

WOLKITE UIVERITY SCHOOL OF LAW



THE REGULATION OF CYBER PORNOGRAPHY IN ETHIOPIA:

A CRITICAL APPRAISAL

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APPROVAL SHEET
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As thesis advisor, I hereby certify that I have read and evaluated this thesis prepared, under my guidance, by Azezia Tedia, entitled 'The Regulation of Cyber Pornography in Ethiopia: A Critical Appraisal'.

Advisor Signature Date

As members of Examiners the LL.B thesis defense examination, we certify that we have read and evaluated the thesis prepared by Azezia Tedia and examined the candidate. We recommended that the thesis be accepted as fulfilling the requirement for the degree of Bachelor of Laws Degree (LL.B).

Examiner Signature Date

DECLARATION

I, the undersigned, hereby declare and affirm that “**The Regulation of Cyber Pornography in Ethiopia: A Critical Appraisal**” is my original work which has not been presented for any degree or examination in any University and the sources used have been duly acknowledged and cited.

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ABSTRACT.

According to the present Ethiopian Legal system, There is no clear and sufficient Legislations for the regulation of cyber pornography.

The purpose of this study is to play a great role in creating awareness and giving more knowledge about the impact of cyber pornography on the individual person as well as the community at large. Because it damages the moral attitudes of the younger generation and finally leads to influence on the social, cultural and religious standards of the country.

To Sum up, I recommends that all interested organ from Federal level up to woreda, should formulate Clear and Strict Laws to regulate the possession, publication, distribution and sale of Pornographic materials for the community. In addition to this I also recommends each religious leaders or fathers should Teach or preach their spiritual sons about the impact of cyber pornography on their religion.

Finally, I recommends for parents to abstain them self and control their children from the consumption of cyber pornographic contents from their television or any other mode of transmission of cyber pornographic contents.

Chapter One

Introduction

1.1. Back ground of the study

Internet is a global network of billions of computers and other electronic devices, with the internet; it is possible to access almost any information communicate with anyone else in the world.¹ Internet technology is an instrument of Communication through Which Citizens mostly the younger generation are using it for unlawful purpose which is affecting their innocent minds and degrading their morals. In recent years cyber pornography has been arising as one of the most worrying issue related to internet.

Cybercrime is also called computer crime by the use of computer as an instrument to perform illegal acts, such as committing fraud, trafficking child pornography, intellectual property and violating privacy.² Among the crimes, as stated earlier, one is cyber pornography. Cyber pornography is the act of using cyber space to create, display, distribute, import or publish pornography or obscene materials, especially materials depicting children to engage in sexual act with adults. Cyber pornography is a criminal offence classified as causing harm to person.³

A growing new anti - pornography movement has arisen in reaction to the ready availability of pornography on the internet. It includes both traditional social conservatives, who still complain that pornography damages the moral tone of the society, corrupts immature minds and could lead to sexual assault and other violence against women. Feminists also complain that some pornography reduce the relationship between men and women. The proponents of these ideas argue that new alleged harms are caused by the internet pornography, and argue that online

¹ <https://edu.gcfglobal.org/en/internet-basics/what-is-the-internet>

² <https://www.britannica.com/topic/cyber-crime>

³ <https://www.your-dictionary.com/cyber-pornography>.

pornography may negatively affect sexual relationship between real couples, and in some cases psychological effects, perhaps even addiction. Just as some who drink or gamble come to have a serious problem, and need help, the same is true for viewers of pornography on the internet.⁴ Cyber pornography is a harmful offence which causes harm to people by initiate, design, produce, publish or advertise any indecent images with the use of internet. To handle issues related to cyber pornography there has been various legislative and administrative attempts taken by government and law enforcement agencies across the globe.⁵

1.2. Statement of the Problem.

As stated in the background development of Information Communication Technology and rapid evolution in communication sector, especially the use of ICT facilities, internet and social networks are bringing effective and efficient communication to the users. But the introduction of ICT facilities and social networks is also paving a way for committing an offence. Among others, cyber pornography is becoming one of the threats in the current world. As Ethiopia is not an island to the internet world, it is prone to the cyber pornography threat. And the main Concern of this study is to critically evaluate the regulation of cyber pornography in Ethiopia.

1.3. Objectives of the study

1.3.1. General Objectives

The main objective of this study is to critically assess the regulation of cyber pornography activities in Ethiopian as a result of development of information Communication Technology.

1.3.2. Specific Objectives

The Specific Objectives of this study are:

⁴ Thomas C. Arthur: The problems with pornography regulation; lessons from history , Emory University School of Law, Emory law journal. Vol 68-2019.

⁵ Yashika Arora and BhawnaSharma: the dark side of cyber pornography:Bharthividy Apeeth University: New land College 2018. Vol 4: p.2.

- ❖ To assess the existing legal the sufficiency of the existing legal framework governing cyber pornography in Ethiopia.
- ❖ To Show the need for adoption of sufficient legislations governing cyber pornography in Ethiopia.

