LEGAL PERSPECTIVE OF PORN PRODUCTION IN INDIA: A STUDY WITH SPECIAL REFERENCE TO ONLYFAN.COM

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 Abstract

The word "pornography" may be described as the reporting or representation of sexual behaviors in order to elicit sexual arousal via the publication of books, films, or other media, including the internet. In this category are pornographic websites, pornographic content made using computers, and the use of the internet to obtain and send pornographic videos, texts, images, and photographs (among other things). Private viewing porn in India does not constitute a criminal offense under Indian penal laws. Onlyfans' content providers are sexual and pornographic artists who charge a high price for their work. Onlyfans is legal in the United States, Canada, and the United Kingdom, but a few nations have outlawed it entirely. As per Indian legislation, everyone who posts sexual stuff online is regarded as breaking the law, and Onlyfans falls under this category. The current research work aims to draw attention to the association between porn vis-a-vis Onlyfans and criminality. Though it is legal to use Onlyfans, this research paper will cover some legal concerns.

Keywords: Onlyfans, Porn, Crime, Porn Sites, Sexual Content

Introduction

Pornography is widely accessible in print periodicals in India, although most people get it online. As cellphones and the internet become more common, so does this consumption. Despite the wider availability, pornography is still a taboo subject in many sections of India. In India, it is prohibited to post pornographic content. This kind of sexually graphic or filthy image is known as "porn." It is used to entice sexual desire. Acts that are "lascivious or
appeal to the prurient desire” or "tend to deprave, and corrupt individuals" in relation to sexually explicit, pornographic, or obscene images are punishable under Indian law. On the internet, adult entertainment is a big business. Today, there are more than 420 million human porn websites. The DoT ruling states that "reasonable constraints" on the freedom of speech and expression apply to "comfortable" content provided on porn sites since it is linked to morals and decency. To combat child pornography, in particular, Additional Solicitor General Pinky Anand informed the Department of Electronics & Information Technology that "appropriate steps" should be taken, which led to the government's July 31 order directing Internet Service Providers (ISPs) to block 857 pornographic websites.

Objectives of Research:

1. To examine the pornography production with particular reference to onlyfan.
2. To study the Indian legal perspective on pornography vis-a-vis onlyfan.

Research methodology:

The research methodology used in this study will include doctrinal and analytical research. For the purposes of this research, data will be gathered via various books and reports of authorities. The researchers have also taken the help of secondary sources. The secondary sources include articles, books, journals, newspapers, and websites.

Onlyfans perspective

You may be familiar with the portal Onlyfans, where users pay to access premium material. Among the different sorts of material, you will discover on Onlyfans are articles on anything from exercise to beauty to fitness to healthy living to sexual content. The website and mobile app were both released in 2016 to coincide with the platform's first public debut. Seventy-five percent of Onlyfans' content providers are sexual and pornographic artists who charge a high price for their work.

Artists may monetize their work on the social networking site Onlyfans. Onlyfans is legal in the United States, Canada, and the United Kingdom, so you do not have to worry about that. It
is lawful almost everywhere else; just a few nations have outlawed it entirely. As per Indian legislation, everyone who posts sexual stuff online is regarded as breaking the law, and Onlyfans falls under this category. In India, there are hazards involved with becoming a member of Onlyfans.

Many authors were alarmed when OnlyFans declared a prohibition on sexually explicit material last year. As of October, the policy change was expected to take effect. The corporation opted not to implement the policy change because of the outcry from users and authors. Although the prohibition was first implemented to appease investors, it began to harm the company's user base.

OnlyFans, for those who are not familiar, is a photo-sharing app and website modeled after Instagram. When it comes to sexual material, the app stands out because it empowers developers to do so. Fans may pay a tiny subscription fee to the artists in this method. Porn actors and actresses are among the many people who use the app.

A look at the company's financial records showed that sexual material was a significant source of income. As a result, they promptly reversed the prohibition on the new policy change, realizing that it may cost them millions of dollars. "Thank you to everyone for making their opinions known," stated OnlyFans in a tweet. The October 1 policy change has been postponed after we received guarantees essential to protect our various communities of creators. All creators will have a place to call home at OnlyFans, and we will continue to do so."

