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# **INDECENT REPRESENTATION OF WOMEN AND OBSCENITY: CHALLENGES AND STRATEGIES FOR PREVENTION AND MANAGEMENT IN INDIA**

AUTHORED BY – AMRITA

## **ABSTRACT**

Despite the presence of various civil and criminal laws in India against indecent representation of women and obscenity, these social issues continue to persist. Furthermore, with the advancement of modern technology, it has become even easier to create and disseminate obscene content, exacerbating the problem. This research paper aims to explore the challenges associated with managing and preventing indecent representation of women and obscenity in India, and proposes strategies for addressing them. To achieve this, the paper will review existing literature, analyze current legal frameworks, and assess their effectiveness. Additionally, it will examine the role of technology in exacerbating the problem and the attitudes of Indian society towards these issues. The paper will also explore the impact of gender inequality and patriarchy on the problem. Finally, the paper recommends improvements to prevention and management strategies. These recommendations include more effective implementation and enforcement of existing laws and the need for additional legislation to address the emerging challenges posed by technology.

**Keywords:** Indecency, Obscenity, Community, Women, Objectifying, Representation.

## **INTRODUCTION**

The problem of indecent representation of women and obscenity in India is deeply rooted in the conservative and patriarchal cultural and societal norms prevalent in the country. Despite several civil and criminal laws aimed at preventing and punishing such behavior, the problem continues to persist and has been further exacerbated by the advancements in modern technology. Various forms of media, including advertising, films, and social media, have played a significant role in

perpetuating these issues, making it clear that traditional approaches to addressing them have been insufficient.

The Indian Constitution guarantees equal rights to men and women, and there are several laws in place to protect women from sexual harassment, assault, and violence. However, in reality, women still face discrimination and violence, and their representation in media often reinforces harmful stereotypes and objectifies them. The film industry, Bollywood, has been accused of perpetuating these harmful stereotypes and promoting unrealistic and unhealthy beauty standards. Critics argue that the industry is male-dominated, prioritizing male actors and catering to male audiences, while female actors are often relegated to supporting roles and subjected to objectification and sexualization.

It is evident that the problem of indecency and obscenity in India is complex and multifaceted, requiring a delicate balance between upholding cultural and social norms while also protecting individual rights and freedoms. In order to effectively address these issues, there is a need for a comprehensive approach that involves legal reforms, improved enforcement, and changes in societal attitudes towards women and gender equality. It is crucial to acknowledge the harmful impact of these issues on women and work towards creating a more equitable and just society for all.

## **CHALLENGES ASSOCIATED WITH OBSCENITY AND INDECENCY**

There are several challenges associated with indecency and obscenity in India. Firstly, the legal framework around these issues is vague and subjective, making it difficult to define what is considered indecent or obscene. The lack of clarity means that authorities have to interpret the laws, which can lead to inconsistencies in enforcement.

Secondly, even with laws in place, enforcement can be challenging due to a lack of resources and manpower. Corruption and bias can also play a role in cases being dismissed or ignored. Additionally, India's conservative culture and society means that public displays of indecency or obscenity can be met with strong backlash.

Thirdly, there is a tension between freedom of expression and the need to maintain cultural and social norms. Some argue that censorship and restrictions on artistic expression or speech infringe on their fundamental rights, while others argue that indecent or obscene content has a negative impact on society.

Lastly, with the rise of the internet and social media, regulating indecency and obscenity online has become increasingly difficult. Content can be easily shared and accessed, making it challenging to monitor and regulate.

Overall, the challenges associated with indecency and obscenity in India are complex and require a delicate balance between upholding cultural and social norms while also protecting individual rights and freedoms.

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

The Constitution of India provides women with not only equality but also with positive discrimination measures. Certain articles such as 14, 15, 15(3), 16, 39(a), 39(b), 39(c), 42, 46, 47, and 51A(e) are significant in this regard. The Constitution also guarantees the right to live with dignity and decency, which has been upheld in various court cases. The right to life includes the right to live with human dignity, which means that women have the right to a dignified life<sup>1</sup>. The Indian Penal Code (IPC) includes sections 292, 293, and 294, which are designed to protect public morals by making the sale of obscene literature and publications, especially to young people, a punishable offense. According to Section 292 of the IPC, a book, pamphlet, paper, writing, drawing, painting, representation, figure, or any other object is deemed obscene if it is lascivious or appeals to prurient interests or tends to deprave and corrupt people. However, there is no standardized definition of obscenity in the IPC.

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<sup>1</sup> Francis Coralie v Union of Territory of Delhi, AIR 1978 SC 597.

