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EXPLORING OBSCENITY: LEGAL INTERPRETATIONS AND EVOLVING STANDARDS IN INDIAN SOCIETY- Tanvi Malpani¹**Abstract**

Recently, the Delhi Metro served as the scene of several outrageous events, involving dancing and loud singing, influencers trying to become popular with their recordings, couples making inappropriate public displays of affection, and passenger fights. Even the most accepting among us could find some of these moments shocking. The term "obscenity" is used loosely in this picture. However, instances like these generate wider and more important discussion points than just their shock value. Obscenity: What exactly is it? Where should the boundaries be for acceptable public behavior? How does society draw the line when it must choose between numerous ideological extremes? Obscenity, along with the phrases decency and morality that are connected to it, cannot be defined standalone. Their interpretations and meanings depend on the state of the society being discussed, the sociocultural language being used, as well as the exposure and demands of that society. These interpretations evolve with each new generation; what wasn't previously accepted may quickly become the standard view after mixing with ideas and beliefs from new sources.

To determine the gauge of obscenity or morality, it is particularly risky to rely solely on public opinion. In fact, in order to preserve control and restrain the spread of new principles, undesirable judgements may sometimes be made in the name of public morality or decency. The decision-makers must make sure that progressive ideas are given a solid foundation so they can spread and ultimately pass scrutiny in the court of public opinion. We frequently examine judicial

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rulings over time to interpret shifting societal norms. Sections 292, 293 and 294 of the Indian Penal Code (IPC) address the offence of obscenity.

According to Section 292, any content is considered obscene if it is lascivious, appeals to impure inclinations, or has the potential to deprave and corrupt readers, viewers, or listeners. It forbids the sale or publication of any materials such as obscene pamphlets, books, papers, paintings, and the like. A violation of Section 293 includes attempting to sell, exhibit, circulate, or distribute obscene items to anybody under the age of 20. The performance of indecent acts and songs in public places is forbidden by Section 294. In Indian law, the definition of "obscenity" has undergone several changes. We must examine two foreign assessments that have strongly influenced our current understanding of these notions before we can trace the development of this idea.

R. v. Hicklin

Test of Hicklin Which was known as the "Hicklin Test" was established by the Queen's Bench in R. v. Hicklin, (1868) LR 3 QB 360. As per Cockburn, C.J., "*The test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.*"²

There were numerous components to the test. The content that was published required to have a natural propensity to corrupt and deprave, or to persuade readers to think "impure" thoughts. The question of whether any piece of content was obscene was to be answered from the standpoint of a "reasonable person," with a focus on those whose brains are more susceptible to such immoral effects. Children or older individuals may be among these sensible folks. Additionally, the aim or motivation behind publication was not thought to be essential for determining whether anything was obscene. Additionally, the published work had to be evaluated on its own merits, and the Court was not permitted to review any of the other literature that was in print at the time.

The publication's context, nevertheless, was crucial. For instance, since the intended audience was small, a medical treatise with visuals required for students' or practitioners' information may

² R. v. Hicklin, (1868) LR 3 QB 360

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not be classified as obscene. The inclusion of a single, isolated paragraph now has the power to make the entire work obscene, which is particularly noteworthy because it was not the complete work or the topic that was to be explored when the question of obscenity was being evaluated.

The Roth Test

The Hicklin test did not allow for consideration of the published material's artistic or social merit. The standard was very limiting and placed severe restrictions on all forms of expression, including artistic expression. Prior to the *Roth v. United States*.³ ruling, it guided the predominate judicial perspective on obscenity. In this instance, the use of "contemporary community standards" changed the attention to the typical person. Although the test confirmed that obscenity is not protected under Freedom of Speech, it expanded the Court standard used to determine what can be deemed offensive. Most importantly, the complete work had to be taken into consideration before the content could be deemed offensive.

"...whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interest".⁴

The American Supreme Court ruled that sex does not automatically qualify as obscene just because it appears in works of literature, art, or science. Obscenity and sex might hardly be considered synonymous. "*Roth* brought about a change in the old *Hicklin* test on two levels. First, it changed the impact that obscene material was to have – *Hicklin* sought to ban material that would "corrupt" any potential receiver of the material, while *Roth* sought to ban material that would offend the community's standards. Second, *Roth* required the material to have an impact on the community in general, while the negative effect on any one receiver, as prescribed in the *Hicklin* case was abandoned."⁵

Judicial Views on Obscenity in India:

Utilizing the Hicklin Test: The Ranjit D. Udeshi Case

³ *Roth v. United States*, 354 US 476 (1957)

⁴ *Supra*

⁵ S. Aatreya, Siddharth, Obscenity and the Depiction of Women in Pornography: Revisiting the Kamlesh Vaswani Petition (November 26, 2018). 13 Nalsar Student Law Review, 2018

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Ranjit D. Udeshi v. State of Maharashtra (AIR 1965 SC 881) is the case in which the Hicklin test was most famously applied in India. In this instance, a bookshop in Bombay was selling *Lady Chatterley's Lover* by *D.H. Lawrence*. The owners of the bookstall were charged under Section 292 of the IPC for allegedly peddling an indecent book. The petitioners claimed that Section 292 violated the Right to Free Speech and Expression and that the book could not be deemed obscene.

The Appeal was denied by the Supreme Court, which upheld the conviction. In its reasoning, the Court claimed that the propagation of influential ideas and information is a limited field in which obscenity has value. The Court acknowledged that some circumstances, such as the intimate pictures and images seen in medical literature, call for the inclusion of features that might be regarded as obscene. In such circumstances, these items were entitled to the safeguards of Free Speech and Expression guaranteed by the Constitution and could not possibly be deemed obscene.