However, nothing has changed in this area. Many of the same individuals who post explicit material on Onlyfan have accounts here. OnlyFan is prohibited in India if you produce a film and post it there. Additionally, such activities are encouraging cyber crime in India. The legislation in India prohibits not just Onlyfans but also the sharing of obscene images, blue films, etc.
Legal perspective

i. Section 66 E. prohibits the transmission of images of "a private portion of any person" without their permission. A fine of not more than two lakh rupees or three years in jail is the punishment for the same crime. Private life is protected by the right to life in the Indian Constitution's Part III, according to a historic ruling by Justice K S Puttaraswamy (Retd) and Anr. v. Union of India (and Others). Article 21 of the Indian Constitution prohibits disseminating any information that infringes on a person's privacy.

ii. As defined in Section 67, any material that is lascivious or titillating or has an impact that is likely to deprave or corrupt individuals is covered under this section. There is a maximum penalty of five years in prison, a fine of up to 10 lakh rupees for a first conviction, a maximum penalty of five years in prison, and a fine of up to 10 lakh rupees for a second conviction.

iii. Section 67 A of the Penal Code makes it a crime to publish or communicate anything involving sexual activities or behavior. Five years in jail and 10 lakhs in fines are the maximum penalties for first-time offenders. Since the Bois Locker Room incident involves the transmission of altered photos of females, the present provision is in effect.

iv. Section 67 B imposes a maximum sentence of five years in prison and a maximum fine of ten lakhs for the first offense. Any digital text or images that represent kids "in an obscene, indecent, or sexually explicit way" are covered under this phrase, not only pictures of youngsters engaging in sex. It is important to remember that young girls' private images are being circulated in the present scenario. The following sections may be utilized as resources as a consequence. Obscene remarks and discussions may also be featured in this section of the forum. By failing to remove or immobilize access to offensive material "upon receiving actual knowledge, or upon notification by the government or its agency that any information resides in or is connected with a computer resource forbidden by the mediator," mediation professionals risk being
held liable under Section 79(3) (b). Mediators must also inform "users of computer resources" that they must not "mass, modify, publish, transmit, display, upload, update any information that is blasphemous or defamatory, or that is obscene or grossly harmful or harassing or pornographic or libelous, or invasive of another's privacy or ethnically offensive" and "harm minor in any way." The Information Technology (Intermediary Guidelines) Rules, 2011, mandate this warning.

v. A basic definition of cyber pornography is the use of the internet to create, show or import pornographic material for the purpose of distribution or publication. Because of the Internet, traditional pornographic entertainment has been replaced mainly by online/digital pornographic entertainment. In certain countries, cyber pornography is prohibited, while in others, it is permitted. The Information Technology Act, 2000, defines this as a grey area of the law in India, where it is neither illegal nor acceptable. The Information Technology Act of 2000 makes it a crime to download child pornography from the internet.

vi. Cyber pornography relates to child maltreatment, aggressiveness towards women, rape, inequality, relationship and family breakdown, teenage delinquency, promiscuity, and sexually transmitted diseases. Despite India's outdated regulations, pornographic content is being transmitted over online. A mouse-click is all that can be done to control what appears online because of its absence of jurisdictional boundaries, the massive amount of traffic it can handle, and the potential of anonymity. Previously, owners of cybercafés had no responsibilities, but those obligations have only expanded since the Information Technology Amendment Act of 2008 was passed.

vii. It is not unlawful to gather and store cyberpornography, but it is punishable by up to five years in jail and 10 lakhs in fines if it includes children. Internet pornography of minors is illegal. An investigation into child pornography known as Operation Ore began in May 2002. The FBI submitted the material to the British authorities after getting access to a British child pornography site's credit card information, home
addresses, and email addresses of thousands of pornographers. Computer expert Thomas Reedy was sentenced to 1,335 years in prison for his role in a pornography network after an international inquiry was begun after his arrest in Texas. More than 1,300 other suspects were detained, including teachers, child care workers, soldiers, doctors, social workers, and 50 police officers.

viii. Obscene items are prohibited under Sections 292 and 293 of the Indian Penal Code of 1860. The Indian Penal Code, 1860, now includes a new section on stalking, Section 354 D, according to the 2013 Criminal Law Amendment Act. Several modifications to the Code, notably Section 354D, were made after the terrible gang rape and murder of Jyoti Singh, known as the Nirbhaya case. A woman's use of the internet, email or any other communication method may be monitored under Section 354D. (b). Therefore, obtaining photos of women through their social media accounts falls under this category. Under this section, a conviction may result in up to three years in jail and fines of up to $10,000.