In India, the Constitution guarantees equality and empowerment of women through various provisions such as Fundamental Rights, Fundamental Duties, and Directive Principles. The Constitution also upholds the right to live with dignity and decency, which includes the right of women to live a dignified life. Sections 292, 293, and 294 of the Indian Penal Code (IPC) have been enacted to protect public morality by making the sale and distribution of obscene literature and publications, particularly to young persons, a cognizable offense.

In *Ranjith D Udeshi's case*<sup>2</sup>, the constitutionality of Section 292 of the IPC was challenged and held to be a reasonable restriction on the right to freedom of speech and expression under Article 19(2) of the Constitution. The Indecent Representation of Women (Prohibition) Act prohibits the indecent representation of women through various means, including advertisements, publications, paintings, and figures. The Act defines indecent representation of women as the depiction of a woman's figure, body, or any part thereof in a manner that is indecent, derogatory, denigrating, or likely to deprave, corrupt, or injure public morality<sup>3</sup>. The Act makes it punishable<sup>4</sup> for any person who publishes, arranges, or takes part in the publication or exhibition of such representations. Exceptions apply to works done for public good, religious purposes, or art, science, and literature.

The penalties for committing crimes under this Act include imprisonment for up to two years and a fine of up to 2,000 rupees for the first offense, and up to five years of imprisonment and a fine of up to 1 lakh rupees for repeated offenses. The Information Technology Act, 2000, includes Section 67, which prohibits the publishing of obscene and prurient material in electronic form. This provision is broad enough to cover all perpetrators of pornography. The Young Person's (Harmful Publications) Act, 1956, defines harmful publications as any books, magazines, or pamphlets containing pictures that portray women in a derogatory light.

Overall, the Indian Constitution and various laws in place aim to prevent the indecent representation of women and obscenity. However, the issue persists due to cultural and societal norms that are conservative and patriarchal. The media, including advertising, films, and social media, has played a significant role in perpetuating these issues, and traditional approaches to addressing them have been insufficient.

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<sup>2</sup> *Ranjit D. Udeshi v. State of Maharashtra*, AIR 1965 SC 881.

<sup>3</sup> The Indecent Representation of Women (Prohibition) Act, 1986, s 2 (c).

<sup>4</sup> The Indecent Representation of Women (Prohibition) Act, 1986, s 6.

## JUDICIAL INTERPRETATION OF OBSCENITY

The Indian Penal Code does not provide a clear definition of obscenity, leaving it up to the courts to interpret and define what constitutes as such. Over time, Indian courts have developed and evolved their own test of obscenity. Initially, they adopted the Hicklin Test, which involved testing content according to the standards of weak minds susceptible to immoral influence. However, as time went on, the courts moved away from this approach and began to use the modern Community Standard Test to define obscenity.

In the landmark case of *Ranjit D. Udeshi v State of Maharashtra*<sup>5</sup>, the courts laid down what has come to be known as the "test of obscenity." This test requires that obscenity must not be judged by a word or passage, but rather the work as a whole must be looked into and analyzed to determine how it impacts society and readers as a whole. The court emphasized that a balance must be maintained between freedom of speech and expression and public decency and morality. However, when public decency and morality are substantially transgressed, freedom of speech and expression must give way.

In *Chandrakant Kalyandas Kakodar v. State of Maharashtra and others*<sup>6</sup>, the Supreme Court held that there are no fixed rules to determine obscenity and that the concept of obscenity varies from country to country depending on the standards of morals of contemporary society. The court stated that in considering the question of obscenity of a publication, it must determine 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 Supreme Court further observed in *Samresh Bose and Another v. Amal Mitra and Another*<sup>7</sup> that a vulgar writing is not necessarily obscene. Vulgarity may arouse feelings of disgust, revulsion, and boredom, whereas obscenity has the tendency to deprave and corrupt those whose minds are open to such immoral influences. A novel written with a view to exposing evils prevailing in society by laying emphasis on sex and using slangs and unconventional language did not make it obscene.

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<sup>5</sup> AIR 1965 SC 881.

<sup>6</sup> AIR 1984 SC 1572.

<sup>7</sup> (1985) 4 SCC 201.

In the recent case of *Aveek Sarkar and another v State of West Bengal*<sup>8</sup>, the Supreme Court passed a judgment stating that a nude picture of a woman is not obscene if it carries a social message. A picture of a nude or semi-nude woman, as such, cannot per se be called obscene unless it has the tendency to arouse feelings or reveal an overt sexual desire. The Court also disapproved of the Hicklin Test and adopted the Roth Test.

