rated movies within a few days of exposure; Hundreds of women have testified in public about how they have been victimised **by** pornography;
- Ten percent of a probability sample of **930** women in San Francisco and **25%** of female subjects in an experiment on pornography in Canada reported having been upset **by** requests to enact pornography;
- Many prostitutes report that they have experienced pornography related sexual assault;
- The laws of social learning must surely apply to pornography at least as much as the mass media in general. Indeed, **I** - and others - have argued that sexual arousal and orgasm are **likely** to serve as unusually potent reinforcers of the messages conveyed **by** pornography;
- **A** large body of experimental research has shown that the viewing of violent pornography results in higher rates of aggression against women **by** male subjects

Andrea Dworkin's testimony before the Attorney General's Commission on Pornography, during its hearings at the United States Court of International Trade in New York City, Jan. 22, 1986

- ✓ Pornography is a civil rights issue for women because it is the systematic exploitation of a group of people because of a condition of birth.
- ✓ Pornography creates bigotry and hostility and aggression towards all women, targets all women, without exception.
- ✓ Pornography harms women. It harms society's image of women by **portraying them as sexual objects** who have perfect bodies and are always hungry for sex forever panting and forever young.
- ✓ Some pornography actually includes violence, culminating at the farthest extreme in "snuff" **films where women are killed or appear to be killed in front of the camera..**
- ✓ Research shows that viewing violent pornography encourages, or at least is correlated with, sexual violence as acted out by male devotees of the material. Pornography also harms some of the women who participate in it as photographic subjects or actors. Research shows that some such women may be filled with shame, despair, and self-revulsion

FREEDOM OF SPEECH AND EXPRESSION??????

WHOOSE FREEDOM AND WHAT IS EXPRESSED

- ✓ A civil rights ordinance, as opposed to a zoning ordinance, would **allow the victims of pornography to sue the makers and distributors of that pornography**, to obtain injunctions to stop the sale and distribution of pornography made of them and damages. The ordinance was the first attempt to regulate pornography as an issue of sex discrimination.
- ✓ The **Minneapolis ordinance was enacted but vetoed by the then Mayor. In 1984, Indianapolis passed a similar ordinance as legislation.** It was later held to be **unconstitutional** because it was deemed to be a violation of the **right to freedom of speech**, protected by the First Amendment to the *United States Constitution*.

Pornography vs constitution.....U.S

- ✓ the Communication Decency Act, (CDA)
 - ✓ the Child Pornography Prevention Act, 1996. (CPP)
 - ✓ the Child Online Protection Act 1998 (COPA)and
 - ✓ The Children Internet Protection Act, (CIPA)2000
 - ✓ Prosecutorial Remedies and other tools to end exploitation of Children Today (PROTECT ACT) of 2003.
-
- In 1997, the U.S. Supreme Court struck down the **Communications Decency Act (CDA)**.
 - Congress responded by passing the Child Online Protection Act (COPA) to correct the constitutional defects in the CDA.
 - The Supreme Court found that COPA likely violated the First Amendment because the government had not meet its burden of proof in showing that less restrictive alternatives (especially filters) would be less effective.' °
 - **The United States has been unable to respond appropriately and provide a model for the rest of the globe for an intelligent balance of safety and privacy, adult and child use**

Ranjit case: Art or obscene?

- *Ranjit D Udeshi v. State of Maharashtra*, AIR 1965 SC 881.
- Charged u/s 292 IPC [1] for certain obscene passages in *Lady Chatterley's Lover*.
- Mr Mulk Raj Anand, a writer and art critic, was witness, who presented a detailed analysis of the novel and opined that the novel was a classic work of considerable literary merit and not obscene..

Test laid down in Ranjit

- **(1) "Where obscenity and art are mixed, art must so preponderate as to throw the obscenity into a shadow or the obscenity must be so trivial and insignificant that it can have no effect and may be overlooked. In other words, treatment of sex in a manner offensive to public decency and, judged by our national standards, considered likely to pander to lascivious, prurient or sexually precocious minds, must determine the result."**

Test

- **(2) "The test to adopt in India is that obscenity without a preponderating social purpose or profit cannot have the constitutional protection of free speech and expression, and obscenity is treatment of sex in a manner appealing to the carnal sides of human nature, or having that tendency."**

Test of obscenity

- **(3) "The law seeks to protect not those who can protect themselves but those whose prurient minds take delight and secret sexual pleasure from erotic writings. No doubt this is treatment of sex by an artist and hence there is some poetry even in the ugliness of sex.**

Social or moral message

- *Ranjit D Udeshi v. State of Maharashtra*, AIR 1965 SC 881. In this case it was further laid down that a work is *per se* not obscene if it contains some social or moral message.