ix. According to Section 463 of the aforementioned Code, forgery is defined as "creating any phony documents or false electronic record, or part of a document or electronic record, with the purpose to cause damage or injury." Section 465 of the Penal Code imposes a maximum sentence of two years in prison and/or a fine for the crime of forgery. Falsified documents and electronic data are likewise penalized under Section 471 in the same manner as forging a document. It is also possible to alter a picture to create a phony electronic record.

x. State of Punjab v. Major Singh (1966) established that Section 509 of the Code applies to any act toward or in the presence of a woman that would be considered sexual by most people. Use this box to hide messages that make sexual comments about the female subjects of the photos that are shared in the group. A fine or a sentence of up to a year in prison may be imposed under this clause.
xi. Pornography victims may resort to slander as a form of revenge. To defame someone's reputation is illegal under the Indian Penal Code Section 499, 1860. This includes the production or publication of defamatory statements against a person in the form of words, writings, or images. Therefore, men's desire to harm another human being's reputation serves as the legal standard under the clause. A claim may be made on behalf of the victims if they so want. Section 500 of the Code, 1860 makes defamation a crime punishable by up to two years in jail, a fine, or both.

xii. To safeguard children's rights and prevent child sexual abuse and exploitation, the POCSO Act, 2012 was passed into law. Section 2 (d) of the Act defines a "kid" as a person under the age of 18 who is the victim of a sexual offense. Chapter III of the POCSO focuses on using kids for pornographic purposes, which we are not concerned about within this situation. There will be special courts to handle matters involving children under the provisions of this law. When an offense is illegal under both the POCSO and the IPC, Section 42 of the POCSO is critical because it specifies that whoever is found guilty would get the worst penalty. Pornographic usage of children is punishable by up to five years in prison and a fine under Section 14(1). Additional penalties for storing pornographic material involving minors with the intent to disseminate it includes up to three years in prison or a fine, or both.

xiii. Forbidding indecent depictions of women in advertisements, publications, and other media, the Indecent Representation of Women (Prohibition) Act (IRWA) was adopted by the United States Congress in 1986. India's Rajya Sabha recommended an amendment to the Indecent Representation of Women (Prohibition) Amendment Bill for consideration in December 2012. The Ministry of Women and Child Development has urged that obscene depictions of women on digital messaging systems like WhatsApp and Skype be criminalized. The Indecent Representation of Women (Prohibition) Act, 1986, was revised in accordance with suggestions from the National Commission for Women and observations from a legislative committee (NCW).
xiv. As of July 27th of this year, India's Ministry of Home Affairs had withdrawn the long-pending Indecent Representation of Women (Prohibition) Amendment Bill, 2012, citing that the proposed amendments to the 1986 law stem from a belief that they are no longer necessary because the concerns have been addressed under the Information Technology Rules 2021 and other provisions of the law.

xv. Article 21 of the Indian Constitution guarantees people's rights to life and liberty. An oral ruling by the Supreme Court of India in 2015 said that a person has the right to watch porn in their own home under the Indian Constitution's guarantee of personal liberty (RPL). Since viewing pornography in one's own home is absolutely lawful, no government can take it away from someone. Pornographic material depicting child pornography, rape, or violence against women is banned, even if it is viewed in a private setting.

xvi. To decide whether a book's ownership and sale constitutes "obscene behavior" under Indian Penal Code Section 292 of 1860, India's Supreme Court in Ranjit D. Udeshi Vs. The State of Maharashtra (1965) created the Hicklin Test. If a "book, pamphlet," "paper" or "writing" is "deemed to be obscene" when it is "lascivious or appeals to the prurient interest," it does not provide any tools for determining what is "lascivious" or "prurient," or has the potential to deprave and corrupt people. Consequently, in cases like Ranjit D. Udeshi, the obsceneness of the work or material in question determined whether or not an accused was found guilty of their actions in connection with it. The Hicklin test was used in India until 2014 to determine if a piece of art, material, or action was obscene.

xvii. In Aveek Sarkar v. State of West Bengal (2014), the Supreme Court rejected the Hicklin Test and instead applied the community norm to determine what constituted obscenity. However, this criterion is still employed to assess if anything is pornographic despite the many restrictions of the Indian Penal Code (IPC) (1860), IT Act (2000), POCSO Act (2012), and the Indian Reproductive Work (IRWA) (1986)
xviii. It is legal because it serves the public interest or is a legitimate use of public resources. Because it is indecent or sexually explicit, it is illegal and criminal. Everything you need to know about what is legal and what is not may be found here.

