

SHOULD DISTRIBUTION OF ART/LITERATURE BE RESTRICTED BY THE MORALITY OF A COMMUNITY AND ITS STANDARDS FOR OBSCENITY?

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According to the IPC, an obscene act is an act based on the selling of 'sexual content' that offends the community on the premise that it could trigger lustful thoughts. The unregulated, open and apparent portrayal of female sexuality was deemed to violate the morality and norms of the community. The obscenity laws are dubious, subjective and arbitrary. Individuals are indicted for printing, distributing or selling sexual substances that can prompt obscene contemplations and thinking. The law specifies that in society, sex is a corrupting power. The state accepts its position to force good and bad. It will not oblige the hazy situation of ethical quality, common standards, and customs. While the state targets ensuring public government assistance and profound quality through the laws relating to obscenity, it is apparent that these points are barely being satisfied (Rajora, 2020). Obscenity in its real form is to be prosecuted.

The intrinsic idea of the obscenity law is chauvinist and denies women of uniformity. We must realize that in our democratic system, we look for equity and balance, progress is simply ostensible and such methods just lead to segregation and persecution thus reversing the fundamental goal of a democracy. Such laws that extend the firm hand of the government just goes about to show an existence of the continuity of the British rule within our system of law. Although the laws, at a periphery glance, may appear to be a defensive agent that guarantees a respectable society, they simply normalize lewd and violent minds. In the following case of *K.A Abbas v. Union of India* 1971 AIR 481, 1971 SCR (2) 446 the Supreme Court of India claimed that it has more potential to affect emotions more deeply than any other product because of the influence of films in society today, and hence should be in the interests of the society and supported its constitutionality under Article 19(2) of constitution of India. In another case *Aveek Sarkar v. State of West Bengal* (2014) 4 SCC 257 it was stated by the Supreme court of India that the obscenity in a sense should be just seen as in the circumstance of what the photograph wants its reader to interpret and the setting in which the photograph is taken. In the following case after the application of Hicklin test for approx. fifty years the court overthrew it and included a different test which was more progressive i.e Roth test. The main idea behind it was that the case should be judged on the basis of the national contemporary standard and not just because of the minority of people who have some problem with that. It was also stated that the court should adopt the following test and the right way to conclude obscenity is to use the Community standard test which implements the Community tolerance test and emphasized that to decide these cases should be taken in mind the contemporary national standards. There were many films during recent times which

faced a lot of problems due to the censor board and had to undergo many cuts which removed a lot of important depictions of the movie, like Lipstick Under My Burkha, Udda Punjab. There were also some movies which faced political censorship even though they had the approval of the censor board like Deshdrohi. This clearly shows even though a movie which was in the 'public interest' had to face troubles even turning it into an issue of protecting the interest of government from "social morality". If in a progressive society it is acceptable to watch the portrayal of sexual activities then it should be accepted and not be opposed just because a few percent of the population have any problem with it (Nitke, 2015). When the court decides to criminalize obscenity, we as a society reach a sort of situation where we begin to pre-criminalize one's actions. The idea of pre-criminalization is a poisoned chalice for our country (Cornford, 2015). The administration has been able to convince the majority it is for the betterment of the people but in reality, we should see it as nothing but a censorship tool laid out in fancy words. The Court's reconfiguration of its justification for exercising power extends a strand of thought established in *R. v. Butler* [1992] in which a partially pre-emptive rationality justifies the regulation of sexual materials and conduct through juridical determinations of harm which in turn inform the Court's vision of how best to preserve the "properly functioning society" (Jochelson, 2011). The court themselves analyze what seems to be obscene or not and when the court decides what affects the proper functioning of society and what hinders the functioning of society is when we come to the final point of pre criminalization. Today however, the scope of regulation has moved beyond targeting the working-class population expanding its scope to include the female identity to characterize certain aspects of femininity as obscene. It is not the duty of artists to simply communicate their feelings or publishers and retailers, who seek to make art accessible to the public, to ensure that those who have access to such art do not mistakenly view it. The fact that the material depicts erotic content and the vulgar language is not fair to determine the content. Such sexual and obscene material is no longer an immoral or unaccepted social trait, but the current pattern is reflected by such content. What is for the "welfare of the people" and what causes a reduction in the "morality of the society" can't be demonstrated through the use of crude guidelines that show up as certain organizational standards. All things considered, Law should be a foundation overturning network norm that are subjective, ridiculous and heartless and one that fixes the previous mistakes of the law. Public government assistance should be one that exists for the advancement of minorities just as majorities. Government assistance is equal and reformist in the more extended term. The state can't force uniform and out of date ideas and concepts that point out certain "ethical guidelines". Evident deception can be seen when 'minds that decipher substantial scholarly and imaginative work as explicitly animating' are being secured to forestall public disharmony. Is the state reproducing assault culture by affirming that the creative portrayal of sex is just intended to instigate obscene considerations? Is the state guaranteeing that a bare lady is foul and can cause negative thoughts and assumptions? Is the state suggesting that individuals have no power over their opinion and can be so effectively ruined by any substance sexual in nature? The state systematizes the restrictions that spin around sex and female sexuality through such laws. It is evident from these precedents that the state assumes and enforces the power of moral policing. While a semblance of ideological change may be portrayed over time the law and judiciary continue to be governed by conventional rules and principles. Women are given outdated expectations of chastity and obedience. In order to be viewed as innocent beings who need exclusive protection from the law, children and women are equated. For how long will such laws be appropriate and approved? The Indian Courts