1.4. Basic Research Questions

The basic research questions of the study are:

- ✓ How does the Ethiopian legal system look like in governing cyber pornography?
- ✓ What possible way outs are there to govern cyber pornography in Ethiopia?

1.5. Significant of the study

This study may give important idea for the following;

- ✓ The study will have an impact on policy makers and the legislature to frame necessary policies and enact sufficient laws.
- ✓ The study will serve as a source other researchers.
- ✓ The study will influence those stake holders to ensure proper use of Information Communication Technology facilities to avoid the production, possession or advertising cyber pornographic materials to the society.

1.6. Research Design and Methodology

The research is a desktop research which falls under the category of doctrinal research. Hence, I have analyzed legislations and written materials like books, journal articles and information from the internet.

1.7. Scope of the study

The study has been delimited on the regulation of cyber pornography in Ethiopian Legal system. In doing so I have tried to discuss some Ethiopian legislations and tried to consult some foreign legislations so as to have a better discussion on the issue.

1.8. Organization of the study

The research is categorized into four Chapters. The First chapter contains the introductory matters, which includes: Background of the study, Statement of the

problem, Research objectives, Research Questions, Significant of the study, Research Methodology and Scope of the study. The Second Chapter contains the general overview of cyber pornography. The Third Chapter contains Regulation of cyber pornography under the Ethiopian legal system. Finally the Fourth Chapter contains Conclusion and Recommendations.

CHAPTER TWO

GENERAL OVER VIEW OF CYBER PORNOGRAPHY

2.1. Terminological definition of some basic words and phrases in the study

Before proceed the main part of the study, it is essential to discuss the terminological Definition of some basic words and phrases in the study. Pornography: The term pornography lacks Global and consensus definition, because of the variation in culture and local values from county to county. However the word pornography is derived from The Greek terms, Porne which means prostitution, and Graphos, means to write. So pornography is writing about prostitution.⁶

Black,s Law dictionary defined pornography as a materials, such as, writings, photographys, or movies depicting sexual activity, or erotic behavior in a way that is designed to arose sexual excitement.⁷

Cyber crime/computer crime/. different scholars have defined the term cyber crime. Jovan Kurbarija defined cyber crime, as a crime committed via the internet and computer systems. International Telecommunication Union defined cyber crime in a narrow and Broad sence. Cyber crime in a narrow Sence it is a computer related crimes that covers any illegal behavior directed by means of electromagnetic operations that targets on the security of computer systems and the Data processedbby them. Cyber Crime in broad Sence it is a computer-related crime covers any illegal behavior committed by means of ,Or related to computer systems or networks.such crimes includes: illegal possession and offering or distributing information by means of computer systems or networks.⁸

⁶ Innocent Kibadu: Inadequacy of Tanzanian legislation in prohibiting cyber pornography, University of Iringa, Faculty of Law. P. 17

⁷ Black,s Law dictionary, edit 2009 p.1279

⁸ Id,Innocent Kibadu, supra note 6,p 18

Under our Computer Crime Proclamation No,958/2016, Computer crime means a crime committed against a computer, computer systems, computer data , or computer network, or a conventional crime committed by means of computer systems or computer data, or illegal computer content data disseminated through a computer systems or computer network.⁹

Cyber pornography : cyber pornography is refers to materials such as, writings,photographys or movies depicting sexual activity or erotic behavior in a way that is designed to arose sexual excitement, but these materials are published or distributed from One person to another or downloaded by and possessed by an individual via internet technology or any other electronic devices.¹⁰

Child pornography: Child pornography covers All pornographic materials that can visually depicts a minor to engage in sexual explicit conduct.¹¹

Child cyber pornography: child cyber pornography refers to any pornographic materials that can visually depicts a minor to engage in sexual explicit conduct. But such materials are published or distributed from One person to another person via internet technology or any other electronic devices.¹²

2.2. Kinds of cyber pornography.

Based on who are involved in the pornographic activity, we can divided cyber pornography in to: Adult cyber pornography, Child cyber pornography, and Gay cyber pornography.

2.2.1. Adult cyber pornography.

Adult cyber pornography is the involvement of adults in the production, possession,

⁹ Computer crime Proclamation No,958/2016 art 2

¹⁰ Id,Innocent supra note,6..p19

¹¹ Ibid

¹² Ibid

publication and distribution of Pornographic materials.

