

OBSCENITY AND INDECENT REPRESENTATION OF WOMEN IN INDIA

by

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ABSTRACT

'Morality' and 'decency' varies from time to time. Something which is immoral today may not be immoral tomorrow. Thus, the concept of morality and decency is not static in the society. Earlier the exposure of women through advertisements, painting, publications or otherwise was not accepted but today it has become a trend. In India, the law relating to obscenity is contained in Sections 292, 293 and 294 of IPC. In spite of these provisions, there is growing indecent representation of women mainly through advertisements. Therefore, in order to curb these crimes the Indecent Representation of Women (Prohibition) Act is enacted. This paper tries to explore the law relating to obscenity and indecent representation of women in India and whether it is effective in modern times. My paper is divided into the following subtitles- Introduction, Constitutional and Legal provisions relating to Obscenity and Indecent Representation of Women, Judicial Interpretation of Obscenity, Indecent Representation of Women on Social Media and Conclusion.

Key words: Obscenity, Indecent Representation of Women, Social Media.

INTRODUCTION

The term obscenity is very difficult to define and thereby to regulate. The meaning of the terms 'morality' and 'decency' varies from place to place and from person to person. Something which is immoral today may not be immoral tomorrow. Thus the concept of morality and decency is not static in the society. Earlier the exposure of women through advertisements, painting, publications or otherwise was not accepted but today it has become a trend. In India, the law relating to obscenity is contained in Sections 292, 293 and 294 of IPC. Section 292 and Section 294 criminalize publishing obscene books, singing obscene songs, and doing obscene acts in or near a public place. These provisions mainly deal with obscenity only. In spite of these provisions, there is growing indecent representation of women mainly through advertisements. Therefore in order to curb these crimes against women the Indecent Representation of Women (Prohibition) Act is enacted on 23rd Dec 1986. This Special Act not only prohibits obscene advertisements but also punishes any references which are derogatory or denigrating women. This paper tries to explore the law relating to obscenity and indecent representation of women in India and whether it is effective in modern times.

CONSTITUTIONAL AND LEGAL PROVISIONS RELATING TO OBSCENITY AND INDECENT REPRESENTATION OF WOMEN

The Constitution of India in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c), 42, 46, 47 and 51A (e) of the Constitution are of specific importance in this regard. Indian Constitution also guarantees right to live with dignity and decency¹. This has been held in various cases. In *Maneka Gandhi v Union of India*², it was ruled that right to life is not merely confined to physical existence but also includes within its ambit the right to live with human dignity. In *Francis Coralie v Union of Territory of Delhi*³, it was held that life means something more than just physical survival and is not confined to protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world, but includes 'the right to live with human dignity.' Thus women have the right to have a dignified life.

¹ INDIA CONST. art. 21.

² *Maneka Gandhi v Union of India*, AIR 1981 SC 746.

³ *Francis Coralie v Union of Territory of Delhi*, AIR 1978 SC 597.

Sections 292, 293 and 294 of IPC have been enacted with the ulterior motive to protect and safeguard the public moral by making the sale, etc., of obscene literature and publications in general, and to young persons in particular, a cognizable offence. Section 292 of the India Penal Code says “a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect (is) such as to tend to deprave and corrupt person.” There is no standard definition of obscene or obscenity in IPC. In Ranjith D Udeshi’s case⁴ constitutionality of Section 292 IPC was challenged and held that Section 292 constituted a reasonable restriction on the right of freedom of speech and expression under Article 19(2).