asserted that the meaning of obscenity would move with the progression of time, and that what may have been "indecent or obscene" at one purpose of time ought not be treated as the same in the future and it is something that changes with the passage of time. It is imperative to specify here that the proper level of obscenity in films, photographs, works of art and writing has not yet been characterized in India, and there is still a lot to consider, we must realize the nonexistence of strict standards for the same just go about to give too much power in the hands of the judge to decide what is obscene and what is not which can often lead to a situation of personal bias (Coldham, 1980). It has been asserted that sex and obscenity are not really compatible, so it is wrong for the government to characterize certain works as obscene or not. In addition, it should not be said with any certainty that a book, a movie or a film is indecent merely because any slang and unusual terms have been used, or because sex and the description of female bodies are stressed, or there are emotional storylines (Raza, 2015). If State moralists prescribe the concept of obscenity, the largest works of the world, paintings, songs and dances, India's lush history, the Konaraks and Khajurahos, high epics and glorious patches can be murdered by statute(S.S. Rana & Co. Advocates, 2019).

In order to fill the gap that comes to exist when, as we suggested the existing laws of obscenity is declared redundant the country should work on establishing new statues that are much more comprehensive in nature. Words such as "obscene," "indecent" and "depraved and corrupt" should be discarded because their utility has been outlived. The legislation should be based in part, on the damage caused or involved in the nature of the material this alone can justify the prohibitions and in part, on the justified interest of the public not to be offended by the appearance and existence of the material this alone can justify the imposition of restrictions aimed at protecting the common citizen from being irrational. The primary aim of the legislation should be to prohibit and avoid the flow of content to young people. For those who want it, only a limited class of content should be banned, since an empirical evaluation of probable harm would not endorse a broader prohibition (williams, 1981). Art and literature should not be limited or forbidden because its existence does not make it immediately offensive or capable of involving the damages we know and because of its ability to convey important ideas and concepts and as we know if there is such a situation we reach an unfortunate state of pre-criminalization which is the opposite of what we desire as a society. Politicians and well known people offer discourteous remarks about rape victims. These remarks are upheld via online media, magazines, papers, and TV. Such preposterous remarks are what ought to basically be viewed as obscene. The vocalization and distribution on the side of such remarks should be at risk for action. Thoughts elevating and prompting mob lynching and collective viciousness is obscene. The standardized trade of assault and misanthropic jokes on different social media settings is obscene. The binary enforcement of gender roles and restrictions on female identity, movement, sexuality, and liberty are obscene. Obscenity should be applicable to individuals, who in reality, cause public disorder. Law should be above romantic paternalism. The exemplary support for obscenity law is to keep an audience from being debased and tainted by distributions that are explicit in nature. Obscenity laws in our country is nothing but a trojan horse used by the government to extend their authoritarian hand within our country to maintain the so-called "decorum". While talking about the concept of morality, moral damage is definitely not a new thought. It is the thing that most guardians have as a primary concern when they blue pencil what their youngsters are permitted to see. It is what parents do when they wish to censor what content

their children absorb. However liberal pundits of the convention have not gotten it, thus have frequently overlooked what's really important of the laws they were reprimanding. Writings shape our perspective on the world. Similarly, as great writing welcomes us to see the world unobtrusively and sympathetically, it is conceivable without a doubt, it is basic for books, movies, or network shows to see the world roughly and uncaringly, and to incite negative thinking within us. Writings that do this can to be sure reason moral damage. Knowing the ethical substance of writings is, nonetheless, too complex an errand for the law to embrace and it is in fact not the place of law. law should not be the governing agency of morality. Some erotic entertainment is ethically awful in light of the fact that it urges the consumer of the content to see others as simple objects of sexual interest, whose sentiments and wants don't make a difference. In any case, this can't be the reason for a functional lawful test for obscenity, since it is excessively obscure and its application too contestable to possibly be a standard of law.

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