



Explanation of the subject of pornography and its types and evolution

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Abstract

Pornography means content containing explicit sexual scenes that are mainly intended to arouse sexual desire. It is a phenomenon that has been studied and explained in terms of its numerous destructive consequences on public and individual chastity and morality, as well as the family circle. The production, publication, distribution and trading of obscene or vulgar content are the most obvious examples of pornography. The finding of this research is that the term "pornography" and its types do not have a legal definition in any of the legal texts. The expansion of the use of the Internet and the recognition of cyberspace have increased the prevalence of the aforementioned behaviors in the virtual and intangible cyberspace. The types and course of the criminal evolution of pornography reflect the change in its pattern from paper images and photos in magazines and special publications of this kind to moving obscene images, obscene videos, obscene sounds, and printing industry technology, and the introduction of video in Iran in the sixties, and then storing information on computers, and then assembling and posting it on the Internet, and finally mobile phone technology.

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Introduction

Pornography is one of the crimes related to content, which is included in the classification of substantive law as crimes against public morality and decency. In the general sense, pornography means images and content that are presented mainly for the purpose of sexual stimulation. These cases are in the form of displaying, presenting, producing and trading obscene and vulgar content. In fact, the Creator of the universe, as the highest of creatures, has brought together a set of diverse and sometimes contradictory feelings, motivations and instincts in man, one of the most complex and mysterious of these instincts is the sexual instinct, which is dependent on many aspects of human behavior, both good and bad. (Dressler, 2002, 1027)

One of the most obvious examples of the rebellion of this instinct is the existence of a large volume of images, writings and other objects related to sexual issues in human society, which are referred to as "pornography" or "pornography". With the advent of the Internet, this crime has gone from being a classic one and has become a widely used and effective tool for sexual abusers. (Bai WapourQahramani, 2009, 2010)

In fact, the questions that arise are: What is pornography and whether there is a definition in the text of the Islamic Penal Code? Another is whether pornography is still presented in the old ways? In this article, with the aim of finding an appropriate answer to these questions, after examining the semantics of pornography, the types and the evolution of these pornographic products are explained and analyzed, and suggestions are presented to eliminate the existing shortcomings.

This article is about explaining the concept of pornography and its types and evolution, which includes four items. First, the following will be explained about the emergence of this phenomenon.

1- History of Pornography

The first part is about the history of the phenomenon of pornography, and the position of this part in the overall research is that it clarifies and specifies the background and basis for the creation of these pornographic contents and works. This phenomenon took root in the 17th century and reached its full potential during the 18th century; but this crime became widespread in the late 19th and early 20th centuries and was mainly available through paper, magazines, paintings and videos. (Ghodsi and Mojtahid Soleimani, 2010, 131-130)

The criminal evolution of pornography reflects the change in its pattern from paper images and photos in magazines and publications specific to such matters to moving pornographic images, pornographic videos, pornographic sounds, and printing industry technology, and the introduction of video in Iran in the sixties, and then storing information on computers, and then assembling and posting it on the Internet, and finally mobile phone technology.

This issue has caused the excessive growth of this crime, and the age of using this device has also decreased. After examining the history of pornography and the process of its formation and expansion, the meaning and concept of pornography and related materials, and what phenomenon pornography basically refers to, will be discussed in the second part.

2- The concept of pornography and related matters

The second case deals with the meaning of pornography and matters related to it, and its place in the overall research is to basically examine and analyze the concept of pornography and the related matters that are actually the transmitters of the concept of pornography.

Discussion of laws related to pornography, due to the lack of a legal definition of this concept and the number of specific laws in this field, many people, unfortunately, even professors, judges and experts, consider the scope of pornography to be so broad that they consider any type of criminal behavior that raises moral issues in some way as pornography, or they basically refer to pornography as a method of committing a crime; While pornography is a title that includes numerous criminal titles, although it necessarily crosses the boundaries of chastity and morality and it is clear that these criminal titles are against chastity and morality, it is not at all correct to expand the title of pornography in such a way that it is used as equivalent to crimes against chastity and morality; because only some crimes against chastity and morality can be classified under the title of pornography, on the other hand, it is clear that pornography is against chastity and morality; otherwise, some artistic and medical activities, etc., in which nudity plays a role, should also be considered pornography, which is not correct, and the Islamic Penal Code has also taken this into account. Persian dictionaries have not provided a definition of the word "pornography". Harzah, with the capital "e" and the abbreviation "z", literally means useless, useless, revelry, corrupt. (Mo'in, 1381, 1193)