In many jurisdictions adult pornography seems to be legal and the production of pornographic materials isn't prohibited. This is one of the area of pornographic industry in which youths are engaged in the production, publication or distribution of pictures or animated photos to earn money due to unemployment crisis among the youth in the world.¹³

2.2.2. Child cyber pornography.

Child cyber pornography is the involvement of Children in the production, and publication of sexual explicit pictures, photographys, vedios and audios over the intern et system. This kind of pornography has been long condemned by local and International communities to protect the best interest of the child. It's believed that exposing child to pornography destroys the moral and social values, and psychological development of the children involved in the action and those who are watching the same online. Development of Information Communication Technology has significant effect on children. Researches indicated that children and adolescents are the Most frequent users of ICT in the home.¹⁴ at global level, child cyber pornography is prohibited. as per art, 2 of optional protocol defines child cyber pornography as any portrayal by whatever method of the child occupied with express sexual excitement via internet technology. Child cyber pornography includes, acts such as: sexual explicit pictures of the children which end up exposing those vulnerable children to unsuitable material, physical Harassment and affectes their emotional sence as well. Children are the Most innocent and affected section of the society. So attention should be given for the protection of their rights , because of they have not defend themselves.¹⁵

¹³ Id, Innocent supra note,6.p21

¹⁴ Id, Innocent supa note,6.p23

¹⁵ Yeshik Arora and BhawnaSharma supra note 5 p2

2.2.3. Gay cyber pornography

Gay cyber pornography is the newly emerged kind of pornography, as a result of recognition of homo sexual marriage, Especially in developed countries in the west Like USA and some European countries.

Strongly speaking, Gay pornography receives strong opposition inn almost all over the African countries, as it's against the African social, cultural and moral values. in the religious perspective, gay Pornography is prohibited.¹⁶

2.3. Arguments regarding to restrictions of Cyber pornography.

There are different arguments regarding to the restrictions of pornography, all of those theories, that means Libralists, Legal moralists/conservatives/ and Feminists are appeared to agree that in certain circumstances restrictions on pornography are justified. But they strongly disagree as to why and in what Circumstances Suh restrictions are justified.¹⁷ Know let us see the arguments of each theories regarding to the restrictions of pornography.

2.3.1. Liberalism.

For libralists, restrictions of pornography May violate two princes of libral ideology, freedom of expression and the right to individual liberty.

A, Freedom of Expression: freedom of expression is the Freedom of an individual to openly communicate his or her idea or believe.

For libralists, freedom of expression is both important and necessary since it allows for the moral, political and intellectual growth of the society. According to Mill, the peculiar evil of silencing the expression of an opinion is like robbing the human race. Restriction on expression is affected a person especially where the expression in

¹⁶ Id,Innocent supra note,6,p24

¹⁷ Joel Bakan, Pornography , law and moral Theory Ottawa law review vol 17:1 p 5.

question presents a challenge to the existing moral and political order.¹⁸

B, The right to individual liberty: The right to individual liberty is the right of an individual to act as he or she wishes without the interference or the threat of interference from others. Political liberty in this sense is simply the area within which a man can act without restrictions by others. For Mill, liberty is manifested in the security and autonomy of the individual and a person's most vital interest is his or her security and autonomy.

Only Secure and Autonomous person can assert his or her individuality and can produce well developed human being. BUT Liberalists Acknowledged that neither freedom of expression nor the right to individual liberty can be absolute. the right to freedom of expression and the right to individual liberty maybe restricted only by the law with in justified reason, it may for the preventions of harm to others.¹⁹

2.3.2. Legal moralists/ Conservatives/.

Legal moralism is the opposite of Liberalism. It begins with the proposition that the function of the law is to enforce the morality of the community. If an act is contravene the moral standards of the community, it is subject to legal restrictions even if it doesn't harm to individual intereste. The classic example of the difference between Legal moralists and liberalists is their different reaction to private sexual practice, such as Homosexuality between consenting adults

That are contravene to the moral standards of the community, But don't harmful to any particular individual. Liberalists argued such acts aren't restricted, since no individual is actually harmed by theme. Legal moralists or conservatives on the other hand argues it's essential to restrict these activities since they are contravene to the community,s morality.²⁰

¹⁸ Id ,cited above on supra note,17,p,3

¹⁹ Id ,cited above on supra note,17,p,4

²⁰ Id ,cited above on supra note,17,p,5

2.3.3. Feminists

Feminist aren't concerned with the moral or immoral nature of pornography, Rather their focus is on the harm that pornography causes to an individual women.²¹ Their argument is partially similar with Libralists argument, Because they are conserved on the harm of individual intereste , not on the harm to the moral standards of the community, But the argument of Feminists is not conclusive the harms of all individual intereste, rather they depends on the harm to individual women. In this regard it differes from Legal libralists.

