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# An Analysis of Laws Relating to Obscenity: Problems & Prospects

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## I. INTRODUCTION

*"The relation between reality and relativity must haunt the court's evaluation of obscenity, expressed in society's pervasive humanity, not law's penal prescriptions." - Krishna Iyer<sup>2</sup>*

Law has been an integral part of human civilization. It cannot be differentiated entirely from ethics and religion. Great philosophers like Henning and Bentham had also denied the necessity of making a difference between law and morals. Primitive societies and communities were small, and everyone lived together as it was challenging to exist individually. Various customary laws evolved. However, there was a thin line of difference between ethics and religion. The growth of multiple nations, states, and involvement in the idea of the welfare state and worldwide activities has made considerable changes in the meaning of 'obscenity.'

### Concept of Obscenity

The idea of obscenity is shaped by the masses' social perception of who is expected to confront obscene materials. obscenity is dynamic; the definition of the term changes from time to time. Every nation has a different meaning for the word " obscenity, " as its purpose depends on society's morality standards. obscenity can be defined as a statement or act which offends the moral standards of the community. It can be in the form of a video, picture, article, figure, or write-up against acceptable<sup>3</sup> social, ethical standards. The word is derived from the word '**obscaena**,' which in Latin means offstage. The meaning is such because potentially offensive content, such as sex, was depicted offstage in the Latin drama.

The meaning of the word obscenity varies from nation to nation, even between communities having the same culture or individuals between the same community. It is a very abstract term as its components change with evolutions of culture<sup>4</sup>. Tests were laid down to understand the meaning of obscenity and censorship imposed to control and suppress the

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<sup>2</sup> Raj Kapoor v. State, (1980) 1 SCC 43

<sup>3</sup> Vishnu D. Sharma and F. Wooldridge, "The Law Relating to Obscene Publications in India" ICLQ (1973). <sup>4</sup> Tejas RK Motwani, "Obscenity as Restriction in India" IJLSR 13 (2013).

obscene material flowing in the society. In legal terms, it means expressions of sexually-explicit nature.

Each nation has virtually suffered from the question of what to do about the representation of sexual activity. Sexual material is prevalent in society because it manifests the tensions between social norms and desires of an individual. Modern-day thinking about sex advances our understanding concerning these problems, but society's ideology is still orthodox about the impact of sexual depictions and sexual freedom. They still try to prohibit explicit material altogether.

In the Indian Constitution, freedom of speech and expression is a fundamental right to assure the free flow of ideas and thoughts. There are reasonable restrictions that are imposed by the Constitution to put a limitation on the free flow of ideas. One of these restrictions includes "decency or morality" that puts an end to obscene materials. Therefore, it can be said that obscenity is an exception to the right of freedom of speech as it can be problematic and harmful for society and can make an adverse impact on the moral values of the community<sup>4</sup>.

## II. NATURE & MEANING OF OBSCENITY

The term 'obscenity' is complex, and it is complicated to explain because it is closely linked to society's moral values and sentiments. The Court had laid down a principle by adopting a test that determines what publications are categorized as obscene and what not. The test is whether the tendency of the matter, charged under obscenity, corrupts or depraves those minds open to such influence and into whose hands such material or publication may fall. If such material corrupts such minds, then it will fall within the purview of obscenity<sup>5</sup>.

In India, the Supreme Court of India, in the case of **Ranjit D. Udeshi v. the State of Maharashtra**, observed that to identify the constituent of obscenity, the test would be "where an obscene material is published for a commercial purpose and no other social purpose; it cannot have the constitutional protection of free speech and expression. Treating sex in such a manner, as it appeals or has the tendency to appeal to the carnal desire of human nature, is regarded as an obscene material or publication". Thus, the concept of obscenity varies from nation to nation and from community to community, and it depends on the moral standards of contemporary society. A literature piece may not be obscene material in England, but it will be considered vulgar in India. Similarly, an individual's act may not be categorized as obscene in New Delhi, but the same action is improper in India's rural area. The standards

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<sup>4</sup> Aditya Sood, "The Case of Ramachandra Tuljapurkar v. State of Maharashtra: A New Chapter on the Law of Obscenity in India" CALQ 12 (2016).