Indecent Representation of Women (Prohibition) Act prohibits indecent representation of women through advertisements or in publications, writings, paintings, figures or in any manner and for the matter connected there with or incidental thereto. Under this Act, Indecent representation of women means “the depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent or derogatory to or denigrating women or as is likely to deprave, corrupt or injure public morality or morals⁵.” Under Section 3 of the Act any advertisement wherein any indecent representation of women in any form by any person who publish or arrange or take part in publication or exhibition is punishable. Any paper, pamphlet, slide, film, writing drawing photos, figures that contain indecent representation of women cannot be produced, sold or let to hire by any person but with some exceptions⁶. This Act shall not apply to any book, paper, pamphlet, painting, writing, photograph, or any figure that is done for public good or in the interest of science, art, and literature. Exceptions also apply if it is used for religious purpose and sculptures, engraved, paintings of which are an ancient monument under Ancient Monument and Archaeological Sites and Remains Act 1958 or any temples or idols used for religious purposes and any film for which Part 2 of the Cinematograph Act 1952 applies. Penalty for the crime committed under this Act is up to 2,000 rupees and imprisonment up to 2 years for the crime done for first time and if it is repeated second time then punishment can extend to 5 years and fine too may extend up to 1 lakh rupees⁷. National Commission of Women and Parliamentary Standing Committee also suggested amendments to Indecent Representation of Women (Prohibition) Act, 1986 to broaden its scope and bring within its

⁴ Ranjit D. Udeshi v State of Maharashtra, AIR 1965 SC 881.

⁵ The Indecent Representation of Women (Prohibition) Act, 1986, § 2 (c).

⁶ The Indecent Representation of Women (Prohibition) Act, 1986, § 4.

⁷ The Indecent Representation of Women (Prohibition) Act, 1986, § 6.

ambit all other forms of media and publication introduced with the technological revolution⁸. The Amendment Bill was introduced in 2012⁹. But recently the Government had withdrawn the Bill stating that IT rules are sufficient to deal with this issue.

JUDICIAL INTERPRETATION OF OBSCENITY

In the absence of definition of obscenity in the IPC, the task of defining it, thus, has been done by courts in India. The apex court has also evolved a test of obscenity.¹⁰ Indian courts chosen to adopt the Hicklin Test but then it deviated to modern Community Standard Test with time to define obscenity¹¹. In the landmark case of *Ranjit D. Udeshi v State of Maharashtra*¹², a bookseller was booked under IPC for selling unedited and expurgated edition of “Lady Chatterley’s lover”. The case laid down what has come to be known as “test of obscenity.” It says that obscenity must not be judged by a word, here a passage there. The work as a whole must be looked into and seen as to how it impact the society, reader as a whole. In the words of the court, *“where obscenity and art are mixed, art must be so preponderate as to throw the obscenity into a shadow or the obscenity so trivial and insignificant that it can have no effect and may be overlooked. It is necessary that a balance should be maintained between “freedom of speech and expression” and “public decency and morality”; but when the latter is substantially transgressed the former must give way.”* In this case the Hicklin Test was applied. In *Chandrakant Kalyandas Kakodar v. State of Maharashtra and others*¹³ it held that there was no fixed rules to determine obscenity, “the concept of obscenity would differ from country to country depending on the standards of morals of contemporary society”. The Supreme Court held that in considering the question of obscenity of a publication, the court has to see whether a class, not an isolated case, into whose hands the book, article or story falls suffer in their moral outlook or become depraved by reading it or might have impure and lecherous thoughts aroused in their minds. In *Samresh Bose and Another v. Amal Mitra and Another*¹⁴, the Supreme Court observed that a vulgar writing is not necessarily obscene. Vulgarity arouses a feeling of disgust, revulsion and

⁸ Disha Chaudri, Analysing The Indecent Representation of Women (Prohibition) Bill 2012, FEMINISM IN INDIA (Nov 10, 2021, 10.00 PM), <https://feminisminindia.com>.

⁹ The Indecent Representation of Women (Prohibition) Amendment Bill, 2012, Bill No. LLX of 2012, § 2, 3, 4, 6 (December 13, 2012).

¹⁰ DR. VIBHUTE K I, PSA PILLAI’S CRIMINAL LAW, 701 (LexisNexis, 10th ed. 2011).

¹¹ Abhijeet Kumar Bhatt, The Law of Obscenity in India, THE DAILY GUARDIAN (Nov. 10, 2021, 9.30 PM), <https://thedailyguardian.com>.

¹² *Ranjit D. Udeshi v State of Maharashtra*, AIR 1965 SC 881.