Differing standards

- The fact that certain books are banned in some countries but not in others (Lady Chatterley's Lover for example is banned in India but not in England or the United States of America) shows the extreme subjectivity of the issue.
- constitution guarantees freedom of speech and this includes the right to see and produce obscene articles.

Hicklin not valid

- Hicklin test was retained till 1954 in UK. A mass of literature may be wholly unreadable to adolescent but that does not mean that a publisher is guilty of a criminal offence for making them available to general public.
- Hicklin is rejected in US, Ulysses case: whether to average person, the theme as a whole appeals to prurient interest?

Test in India

- It is obscene if it is,
- Lascivious, appeals to prurient interest, if its effect as a whole, tend to deprave and corrupt persons
- Intention of writer is important: Judge should place himself in writers shoes and adjudge
- Vulgarity, Nudity may not be obscene

Film Medium

- Raj Kapoor v State- satyam sivam sundaram
- Indecent Representation of Women Act 1986,
Communication Decency Act USA



Bandit Queen- Seema biswas



Sculpture not obscenity

- Representation sculptured, engraved, painted or otherwise represented in any ancient monument, or temple or any car used for carrying idols or used for religious purposes. (Exception to 292 IPC)
- 293 Selling Obscene things. Such things can be forfeited by the Govt under CrPC.

Bobby Art International

- This was applied in *Bobby Art International v. Om Pal Singh Hoon*, AIR 1996 SC 1846. This case related to the showing of rape scenes in the movie 'Bandit Queen'. The courts held that nakedness does not always arouse carnal passions and the intent of the producer was to arouse sympathy from the viewer. The film focused on social evils and thus was held not to be obscene.

What is the test?

- *Shri Chandrakant Kalyandas Kakodkar v. The State of Maharashtra and Others* (1969) 2 SC 687.
- court applied the *Hicklin* test strictly, and stated that “none has so far attempted a definition of obscenity because the meaning can be laid bare without attempting a definition, by describing what one must look for. It may be said that utilizing sex and nudity in art and literature cannot be regarded as evidence of obscenity without something more. It is not necessary that the angels and saints of Michelangelo should be made to wear breeches before they can be viewed.

Relevance of Hicklin Test

- It must be noted that the *Hicklin* test need not be taken as a static one as was stated in the case of *R. v. Martin Secker and Warburg Ltd.*, (1954) 1 WLR 1138, the judge in directing the jury stated that “because the test [the *Hicklin* test] was laid down in 1868 does not mean that you have to consider whether [this book] was obscene by the standards of nearly a century ago. Your task is to decide whether you think the tendency of such a book is to deprave those whole minds are open to such immoral influences and into whose hands the book may fall when published...the charge is that the tendency of the book is to corrupt and deprave not shock and disgust.”

Test of obscenity

- *Sukanta Halдар v. The State* AIR 1952 Cal. 214 whether a defense of social good is available to an offence of obscenity?
- ‘Nara Nari’ magazine had been thought to be obscene. Publisher claimed: ‘the science of sex’ and not sex with the intent of arousal. Court found plea was merely a trick to escape censure while increasing the circulation.
- Relied upon the *Hicklin* test but modified it. “the tests to be applied to determining whether a particular object is obscene or not would depend on various circumstances. The idea as to what is obscene has varied from age to age, from region to region, dependant upon particular social conditions.

Test in Sukanta Halдар

- There cannot be an immutable standard of social values... The true is not to find out what depraves the morals in any way whatsoever, but what leads to deprave in one way which is by exciting sexual desires and lascivious thoughts. The effect produced on an ordinary member of society or a particular class of readers for which a particular publication may be meant has to be ascertained. It is neither a man of wide culture or rare character nor a person of a depraved mentality who should be thought of as being the readers of such literature.

Sameresh Bose case

- Whether **vulgarity is also obscenity**? *Samaresh Bose v. Amal Mitra* AIR 1986 SC 967.
- Bengali novelist accused of obscenity though no blatant references to sex in his book *Prajapat*. The Supreme Court held the novel to be vulgar and not obscene and stated “vulgarity arouses a feeling of disgust and revulsion and also boredom but does not have the same effect of depraving, debasing, and corrupting the morals of any reader of the novel, whereas obscenity has that tendency.”

Pratibha Naitthani v Uoi

- AIR 2006 (Bom) 259: aggrieved by the telecast of "adult and obscene films shown by the electronic media" and "obscene photographs" in the print media, filed a WP before Bombay HC held TV channels were violative of the programme code under the Cable TV Network Act and the Cable TV Network Rules. issued a number of orders while hearing the case.