<sup>5</sup> Regina v. Hicklin, (1868) L.R. 3 Q.B. 360

should always be laid upon on the writer to check that the adolescent should not be contacted with material containing sexually explicit information. If they read them as a reference, relevance should be given to the writing's dominant theme.

The flow of obscene material increases with the young generation's growing interest in indulging in sexual activities, which causes serious problems such as teenage pregnancy, premarital sex, sexually transmitted infectious diseases, etc. Future threats to this growing flow of obscene materials could be harmful as it degrades future generations' morals and ethics. In a country where marriage is considered as a sacred bond and sex only serve as a purpose of sharing purity and love, obscenity gives us a new meaning of this act, where the drive is only to fulfil one's sexual needs, and the female will only become an object of lust. The rising level of obscenity in Indian films damaged the foundation of Indian society, its cultural and sexual norms, values, and principles. Immediate action should be taken so that the equilibrium should be maintained between individual rights and societal values.

In this context, this dissertation will look upon the fundamentals of laws relating to obscenity, the harm that these laws will address, and the methods through which these harms are prevented from Indian society. The damage which these laws seek to avoid is not an offense for an individual viewer, nor is it an incitement to violence against women, but they are moral harm that affects the whole system of law. Also, an attempt shall be made to point out the analysis of obscenity from the societal point of view; the nature and extent of the existing laws related to obscenity; their effectiveness; the role played by law enforcement agencies in the enforcement of anti-obscenity laws, and the need to revive the current laws on obscenity having due regards to the morals, norms, ethics, and dynamic nature of society including the actual concept and spirit of obscenity from the legal and judicial point of views. In brief, the dissertation discusses that the idea of obscenity is a coherent one and that obscenity law tries to prohibit a genuine evil. Still, the rules are too cruel a tool for the accomplishment of this task.

### **III. HISTORICAL & JURISPRUDENTIAL ASPECT OF OBSCENITY**

Obscenity is a relative term whose meaning is constantly changing over time. The purpose of the word ' obscenity is generally dependent on the individual's outlook and varies with society's cultural values and moral standards. Laws guiding obscene literature and materials do not emerge instantly, but it is the outcome of society's development from ages. Due to scientific innovations and technological advancement, obscene material transmission is accessible in the modern era. There is a need to regulate the same by the government through

various methods. Thus, a balance is needed between societal value and moral principles and the growth of society. For this, the historical and jurisprudential genesis of obscenity is essential to study.

### **Historical Genesis of Obscenity**

The essence of free speech and expression is speaking and thinking freely and obtaining relevant information from others through publications and public discourse without fear of repression, restriction, and retribution by the government. This essence of expression brings people close to each other to strengthen their morality, achieve their political influence, and help others become enlightened citizens<sup>6</sup>. The concept of obscenity varies from time to time and from nation to nation. However, it depends upon the moral values and cultural traditions that shaped the history of the entire world's society. Generally, obscenity is analysed in the background of the sexual conduct of the individual constituting the group. Indian law relating to obscenity is defined under the Indian Penal Code, 1860, and the legislature's various statutory enactments. In India, the law mainly deals with how a material or publication such as a book or a film depicts or portrays sexual conduct. In India, from ancient times, the 'purity' of women has been regarded as most important. obscenity is like a social barometer that is elemental to sustain a family's social reputation and social honour. Whether the woman belongs to the royal family or simply an ordinary woman, Indian culture always relied on women's values, especially their fidelity.

Even the portrayal of women exhibited in India's temples, such as the Khajuraho paintings, focuses on these aspects until the new advent of bohemian thinking and advertising, which changed the common perception.

### **Development of Obscenity in India**

In the Indian context, the concept of obscenity was first introduced in the Penal laws of 1860. Sections 292 to 294 of the code primarily deals with obscene books and objects etc. The sections prohibit the distribution, sale, and publication of obscene materials. If anybody contradicts these provisions, such an article will be forfeited, and the offender will be liable to punishment. The Supreme Court of India in **Ranjit D. Udeshi v. the State of Maharashtra** adopted the test to determine obscenity as laid down by the Chief Justice, **Cockburn in R. v. Hicklin**<sup>7</sup>. The difficulty determining the criteria of obscenity formulated by the Hon'ble Supreme Court is, 'whether the tendency of the matter charged as containing obscene

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<sup>6</sup> Pratyush Raj, "Obscenity: Analysis of Indian and US Laws", available at: <http://ssrn.com/abstract2057442>.