– Adult pornography browsing in private is perfectly legal. Any kind of pornographic material creation or production is strictly banned. Forcing any woman to see porn is a crime regardless of age. Illegal to force any man above the age of 18 to watch pornography. Child pornography is prohibited from viewing, creating, or distributing. Shared pornographic movie links are illegal on any social media platform—even in private messages—even on WhatsApp and Facebook and Instagram and Onlyfan. It is against the law to participate in pornographic activities in a group or a public place.

xix. Ryan Maharashtra v. John Michael Thorpe (2021) Infidelity and pornography charges were filed against Raj Kundra, a businessman, and Shilpa Shetty's spouse. The Mumbai Police Department had received several complaints from women who claimed they had been pressured into performing in the obscene film for Raj Kundra's app Hotshots, which is now owned by Kundra's brother-in-law, Pardeep Bakshi, a UK businessman. Raj Kundra was detained after a series of arrests and raids. He was prosecuted under the Indian Penal Code, 1860, the Information Technology Act, 2000, and the Prohibition of Indecent Representation of Women (Prohibition Act) under Section 420 (cheating).

xx. When it comes to the case of Ryan John Michael Thorpe v. the State of Maharashtra (2021), the petitioner Ripu Sudan Kundra @ Raj Kundra has been accused of actively participating in the marketing of pornographic films, as well as maintaining the Hotshots App through his company Viaan Industries and making money from it via social media distribution. Petitioner Ripu Sudan Kundra @ Raj Kundra set up Armsprime Media Pvt. Ltd. specifically for this reason. This led to the investigating agency applying for permission to search the office of Viaan Industries to the learned Magistrate. 51 pornographic films/movies with the logos of Hotshots and Bollyfame were found on his mobile phone and SAN device. Messages between Petitioner Ripu Sudan Kundra @ Raj Kundra and Pradeep Bakshi (who wanted to be implicated), his
brother-in-law, were discovered in an investigation using Hotshots App. In his bail plea, Raj Kundra argued that the prosecution has yet to show any proof tying the program 'Hotshots' to a criminal offense, which was filed via attorney Prashant Patil. Investigators said that the defendant was posting and streaming obscene content on the Hotshots app. According to the bail petition, a supplementary charge sheet against Kundra (the present petitioner) had no allegations that he was involved in any of the video shootings. Petitioners argued that it was their decision whether or not they would publish their work on the app in question. According to the bail application, there was no prima facie evidence of an offense against Kundra in the complaint. The investigating officer's arrest of the petitioners and the learned Magistrate's remanding of them to police custody by the impugned order of 20th July 2021 were found to comply with the requirements of law by the Bombay High Court. As a result, no intervention was necessary. Shilpa Shetty's husband, Raj Kundra, and Viaan Industry's IT chief, Ryan Thorpe, were granted bail by a Mumbai Magistrate Court on September 20th, 2021, in the alleged pornography racket case.

xxi. Sam Infant Jones v. State (2021) The Madras High Court, headed by Justice G.R. Swaminathan, decided whether or not child pornography is an offense in the recent case of P.G. Sam Infant Jones v. State. This particular petitioner had used his Airtel sim card to access the internet, download, and send child pornographic material via his e-mail and Facebook account.

xxii. According to the respondent, in this case, the NCMEC (National Center for Missing and Exploited Children) is an international NGO that operates a Cyber Tipline. To access NCMEC's files, the Indian National Crime Records Bureau (NCRB) and NCMEC signed a Memorandum of Understanding (MOU). Respondent police received a Tipline report with the petitioner's name on it. It was also said that the event happened roughly a year ago and seemed to be a one-off. For this reason, the petitioner was obliged to turn over to the respondent his phone, sim card, and any other necessary equipment.
According to the Supreme Court, viewing pornography privately is not a crime. Many claims that these private actions are protected by the Indian Constitution's protection of freedom of speech and privacy, and there is currently no legislation in place to prohibit them. The Information Technology Act, 2000 prohibits any acts related to child pornography; therefore, simply viewing it violates Section 67-B.

According to the Bench, children's pornography is an urgent problem that demands a strong response, differentiating between one-time consumers and those who transmit, disseminate, display, or distribute in the digital realm. Even before one steps foot in a digital realm, the government or the operators of social networking sites are tracking their every move. Further, if you respect your privacy, there is no other option except to shun such networks, as the Supreme Court noted. I suppose this is not an option in today's environment.