Directions of Division bench

- Dec 8, 2004 court restrained newspapers from publishing any advertisements that amounted to invitation to prostitution; which had a sexual overtone; or which violated Section 3 of the Indecent Representation of Women (Prohibition) Act, 1986. Dec 1, 2004 and Jan 12, 2005, DB said: absolutely imperative for the Central Government to issue appropriate guidelines regarding downlinking.

Issue

- Whether TV channels are free to telecast CBFC certified adult films despite the restriction in Clause (o) of Rule 6(1) of the Cinematograph Act Rules that no programme shall be carried on the cable service which is "unsuitable for unrestricted public exhibition"?

Right to watch adult content

- The court held that the adult viewer's right to view films with adult content is not taken away by Clause (o) of Rule 6(1). "Such a viewer can always view Adult certified films in cinema halls. He can also view such films on his private TV set by means of DVD, VCD or such other mode for which no restriction exists in law."

No violation of right

- Held restriction upon cable operators and cable service providers that no programme should be transmitted that is not suitable for unrestricted public exhibition did not violate their right to carry on trade and business.
- only films sanctioned by the CBFC, under Act and Rules, as suitable for "unrestricted public exhibition" could be telecast or transmitted on cable TV.

Regulating

- If the sale and viewing of obscene materials is banned, a huge underground market will be set up to serve the demand created for such products. The government would do better to regulate obscenity rather than ban it outright.

Sexual tensions

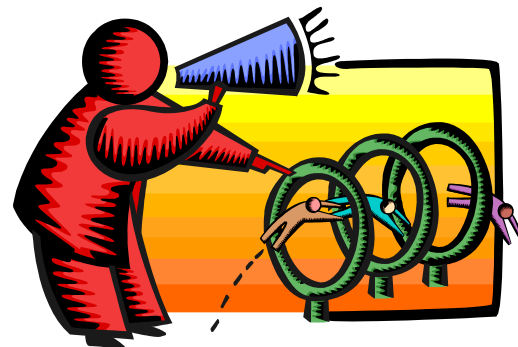
- Another argument used by pro-pornography activists include the fact that pornography has positive benefits in contributing to social well being, including the liberation of people from taboos and constraints at the level of fantasy, and providing a catharsis for individual sexual tensions.

Indecent Representation of Women (Prohibition) Act 1986

- Indecent Representation of women (prohibition) Act, 1986, prohibits indecent or obscene representation of ads and material or photos.
- Indecent representation means depiction in any manner of 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.

Section 3 offence

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



Books etc

- 4. No person shall produce or cause to 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



Exception

- For public good in interest of science, art, or learning, or other objects of general concern or
- Which is kept or used for religious purposes;
- Sculptured, engraved, painted or otherwise represented in ancient monuments, any temple.

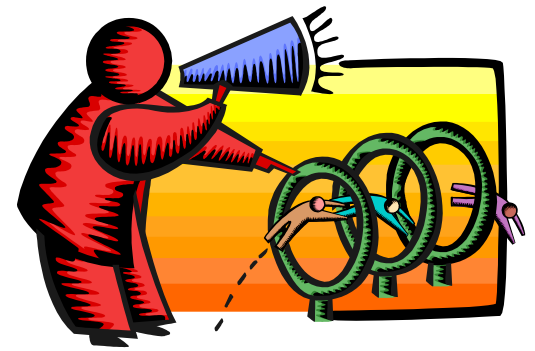


Power to enter

- Any Gazetted officer authorized by State can enter, inspect, seize material containing indecent representation of women.
- No entry in private dwelling house without warrant
- Penalty for offences under SS 3,4, 2 yrs jail plus 1000 for first, up to 5 yrs and one lakh for second and subsequent offences.

Obscenity & Indecent representation of women

- Encouraging some one to engage in a crime is an offence, for procuring obscene object is an offence 292 imprisonment and fine, Indian Penal Code
- Procuring, distributing, communicating and publishing obscene objects or writings is an offence.





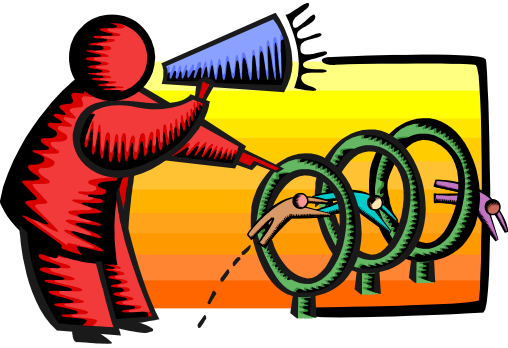
IPC

- Young Persons (Harmful Publications) Act 1956, publishing harmful material is an offence
- S 293 prohibits sale, hire, distribution, exhibition or circulation or attempt is offence. *Ranjit D Udeshi v Maharashtra*, AIR 1965 SC 881, Obscenity defined.