<sup>7</sup> (1868) L.R.3 Q.B. 360.

materials corrupt or deprave the mind of those accustomed to such immoral influences and into whose hands such obscene publication might have fallen.'

Interestingly, the test, which was formulated in 1869 by the Hicklin case, remains the basis for obscenity jurisprudence in India even in modern times, until the Supreme Court replaces them in **Aveek Sarkar v. State of West Bengal**. However, at the end of the 20th and the early 21st century, differences arose between nations regarding the legal meaning and moral and cultural conceptions of obscenity. Such a concept became highly important with the evolution of the Internet and mass media. This technological advancement enables anyone having a computer to view sexually explicit materials, including images, motion pictures, and texts originating virtually from anywhere around the world.

The Supreme Court of India, in the case of *Aveek Sarkar v. State of West Bengal*, took a different view and said that the correct test to determine the principle of obscenity would be the contemporary 'Community Standards Test' and not the doctrine propounded in the Hicklin test. The Court had observed that the judicial pronouncements in obscenity cases must be taken by taking into mind the contemporary national standards of the society and not the means of few sensitive persons.

### **Jurisprudential Aspect of Obscenity**

Law, morality, and society are closely related to each other. The ethics and morals of society lay down the fundamental rule that regulates the community's order. As the state's role is changed from a 'protective state' towards a 'welfare state,' the underlying values and principles governing the society have also changed over the period. The relation between law and morality has always been a debatable issue. The term Morality distinguishes what is suitable from the purview of what is wrong<sup>8</sup>. Morality being an abstract term, differs from society to society and from time to time. Moreover, the two terms 'morals' and 'morality' have a close relationship with sexual morality.

To formulate a law or interpret a rule, or find the grounds of judicial decision, three essential elements should be kept in mind. They are Justice, which connotes the ideal relationship between men. Second, the Morals reflect the perfect development of an individual character, and the third one is the element of protection of society<sup>9</sup>. A Balancing approach should be maintained between these three elements so; that the law evolved will be beneficial for society. However, certain practical limitations on the effective result developed through the

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<sup>8</sup> B. P. Mac Farlan, "Reviewed Work: The Province and Function of Law by Julius Stone", available at <https://www.jstor.org/stable/20631465>.

<sup>9</sup> Roscoe Pound, "Law and Morals: Jurisprudence and Ethics" 23 NCLR 222 (1945).

law's formation and interpretation by the administrative and judicial authorities. Yet, such a process requires not to place too much reliance on the lawyer's sense of the law's meaning; instead, they kept in their morals and morality better protected by other social control agencies.

The sexual thought stimulated by obscene matter lowers the moral values and beliefs of the community. The long-term exposure of obscene materials deteriorates society's basic societal norms, morals, and values; thus, it will create an imbalance in society. These harms, which attack the commonly recognized practices and standards of sexual morality, might subvert the cultural and moral status quo and bring about corruption and depravity in the form of increased sexual license<sup>10</sup>. Hence, obscenity law helps maintain the existing ethical standards by suppressing the act categorized as obscene.

In the current scenario, ethics and morality are concerned with those principles convenient under a given circumstance, and the laws are meant to regulate human behaviour. The culture of society played a significant role in encompassing the true meaning of the term obscenity.

The people who regard nude display as proper have their sense regarding obscenity than those who considered it inappropriate in the public domain. The carvings of exotic figures in the ancient Indian temple complex at Khajuraho may be regarded as obscene to a western tourist. Still, such pictures reflect the religious significance of the Hindu community<sup>11</sup>.