2.4. The regulation of cyber pornography In Foreign jurisdictions.

2.4.1. The regulation of cyber pornography in Indian.

Cyber pornography is defined as the act of by means of cyberspace generate, display, import, distribute, or obscene materials or publish pornography. With the coming on of cyberspace, traditional pornographic comfortable has now been for the most part replaced by online/digital pornographic comfortable. Cyber pornography is forbidden in many countries & legalized in some. In India, In the Information Technology Act, 2000, this is a grey region of the law, where it is not illegal but not legalized either. There is one case in which presentation Cyber pornography is carrying a punishment of with imprisonment up to 5 years & fine up to 10 lakhs. Where the comfortable contains children attractive with one an additional or with adults in sexually clear acts. Downloading Child pornography online is also a carrying a punishment of offence under the Information Technology Act. The formation of child pornography is also carrying a punishment of under the Act. The act of collecting & storing cyber pornography is not an offence, but if the comfortable involves minors, then it is carrying a punishment of with imprisonment up to 5 years & fine up to 10 lakhs. Globe over online child pornography is illegal. One of the biggest made known catches of child pornography perpetrators was launch in May 2002 & called Operation Ore. After the FBI access the credit card details, home addresses of

²¹ Id ,cited above on supra note,17,p,2

thousands of pornographers accessing a British child pornography site, and email addresses the particulars were given to the British police force for investigation. The arrest of a computer specialist in Texas led to an international investigation that imprisoned Thomas Reedy for 1,335 years for successively the pornography ring. About 1,300 other perpetrators were also under arrest, including teachers, child-care personnel, soldiers, surgeons, social workers, & 50 police officers. As an outcome, 40 children, 28 of them in London, were located under protective care. To conclude, Cyber pornography has not been legally recognized in India, however, it's browsing has not been banned either apart from in the case of child pornography. Globe over online child pornography is unlawful. Watching pornography no offence in IPC & IT Act.²²

2.4.2. The regulation of cyber pornography in USA.

Internet pornography is a battlefield in U.S. law. Since the explosion of public interest in the Net in the 1990s, the public, lawmakers, and the courts have argued over how to control online porn. Congress and state legislatures have passed several laws aimed at protecting children from exposure to so-called cyber porn, but the most sweeping of these have often failed to pass constitutional tests. The failure of these laws in court means this popular yet controversial medium faces few regulations.

According to the Internet Filter Review (an industry group advocating pornography filtering), Internet pornography accounts for \$2.5 billion of the \$57 billion worldwide pornography market. The Review found that in 2003 there were 4.2 million pornography Web sites allowing access to 72 million worldwide visitors, of which 40 million of them were Americans. One fourth of the search engine requests every day (68 million) are for pornographic material.

²² <https://blog.iplayers.in/cyber-Pornography-law -in-india-the-grew-law-decoded/>

In some respects, the issue continues a legal struggle many decades old. Opponents of pornography have long tried to control it on moral grounds, even as proponents sought to protect it as a valid expression of free speech. Traditionally, opponents won these battles. The Supreme Court established that **obscenity** is not protected by the First Amendment, but the difficult question in each case has been defining what is and what is not obscene. Court rulings gradually shifted from a broad, forbidding position of the late 1950s to holding, in the 1970s, that communities could set their own standards for obscenity. Replayed in countless courtrooms, the tug-of-war between these camps has continued ever since.

But the fight over cyber porn carries traditional arguments into new areas shaped by technology. A chief concern is that the Internet allows minors easy access to it through search engines—sometimes even accidentally. U.S. **Solicitor General** Ted Olson contended that minors could stumble upon or intentionally enter 28,000 commercial porn websites. Also of worry is the Internet’s ability to facilitate the illegal dissemination of child pornography. And the ubiquity of Internet access has raised new social problems by introducing pornography into new settings, such as public libraries and the workplace.

Milestones in the development of Internet pornography law include the following.

- The Supreme Court established that obscenity is not protected by the First Amendment in *Roth v. United States* (1957), declaring obscenity to be “utterly without redeeming social importance.”
- After subsequent cases showed the difficulty of finding a conclusive definition of obscenity, the Court restated its definition in *Miller v. California* (1973). It substituted a detailed three-part test ultimately to be used by each locality—the so-called “community standards” test.

- The Court ruled that child pornography is not a form of expression protected under the constitution in *New York v. Ferber* (1982). It has also upheld a state law prohibiting the possession and viewing of child porn in *Osborne v. Ohio* (1990).
- Seeking to control Internet porn, Congress first passed legislation in 1996. The Communications Decency Act (CDA) criminalized the dissemination over computer networks of obscene or indecent material to children. Immediately blocked from enforcement by the courts, it was ruled unconstitutional under the First Amendment in 1997. Seeking to update federal child pornography law for the Internet, Congress passed the Child Pornography Prevention Act (CPPA) of 1996. Among other features, the law criminalized any visual depiction that “appears to be” child pornography, including so-called virtual porn created by computer. After lower courts struck down provisions of the **statute**, the U.S. Supreme Court agreed to hear an appeal. In *Ashcroft v. Free Speech Coalition*, (2002), the high court agreed with the Ninth Circuit that two key provisions of the CPPA were unconstitutionally overbroad (affecting both legal and illegal speech) under the First Amendment. The law was struck down.
- Congress responded by passing the Child Online Protection Act (COPA) of 1998. More narrowly written, COPA took aim at commercial online porn sites that disseminate material to minors. And, anticipating constitutional objections, it mandated that criminal cases brought under it would be tried according to contemporary community standards. The law set stiff penalties of \$150,000 for each day of violation and up to six months in prison. However, COPA suffered similar setbacks in court after the ACLU and several non-pornographic online websites successfully contested it, first in federal district court in Philadelphia and then before the U.S. Court of Appeals for the 3rd Circuit. As before with the CDA, the Justice Department continued to appeal; this time, it argued that online porn is even more readily accessible to children and thus in need of urgent control. However, in 2004, the U.S. Supreme Court rejected Congress’ version of the Child Online Protection Act (COPA), in that it did not sufficiently protect the rights of adults to consensually view