Naghari is also from the root of "writing" and "writing" and means to make a picture, to depict, to draw. (Mo'in, 1381, 1127)

The word "negari" also comes from the root "negarid" and "negarish" and means to portray, to depict, to draw. (Mo'in, 1381, 1127)

Therefore, the literal and primary meaning of pornography is "negari" (writing and describing the activities of prostitutes), and according to the Persian Language and Literature Dictionary, "negari" (pornography).

"negari" is the Persian equivalent of the word "pornography". Pornography is a combination of two Greek words; "porne" means prostitute and prostitution, and "graph" means writing and composing. (Dressler, 2002, 1028)

Pornography is one of the most important crimes committed against public chastity and morality and has a direct impact on the family.

In this regard, we can say: pornography, in the classification of substantive law, is among the crimes against public chastity and morality. (Bai WapourQahramani, 2009, 98)

In Chapter 18 of the Islamic Penal Code, under the title "Crimes against public chastity and morality", pornography has been implicitly examined. The Iranian legislator has not used the term "pornography" in any of the legal texts and has not provided a definition of the term pornography in any of the laws related to this area.

In several legal texts, pornography has been implicitly referred to with terms such as "contrary to public chastity", "offending public chastity and morality", "vulgar" or "obscene". Among all the terms, only two terms "vulgar" and "obscene" have a legal definition. "Vulgar" and "obscene" have a definition in two laws on the method of punishing persons who engage in unauthorized activities in audiovisual matters and computer crimes. Finally, the legislative timeline indicates that the Computer Crimes Law approved in 2009 is closer to the true will of the legislator due to its recentness over the previous definition.

Also, in our legal system, the production and display of content beyond what is called explicit sexual display in other countries; above all, the criterion for determining instances of pornography is the violation of chastity and public morality, and therefore the victim of the crime includes both children and adults.

Finally, "pornography" is a crime that consists of a set of criminal behaviors that include the production, design, presentation, publication, and trading of audio and visual content that offends chastity and public morality. With this definition, it can be assumed that; Pornography, like crimes related to content or like the crime of corruption or terrorist act, is not only a crime or even a criminal process, but each of the behaviors of pornography such as production, publication or presentation, etc. are all types of immediate crimes and have separate criminal characteristics. (Aalipour, 2011, 294)

Pornography can be definitely considered a set of criminal behaviors; not just committing a crime. The meaning and concept of pornography and the content related to it were analyzed; however, regarding the concept of pornography, identity and the concepts that are raised about it will be discussed in the third part.

1- Identity Pornography in Cyberspace

The third section explains the meaning and concept of identity pornography in cyberspace, and in fact, its place in the overall research is that it evaluates and analyzes the concept of cyberspace, the concept of identity, the characteristics of cybercrimes, the problems of prosecuting and prosecuting computer crimes, the concept of identity pornography, and the constituent elements of identity pornography in cyberspace.

3-1- History and Evolution of the Internet

In this section, the history and process of the formation, evolution, and progress of the Internet are examined. The creation and expansion of the Internet began in the late 1960s, when it became known as the ARPANET network because this experiment was carried out at the US Department of Defense Research Projects Agency. The ARPANET network continued to operate until 1990, and in that year it was replaced by the Internet, which was created in 1980 with the aim of connecting global networks with different communication protocols. (Nadali, 2012, 19)

Therefore, the Internet network grew and expanded significantly after its formation. After explaining the process of formation and evolution of the Internet, the meaning and concept of cyberspace will be mentioned in the next section.

3-2- The concept of cyberspace

This section explains the concept of cyberspace. In general, we can say that cyberspace is a virtual and intangible environment in the space of international networks, which are interconnected through information highways such as the Internet and are composed of a combination of computer and

telecommunication technologies. In this virtual environment, all information about cultures, nations, countries, individuals, and everything that physically exists in the real world is available digitally and is usable by users.