#### **IV. CONSTITUTIONAL & STATUTORY PROVISIONS OF LAWS RELATING TO OBSCENITY AND JUDICIAL RESPONSE**

Law against obscenity is often formulated or defended on the ground of public morality prevalent in society. Such law seems to presuppose that there is a thing called public morality, which has some claim on the community's members. obscenity has some connection with sex, and sex is related to love, which is an intimate private concern of all men<sup>12</sup>. Thus, the problem of obscenity involves far-reaching questions about the nature of our community, their compositions, the ends and values by which this civil society should be governed, and it also affects the most delicate and personal interests of individual human beings. obscene materials in their contents and form depreciate and violate the fundamental

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<sup>10</sup> Chaffee Zechariah, "Government and Mass Communications: A Report from the Commission on Freedom of the Press" 6 *Harvard Law Review* 211 (1947).

<sup>11</sup> David A. J. Richards, "Free Speech and Obscenity Laws: Towards a Moral Theory of the First Amendment" *University of Pennsylvania Law Review* 112 (1974).

<sup>12</sup> H.M. Servai, *Constitutional Law of India* 711 (Universal Law Publishing Company, New Delhi, 8 th ed, 2001).

standards of decency and morality.

Obscenity is mainly not a legal term in the true sense. Time is not defined anywhere, so it is tough to mean everyone and every society. obscenity is, to a more considerable extent, a product of the imagination of the person; something indefinable in the minds of a few individual and not in the others and similarly such perception is not similar in every individual of every clime and country nor is identical to the present, past and the future.

### **Constitutional Provisions relating to Obscenity**

In any democratic country like India, freedom of speech and expression is considered a quintessential right. Such freedom ensures the free flow of thoughts and ideas. It is the most cherished constituent for a healthy and open-minded democracy that allows individuals to actively and freely participate in their own country's political, social, and cultural happenings. In India, Freedom of Speech and Expression is constitutionally protected and guaranteed under Article 19 (1) (a) of India's Constitution, 1950.

However, this fundamental right is not absolute. A rider is provided under Article 19(2), which allow the state to restrict and regulate the right provided under sub-clause (a) of clause (1), through imposing reasonable restrictions on this freedom in the light of "the interest of sovereignty and integrity of India, friendly relation with foreign states, the security of the state, public order, decency or morality or concerning contempt of Court, defamation or incitement to an offense<sup>13</sup>.

Obscenity becomes a topic of constitutional interest, and from that time, clashes occurred between the individual interest to freely express their opinions. For obscenity, the ground of decency and morality is relevant. The purpose of this exception is to regulate and control the proliferation of morally degrading or indecent materials<sup>14</sup>. The right of freedom of speech and expression does not protect obscene materials. But consequently, the question arises as to what are the standards for Indecency or immorality in society? To answer this, we have to look into the meaning of the term 'indecent' or 'immorality.' The expression "indecent" seems to be relatively interchangeable with obscenity, frequently used in statutes. Whenever the term 'indecent' occurs in the English statutes, it reflects the same meaning as obscene. However, the term morality has a broader connotation than decency. The Supreme Court of India, in the case of *Bal Thackeray v. Prabhakar Kashinath Kunte*<sup>16</sup>, explains the meaning of the term by observing that the ordinary sense of 'decency' indicates an action that must be per

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<sup>13</sup> M.P. Singh (ed.), V.N. Shukla: Constitution of India 124 (Central Law Agency, Faridabad, 11th ed. 2008).

<sup>14</sup> Annalisa Ciracusa, "Obscenity" *Geo. J. Gender & L.* 347,348 (2005). <sup>16</sup> 1996 SCC (1) 130.

the current behavioural pattern and societal norms. In a secular society, the correct behavioural pattern requirement is when the candidate contesting the election will not appeal for votes on the religion or caste, region, etc. The fact that the idea of separate electorates was rejected during the framing of the Constitution and Secularism being adopted is relevant considerations to treat this as reasonable restrictions on the fundamental right of speech and expression. Such rules help maintain individuals' behaviour, which is required following the principle of decency and propriety of the social norms and values.

The scope of the term 'Morality' is vague and not very clear. The conception of the term varies from society to society and also from time to time<sup>15</sup>. Thus, contraceptives and birth control methods are considered immoral at primitive time, and publication dealing with such contraception was deemed evil and convicting the accused person. Still, now the perception is wholly changed, and there is no offense to discuss and writing on such material; instead, the state encouraged their publication and disseminated the information.