Despite various charges of obscenity being brought against writers and poets, the laws concerning obscenity in India are similar to those established by the British government, and the law has yet to be revised. Notable trials have involved the Hungryalists, who were arrested and prosecuted for their work.

Overall, Indian courts have moved away from the Hicklin Test<sup>9</sup> and have adopted the modern Community Standard Test to define obscenity. The courts now consider the context and intention behind the content in determining whether it is obscene. While charges of obscenity continue to be brought against writers and poets, the laws in India concerning obscenity have yet to be revised.

## NEED FOR ADDITIONAL MEASURES

The persistence of the problem of obscene content despite the existence of laws can be attributed to several factors, such as gaps in the legal framework and lack of effective enforcement, as well as a general lack of awareness and sensitivity towards the issue. To effectively tackle this problem, additional measures need to be taken beyond the existing legal framework.

One of the key measures that should be taken is the introduction of stricter legislation that covers online platforms, which have become a major source of obscene content. This could involve amending existing laws or introducing new ones. In addition, greater focus should be placed on awareness and sensitization campaigns to change societal attitudes towards women. This could help to shift the focus of advertisements from portraying women solely for the purpose of attracting to appealing to them as consumers.

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<sup>8</sup> (2014) 4 SCC 257.

<sup>9</sup> Regina v. Hicklin, 3 QB 360.

To ensure the effectiveness of these measures, there needs to be greater enforcement of the laws, including imposing strict penalties and ensuring speedy justice. The decisions of the Censor Board should also be effectively enforced to prevent the dissemination of unhealthy entertainment through cheap publications, presentations, films, TV programs, and cable channels.

Preserving moral and ethical values in society is crucial because they establish a standard for ideal human behavior, promoting good ends and justice. The enforcement of these values depends on individual conscience and the force of enlightened public opinion.

To assist in the effective implementation of these measures, it is suggested that in each state, an Expert Board consisting of doctors, psychiatrists, sociologists, literature professors, and retired judges should be formed by the government to provide opinions on the obscenity of literature or work to the investigating agency before launching the prosecution in a court of law. These opinions should be treated as expert opinions and relevant under Section 45 of the Indian Evidence Act by amending the law.

Furthermore, a separate department or cell should be established by the Government of India under the Ministry of Information and Broadcasting to determine the various categories of advertisements, issue a code of conduct, and assist in relating goods with advertisements. This would help to ensure that all forms of media are covered and that there is greater control over the content that is disseminated through these channels.

The advertisement of a product should be directly related to its nature and usage. Advertisements should be relevant to the products being advertised and should avoid indecency and vulgarity. Advertisers, advertising agencies, and the media should consider it their corporate social responsibility to be truthful and honest in advertising, and should follow norms of fair competition. Additionally, advertisements should showcase women as successful achievers in positions of influence and decision-making, rather than in traditional, mundane roles.

To combat the indecent representation of women, social organizations, parents, teachers, and academicians should form public opinion. This issue should be made a mass movement to awaken society to the idea that the aim of life can only be achieved honorably through education, service, and employment, and not through materialism.

New and innovative presentations of women, based on India's distinct culture and society, should be introduced through media. Despite accepting the dynamic globalization process, Western indecent culture should not be imitated. Women and young girls must also resist the temptation for money and craze for popularity through lascivious advertisement to prevent the objectification of women. Parents should monitor their children's inattentive views to prevent them from being misled.

In summary, advertisements should be directly related to the product they advertise and should avoid indecency and vulgarity. Advertisers, advertising agencies, and the media should be truthful and honest in advertising, follow norms of fair competition, and showcase women as successful achievers. To combat indecent representation of women, public opinion should be formed, and new and innovative presentations of women, based on India's distinct culture and society, should be introduced through media. Finally, parents should monitor their children's views to prevent them from being misled.

## **CONCLUSION**

In conclusion, the issues of indecent representation of women and obscenity are severe and need immediate attention. The existing legal framework has several gaps that require addressing, and additional measures must be taken to effectively combat the problem. A comprehensive approach involving legal, social, and cultural interventions is necessary to create a society that values and respects women. The term "indecency" is all-encompassing and covers every aspect of personal conduct that deviates from standard norms. What is considered indecent varies based on the time, place, and level of civilization of a particular society. Hence, no universal standard can be set, and laws based on such a fluid concept are impractical. Nevertheless, in the current context, it is vital for every society to establish certain norms and rules to maintain order and decency. The standards set or adopted by a society may not be perfect and can differ from society to society and over time.