After explaining the concept and meaning of cyberspace, it is necessary to know what characteristics and features this cyberspace has that cause crimes to occur in it, which will be addressed in the next section.

3-3- Characteristics of Cyberspace

In order to better identify this space as a place for committing computer crimes, it is necessary to examine the specific characteristics of this space. These features include: low-cost entry into this space, speed and ease of access to it, the absence of a specific owner, the absence of time and place restrictions, the possibility of accessing the privacy and personal information of others, the possibility of anonymity of individuals, etc. (Aqamir, 2011, 28)

Therefore, one of the most important features of this space is its transboundary nature. In fact, the above-mentioned cases are characteristics of cyberspace; but what meaning identity contains and how it differs from personality will be discussed in the next section.

3-4- The concept of identity and personality and their distinguishing features

This section briefly explains the meaning of identity and personality and their distinguishing features. Identity, in dictionaries, means a particular truth that includes inherent characteristics that distinguish a person or an object from other people and objects. It can be said: Identity is an ambiguous word that has been considered from different social and cultural fields.

There are also many definitions of personality; but a definition that has all the factors of definitions can be said: "Personality is the external manifestation of a system consisting of the totality of perceptual, passive, volitional and physical aspects of a human being, in the form of states and characteristics that contain individual differences and characterize a particular human being." (Arif, 2010, 115)

The difference between identity and personality is that; identity is a matter, it is used both for humans and non-humans and objects; however, personality is used only for humans. Identity is a particular truth; but personality is the external manifestation of the states to which that particular truth belongs. Ultimately, identity is the objective and external truth of the individual, while personality is a set of states and characteristics of the individual. After explaining the concepts of cyberspace and its characteristics, identity and personality, and the aspects of distinguishing between the two, it is necessary to identify and explain the characteristics of cybercrimes, which we will explain in the next section.

3-5- Characteristics of Cybercrimes

Computer science is constantly developing and growing. Along with its advantages, we also witness its negative aspects. These crimes have distinctive characteristics compared to classic crimes. These include the easy way of committing them, huge losses and damages with minimal resources and costs, the lack of physical presence at the scene of the crime, the lack of identification of crimes, which in some cases are apparently not identified as illegal, and the transnational nature of the scope and scope of the crime. (Bastani, 2011, 33)

Below, we will briefly review some of these characteristics.

3-5-1- Perpetrators of Internet Crimes

This is the first characteristic of cybercrimes that examines the characteristics of perpetrators of Internet crimes. Virtual crimes can be committed by any gender, race, and age group. (Zarrokh, 2010, 81)

Different people have stated different things about the perpetrators of cybercrimes; finally, the perpetrators of cybercrimes are not necessarily criminals, they do not require high skills and specialization, and they are both men and women, and they are both young and adults, sometimes they have political and economic motives, and sometimes they do this out of curiosity. In general, the higher

the level of intelligence, literacy, and education of the criminals, the more extensive crimes they commit with greater losses. (Aghamir, 2011, 25)

It can be said that the perpetrators of these crimes do not necessarily have to be criminals, intelligent, and literate, but if they have high intelligence and literacy; they commit more extensive crimes and with greater losses.

After examining the first characteristic of cybercrimes, it is necessary to state other characteristics of these crimes, which are stated in the next case, in addition to the lack of accurate estimation of the amount of crimes committed in cyberspace, some information has been stated.

3-5-2- Lack of accurate estimation of the amount of crimes committed

Another characteristic of cybercrimes is that it is impossible to estimate the exact amount of crimes committed in cyberspace. (Bastani, 2011, 35-34)

One of the characteristics and features of computer crimes is the existence of a very high black figure. A small percentage of computer crimes are reported to law enforcement authorities, which causes the black figure of computer crimes to increase, and this is due to multiple reasons; for example, compact memory capacity and high speed of storing and processing information by computers, etc. (Abqari, 1998, 45)

Therefore, crimes committed in cyberspace cannot be accurately known, which was due to multiple reasons that were discussed in detail. It is necessary to examine the transnational and international nature of cybercrimes as the third characteristic of cybercrimes in the next section.