### **Statutory Provisions relating to Obscenity**

The statutory provisions dealt with under this topic are as follows:

- Indian Penal Code, 1860
- Code of Criminal Procedure, 1973
- The Cinematography Act, 1952
- The Postal and Telegraph Act, 1893
- The Immoral Trafficking (Prevention) Act, 1956
- The Information Technology Act, 2000

### **Judicial Pronouncements related to Obscenity**

Obscenity is a relative concept, and it differs from society to society, culture to culture, and from time to time, depending upon the moral standards of the people. obscenity results from the mental pervasion of the human being that manifests the tension between desire and societal norms. In India, due to technological development and rapid transition towards a developed nation, society's social and moral standards are changing rapidly. So, the judiciary plays a keen role in establishing whether a particular book or material falls under the category of obscenity or not. The judges have to look into whether a class or person, into whose hand such material falls, will suffer on their moral values and outlook or become depraved by

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<sup>15</sup> AP Datar, *Commentary on the Constitution of India* 311 (Wadhwa & Co., Nagpur, 2nd ed., 2007)

reading them or creating impact of lecherous or impure thoughts in their minds.

### **FORMATION OF MONITORING COMMITTEE BY THE COURT**

In **Suo Moto v. the State of Rajasthan**<sup>16</sup>, the main facts are: the Rajasthan High Court *Suo moto* took the matter and directed the Broadcasting Ministry, the DG of Door darshan, and the Registrar of Newspaper to submit their affidavits to the concerned authority, indicating how the menace of women depiction in an indecent manner was being controlled and eradicated. A monitoring committee is also directed to scrutinize television programs and identify the advertisements or materials that compromise the women's dignity. The main issues involved in this petition were whether women's depiction and representation in an 'undignified manner' by the media need to be regularized to prevent obscene material transmission through television and another medium of mass communication.

The Court believes that under the Cable Television Networks (Regulation) Act, 1995, it is expected from the government to verify a program before its telecast that whether the Programmers conform to the government's regulations. The Court further believes that if it is found that the program telecast is derogatory or indecent to women's dignity or such telecast is likely to corrupt, injure or deprive public morality, strict action had to be taken against such telecast. Similar measures must also be taken against persons responsible for advertisements, posters, and hoardings. The Court also observed that the government had enacted the Indecent Representation of Women (Prohibition) Act, 1986, to regulate the transmission of such indecent materials. Still, there was a lack of enforcement and implementation of these laws and regulations by the designated authorities.

### **CRITERIA FOLLOWED BY INDIAN COURTS ON OBSCENITY**

Similarly, in **Maqbool Fida Hussain v. Raj Kumar Pandey**<sup>17</sup>, the main facts of the case are M.F. Hussain painted a picture of a nude lady expressing grief without giving any title to the work. The painting was put under an auction for the Kashmir earthquake victims under the name 'Bharat Mata.' A large-scale protest started throughout the country against this painting. As a result, several complaints were filed in various government parts alleging different offenses against M F Hussain due to the said painting. The main question before the Court was whether M.F. Hussain's portrayal of 'Bharat Mata' should be considered obscene material and whether M.F. Hussain should be held criminally liable under Sections 292,294 and 298

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<sup>16</sup> *Suo Moto vs State of Rajasthan* on 1 June, 2005, [Indiankanoon.org](https://indiankanoon.org/doc/1058934/) (2021), <https://indiankanoon.org/doc/1058934/> (last visited Apr 11, 2021).

<sup>17</sup> *Maqbool Fida Husain vs Raj Kumar Pandey* [Along with CrI. ... on 8 May, 2008, [Indiankanoon.org](https://indiankanoon.org/doc/1191397/) (2021), <https://indiankanoon.org/doc/1191397/> (last visited Apr 11, 2021).

of the Indian Penal Code, 1860. The Court, in its verdict, held that *Prima Facie*, the painting was neither passionate nor likely to arouse sexual interest in a perverted person, who has access to such image. The Court ruled out that nudity alone cannot be considered as a criterion for obscenity. The Court further observed that the nude picture was not shown in any particular kind of posture to arouse sexual feelings or lust in the person's mind who sees it. The Ashok Chakra placement was also not placed on any specific part of the women's body, which does not seem to reflect disrespect to the national emblem. The Court recommended that the government think for appropriate legislation to ascertain that artists and other creative persons have not been made subject to such atrocities and will not defend themselves against such criminal proceedings initiated by the oversensitive or for publicity.