sexually explicit material on the Internet. *Ashcroft v. ACLU*, No. 03-0218 (2004). The Court, by a close 5-4 vote, concluded that the government had not shown why less-restrictive alternatives (such as software filters) could not be equally or more effective. The high court noted that filtering software had come a long way in just five years, and that two less restrictive laws had passed muster, one prohibiting misleading domain names, and another creating a child-safe kids.domain, and that these and similar actions may be sufficient to protect children. The case was remanded to a lower court for further investigation and action.

- In response to this, the Department of Justice began issuing subpoenas to Google, Yahoo, and MSN, to obtain one million random Web addresses and records of all searches for a one-week period in order to prove the superiority and necessity of COPA, and the ineffectiveness of filtering technology. As these federal cases suggest, recent outcomes have favored those who regard federal control of Internet pornography as censorship. That does not mean the issues are settled, as indeed partisans on both sides of the issue eagerly anticipate forthcoming proposed legislation and judicial review thereof.²³

2.5. Effects of cyber Pornography on younger generation.

The effects of cyber pornography ranges from The individual child up to the adolescent age. But in this paper I have tried to explain the effects of cyber Pornography, on the younger generation, as they are the Most users of modernized Systems of Information Communication Technology. For their day to day Activities.

2.5.1. Encourages sexual practice.

Pornography teaches about sex and sexuality, which is unsafe sexual practice. It includes engaging in sexual intercourse without the use of contraceptive methods of sexual conduct as well as engaging in diverse form of sexual acts. Such as anal

²³ [https:// internet.law.uslegal.com/pornography](https://internet.law.uslegal.com/pornography).

intercourse, facial ejaculation and intercourse with multiple partners. Pornographic materials maybe utilized by younger people to pleasure themselves, as well as to explore their sexual identity and other sexual practice.

Pornography fails to educate young people about the reproductive aspects of sex, as well as the ethical negotiations surrounding sexuality, such as consent of the sexual partner.²⁴

2.5.2. Sexual aggression

Pornographic contents have become more aggressive, with most senses depicting acts of physical and verbal aggression. these acts of aggression includes, gagging, choking and slipping , degradation and humiliation of women, B/c men getting what they want, women consider as Object of their pleasure by unsafe, unprotected sexual practice and engaging in sexual act with multiple partners. There for pornographic contents are displays sexual violence against women, as people who regularly engage with violent pornographic materials are more likely to be sexually aggressive compared to those who are not engage in view of Pornographic materials.²⁵

²⁴ . https://en.wikipedia.org/wiki/Effect_-_of_pornography_on_young_people

²⁵ ibid

CHAPTER THREE

THE LEGAL PERSPECTIVE AND REGULATION OF CYBER PORNOGRAPHY IN ETHIOPIA

3.1. Constitutional Guarantees of Freedom of Expression in Ethiopia

Freedom of expression was for the first time given juridical recognition in modern Ethiopia by the Revised 1955 Constitution.²⁶ Freedom of expression was also given recognition in the 1974 Draft Constitution. Constitution of the Peoples' Democratic Republic of Ethiopia, which had a clear socialist orientation, also gave recognition to freedom of expression.²⁷ Hence, at least on paper, freedom expression has been given recognition in Ethiopia for more than half a century. However, anybody who is familiar with modern

Ethiopian history would know that these constitutional guarantees of freedom of expression were not effective in fostering political dissent and freedom of the press. On the ground, there was hardly any free press or freedom for political dissent despite what these constitutions provided.

A dramatic change occurred as far as freedom of expression was concerned with the collapse of the 'Dergue'. Not only did the Transitional Charter recognize freedom of expression.²⁸ but freedom of the press and speech became a reality with an unprecedented proliferation of privately run newspapers and magazines. The extent to which that freedom has subsisted till this day is a debatable issue, but what is certain

²⁶ . See the 1955 revised Constitution of the empire of Ethiopia, art, 41.