3-5-3- Transnational and international nature of cybercrimes

This section contains the third characteristic of crimes that occur in cyberspace. Due to its nature, computer crime is not specific to the physical environment and can be easily committed worldwide. (Bai-Vapour-Qahramani, 1999, 74)

Given the borderlessness of these crimes and their daily expansion, it may be better to achieve a single criminal policy by establishing international cooperation to combat these crimes. This section has provided information about the international aspects of cybercrime; however, cybercrime also has another characteristic that will be examined in the next section, and that is the extent of the damage caused by cybercrime.

3-5-4- The volume and extent of losses and damages caused

In this section, the volume and extent of losses and damages caused to human society through cybercrimes will be evaluated. The computer, due to features such as: with the least capital and cost of entering and penetrating the information network, ease of committing with a large volume of issues, speed of computer performance, no need for special or high specialization, no need for the perpetrator to be physically present on site, can inflict huge losses in a fraction of a second on hundreds of thousands of users around the world. (Bastani, 2011, 36)

Finally, cybercrimes will cause huge losses to human society. It seems that what problems computer crimes will pose in terms of prosecution and procedural rules, which is also clarified in the next section.

3-5-5- Problems of Prosecution and Procedure of Computer Crimes

This section also addresses the fact that computer crimes have problems due to their specificity in terms of formal law and criminal procedure. In fact, this can be considered one of the characteristics of cybercrimes. Due to the novelty of all judicial and legal discussions, computer crimes are focused on substantive law and are free from formal law and problems of criminal procedure.

After stating what is generally meant by cyberspace, identity, and personality, and the aspects of distinction between the two, it is necessary to explain and clarify the concept of identity pornography as one of the crimes that occur in cyberspace.

3-5-6- The concept of identity pornography

This is also about explaining and clarifying the meaning of identity pornography. A crime against public chastity and morality and against the spiritual personality of individuals called identity pornography or distortion of images means changing the content of another. This behavior is in the field of crimes related to content, which is why it is different from computer forgery or destruction. (Aalipour, 2011, 314)

Sometimes in pornographic content, it is possible that public chastity and morality are not injured and the moral boundaries of society are not violated; but since changing and distorting the content may cause insult, slander, etc. to another, it is an act committed against the spiritual personality of individuals. Identity pornography is not a crime specific to cyberspace and is one of the crimes that can also be committed in the physical space. After mentioning the meaning and concept of identity pornography, it is necessary to analyze the elements constituting the crime of identity pornography in cyberspace, which is addressed in the last case.

3-5-7- Examining the elements constituting the crime of identity pornography in cyberspace

Considering that we said that every crime requires the proof and verification of three legal, material and spiritual elements in order to be prosecuted. Article 16 of Chapter Five of the Computer Crimes Law deals with the distortion or pornography of identity in cyberspace. The behavior subject to Article 16 occurs in two ways; A: Change or distortion and dissemination, in which case two behaviors are required for the crime of distortion. Therefore, this crime is compound.

A compound crime is a crime that is based on two or more physical behaviors, each of which is not sufficient for that crime. Each has two meanings, and change and distortion also include distortion. Therefore, distortion is a special form of change that refers to an entire content, such as a writing or a film. The perpetrator has not committed a crime until he changes or distorts another content, unless his behavior is an example of another crime, such as destruction or forgery. After changing or distorting, the perpetrator is required to publish the content in order to reach the punishment provided for in Article 16 of the Computer Crimes Law.