In the case of **S. Khushboo v. Kanniammal & Ors.**<sup>18</sup>, the main facts before the Court are that India Today had surveyed the sexual habits of people living in India's metropolitan cities. One of the issues raised and discussed in the survey was the growing incident of premarital sex. In this context, the magazine had gathered the views from several individuals and published the same in the magazine. The appellant was one of the people questioned during the survey. The appellant expressed her personal opinion, wherein she appealed for the reorganization of premarital sex, especially in the light of a live-in relationship.

The magazines published her opinion because complaints were filed against the magazine under Sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986. The main issue before the Court was whether the appellant's statement as a part of the survey was protected under Article 19(1) (a) of the Constitution or not.

The Hon'ble Supreme Court of India believes that the constitutional Freedom of Speech and expression under Article 19(1)(a) of the Constitution is not absolute and can be subjected to reasonable restrictions on the ground of 'Morality and Decency.' The framers of the Constitution of India recognized the importance of safeguarding and protecting this right. This is because the free flow of ideas and opinions is essential to sustain the citizens' collective lives. Hence, culture must stress the need to tolerate unpopular views in cultural and social spaces.

Similarly, in **Gita Ram v. State of Himachal Pradesh**<sup>19</sup>, the brief facts are that a raid was conducted by the patrolling party in the appellant's premises and found that the appellant

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<sup>18</sup> S. Khushboo vs Kanniammal & Anr on 28 April, 2010, Indiankanoon.org (2021), <https://indiankanoon.org/doc/1327342/> (last visited Apr 11, 2021).

<sup>19</sup> Gita Ram vs State of Himachal Pradesh on 26 April, 2002, Indiankanoon.org (2021), <https://indiankanoon.org/doc/1627474/> (last visited Apr 11, 2021).

showed blue films to young persons. The patrolling party seized some CDs from the premises, including 3CDs with titles such as 'Size Matters' and 'Jawaani Ka Khel.' Several vulgar and nude pictures and posters were also found from the premises of the appellant. The appellant was charged for the offense of obscenity, and the trial court convicted the appellant to Six months imprisonment and a fine of one thousand rupees. The High Court rejected the application for preferring an appeal against the trial court decision. Aggrieved by this, the appellant preferred an application before the Hon'ble Supreme Court. The main contention before the Court was whether the charges framed against the accused are liable to be quashed on the ground of good conduct or not? The Supreme Court observed that the intention of the legislature while incorporating Section 292 of the Indian Penal Code was to prevent the transmission of obscene material in the society so that the person who is could have easy access to such material would not corrupt their mind and become easy prey to such material. The Hon'ble Court upheld the conviction passed by the trial court.

## **V. DEVELOPMENT OF COMMUNITY STANDARD PRINCIPLES IN INDIA**

Recently, the Supreme Court of India, in **Aveek Sarkar v. State of West Bengal & Anr.**<sup>20</sup> applied the 'Community Mores and Standard' as against the Hicklin principle stated in the **Ranjit D. Udeshi v. the State of Maharashtra**<sup>21</sup>, wherein the Court is of the view that if the material charged as obscene, deprives and corrupts the mind of the person who is accustomed to such material then, it will fall under the category of obscenity. The Aveek Sarkar case's main facts are that a German magazine named 'Stern' published an article with a picture of Boris Becker, a popular tennis player, and his fiancée and popular German actress Barbara Feltus. In the picture, the couple was displayed as naked, and Becker put his arms around Barbara's body to cover her breasts with his palm. The article states the couple's engagement, plans for the future, and the public's message. Subsequently, this article, along with the couple's picture, was published in an Indian magazine titled 'Sports World' and in the newspaper titled 'Ananda Bazar Patrika.' The petitioner, Aveek Sarkar, filed a case under Section 292 of the Indian Penal Code, 1860 against the publisher, editor of the newspaper as well as the magazine's editor, alleging in the petition that the photograph will corrupt the minds of the young persons and were against the moral and cultural ethos of the Indian society. The petitioner further contended that the accused should also be prosecuted under Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986 since the

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<sup>20</sup> Aveek Sarkar & Anr vs State of West Bengal And Anr on 3 February, 2014, Indiankanoon.org (2021), <https://indiankanoon.org/doc/195958005/> (last visited Apr 11, 2021).