²⁷ .se the constitution of the people's democratic republic of Ethiopia(1987), art,47

²⁸ See transitional period charter of Ethiopia, (1991) art, 1(a)

is that in our constitutional history, freedom of expression was stipulated in the 1995 FDRE Constitution in the most elaborate manner. Article 29 of the FDRE Constitution provides for the 'Right of Thought, Opinion and Expression' in the following terms:

- 1) Everyone has the right to hold opinions without interference.
- 2) Everyone has the right to freedom of expression without any interference. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice.
- 3) Freedom of the press and other mass media and freedom of artistic creativity is guaranteed. Freedom of the press shall specifically include the following elements: (a) Prohibition of any form of censorship; (b) Access to information of public interest.
- 4) In the interest of the free flow of information, ideas and opinions which are essential to the functioning of a democratic order, the press shall, as an institution, enjoy legal protection to ensure its operational independence and its capacity to entertain diverse opinions.
- 5) Any media financed by or under the control of the State shall be operated in a manner ensuring its capacity to entertain diversity in the expression of opinion.
- 6) These rights can be limited only through laws which are guided by the principle that freedom of expression and information cannot be limited on account of the content or effect of the point of view expressed. Legal limitations can be laid down in order to protect the well-being of the youth, and the honor and reputation of individuals.
- 7) Any citizen who violates any legal limitations on the exercise of these rights may be held liable under the law.

In addition to enshrining freedom of expression as a fundamental ‘democratic right’, the Constitution stipulates that the third chapter of the Constitution (i.e. is its bill of rights) should be interpreted in accordance with the Universal Declaration of Human Rights (UDHR) and international human rights instruments ratified by Ethiopia,²⁹ Accordingly, one should always bear in mind that the relevant provisions of the UDHR, the ICCPR (International Covenant on Civil and Political Rights), the ACHPR (African Charter on Human and Peoples’ Rights) and other pertinent human rights instruments ratified by Ethiopia should be read alongside this constitutional provision in order to have a full picture of the legal regime that is expected to accord protection to freedom of expression in Ethiopia.³⁰

3.2. Grounds of Limiting Freedom of Expression under FDRE Constitution

The first five sub-articles of Article 29 provide the rights associated with freedom of opinion and expression that are protected by the Constitution. Hence, these sub-articles tell us *what* is protected. Political speech, operating a press and expressing one’s views and opinions through state media are among the various rights protected under Article 26. Sub-Articles 6 and 7 deal with the limitation of the rights enumerated in the preceding sub articles. While subArticle 6 lays down the grounds and conditions for limiting freedom of expression, sub-Article 7 stipulates that “Any citizen who violates any legal limitations on the exercise of these rights may be held liable under the law”.

If read by itself without taking sub-Article 6 into account, this article might be understood as saying that so long as a limitation of the right has a legal or statutory basis, it is acceptable. Such a reading is obviously very dangerous and must be rejected for two reasons. The first reason is the fact that such a reading will render sub-Article 6 meaningless and in effect negate it completely. If any limitation made in accordance with statutes was to be considered valid, then there would have been no

²⁹ See art, 13(2) of the FDRE Constitution.

³⁰ Gedion Timothewos, p 207

need to provide grounds for limiting freedom of expression under sub-Article 6. This will render sub-Article 6 superfluous and will be contrary to the principle of positive interpretation. Furthermore, such a reading will have to be rejected taking in to account international principles of human rights which the Constitution makes the benchmark for the interpretation of its bill of rights. These principles would require that we reject a reading of sub-Article 7 that will validate all limitations of freedom of expression prescribed by law.³¹

Therefore, sub-Article 7 should be seen as complementing sub-Article 6 and reiterating that so long as a limitation of freedom of expression is based on a law that meets the requirements of sub-Article 6, it would be considered legitimate. Such understanding will make sub-Article 6 the central article that needs to be analyzed in discussing the legitimate grounds for limiting freedom of expression.

Sub-Article 6 has three clauses. The first clause provides what kinds of limitations of freedom of expression are impermissible in addition to stating that limitations of freedom of expression can only be made through law. It provides that limitations on account of the content or effect of the view point expressed are not allowed. The first part of these prohibitions is a prohibition of content based” limitation and seems to have been inspired by the US jurisprudence on “content based discrimination. The second prohibition is a proscription of limitations on freedom of expression based on the “effect of the view point” of the expressed opinion. Its inspiration does not seem to be as obvious as that of the first prohibition. But one might contend that it is also inspired by US free speech jurisprudence on ‘view point discrimination, This contention is fraught with troubles since the effect of a viewpoint is something different from the *viewpoint* itself. Hence, one could still argue that the U.S free speech jurisprudence prohibiting restrictions on speech based on the viewpoint reflected in the speech is different from the prohibition of limiting freedom of expression based on the effect of the viewpoint of the speaker.

³¹ see art, 13(3) of the FDRE Constitution and art,19(3) of ICCPR.