The second case provided for in Article 16 is the publication of another content with knowledge of the change or distortion, in which case only one behavior occurs, which is a simple crime, unlike the first part of the article, which refers to a compound crime. Changing or distorting another content can occur in many ways, such as reducing the content of a film or image, such as: someone edits a group photo so that only a girl and a boy remain, or in the form of adding, such as: creating an image of a pornographic film artist next to a high-ranking manager. Sometimes changing and distorting some items is committed in a vulgar and obscene manner, in which case, as will be said and also according to the note to Article 16, the perpetrator will be sentenced to the maximum of both prescribed penalties, and this penalty is based on the application of the proposition of material plurality that is not similar. It is worth remembering that in the note to Article 16, there is no mention of vulgarity, and this mistake is unacceptable from the legislator. Article 16 deals with the rules of multiple offenses. If this note were not there, the same provision of material multiple offenses of a dissimilar type (non-similar) should have been applied. The reason for this is that the constituent parts of the offense of Article 16 are different from the offense subject to Article 14 of the Computer Crimes Act. The offense subject to Article 16 is complex and the offense subject to Article 14 is simple, and there is no spiritual multiple offense between these two; rather, the material multiple offenses are of a dissimilar type and the sum of the penalties is in such a way that the same thing has been done in the note. However, with regard to publication, spiritual multiple offenses are established; Because, this behavior is mentioned in both Article 14 and Article 16, and if someone uses the necessary software to make another person appear naked, it is a behavior that has two criminal titles. Therefore, a more severe punishment should be given; but the legislator has also foreseen the same rule of multiple punishment in the note to Article 16 regarding this case, regarding vulgarity, which is not explicitly stated in the article; general statements of multiple offenses should be applied. (Aalipour, 2011, 316)

It should be noted that both of the aforementioned behaviors are restricted to achieving a result in terms of the material element in Article 16 and must lead to defamation of reputation, and the standard for defamation of reputation is customary, which varies according to the conditions of time and place.

Regarding the psychological element of the crime under Article 16, it should be said that it is necessary for the perpetrator to intend both the change or distortion and the publication. In the first part of the article, which is a compound crime, both parts of the criminal behavior must be committed with intent and will in order for the crime to occur. However, in the second part of the article, which is a simple crime, the perpetrator must be aware of the intention to publish and, in addition, of the change and distortion of the content, and in both parts of the article, the perpetrator must be aware that the image or film, sound, etc. belongs to someone else. (Nadali, 2012, 89-88)

It is worth noting that first, the behavior must be committed in cyberspace and second, the behavior must be committed on obscene and vulgar content as the subject of the crime, these two conditions are necessary for the occurrence of this crime.

So in fact, we can say: The crimes subject to Article 16 are absolute crimes in terms of the psychological element and do not require a result because they are realized in any case and a specific malicious intent is hidden in it.

After stating the elements that constitute identity pornography in cyberspace, it is also necessary to analyze the different types of pornography.

1- Types of classification of pornography

The phenomenon of pornography has the following types.

4-1- Classification of pornography based on age

In a classification of pornography, it is divided into two categories: child pornography and adult pornography based on the people who participate in it.

4-1-1- Child pornography

Pornography based on the child who is present in it.

4-1-2- Adult pornography

Pornography, based on the adult participating in it.

After examining pornography based on age, pornography based on content also needs to be examined as another classification of pornography, which is as follows.

4-2- Classification of pornography based on content

In another classification, pornography is divided into two categories based on content: direct pornography and indirect pornography. This type of classification is very useful in terms of rating products for access by different ages, applying subject restrictions, age restrictions and supply restrictions in countries that consider pornography legal.

4-2-1- Direct pornography

This type of pornography includes close-up images of aroused genitals and penetrative sexual acts. Direct (or obscene) pornography includes obscene and highly offensive images and scenes that are clearly and directly erotic.

After describing direct pornography, there is another type of pornography classification based on content called indirect pornography, which is as follows.

4-2-2- Indirect pornography

This type of pornography includes images, content, and products that contain scenes of nudity, scenes of sexual temptation, and simulated sex. Indirect pornography is the opposite of direct pornography and includes products that rely on showing scenes that are indirectly and indirectly erotic. (Eskandarzadeh Shanjani, 2010, 21)

Some adult films are edited in an indirect way that is suitable for broadcast on night televisions, and in contrast to direct pornography, they are prepared for broadcast in adult film stores. After analyzing pornography based on content, there is another type of pornography based on production and distribution methods, which will be discussed in the next section.

4-3- Classification of pornography based on production and distribution methods

In terms of production and distribution methods, pornography can be divided into two types.

A: Simple method

B: Computer, cyber method

4-3-1- Simple method

This method included cases that were common before the computer entered the world of technology. Simple methods include: paintings, photographs, and films, which were produced and distributed in the form of photographs, magazines, and special pornography films.

Another method of producing and distributing pornography is the computer-based, cyber method, which will be discussed below and related matters.