<sup>21</sup> Ranjit D. Udeshi vs State of Maharashtra on 19 August, 1964, Indiankanoon.org (2021), <https://indiankanoon.org/doc/1623275/> (last visited Apr 11, 2021).

photograph, on the face of it, gives a sexual feeling and its impact would degrade the morals of the society. They would also encourage people to commit sexual offenses.

The Hon'ble Supreme Court of India, in its judgment, found the editors and publishers of the newspaper and magazine are not guilty under Section 292 of IPC and Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986 and overturned the decisions of the trial courts. The Supreme Court further held that obscenity's question must be looking from the photograph's visual context and the message it conveys. The Court further held that the actual test to determine obscenity would be the 'Community Standards Test' instead of the principles laid down in the 'Hicklin Test.'

## **VI. FINDINGS & SUGGESTIONS**

For the effective implementation of the laws relating to obscenity in India, Various recommendations towards Legal Action must be incorporated by the implementing authorities.

Some of these significant recommendations are as follows:

**A. The clarity in the definition of 'Obscenity** - First and the most important recommendation is that the definition of the term obscenity should be clear and not a vague one. The courts had tried to interpret the term according to each case's facts and circumstances, but the attempt to provide a clear-cut definition covering all the essential requirements has been failing. The alternative way is to strike towards a more abstract definition of the term obscenity. Such definition should be contextually sensitive and responsive to the progress and development of individuals and society's behavioral patterns. Also, while defining the term, vague and subjective terms such as 'harmful to public morals' 'indecent' should be avoided.

**B. Application of Harm Principle** - The restriction against obscene materials must prevent actual harm and not simply prevent offenses to public sensibilities. In this respect, the harm principle must be applied to criminalize such acts and not undermine merely offensive material.

**C. The clarity in the components of Obscenity** - A clear-cut distinction should be made between offensive material from actually harmful materials.; providing restrictions to the abusive material will not sub-serve the objective to prevent harm.

**D. Adopting Community Standard Principle** - A 'Contemporary Community Standard' test should be incorporated into the legal system. Such a test highlights the community's

standards as a whole and not merely a part or segment of the community. This test is contemporary, varies with time. In deciding the matter, one has to look into whether a society or class, into whose hands such article or publication will fall, suffer in their moral outlook and create impurity in their minds. Although the Indian judiciary adopted this approach of community standards in the Aweek Sarkar case yet, a mechanism must be developed to effectively implement this case's pronouncement at the lower level of India's judicial system.

E. **Need for an Amendment in section 292 IPC, 1860** - Section 292 of the Indian Penal code, 1860 dealing with obscenity law must be amended to include some qualifying prefixes to the word 'tend to.' The appropriate words would be sufficient, substantially or grossly tending to deprave in place of 'tend to deprave.'

F. **Recognition of Censorship** - Censorship should be recognized, and equal representation of men and women should be ensured in preview committees and censor boards. This will help in eradicating biases and ensure neutrality. Also, Indecency should be criminalized in the manner of obscenity.

G. **Regulation over the Internet** - The need for the present scenario is that the act of accessing obscene material over a computer network or medium should be made a punishable offense. Also, the term 'transmits' or 'publishes' in the electronic medium must be defined under the law relating to obscenity. This will help fix the liability upon the respective offenders.

H. **Alternative to Police action** – In contrast to the police officials' power to confiscate obscene publications or materials without first registering the offense, a better alternative would be to empower the concerned government departments to expedite police reports instead of making policemen as a judge for obscene materials.