State v. Crl. OP (Md) No. 11735 from 2014 (2015), While deciding the matter of CrlOP (Md) No. 11735 of 2014 v. State (2015), the Madras High Court gave a reformative verdict in which a 15-year-old boy was victimized by the petitioner, a British national, while the latter was residing in the Trust operated by the former. Definitions used by the Court for the phrase "child sex abuse" included acts of physical or verbal contact with a child's private parts, oral or visual fondling, and the use of minors for prostitution or pornographic purposes.

To guarantee that children are protected and allowed to grow in a healthy and accessible manner, according to Article 39 (e) (f) of India's Constitution, it is the obligation of the State. According to Article 45, the State is responsible for providing all children with comprehensive care and education, especially up to the age of six. Article 15 of the Constitution grants the State the authority to take extraordinary measures for women and children (3). Additionally, Parliament passed the Protection of Children from Sexual Offence Act 2012 to safeguard children against sexual assault, harassment, and pornographic material and set up specialized courts to hear cases involving these types of offenses and those that arise in the course of
prosecuting them. The Court, in this instance, emphasized that, notwithstanding the particular regulation, crimes against children are increasing at an alarming pace, according to NCRB data. Positivity for change: Socially enlightening insights was drawn from this case by the Court. The government should make decisions on sexual education after careful study. Young people nowadays are naturally captivated by sex and more likely to access pornographic material, which may lead to sexual arousal and the commission of crimes against children due to globalization.

xxvii. Because of the situations mentioned above, children should be taught about sexual solicitations, unwanted contact, and sexual abuse. This sort of dangerous problem is only the result of a lack of information, which must be addressed. In the era of globalization, we should not deceive ourselves or our children in the name of culture, values, morality, or traditions. Because of this, the government must make an informed choice about the implementation of sexuality education for adolescents and young people.

xxviii. Children may better understand the distinction between sexual and non-sexual interaction if they are given age-appropriate information about their bodies and sexuality. As a result, children who have been sexually assaulted may be more willing to speak out about their experiences in the future. An Indian government that fails to require all public schools to teach age-appropriate sexuality education to all students constitutes negligence and a breach of its obligations, given the overwhelming evidence that child sexual abuse is widespread in India and the strong evidence that such instruction can reduce both the frequency and severity of sexual abuse.

xxix. There is no question that castration should be used as a punishment for barbarous offenses since traditional standards are not strict enough to have any noticeable positive effect. An offender's urge to perform criminal acts is fuelled by alcohol and pornography; castration is an attempt to tamp down on this desire by altering the offender's libidos. Child sex offenders have been castrated in Poland, Russia, Estonia, and nine states in the United States, including California, Florida, Oregon, Texas, and
Washington. For the first time, castration was made illegal in South Korea. Interpol issued a red corner notice to the petitioner, which the Hon'ble High Court delayed to allow him to go to India just to appear before the Prosecution Court and stand trial.

Conclusion
Too far, the Indian government has barred over 3,500 pornographic websites from operating in the nation. However, when it comes to the consumption of pornographic material, India ranks third in the world, behind only the United States and the United Kingdom. Experts in the sector agree that blocking the website mentioned above has had little effect and that this is obvious. According to the Indian cyber crime investigator and security specialist, for one thing, the restriction is pointless while pointing to something more hazardous that may be implemented instead. "The banning of established porn sites has prompted participants in the sector to create additional URLs that are simpler to access, such as onlyfan and other similar sites. In other words, when a child types anything that contains the keyword for a pornographic site, the user is directed to a regional pornographic site, which attracts the user even more because it is in the user's native language," they write. When it comes to the Internet in India today, three essential things are lacking: anonymity, confidentiality, and Trust. So, what exactly might a ban on pornography accomplish? It is almost transparent that banning will be counterproductive. "Children are exposed to various experiences throughout their lives, and for better or worse, many of those experiences have a long-lasting influence on them. Children are now addicted to video games and social networking applications such as onlyfan, Twitter, and others for the majority of their leisure time, thanks to an overabundance of technological exposure. In addition, experts point out that the widespread use of social media has resulted in an increase in the number of youngsters exposed to adult content, particularly given that the majority of the material accessible on these forums is sexually explicit. There seem to be severe consequences in India when it comes to social media. Many individuals are generating porn and uploading it on onlyfan. These elements influence the decision to engage in pornography by children and young people.

References
• Cardoso, D., & Scarcelli, C. M. (2021). The bodies of the (digitized) body: experiences of sexual (ised) work on OnlyFans.


