

# Indecent Representation of Women on OTT Services in India – A Criminological Study

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## **Abstract:**

In a friction between law and biological need, the winning will be obviously of the later. The OTT Services involve in their content the indecent representation of women is instigating the biological need of men resulting in sexual crimes against the women. The fueling factors in instigation of these crimes are disproportionate sex ratio in Indian society due to female feticide and avarice of male child, availability of OTT on many devices because of media convergence, availability of devices to all irrespective of age and maturity, online teaching-learning and free access to even the paid OTT content through links on social media. There is a need of addressing this issue and coming out with necessary amendments and prioritised treatment of existing legislations. The protective legislation for in this regard is a need of an hour. This research is an attempt to find out the criminological study of indecent representation of women on OTT services and finding solutions for avoiding its impact resulting in crimes against women.

**Keywords:** OTT – over-the-top, indecent representation of women, pre-publication censorship, media convergence, internet

## **Introduction:**

Over-the-top (hereinafter referred as OTT) services are now-a-days gaining popularity and following because of no time constraints for watching any movie, television programme, any many other websites. There are many of the benefits other than these making OTT a first preference over cable television networks, movie theatres and many other places of entertainment. Started in 2008, today there are more than 30 OTT services available in India. The Indian homes having internet connectivity and fed up of commercial breaks and fond of on-demand entertainment content, find OTT always a better option than any other means of entertainment. The 4G internet connectivity has hugely facilitated the OTT services to develop in number, fame, and reputation. Introduction of smart televisions and devices like Amazon Fire Stick converting a television with USB port into OTT ready television has increased the use and subscription of OTT services. The media convergence has made it possible to have OTT services available on mobile phones, tablet, personal computers and other electronic devices having audio-visual outputs connected to internet. The Indian audience is attracted to the OTT services has also created a worrying situation because of non-censored content of them. This unregulated entertainment services are dangerous to the social fabric and law and order situations in India.

This research is an attempt to find out one of the major problematic issues of content of OTT services viz. indecent representation of women. This issue needs to be addressed with special attention and sanction mechanism because it results into sexual crimes against women.

This research involves doctrinal research where books and internet websites are the sources utilized to collect facts for it which helps to have findings and conclusions.

## **Constitutional Perspective:**

The Constitution of India (hereinafter referred as the Constitution) is the Grundnorm of the country. Any other law in India will receive its validity of force in the legal system only till it follows the Constitutional mandates in general and Chapter III in particular of it. This principle is called the doctrine of constitutionalism. This is the guiding principle for all the organs of the Government for keeping their functions within the constitutional limits.

It has been observed that indecency is not tolerated under the provisions of the Constitution. One can find the word decency as a restriction for the most important freedom i.e. freedom of speech and expression enumerated in clause (2) of Article 19. No person can claim his freedom of speech and expression if it involves the obscenity in it. Though it has been opined by the Supreme Court that watching porn in private is not illegal,<sup>i</sup> but the result of it may be a sexual crime against women. Child pornography in India is declared illegal under section 14<sup>ii</sup> of the Protection of Children from Sexual Offences Act, 2012. But India is still waiting for the protection of women from such evils.

The Constitution has guaranteed a special protection to women under clause (3)<sup>iii</sup> of Article 15. This provision has all potential to provide effective solution for the evils arising out of indecent representation of women but there might be lot many reasons because of which the protection is still awaited. There might be lot many vested interests and objects like commercial in this regard. It has been observed that porn industry is a high earning source and always in demand. That's why it has been observed that most of the times that launch of any internet facility takes a help of pornography to get early fame and reputation.

The Constitution guarantees right to dignified life under Article 21.<sup>iv</sup> Right to life with human dignity has been upheld by the Supreme Court in *Maneka Gandhi v. Union of India*.<sup>v</sup> The dignity of women is lowered not only because of indecent representation but also due to the sexual crimes instigated by such representation.

After having so much of provisions of the Constitution, the Indian Legal System is still waiting for prohibiting the indecent representation of women on OTT. There should be disseminations, discussions and deliberations on as many platforms possible to convey its requirement to the Government of India. This research article is one those deliberations in the endeavor advocating need of pre-publication censorship of OTT services.

