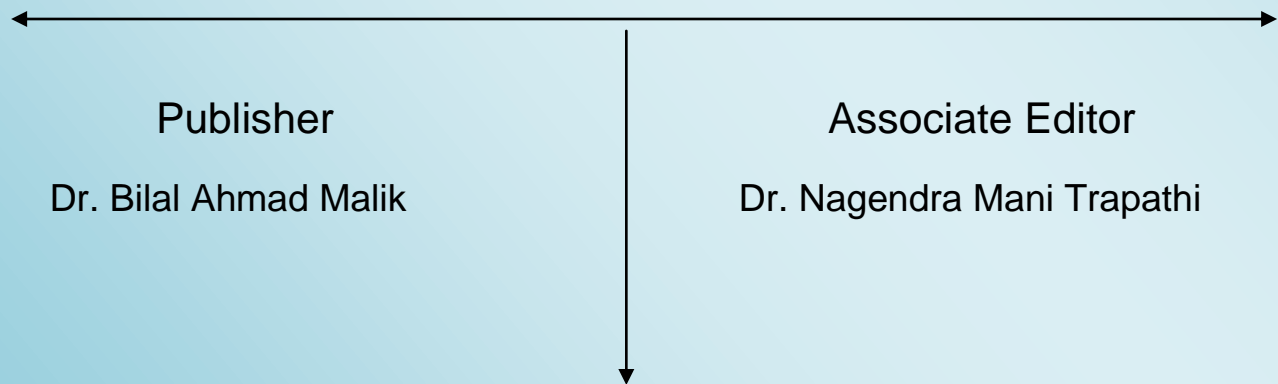


# North Asian International Research Journal Consortium

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# OBSCENITY AND WOMEN- AN ANALYSIS

PADMA APARAJITA PARIJA<sup>1</sup> & KIRTITA BANERJEE<sup>2</sup>

## INTRODUCTION

Society is a collection of individuals regulated by certain norms and rules for smooth running of the system. It has always set up boundaries for art and obscenity has remained debatable in our society. Our acts, omissions remain under the radar through the law. Of the subject matters our laws seek to regulate are obscenity and the things it engulfs within it.

## COUNTRIES AND OBSCENITY LAWS

### UNITED KINGDOM

The Concept of obscenity got scrutinised and heavily penalised through various means. It was first witnessed when publication of obscene material was penalised under the common law. Then came the Vagrancy Act which punished any person who exposed obscene material for sale. Then the whole gamut of obscenity got regulated by a proclamation of George III. After which the Law relating to obscenity is governed by the Obscene Publications Act 1857 was brought forth by the legislature. The Act was an effort on the part of Lord Campbell and that is the main reason for which it is called as the Campbell's Act. It did not however define the term 'Obscene' which ultimately got its interpretation in the landmark case of *Regina v. Hicklin*<sup>3</sup>.

### UNITED STATES

The laws relating to obscenity mainly takes freedom of speech and press and at the same time discusses pornography and censorship. Sale of Obscene materials and its circulation got prohibited in most American

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<sup>3</sup> David Hudson Jr. ; Pornography and Obscenity, < <http://www.firstamendmentcenter.org/pornography-obscenity> > accessed on 02/12/2016.

states. While the federal law banned it since 1873. There were several cases of obscenity in the US but the genesis of the definition of obscenity happened from the English Case *Regina v. Hicklin* which laid down a test.<sup>4</sup>

In 1973, the U.S Supreme Court in *Miller v. California*<sup>5</sup>, set down what it deemed to be appropriate standard in relation to obscenity:

The basic guidelines for the tier of fact must be:

- (a) Whether an average person who is applying the contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest;
- (b) Whether the particular work depicts or describes sexual conduct specifically defined by the applicable state law in a patently offensive way; and
- (c) Whether the work, taken as a whole, lacks serious literary, artistic political or scientific value<sup>6</sup>.

## CANADA

The Verdict of *Regina v. Butler* of the Supreme Court of Canada brought a new insight to the concept of obscenity. It discussed several issues one of which was the discussion on the definition of Obscene given under the Canadian Criminal Code, 1985. It labelled any publication as obscene if its dominant characteristic related to undue exploitation of sex or one or more of the following subjects like crime, horror, violence, cruelty.

The Hon'ble Court gave an extensive interpretation of the term "undue exploitation". It also held that community standard is to be given importance in order to decide questions of this sort.<sup>7</sup>

In *R v. Dominion News & Gifts*, the court stated that the community standard test must be made in consonance with changing mores in the society.

In *R v. Butler* Court held that the State has no power to restrict expression only on the ground of being distasteful or did not fall in line with what was dominantly thought to be appropriate.

