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National MAGAZINE | FEB 15, 2010



CYBER LAW: BAN ON PORNOGRAPHY

Kill It Before It's Porn...

How practical or necessary is the CJI's idea to prohibit all pornography on the internet?

CHANDRANI BANERJEE

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Is it possible for the government to block and monitor pornography on the internet? The question began to be debated hotly in legal circles and among cyber experts ever since the Chief Justice of India K.G. Balakrishnan, at a conference of the National Consultation on Enforcement of Cyber Law in New Delhi on January 31, said that there was an urgent need to ban/block websites that contain pornography. He also emphasised the need to tighten cyber-law enforcement.

However, given the mind-boggling number of porn sites in cyberspace, any government action, say experts, seems impossible. Search engines and other websites in the country are required to filter pornographic content by law, but the opportunity for circumvention is so immense and government interest in prosecution so low that the country is better off without cyber laws, say analysts. "It is impractical to monitor pornography on the net," says cyber-law expert Abani Sahu, who was also part of the consultation process while the IT law was enacted. "Rather than try to control all pornography on the internet, the government would be better off focusing on the more serious issue of child pornography," he adds.



"Websites can't be policed by banning. Even in cinema, the system used is of warning on content." Rajeev Dhavan, Supreme Court Lawyer

As per a 2008 amendment of Section 67 of the Information Technology Act, 2000, "whoever publishes or transmits or causes to be published or transmitted in electronic form" any material "which is lascivious or appeals to prurient interest" or "contains (a) sexually explicit act or conduct" is liable to be penalised. In reality, this law is observed more in the breach. As cyber-law consultant and Supreme Court advocate Pavan Duggal points out, "Though the IT Act has been strengthened, there are still sufficient loopholes. For example, if the user sourcing porn enters a search engine giving his country as the US, he cannot be acted against. Neither can the search engine be faulted."

Adds SC lawyer Rajeev Dhavan: "Websites can't be policed by banning. Even in cinema, the system used is of warning about something objectionable. If prosecution is possible, then it should be done. Otherwise, website owners should be told to monitor and do the needful. But it's impractical. The vast area

of network makes it impossible."

Experts point to the classic case of the government failing to rein in porn site www.savitabhabhi.com. Banned last year for its comic depiction of the sexual fantasies of Indian housewives, it was relaunched as www.kirtu.com and is hosted by a foreign server which is beyond the jurisdiction of Indian law.

Some search engines have tried to block adult content in their

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India operations. But it's nothing that a net-savvy person can't get around. For example, website and search engine yahoo.com does have filters designed to block adult content among Indian users. However, even college students can crack the code and surf porn at will. Says Shubho Ray, president of the Internet and Mobile Association of India, "The statement made by the chief iustice is very encouraging. But



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Akhila Sivadas, media researcher and executive director, Centre for Advocacy and Research, Delhi, feels net users must be educated and made aware. So must the law-enforcers. "It's unfortunate that there is no consumer education in India," she says. "A system needs to be set up and the multi-stakeholders to that system need to respond to it. We do need a system to monitor such offences on the web but then we need to put a system in place. We just talk of bringing in a change but what about the execution and enforcement part? It requires introspection on the part of policy- and law-makers."

Sexologist Dr Praksh Kothari, however, condemns this entire debate on banning cyber porn. "This is a harmless thing that stimulates an individual," he says. "One enjoys the sensual part of the art and may get excited about the act. If the CJI's statement suggests that just watching a website is a crime, then I think it's impractical. One can't ban websites circulating pornography just because some people think it's contributing to a criminal mindset. Instead, there should be proper sex education."

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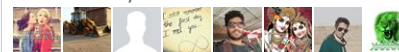


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But who will define and set the standards?

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Pornography is a much abused term in public discussions. The legal system cannot function in denial of a reality. While it is pertinent to curb the proliferation of porn websites to check child abuse, it is also a social necessity to educate the people on sex. Prostitution is a much vexed issue. The problem is ill conceived. Is a society better off by legalising prostitution or it works fine by holding aloft the flag of morality but failing to check prevalence of exploitation in its name? A consensus needs to be built on this issue.

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I have a feeling there are more pressing issues for the CJJ than thinking about pomography. Will he care to elaborate what happened with the Justice Nirmal yadav and dinakaran case?

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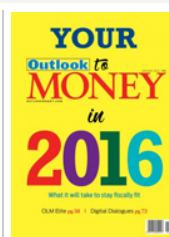
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