Controversial Tuffs Shoe Ad





Tuffs Shoe



- Model Madhu Sapre faced a trial for charges of obscenity and indecent representation of women, along with Milind Soman. A photograph of the Tuff shoes advertisement, in which Sapre had posed nude with Soman, had appeared with a news item in a newspaper on July 23, 1995, sparking off protests.

Press & IPC

- 124A Sedition: Spreading disaffection (disloyalty and all feelings of enmity) by words or writings against Govt estd by law- punishment life imp+fine. Disapproving the measures of Govt is not disaffection.
- Not connected with violence, presuppose disaffection, calculated to disturb the tranquility of state by words or deeds leading innocents to subvert the laws or govt in the country.

Sedition

- Indian law of sedition is contained in Sections 124A political offence,
- 153A Sedition by class hatred and
- 295 Sedition by promoting religious insult
- Sedition caused by questioning territorial integrity according to Section 2 Criminal Law Amendment Act, 1961

Binayak Sengupta Case



Tendency of disorder

- Not an offence against public order, but gist is 'tendency of public disorder. Citizen can criticise without inciting to violence.
- Liability of writer or printer is rebuttable presumption, essence of this crime is intention
- Tilak Case Bangbasi, British India Govt is thoroughly dishonest, throw out violently considered to be seditious in 1941

Mao-Tse-Tung

- Book 'Extracts from Mao-Tse-Tung' was forfeited by Gujrat Government as seditious Gujrat HC said to condemn it was closing the doors of knowledge (Manubhai Tribhuvan Das v State. Six out of 184 passages were removed and order reversed
- This continues to be a threat to media's freedom.

Hate Speech

- 153A Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language and doing acts prejudicial to maintenance of harmony. 3yrs
- By words or signs or by visible representations
- By committing act prejudicial to harmony
- Organising movement, drill, to use violence
- Committing this offence at place of worship 5yrs

Prejudicial to Integration

- 153B Imputations assertions prejudicial to national integration- 3yrs + fine.
- Making an imputation that some do not bear true faith to Indian Constitution
- Asserts or propagates that some be denied of their rights as citizens of India
- Making assertions to cause disharmony or hatredness
- Committing this offence at place of worship, 5 yrs

Statements of mischief

- Publishing statement, remour or report
- With intent to cause soldier to mutiny
- With intent to cause fear or alarm to public inducing them to commit an offence against the state or against public tranquility
- With intent to cause one community to commit offences against another community, etc S 505

Offences against religion

- Injuring or defiling place of worship with intent to insult the religion- 2 yr + fine s 295,
- Malicious acts to outrage religious feelings, 3 yrs and fine, S 295A
- Uttering words etc with intent to wound religious feelings, 1 yr + fine, s 298

Sec.293

- Sec 293 of IPC, makes sale of obscene materials to young persons as aggravated act of obscenity, and the punishment is seven years and fine of Rs.5,000/-.

Offences relating to religion:-

- **Sec.295:-**
- Deliberate malicious acts intended to outrage religious feelings or insulting religion or religious beliefs. Punishment three years/fine or both. Sanction under sec 196 CRPC by District Magistrate is necessary. (Ramjilal Modi V State of U.P (SCR-1957 p-860)).

MEDIA TRIAL ?

MEDIA JUDGMENT ?

MEDIA PUNISHMENT ?

Concerns



- Right to Fair trial
- It completely overlooks the vital gap between an accused and a convict keeping at stake the golden principles of *'presumption of innocence until proven guilty'* and *'guilt beyond reasonable doubt'*
- A person is presumed to be innocent unless he is held guilty by the competent court, but here the trend is to declare a person guilty right at the time of arrest. The media is there to report facts or news and raise public issues; it is not there to pass judgments.



- TRP RATINGS: Earlier, journalism was not under pressure to push up TRP ratings or sales. So the journalists did their work with serious intent and conviction, with courage and integrity
- highlighting the *sub-judice issues into public*
- keeping at stake the sanctity of judicial procedures
- Interference with '*right to life with dignity*' of accused and suspects.
- The media trial → media verdict → media punishment
- Is it an illegitimate use of freedom and transgressing the prudent demarcation?

Google News....Taj Hotel



Shivani Bhatnagar's Murder Case





Ram Jethmlani – Villain – CNN-IBN

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Police have no clue'.
Police under pressure





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Conclusion

- Public debate and talks between politicians, producers and teachers.
- Development of professional codes of conduct and self-discipline for producers.
- Innovative forms of media education to create competent and critical media users.



show the truth and that too at the right time !!