I. **Setting up and advancing forensic laboratory** – There is a need for the forensic laboratory's technical advancement for prohibiting the transmission of obscene material over the Internet. A trained and well-equipped law enforcement personnel at the local, state and national level will ensure proper investigation, proper collection of evidence, and prosecution of offenses.

J. **Transformation in Ideology** - A complete change is required in our jurisprudential value so that the judiciary and censor board should strengthen civil society. Also, the value-based Indian culture and traditions should be kept in mind by the government for proper and strict implementation of the law.

## VII. CONCLUSION

The concept of obscenity is dynamic, and it constantly changes with the circumstances of the case. There is no clear definition of the term 'obscenity'. It means modesty or chastity, while its legal meaning is any tendency that deprives or corrupts the mind of those who are open to such immoral influences. The word is extensive and includes everything that seems to be 'vulgar.' obscenity is a global phenomenon and largely depends on different nations' local moral traditions and values. In all the legal systems, however, the test to determine the components of obscenity is somehow similar. Still, the manner of investigation and the conduct of judicial prosecution are somewhat different.

In the Indian context, the law relating to obscenity developed through the court interpretation of the term 'obscene' in *Ranjit D. Udeshi v. the State of Maharashtra*. In this case, the Court applied the Hicklin test in the Indian conditions. The test laid down cannot be followed in every case, mainly due to varied cultural and moral standards between the two nations. The acceptance of the different notion of morality and decency differentiate one country from the other. Recently, however, the Supreme Court changed its judicial approach and laid down the 'Collective Community Test' as the basis to determine whether or not a publication or material falls within obscenity or not. This approach was adopted in *Aveek Sarkar v. State of West Bengal*, in the Miller test line. India, being a complex multi-cultural, multi-ethnic society, the concept of obscenity has been altered due to variation in community standards and social attitudes.

The Constitution of India treated both men and women equally and in the same manner. Still, in Indian society, a clear-cut distinction is visible between the rules and their practical application. To remove this ambiguity, provisions have been laid down which favors women.

Also, Freedom of Speech and Expression is recognized as a fundamental right under Article 19(1)(a) of the Indian Constitution but, such a right is not absolute. It could be restricted on the ground of 'morality, decency, and public. order' mentioned under Article 19(2) of the Indian Constitution. This restriction is incorporate to protect people from depravity and corruption by immoral influences. Censorship is permitted on obscene substances, mainly on the grounds of moral values and social interest specified under Article 19(2). Similarly, the Constitution guarantees the protection of life and personal liberty and includes the right to live with decency and dignity.

As a result of this entire Constitutional mandate, to protect a person's interest against the exhibition and exploration of sexually explicit materials, numerous Acts were enacted by the

Indian Parliament. The laws relating to obscenity are further strengthened by Sections 292 to 294 of the Indian Penal Code, 1860, the Cinematograph Act, 1952, the Information Technology Act, 2000, etc. Yet, it is unfortunate that despite these Constitutional Articles, Legislative enactments and provisions, and Judiciary intervention, both print, and electronic media, continue to publish and transmit obscene materials. The growing rise of obscenity in the Indian entertainment industry undermined the notion that illegal obscenity can be prosecuted. Thus, it is high time to uproot this social problem at every level through a strict compliance and sincere implementation of the law against obscenity. Media is considered the fourth pillar of democracy, and hence, media should play the role of the agent to alarm the policy makers against obscenity. Every person must take cognizance of the activities that destroy the foundational pillar of Indian society and its culture. otherwise, our future generation will blame us for destroying the rich cultural and social heritage, which transformed into vulgarity and obscenity of the meanest order.

Due to technological advancement and scientific innovations, the legal provisions dealing with obscenity are ineffectual. For instance, the publication of pornography over a computer network in India and abroad is made punishable under the Indian law, but accessing such material on the computer network is not an offense. The Supreme Court's approach is recently transformed due to the radical development and constant changes in moral standards and cultural values of Indian society. Still, every stakeholder of the community must make efforts to solve this prolonged issue of obscenity. As obscenity is a complex and relative concept, only legislature and judiciary cannot solve this social problem, and other approaches must also be incorporated.

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