The Supreme Court must determine what is obscene and what is art, the Court stated, because Section 292 does not give a clear definition of the term "obscenity." The Court thoroughly examined the obscenity test in order to define the constitutional limits of obscenity, realizing that merely depicting sex or nudity does not automatically qualify as obscenity. Without violating the terms of Article 19 of the Indian Constitution, the Court adopted the Hicklin test. According to the Supreme Court, the term "obscene" refers to behavior that is "offensive to modesty or decency; lewd, filthy and repulsive." In determining what can be classified as "obscene", the Court held that regard should be had to "our community mores and standards" and whether the material "appeals to the carnal side of human nature or having that tendency".⁶It's important to disregard the ideals of free speech and freedom of expression when a work flagrantly transgresses moral and decency standards in society. The Court carefully considered *Lady Chatterley's Lover's* text and found that it met the Hicklin test's criterion of obscenity. The appeal against the conviction was thus denied.

⁶ *Morality, Obscenity and Censorship*, (2003) 1 SCC J-1

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The Hicklin test was modified in three ways by Hidayatullah, J., who wrote the court's judgement:

- The sheer presence of sexuality and nudity in works of art and literature does not constitute indecency in and of itself.
- The examination of a piece of work should include the full of the work, considering the presence of any vulgar language or explicit sections, as mention of sexuality alone is insufficient to erode moral standards. It is crucial to assess if the work's non-offensive elements are more important, which would lessen the impact of any obscenity, or if the obscenity itself is so insignificant that it can be ignored.
- The addition of a defense to refute the charge of obscenity, particularly in situations when the publication in issue served a wider societal purpose, was another way that the test was different from other tests.

K.A. Abbas v. Union of India and Anr⁷

In this decision, the Court dismissed a petition that questioned the Act's censorship authority by upholding the restrictions on public showings established by the Cinematograph Act of 1952. The petitioner claimed that prior censorship—a practice subject to arbitrary decision-making as permitted by the Act—had violated his Right to Free Expression after his film was denied an unrestricted viewing certificate because of a specific scene deemed unsuitable for younger audiences. The Act is sufficiently specified, barring any unfair or capricious use of its authority, the Court found, making such prior censorship a justifiable restriction within the context of free expression. Chief Justice Hidayatullah held that *“the standards that we set for our censors must make a substantial allowance in favour of freedom thus leaving a vast area for creative art to interpret life and society with some with some of its foibles along with what is good”*.

The Court further recommended that when determining obscenity, the Act's principles should distinguish between artistic and non-artistic forms of expression. It observed that *“the censors need to take into account the value of art while making their decision. The artistic appeal or*

⁷ K.A. Abbas v. Union of India and Anr, AIR 1971 SC 481

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presentation of an episode robs it of its vulgarity and harm and also what may be socially good and useful and what may not."

Bobby Art International &Ors. v. Ompal Singh Hoon⁸

The Supreme Court made a distinction between nudity and obscenity in this case as well. The Gujjar community member who filed the petition argued that the assault scene in *Bandit Queen* "suggestive of the moral depravity of the Gujjar community" and that the depiction in the movie was "abhorrent and unconscionable and a slur on the womanhood of India.". The Court rejected the petitioner's contention that the scene of frontal nudity was indecent within Article 19(2) and Section 5-B of the Cinematograph Act and held that the object of showing the scene of frontal nudity of the victim was not to arouse prurient feelings but revulsion for the perpetrators.⁹

The Court held that "*a film illustrating the consequences of social evils must necessarily show that social evil*", and that "*a film that carries the message that the social evil is evil cannot be made impermissible on the ground that it depicts the social evil*".

Chandrakant Kayandas Kakodar vs The State of Maharashtra¹⁰

Here the Supreme Court observed that "*what we have to see is that 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*". The Court acknowledged that India's society was evolving quickly and that norms were following suit. A growing number of citizens now had access to works of literature that dealt with sex, love, and romance.

The Hicklin test was thus qualified with an 'overall view of the work' now being required. It was observed that "*it is, therefore, the duty of the court to consider the obscene matter by taking an overall view of the entire work and to determine whether the obscene passages are so likely to deprave and corrupt those whose minds are open to such influences and in whose hands the book is likely to fall and in doing so one must not overlook the influences of the book on the social morality of our contemporary society.*"

⁸ Bobby Art International &Ors. v. Ompal Singh Hoon (1996) 4 SCC 1

⁹ Morality, Obscenity and Censorship, (2003) 1 SCC J-1

¹⁰ Chandrakant KayandasKakodar vs The State of Maharashtra (1969) 2 SCC 687

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References:

- <https://www.sconline.com/blog/post/2022/07/21/law-of-obscenity-and-freedom-ofexpression-where-to-draw-the-line/>
- S. Aatreya, Siddharth, Obscenity and the Depiction of Women in Pornography: Revisiting the Kamlesh Vaswani Petition (November 26, 2018). 13 Nalsar Student Law Review, 2018
- Gautam Bhatia, Obscenity: The Supreme Court discards the Hicklin Test, <https://indconlawphil.wordpress.com/2014/02/07/obscenity-the-supreme-courtdiscards-the-hicklin-test/>
- R. v. Hicklin, (1868) LR 3 QB 360
- Miller v. California 413 US 15 (1973)
- Morality, Obscenity and Censorship, (2003) 1 SCC J-1
- K.A. Abbas v. Union of India and Anr, AIR 1971 SC 481
- Bobby Art International & Ors. v. Ompal Singh Hoon (1996) 4 SCC 1
- Chandrakant Kayandas Kakodar vs The State of Maharashtra (1969) 2 SCC 687

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