

INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]

ISSN: 2584-1513 (Online)

Volume 2 | Issue 2 [2024] | Page 142- 146

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EXPLORING THE BOUNDARIES: CONTEMPLATING THE RIGHT TO PORNOGRAPHY THROUGH RONALD DWORKIN'S LENS

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INTRODUCTION

Many Liberal thinkers have given a great deal of importance to the legal rights of individuals which are to be given or let us say they need freedom from state restriction. The paramount concern is liberty and equality of the individual. Liberal theorists are often presented with a question as to what extent this freedom can be provided, and whether the freedom granted is harming other individuals. Reading “*Do We Have a Right to Pornography?*” tries to look for an answer to whether the government can legally restrict consenting adults from viewing and publishing pornography in private or whether it is a violation of freedom of expression and speech. This question raises issues on what basis that state can use its powers to limit the freedom of expression of an individual. Traditionally many liberals have argued the freedom of consenting adults to produce and consume in private from religious and moral conservatives who find pornography to be a corrupting influence on the customer. Some feminists also have the same opinion as conservatives against pornography but not because of obscenity but rather because they allege that it harms the character and role of women in society. Throughout the reading, the main theme that can be observed is the difference between arguments and principles of policy which here refers to goal-based strategy and right-based strategy, respectively. Goal-based strategy states that curtailing liberties will lead to a *slippery slope* whereas right-based strategy states that policies introduced by the states should not curtail or diminish the liberty of an individual.

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ARGUMENTS PRESENTED BY DWORKIN IN THE READING

Dworkin started his argument to defend the right to pornography by opposing the suggestion made by the Williams Committee Report on Obscenity and Film Censorship.² The report suggests that the public display of sexual intercourse and nudity should be prohibited. Dworkin argued that such a ban is to gratify the majority belief. He reckons many people opt to outlaw pornography because they believe that the pornographer's perception of pleasure merits less value than others. Following Dworkin's philosophy, such external preferences are moralistic because they render the perception of the pornographer and its respective consumers to behave in an immoral or inferior manner in contrast to the greater realm of humanity. Thus, Dworkin argues such moralistic preferences are prejudiced. And, henceforth, contradict his notion of moral interdependence.³ However, Dworkin also stated that offensive pornography can be the best justification to restrict porn. Dworkin Proposed the concept of zoning porn due to mixed preferences for permitting pornography, where zoning would be against the expense, inconvenience and embarrassment faced by the customers.

Dworkin also considers that if it has harmed the public at large who does not consume it voluntarily by those who consume it privately then it is sufficient to outlaw the private consumption of porn as well, as private activities create difficulty for other people it doesn't mean its confidential anymore, thus Dworkin argues that if excessive consumption of pornography legitimately caused absenteeism from work, then the public and the state might have the right to prohibit it.⁴ But there is no such evidence which states that the private consumption of porn will harm people. Hence Pornography solely fulfils harmless personal choices for sexual gratification, and it is thus not relevant to the makers of policy, as they do not have the right to control the moral independence of any person. Concerning the view of conservatives on the distortion of

²Committee on Obscenity and Film Censorship' (*Wikipedia*, 11 January 2024) https://en.wikipedia.org/wiki/Committee_on_Obscenity_and_Film_Censorship.

³ Essay Sauce, Dworkin's paper 'Is there a right to pornography'. Available from: <https://www.essaysauce.com/philosophy-essays/essay-dworkins-paper-is-there-a-right-to-pornography/>.

⁴ Dworkin R, 'Do We Have a Right to Pornography?'.

society's morality, Lord Delvin in his writing also stated on homosexuality and elaborated on how society has the right to protect its existence when public morality is at stake.⁵

There are many cases in the US concerning the issue of restriction of pornography and the court has laid down tests to determine whether the material is obscene or not and decide whether they are protected under the First Amendment thus the court had held that distribution and advertising pornographic material was not under the ambit of First Amendment.⁶ Later the court limited the power of the government to decide whether the possession of such material was illegal or not, the majority opinion did not give importance to the social factors but highlighted the importance of free access to porn and defended the right of consumers to have access to porn but court have still restricted the type of pornography that might create a negative impact on society such as child pornography.⁷