Naturally, questions might arise in relation to these impermissible grounds of limitation.³² As far as content based limitation is concerned, one could ask if it is an absolute prohibition that would proscribe even limitations that are aimed at limiting the dissemination of materials with obscene content. Fortunately the answer for this query is quite obvious. Given that protecting the well-being of the youth is provided as an acceptable ground for limiting freedom of expression in the next clause of the same sub-article and also taking into account the experience of other jurisdictions on the matter, one can safely assert that in relation to expression which contains obscenity, an exception can be made to limit freedom of expression on account of the obscene content.

In addition to speech with obscene content, a question might arise as to the permissibility of limiting freedom of expression on account of its defamatory, profane or blasphemous content. Article 29(6) stipulates that preserving the honor and reputation of others is an acceptable ground for limiting freedom of expression. Hence as far as defamatory content of speech is concerned, the question could be answered by relying on the stipulations of Article 29(6).

However, the question relating to profane or blasphemous content, particularly, whether or not such content justifies limiting freedom of expression can not readily be answered by simply referring to Article 29(6). Comparative and international experience on the matter is divided. In *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952), the US Supreme Court has held that restrictions on ‘blasphemous’ speech is unconstitutional. Contrary to this, the European Court of Human Rights had upheld restrictions on blasphemous speech and expression of opinion by asserting that the freedom of religion requires such restrictions. A Court in South Africa has also upheld restrictions on expression of sacrilegious views asserting that such restriction is required by the right to dignity of the believers. Which approach to the issue best fits

³² See FDRE Constitution, art 29(6) second sentence.

the letter and spirit of the FDRE Constitution and the needs of our society is an open-ended question.

The prohibition of restrictions on speech based on the *effect of the viewpoint expressed* is also another delicate question that arises in relation to Article 29(6). Does it mean that freedom of expression cannot be limited even when the view expressed by the speaker has the effect of unleashing ethnic or religious conflict and violence? Answering this question either in the affirmative or negative without any qualification would be dangerous. If we simply say ‘yes’ it would mean that we are sanctioning violence, death and chaos for the sake of protecting free speech. If we simply say ‘no’, we might accord constitutional validity to drastic and disproportionate limitations of freedom of expression the same regardless of how remote and unlikely the danger of violence is. There is also the risk of silencing critiques in the guise of limiting freedom of expression in the interest of public order.

The best way to deal with this dilemma would be to accept that the impermissibility of effect-based limitation has some exceptions. These exceptions to the rule will permit effect based limitation in relation to expression or speech having some predetermined effects. Common sense and the experience of even the most liberal jurisdictions support this view. In the Ethiopian context, the candidates for such exceptional treatment will be speeches or expressions that have the effect of causing ethnic or religious strife. Narrowly designing such limitation is important to make sure that the exception will not swallow the rule.³³

3.3. Regulation of cyber Pornography under different Legislation's in Ethiopia.

Strictly speaking, In our country Ethiopia, There is no clearly formulated legislation's for the regulation of cyber Pornography. But we can infer ideas of regulation of cyber Pornography in separate articles of different Legislation's. Now, let us see provisions

³³ Id, Gedion Timothewos supra note, 30 p, 220

of different Legislation's which tried to regulate cyber pornography. Including, the FDRE Constitution.

3.3.1. Regulation of cyber Pornography Under the FDRE Constitution.

As per art, 29 (2) of the FDRE Constitution, Everyone has the right to freedom of expression with out any interference. This right shall include, Freedom to seek, receive and import information and ideas of all kinds, regardless of frontiers either orally, in writing or in print, in the form of art or through any Media of his choice.³⁴ But these rights can be limited only through laws which are guided by the principle that freedom of expression and access to information can be limited in order to protect the well being of the youth, and the honor and reputation of individuals.³⁵

From this Provision, Even though the FDRE Constitution don't clearly formulate Regulation of cyber pornography, we can infer that cyber pornography under Ethiopian Legal system is prohibited.

3.3.2. Regulation of cyber Pornography Under the criminal code of Ethiopia.

The Criminal Code of Ethiopia contains different provisions in order to criminalized different offences from grave offence up to petty offenses, with in a detailed and clearly manners. But the regulation of cyber pornography under Ethiopian criminal code don't clearly formulated.

However, we can indirectly understand from art, 640 and 641 of the criminal code, as cyber pornography is regulated in Ethiopia. Which states as; Whoever, makes, imports, or exports, transports, receives, possesses, displays in public, offer for sale or hires, distributes or circulates, writings, images, posters, films or other objects which are Obscene or grossly Indecent or any other way traffics or trades in them.³⁶or advertises, indicates or makes known, by any means, how or from whom such objects maybe

³⁴ See art, 29 (2) of the FDRE Constitution

³⁵ Ibid art 29 (6)

³⁶ See art, 640(1-a) of Criminal Code of Ethiopia

procured or circulated, either directly or indirectly, is punishable with simple imprisonment for not less than six months, and fine, without prejudice to the forfeiture and destruction of the incriminating material.³⁷ The punishment maybe extended to, Simple imprisonment shall be for not less than one year, and the fine shall not exceed ten thousand birr, Where the criminal:

Habitually engages in or carries on such traffic.³⁸ Knowingly exhibits, hands over or delivers such objects to a minor.³⁹ or for this purpose displays a simulation of sexual intercourse by minors or exhibits their genitals.⁴⁰ Therefore, Even though our penal code don't define the word Obscene or Indecent, they are similar to pornography both are condemned as immoral acts, which is leads to prostitution.