### **Over-the-top Services:**

In entertainment industry, there are many ways to access and get availability of the entertainment. It has begun from the theatres and auditoriums to the latest of OTT on many electronic devices. The popular types of entertainment started from cinema to present day short movies or audio/video clips. The development in technology for accessing entertainment has seen witnessed by all of us in different sizes, shapes, and thereby audio-visually advanced electronic gadgets. The present and most used technology is mobile phones. Due to the internet connectivity available on it, after second generation technology and devices, the concept of personal entertainment has changes inside out. Now a person is not required to go any special place or wait for any special event to have access to entertainment. This has not only made the availability easy but has given a value of time for entertainment. In all this, OTT platforms are the most used service. Today in India, there are more than 30 OTT services available. Many of these are accessible through mobile apps and smart televisions or with the help of devices like Amazon Fire Stick making any television with USB input support. For OTT service the second requirement is of internet. In India, there are 658 million internet users reported in January 2022<sup>vi</sup> and where it is highly probable that there might be more than one person accessing data from recorded single user. The percentage of population using internet in India is around 47%.<sup>vii</sup> Thus one can imagine the possible length and width at which there are audience of OTT services which is becoming the first choice of seekers of entertainment from internet.

### **Indecent representation of women:**

It has been researched, reported, and complained many times the use of indecent representation of women for gaining fame and audience by many internet services. OTT services are not exception to this. There are many OTT services exclusively engaged in such content. There are complaints against such service providers like Neufliks for showing pornographic content.<sup>viii</sup>

There is a legislation on prohibition of indecent representation of women passed in 1986.<sup>ix</sup> It has been found that the Indecent Representation of Women (Prohibition) Act, 1986 (hereinafter referred as the Act of 1986) fails to cover the indecent representation of women in electronic media.

This failure is because of the year in which it is passed and the present-day indecent representations. The advancement of technology from print to electronic media has paved the way to such criticism of the Act of 1986. The forms and options offered of the indecency are increasing day-by-day in number and devices.

### **Criminological impact of the indecent representation of women on OTT:**

The indecent representation of women is a cause of sexual crimes against women has been recognised and punished from year 1986. That indecency has been increased due to electronic media, the great participant of which is OTT services. Following are the criminological findings or observations of this research which will point out the need of addressing and prohibiting the indecent representation of women on OTT services:

1. In India, the social stigma for any sexual offence is always on a woman and she has to carry it throughout her life. Though she is a victim, she is treated as a disqualified or ineligible person for many social rites and rituals, social rights, social positions, and most adversely affecting her membership and status in a society. This brings her to such a mental trauma where she has to take extreme steps like suicide, changing her habitat all together, prostitution for living, leaving her relatives and nearabout renunciation of world. This victimisation of her, makes her to pay the price and face the music than the real culprit of the crime, the offender.
2. The sexual crimes against women will be caused by the indecent representation of women. This criminological study has been already into a piece of legislation as in the form of the Indecent Representation of Women (Prohibition) Act, 1986. But the advent of OTT services engaged in this is a highest fueling point instigating the offenders and increasing the sexual offences against women with high numbers.
3. The accessibility of OTT services on many devices with internet because of media convergence. Media convergence allows access of same content of many different platforms and services to masses on devices ranging from television sets on table to desktop computers to tablet computers to mobile devices. The media convergence has increased the audience of OTT services.
4. Those devices having OTT service available are accessible irrespective of age and maturity. The devices are accessed by minors and adolescents. The indecent representation of women so accessed will instigate the biological need of sex and sexual desire. But because of lack of maturity, they may make them to select the path of crime for satisfying those needs and desires.
5. The online teaching-learning modes of education has made the availability of those devices to children ranging from school to higher educations along with internet. This is a fueling factor for exposing children to such indecent representation of women and thereby every chance of them to fall into criminality.
6. The sex ratio in India is 933. It means behind every thousand males, there are 933 females.<sup>x</sup>The major reasons behind are the avarice of male child and female feticide or infanticide. This sex ratio showing disproportion is one of the fueling factor of increased sexual crimes against women and where the indecent representation of women depicting women a sexual object on OTT appeals to the prurient interests of male audience.
7. The indecent representation of women is an attack on womanhood, lowering down the dignity of women, objectification of women, and treating women an inferior sex. These all adversely affect the public morality and morals.
8. The women involved in the OTT services indecently represented are not the victims of the offences but the women in general in society are exposed to the crimes.
9. There no efforts for spreading awareness of Cyber Ethics in India. It must be the subject of dissemination of knowledge. This will make the internet users dealing with cyber world aware about the evils arising out of the indecent representation of women on OTT services in particular and internet in general.
10. The OTT services like tubitv, JioCinema, Vudu, MXPlayer, and some more are providing free access or access with some easy steps to complete or limited content. Similarly, some OTT content

are also made available through links on social media including movies and web series. This is one of the fuelling factors for the indecent content on OTT making OTT as a cause of crime.