Dworkin also comes up with the concept of Neutral Utilitarianism, through which he expresses that satisfying one's desire based on that it's more important or intense is wrong, through this principle he re-emphasises on theory of justice as a full political constitution and not simply how to choose one. "Neutral utilitarianism accommodates within its scope the ambitions that people have for their own lives and gives importance to these ambitions during the distribution of social resources and opportunities to others. What it does not approve of is weighing all preferences on an equal scale on the same basis." ⁸

CRITIQUE

While going through the reading, Dworkin shows a great concern towards pornographers and its regulating market, but he fails to address the opinion of feminists and their approach toward porn. Feminists and Conservative society have the same approach towards pornography but have different reasons. Many authors such as Catherine MacKinnon and Andrea Dworkin have put forward points against pornography and criticised Ronald Dworkin's ideology through the lens of a feminist. Feminists argue that pornography violates civil rights because it makes women

⁵ Crit Khakha MJ, 'RIGHT TO PORNOGRAPHY: CRITIQUE OF DWORKIN' 3 International Journal of Law and Legal Jurisprudence Studies 202.

⁶ *Roth v. United States* 354 US 476 (1957).

⁷ *Stanley v. Georgia* 349 US 557 (1969).

⁸ Crit Khakha MJ, 'RIGHT TO PORNOGRAPHY: CRITIQUE OF DWORKIN' 3 International Journal of Law and Legal Jurisprudence Studies 202.

subordinate to their male partners and causes violent crime by using them as objects to satisfy their pleasure.

Feminists also claim that constant consumption of porn leads to adverse impacts in society by not letting women speak about sexual abuse faced by them, which does not help to avoid this instance in future. Many feminists also believe that pornography is a detriment of male supremacy which is not noticeable, or people tend to avoid such feelings. Feminist thus argues that publishing porn violates the basic right of equality and should be considered as illegal. Thus, the feminist approach towards pornography contradicts the ideology of Dworkin on the freedom to consume porn. Even if Dworkin has the right to moral interdependence, his argument fails to highlight the feminist point of view as pornographers consider equality as a goal instead of a right to an individual, unlike the feminists.

Traditional conservative is against the consumption of porn because of its sexually explicit nature and its graphic, they consider pornography intrinsically morally wrong.⁹ Conservative also discusses the impact of the consumption of porn on a person's personality, they think that it hampers the productive life of the individual and thus corrupts the moral character. The state can adopt the position of legal moralism and is justified in using its coercive power to uphold and enforce a community's moral convictions and to prevent citizens from engaging in activities that offend prevailing community standards of morality and decency.¹⁰

CONCLUSION

It's important to keep in mind the link between the subjugation of women in society and the consumption of porn, the government have a valid reason to restrict the production of porn for the same, and therefore the question of moral independence will not be considered as state intervenes based on the impact of any potential harm that it can cause to the society.¹¹ The claim of feminists would be more important than others according to neutral utilitarianism. Thus, the government should make policy keeping in mind the concerns raised by the feminists. Hence based on both the principle due to consumption of porn results in the subjugation of women then the interest of the women in society would be most significant over others and thus slippery slope

⁹ Dworkin A, 'Pornography: Men Possessing Women' (1st ed, 1981) (pp 12-14).

¹⁰West C, 'Pornography and Censorship' (*Stanford Encyclopedia of Philosophy*, 22 September 2022) <http://plato.stanford.edu/entries/pornography-censorship/>.

¹¹ Dworkin R, 'Do We Have a Right to Pornography?' (pp- 360).

argument would not be that strong. Through this reading, we can see that Dworkin has preferred the right-based strategy over the goal-based strategy, where he has given importance to individual liberty, and it must not be undermined via law and policy making, there must be a balance between harm and equality. This approach can be used to contradict the conclusion made by him at the end. Despite Ronald's Dworkin approach and work towards the publication and usage of pornography in society, the role of women in such society and the ambiguity that he has created in terms of pornography has resulted in a major mishap to his article.