¹³ *Chandrakant Kalyandas Kakodar v. State of Maharashtra and others*, AIR (1970) 1396.

¹⁴ *Samresh Bose and Another v. Amal Mitra and Another*, (1986) Cr.L.J. 24 SC.

boredom whereas the obscenity has the tendency to deprave and corrupt those whose minds are open to such immoral influences. A novel written with a view to expose evils prevailing in society by laying emphasis on sex and use of slangs and unconventional language did not make it obscene. In a case of *Aveek Sarkar and another v State of West Bengal*¹⁵, Supreme Court recently passed a judgment stating, “*Nude picture of women is not obscene if it carries social message*”, that is a picture of a nude or semi-nude women, as such, cannot per se be called obscene unless it has the tendency to arouse feeling or revealing an overt sexual desire. The Court finally disapproved the Hicklin’s Test and adopted the Roth Test. Recently in 2018, the Kerala High Court passed a judgment stating that “One man’s vulgarity is another man’s lyric” and refused to accept the breastfeeding picture of a women in a magazine cover as obscene¹⁶.

INDECENT REPRESENTATION OF WOMEN ON SOCIAL MEDIA

Obscenity on Internet is available in different medium such as pictures, sound files, stories, etc. The trafficking, distribution, posting and dissemination of obscene material including pornography, indecent exposure and child pornography, constitutes one of the most important cybercrimes known today. On net everybody has easy access to all sorts of materials. Obscene matter posted or transmitted through internet can traverse many jurisdictions and can be accessed in any part of the Globe. The existence of pornographic material on Internet has been a matter of concern and even the most stringent restrictions on the publication and dissemination of pornographic materials on the internet have not been able to control it. The law on obscenity has evolved with the advent of the Internet and social media. The major law which govern obscenity on online or electronic platforms is Section 67 of the IT Act. It reads as follows “Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.” The important ingredients of an offence under section 67 are publishing, or transmitting, or causing to be

¹⁵ *Aveek Sarkar and another v State of West Bengal*, (2014) 4SCC 257.

¹⁶ *Felix M. A. v P.V. Gangadharan*, Writ Petition (Civil) No. 7778 of 2018.

published, pornographic material in the electronic form. Section 67A of IT Act inserted vide IT Amendment Act 2008 prescribes punishment for up to 5 years and in cases of subsequent conviction up to 7 years and also with fine up to 10 lakhs rupees for persons who publish, transmit or cause to be published or transmitted in electronic form any material which contains sexually explicit act or conduct. Another section that has been inserted vide the Information Technology Amendment Act of 2008 is Section 67B which lays down punishment for publishing or transmitting of material depicting children in sexually explicit acts etc, in electronic form. In spite of these provisions under the IT Act the nature of Internet has made its regulation difficult. In the present era, the role of media is of utmost importance. Media can be the tool for the social change and development. It is known as the Fourth Estate.¹⁷ Unfortunately media has risen as the main exploiter of women, portraying obscene content. One of the major role media can play is also to sensitize people about the above mentioned laws and to create awareness among people.¹⁸

CONCLUSION

Historically and socially women are respected in India but the hard truth is that even today, they are struggling for their own individuality. They have to go through rape, dowry deaths, sexual harassment, obscenity, indecent representation and more. Despite the constitutional guarantee of equality and dignity to women, rampant discrimination and exploitation of women in India continues. The legislature had enacted laws to curb the problem of obscenity in India. But the speed of crime is too fast than the laws. The law on obscenity in India is clearly outdated as these provisions were drafted in the 19th century. Now a day the incidence of indecent representation of women on digital platforms is on increase. Awareness in the women as well as society should be created and self regulation of mass media and digital platforms are the need of hour. A strong legislative effort coupled with a wide spread social awareness with morality and ethics is needed to fight this menace so that women are not perceived as a commodity but as individual with right and dignity.

¹⁷ A.G. Noorani, *The Media: Politics Ethics and Law*, Economic and Political Weekly 2006.

¹⁸ Deepak Ranjan Sahoo, *Indecent Representation of Women: Role of Media and Law*, ODISHA REVIEW 35 2015.