The phrase " In any other way" under art, 640(1-a) of the criminal code of Ethiopia, maybe indicates pornography with in cyber space, Because it is illustrative One.

3.3.3. Regulation of cyber Pornography Under Telecom Fraud Offence Proclamation No,761/2012.

The Tele com Fraud Offence/ TFO/ Proclamation is another piece of Legislation that criminalizes certain acts that may be Catagorized as cyber crime. This Proclamation is criminalized "3" Cyber crimes.⁴¹

1st, it criminalizes unlawful interception, obstruction of Access and interference with Telecom service system and data.⁴² 2nd, the TFO Proclamation is criminalizes Telecom related frauds and forgery, such as manipulating or duplicating and selling or other ways distributing SIM cards, credit cards, Subscriber identification number, obtaining service through the use of forged documents or by fraudulently use the

³⁷ Ibid art, 640(1-b)

³⁸ Ibid art, 640(2-a)

³⁹ Ibid art,640(2-b)

⁴⁰ Ibid art,640(2-c)

⁴¹ .Kinfe Michael Yilma, Cyber crime Law making And human rights in Ethiopia, AAU, School of Law, mizan law review vol, 15 No,1 September 2021 p,83.

⁴² see Telecom fraud offence Proclamation No,761/2021 art,5.

identity code of any other person.⁴³ 3rd, TFO Proclamation criminalizes the use of Telecom services, networks and systems for the commission of other crimes, Especially disseminating Obscene materials.⁴⁴ Under this, we can understand that cyber Pornography is protected under our TFO Proclamation.

3.3.4. Regulation of cyber Pornography Under computer crime Proclamation

First of all, when we see the definition of computer crime Under Ethiopian computer crime Proclamation No,958/2016, computer crime is defined in manners. For this study, we should take the definition of computer crime stated under Art, 2(1-c) of the proc, which says, Computer crime means; The illegal computer content data that disseminated through computer, computer system or computer network. from this definition we can inferd that the illegal contents maybe Pornographic materials. In addition to this as per art,12 of this proc, whosoever, intentionally produce, sale, distributes,makes available or possess any pictures posters, videos or images through a computer system that depicts : a minor to engage in sexual explicit conduct.⁴⁵ or any adult person who is intentionally by using computer systems, prepare, distributes, sales or makes available for the other as appeared a minor engaged in sexual explicit conduct shall be punishable with regoriouse imprisonment from 3_10 years.⁴⁶ whosoever, entices or solicits a minor for sexual explicit conduct by transmitting or sending erotic speeches , pictures, text messages or videos through computer systems shall be punishable with regoriouse imprisonment from 5_10 years.⁴⁷ Generally, Even though , it doesn't put in a clear manner, cyber pornography under the computer crime Proclamation is regulated.

⁴³ id art,10

⁴⁴ id art, 6

⁴⁵ Ibid art,12(1-a)

⁴⁶ See supra note 62, Art, 12(1-b)

⁴⁷ Ibid art,12(2)

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1. CONCLUSION

Development and Continuing growth of Information Communication Technology brings about impacts in our society. These impacts maybe positive and negative one. Among positive Impacts brought by ICT; among positive Impacts brought by ICT, in this time the community at national And international level can easily communicated and share information among the people worldwide. On the other hand, Development of information Communication Technology has negative impact on the country. Among them, the expansion of crimes by using computer systems throughout the world. Like cyber pornography. In our country Ethiopia, Know a days Most of the younger generations are engaged in the consumption of cyber pornographic materials by using their mobile phone and other Electronic devices. Therefore all interested organ from Federal level up to the lower woreda level should tried to reduce the production, distribution, possession, advertising and sale of cyber pornographic materials, Because if the consumption of cyber pornographic materials is increased, It increased the sexual aggression of the person who engaged in the consumption of cyber pornographic materials as Pornographic materials contain sexual explicit contents. It also affects the moral attitudes of the youth generation and finally affects the costume, moral and religious standards of the country.

4.2. RECOMMENDATIONS

We have seen that technological development has increased the chance of criminals, such as pornographers to engage in to cyber pornography business, and finally affects the minds of the youth generation and the moral standards of the community as a whole. Based on the analysis made under this study, the following are Recommendations for the effective prohibition of cyber pornography in Ethiopia.

1. Clear and Strict Laws For The Regulation of Cyber Pornography shall be enacted
2. An organization that regulates the legislation shall be formulated
3. Educating the public on the proper use of ICT facilities.
4. Blocking of cyber pornographic content sites.

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