4-3-2- Computer-based, cyber method

The methods of producing and distributing pornography have undergone major changes since the advent of computers, and the production and distribution of pornography by computer using the Internet, chat rooms, e-mail, unsolicited letters or so-called spam, and Usenet news have undergone changes.

4-4- Classification of pornography based on relevant laws

Pornography has been criminalized sometimes in general law and sometimes in specific laws, and it has been addressed sporadically in general and specific laws.

4-4-1- General Law

In the Iranian legal system, the general law governing pornography, like many other criminal titles, is the Islamic Penal Code, and in various articles, and in particular, parts of articles 639 and 640, it has criminalized titles related to pornography. (Nadali, 2012, 54)

In addition to the general law, there are also special laws, which we will explain below.

4-4-2- Special Law

In addition to the general Islamic Penal Code, the legislator has also tried to criminalize pornography in a more precise and specialized manner in other laws, which we will briefly explain. Article 28 of the Press Law, the Law on the Punishment of Persons Who Engage in Unauthorized Activities in Audiovisual Matters, passed in 1993, which has introduced broader and more specialized criminalization in the field of pornography, and was amended in 2007 in light of the advancement in technology of criminal acts, and the Computer Crimes Law, which is one of the most specialized laws related to the field of pornography. (Eskandarzadeh Shanjani, 2009, 25)

Therefore, the legislator has adopted the approach of absolute prohibition and complete criminalization regarding the phenomenon of pornography. However, unfortunately, due to the lack of a single law in this regard, Iran's legislative criminal policy in dealing with this phenomenon can be considered inconsistent. Also, the surrounding issues regarding pornography, such as: the issue of resocialization of the offender and the victim, and aiding and abetting the crime, etc., have not been examined in these scattered laws. In

order to achieve its goal, which is actually to combat this phenomenon, the legislator should strive to criminalize the term "pornography" and all related materials, and completely repeal other similar laws in this field to prevent judicial wandering.

Conclusion

Pornography in a general sense means content that is presented primarily for the purpose of sexual arousal. Pornography is, in fact, a crime that consists of a set of criminal behaviors that include the production, design, presentation, dissemination, and trading of audio and visual content that offends public morality and chastity. With this definition, it can be assumed that; pornography, like crimes related to content or such as corruption or terrorist acts, is not only not a crime or even a criminal process, but each of the behaviors of pornography, such as production, dissemination, or presentation, etc., are all types of immediate crimes and have separate criminal characteristics. In fact, pornography is a set of criminal behaviors, not just a crime. Of course, this phenomenon has been criminalized in the laws of many countries, including Iran, in terms of its numerous destructive consequences on public and individual chastity and morality, as well as the family center. The main penalties for these criminal behaviors regarding pornography include flogging, imprisonment, fines, and deprivation of social rights; however, in some cases, the legislator has given judges the authority to consider the perpetrator's actions as examples of corruption on earth and issue a death sentence. Finally, we will examine the questions raised at the beginning of the article. As we said at the beginning of this title, pornography is a crime that consists of a set of criminal behaviors including the production, design, presentation, etc. of audio and visual content that is mainly presented with the intention of sexual stimulation; Which offends public morality and morality, and each of the criminal behaviors that we mentioned are of the type of immediate crimes and have separate criminal descriptions. This phenomenon has existed since the 17th century, but its prevalence has been since the late 19th and early 20th centuries. Pornography has not been explicitly stated in any legal texts, its title, definition, and types, but rather this phenomenon has been implicitly referred to. The types and course of the criminal evolution of pornography indicate the change in its pattern from paper images and photos of magazines and special publications of this kind to moving pornographic images, pornographic video films, pornographic sounds, and printing industry technology, and in Iran, the introduction of video in the sixties, and then the storage of information on computers, and then its assembly and placement on the Internet, and finally the technology of mobile phones. It is suggested that the term pornography and its definition and related matters regarding the issues of repetition, initiation, aiding and abetting, and multiple crimes, and the resocialization of the perpetrator and the victim, and the types of pornography, and ultimately the legislative goal, which is the absolute prohibition and complete criminalization of this phenomenon, should be specified as a chapter of the Penal Code, and all similar laws should be explicitly repealed.

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