<sup>4</sup> Brinda Bose, *Obscenity of Women: A Trend Towards Commercialisation, Gender And Censorship*; 2006

<sup>5</sup> This test was adopted in India but in course of time the Community Standard test and the Responsible Reader test was adopted in *Aveek Sarkar v. State of West Bengal* [ (2014) 4 SCC 257] and *Ajay Goswami v. Union of India* [AIR 2007 SC 493]

<sup>6</sup> Brinda Bose, *Obscenity of Women: A Trend Towards Commercialisation, Gender And Censorship*; 2006

<sup>7</sup> Rani Premkumar, *Law, Women and Advertisement*, < <http://www.legalserviceindia.com/article/I210-Law,-Women-And-Advertisements.html> > accessed on 29/10/16.

## OBSCENITY LAWS IN INDIA

Indian Society is no exception so far as the matter of demarcating the boundaries of obscenity is concerned. There have been several cases in which the court has specifically set out the meaning and implication of several terms relating to obscenity and how much it is tolerable in the society. Our laws have its genesis form the International Convention for suppression of or traffic in obscene publications.

The questions of obscenity has come up not only in case of books but also in case of films, movies etc. A series of cases unleash the debates the court had to go through to declare content as obscene.

In *Ranjit Udeshi v. State of Maharashtra*: The Court held that the obscenity test laid down by J. Cockburn should not be discarded it<sup>8</sup> went further to decide that the obscene matter in a book is to be considered by itself and separately to find out whether it is so gross that it would deprave and corrupt those minds which are open to influences of this sort<sup>9</sup>.

Thus one can say that Indian Laws are based on an old test given in some centuries ago and this is still used as a parameter for judging obscenity and obscene content in the country<sup>10</sup>.

It was later on that the court observed that a judge should examine the entire text from the author's point of view then from the reader's point of view and only then appreciate the influence the material would have on them<sup>11</sup>. Thereafter, he could proceed to put it under the radar of S.292, IPC to determine if it's transgressing the limits laid down by it.<sup>12</sup>

*The Press*: often it is seen that censorship on the basis of public policy curbs the freedom of press. Here a huge debate between the freedom of press and obscenity is seen as a regular affair in any country. It may happen that objections on the ground of obscenity may arise at a time when the press comes forth with an information for its

<sup>8</sup> Obscenity under the law A review of significant cases, < [https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&uact=8&ved=0ahUKEwikyej9rd3QAhUJM48KHdtOA0IQFggyMAQ&url=http%3A%2F%2Ffindiatgether.org%2Fuploads%2Fdocument%2Fdocument\\_upload%2F2141%2Fblawobscenity.pdf&usg=AFQjCNEwS-6M8eY4A1yot65JJMBJQ\\_ANsg&bvm=bv.139782543,d.c2I](https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&uact=8&ved=0ahUKEwikyej9rd3QAhUJM48KHdtOA0IQFggyMAQ&url=http%3A%2F%2Ffindiatgether.org%2Fuploads%2Fdocument%2Fdocument_upload%2F2141%2Fblawobscenity.pdf&usg=AFQjCNEwS-6M8eY4A1yot65JJMBJQ_ANsg&bvm=bv.139782543,d.c2I) > accessed on 01/12/2016.

<sup>9</sup> Mamta Rao, Law relating to Women and Children, 2<sup>nd</sup> Ed., Eastern Book Company, Lucknow, 2008.

<sup>10</sup> Rani Premkumar, Law, Women and Advertisement, < <http://www.legalserviceindia.com/article/I210-Law,-Women-And-Advertisements.html> > accessed on 29/10/16.

<sup>11</sup> Rani Premkumar, Law, Women and Advertisement, < <http://www.legalserviceindia.com/article/I210-Law,-Women-And-Advertisements.html> > accessed on 29/10/16.

<sup>12</sup> Samaresh Bose v. Amal Mitra AIR 1986 SC 967

readers. Such objections may come in the way of disseminating information amongst citizens which in turn would hinder the prosperity of a modern society<sup>13</sup>.

*Threesome*: the law of obscenity is governed by the Indian penal Code 1860, Indecent Representation of Women Act 1986 and the Information Technology Act 2000.

- *Indian Penal Code 1860*: the provision of obscenity are dealt with under sections 292 to 294 of the Act of 1860. They have laid down provisions for sale, hire, distribution, public exhibition circulation, import, export or advertisement etc of any matter which is obscene. An amendment was mad to sections 292 and 293 to make the laws more definite and for making the explanation of the term obscene clearer. It has also provided for an enhanced punishment to make the entire act deterrent.
- *Information Technology Act 2000*: Sections 66E, 67, 67A, 67B, deal with publication or circulation of obscene material electronically. 67A deal with adult content whereas 67B deals with Child Pornography. It provides imprisonment for first as well as subsequent offences. However, it excludes those materials which are made for public good because it serves the interest of science, literature and arts.