11. The Rajya Sabha has withdrawn the Bill introduced on December 13, 2012 suggesting the inclusion of electronic media in the Act of 1986 on July 26, 2021<sup>xi</sup> by giving a reason that the passing of the Rules on February 25, 2021 named the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 to be read with sections 67 and 67A of the Information Technology Act, 2000. This reason has taken the possible solution back. This has made the society to bring a huge hue and cry for getting the remedy for the protection of women in the area of this research because it has been so witnessed by us in recent past that for getting protection of law, women has to give tough fight and has to bring huge public agitation by march on street and many other impactful ways.

### **Conclusion and Suggestions:**

The above observations are sufficient to justify the making of special women protective and a gender specific legislation. This making of legislation is supported by clause 3 of article 15 of the Constitution of India. The legislative process of amending the Act of 1986 has been withdrawn from the Rajya Sabha, resulting into carry out the whole process of making of Bill and passing it into legislation in both the Houses of the Parliament. The reason provided for withdrawal of the Bill of 2012 is not justifiable because there is a requirement of special protection of women by a gender specific legislation by taking into consideration the level vulnerability of women in regard to the area of this research. This making of new Bill can be a boon, in one way, for this research as there received an opportunity to create an exhaustive statute on the subject with reference to the earlier withdrawn Bill and thereby include the OTT services particularly in the application of the Act passed in its furtherance. Taking into consideration the above conclusion, the following suggestions are put forth to fight against the evil of indecent representation of women on OTT services:

1. The making of an amendment Act with the following changes in the Bill of 2012:
  - a. substituting the definitions of advertisement, distribution, and indecent representation of women to cover OTT services in them;
  - b. inserting the definitions of depiction, electronic form, material, and publish to cover OTT services in them;
  - c. include OTT services in section 4<sup>xii</sup> of the Act of 1986 while prohibiting the publication or sending any indecent representation of women through any print or electronic format;
  - d. introducing deterrence in the punishments of indecent representation of women on OTT, the offences should be declared cognizable and non-bailable. For this there should be insertion of section 6A in the Act of 1986 after section 6;
  - e. inserting a section for synchronisation between the Act of 1986 and the Act of 2000 to have effective executive mechanism for implementation of the amended legislation; and
  - f. by taking into consideration the pace of growth or advancements in electronic media like OTT and further, the power to make Rules to combat those future challenges in the area of research.
2. Effective parenting is all needed to overcome the misuse of electronic devices for watching indecent representation of women. In this regard, free and easily accessible and understandable tutorials of effective 'Parent Control' techniques should be made available by the OTT service providers. The two level authentication system as that like of some email services should be made available where the second authentication should be there with the parents. Along with this the facility of ending the screen time for viewing the OTT service by remotely switching off the service can also be an effective technique.
3. The perpetrators or uploaders of the indecent representation of women should be punished rather than punishing or holding intermediaries responsible for the content. Another reason for punishing the indecency in general is that it's not the women involved in indecency are victims but victims are those women who gets exposed to a higher level of vulnerability and risk due to their existence in publicly accessible places.

4. There should creating some authorities for the spread of Cyber Ethics who will cover in its scope the OTT services as those are running through internet and in the cyber space. These authorities can be created as one of the authorities under the Indian Institutes of Information Technology Act, 2014.
5. To avoid free access to content in this area of research on OTT services through links on social media, the inclusion of social media within the scope of applicability of the amended Act of 1986 is inevitable.
6. All the OTT services should be made a paid subscription and accessible only after logging in to the browser, if used on laptops and desktop computers and tablet computers. The OTT should be made available through a paid application on a mobile phone. This will bring the control on free and easy access of the indecent OTT content.

The pre-publication censorship of the indecent representation of women as content of OTT services is need of an hour because it is the biggest cause of sexual crimes against women.

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