## OBSCENITY AND WOMEN IN INDIA

This has been regulated by the Indecent Representation of Women Act 1986. It is a special Act and apart from Indian Penal Code 1860 and Information Technology Act 2000, it protects women form the objectification that takes place every now and then<sup>14</sup>. The Act has also given the definition of the term ‘indecent representation of women’. It lays down that the term indicates to the depiction of a woman’s figure in any manner or body or any part thereof in an indecent or derogatory or denigrating manner or is likely to deprave, corrupt or injure the public morality or morals of any person or persons of any class or group may not be similarly affected<sup>15</sup>. Section 3 prohibits persons form publishing or causing to publish or causing to arrange or to take part in the act of publishing or exhibiting any advertisement consisting of indescnt representation of women. Thus one can say that the Act penalises all those who are directly or indirectly insults women by indecently representing them. *Section 4* prohibits production or causing sale of books, pamphlets etc. However, certain exceptions have been

<sup>13</sup> Delhi Court says that obscenity against women cannot go unpunished, The Indian Express, New Delhi < <http://indianexpress.com/article/india/india-news-india/delhi-court-says-that-obscenity-against-women-cannot-go-unpunished-3002147/> > accessed on 04/12/16.

<sup>14</sup> Rani Premkumar, Law, Women and Advertisement, < <http://www.legalserviceindia.com/article/I210-Law,-Women-And-Advertisements.html> > accessed on 29/10/16.

<sup>15</sup> Section 2(c) of the Indecent Representation of Women Act 1986

made in the application of this section which immunises any publication made for public good or made for bonafide religious purposes. Any sculptures or engravings on an ancient monument or temple is also protected by the exception<sup>16</sup>.

*Penalties* in the form of imprisonment and fines are provided in this Act. Imprisonment extending to 2 years and fine extending to Rs 2000 is meted out for first offence and for every subsequent offence the imprisonment is given for not less than 6 months but which may extend to 5 years and also with a fine of not less than Rs.10000 extending to Rs. 100000. It is to be pointed out that not only individuals but also companies are made liable under this Act. Hence all persons in charge of the company would be held liable. But a person who proves that the offence was committed without his knowledge or that he had exercised due diligence to prevent it shall not be liable.<sup>17</sup>

It is seen that women have been projected as a sexual object for centuries together. We often forget in this process that women are also humans and have a need to be treated in that way. It is tough for women even in this 21<sup>st</sup> Century to ensure women of their rights. It could only be possible if all organisations International and national come together to make this world a more equal place for both the genders to live in. It is often seen that advertisements for several products use women as sex objects and project them in such a manner which debase their social status as well their self esteem. This eventually has a profound influence in real lives as well leading to several offences against women including rape, sexual assaults etc<sup>18</sup>.

### **SUGGESTIONS MADE FOR AMENDMENT OF THIS BILL**

There have been enormous suggestions for improvement of this bill. Some of these are : Same powers of search and seizure is to be given to police officers as it is given to the gazetted officers, Amendment must be made to the definition of 'indecent representation of women' to include depiction or description of a woman which is violent or 'derogatory or to her status as a human being. Also an amendment of the definitions of "advertisement" and "distribution" was asked for and definitions of "electronic form", "material" and "publish" were required to be given.<sup>19</sup> It was mainly done to keep the Act updated with the pace of growing needs of the society, specifically to

<sup>16</sup> Mamta Rao, Law relating to Women and Children, 2<sup>nd</sup> Ed., Eastern Book Company, Lucknow, 2008.

<sup>17</sup> *Ibid*

<sup>18</sup> Rani Premkumar, Law, Women and Advertisement, < <http://www.legalserviceindia.com/article/I210-Law,-Women-And-Advertisements.html> > accessed on 29/10/16.

<sup>19</sup> The Indecent Representation of Women (Prohibition) Amendment Bill, 2012.

those which has resulted with that of growth of communication like internet, satellite etc. These recommendations were presented in the Rajya Sabha for amending the Bill<sup>20</sup>.

## CONCLUSION

Thus in conclusion one may say that in an age where we seek for a more equal world for all genders, women still are in need of the basic respect every human being claims for. It is high time for us that we treat them as human beings and not as object which stands as an epitome of beauty, desire and pleasure. It is only when we respect women for their innate qualities and not for their external beauties, would then we see a world free from all shame, disgust and humiliation that we witness happening on an everyday basis.

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<sup>20</sup> Brinda Bose, *Obscenity of Women: A Trend Towards Commercialisation, Gender And Censorship*; 2006



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