



ORIGINAL RESEARCH PAPER

Law

LAWS RELATING TO OBSCENITY & INDECENT REPRESENTATION OF WOMEN

KEY WORDS:

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ABSTRACT

Not only it is indecent but also irrelevant when female models/actresses are casted in TV commercials pertaining to commodities which are not even meant to be used by women such as shaving creams, men's deodorant, men's undergarments, pan masala and what not. Her presence in such an ad film/commercial is definitely not going foster or multiply the sale statistics in any which way. But to an extent it inadvertently reflects the unprecedented abyssal depths to which our society has fallen. Degeneration of moral values is an inevitable result. A common mindset wherein indecent representation of women is viewed with a callous approach necessitates sensitization and introspection amongst the societal stakeholders. Women cannot be allowed to be portrayed as a commodity. Her depiction should rather be in a proactive and empowered manner, which can have maximum impact on the society and bring about an attitudinal/behavioral change among people towards women. The test of obscenity as enshrined in the penal law of the land is whether the tendency of the matter, charged with obscenity, is such to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall. Needless to add that it is a matter for contemplation that such exploitation of the female anatomy though prohibited by law, is nevertheless flourishing, due to the non enforcement of such laws to prevent such offences against the public order and good taste that too in a country where women have been held in great in esteem and treated with kindness and courtesy can be seen from numerous verses contained in the Vedas, the Upanishads, the Puranas, Ithihasas and the legal literatures that formed part of the Dharma Sastras, which stands as the most prominent source material for Hindu Law. One might contend that the line demarcating the decent from the obscene is vague. In such a situation there lies a heavy onus on the judge who while judging the question of obscenity is expected to first place himself at the position of the author/producer and see if the author/producer has conveyed anything of literary and artistic value, and then he has to place himself in the position of the reader/viewer of all age groups in whose hands the material in question is likely to fall so as to understand the possible influence the material can have on its reader/viewer. This research paper is an endeavor to elucidate the functioning of the entire gamut of laws dealing with the subject, the scope of strengthening the existing provisions, the judicial trend and matters connected therewith or incidental thereto.

INTRODUCTION

Art and advertising are two different things with each having its own aim. An artist does whatever he feels independently, he is generally not bound by any profit motive. Whereas advertisement is created artistically with an aim of selling more and making more profits, art work is voluntary in nature and advertising is solely commercial. Customers cannot ignore advertisements but in art only selected some are interested. Therefore advertisements are created in a very creative manner and at times with unrealistic beliefs like happiness, simple life with no extra effort, even the everyday chores of life are projected as if it takes no extra effort to do them and all families are very beautiful and always happy. Advertising world sees most of things with a powerful eye of the person or a corporate who has huge amount of money to spend. Advertisers these days just to make their message reach vast and variety of the audience portray women unethically and unrealistically. It comes to them as an easiest tool to achieve their goal and they represent women in most of cases as a substitute. Women models are portrayed even to sell a male product, as advertisers believe by portraying beautiful women they will be able to make more sales. In reality many changes have taken place in the status of women. These days women are very active politically and socially. But this change is seldom visible in the advertisements. She is seen as model to be idealized by everybody else.

Commoditization of women in advertising brings out a paradoxical nature of woman's role as a consumer; she is the subject of transaction in which ultimately she herself becomes an object at times. In transaction of sale and goods it is the women who becomes a good herself. Advertising presents women and their body parts in separate and disoriented manner. At times their hands, legs, lips, eyes etc all are shown separately, which gives an impression that part

and person are different individual and body parts are more important than true individual, i.e., human being in image is fragmented and not coherent. Such portrayal of women in advertisements does effect their image in the society. Women feel very low in their self-esteem.¹

Dignity is a roman thought with word dignitas meaning "status". It means in roman literature that honor and respect should be accorded to those who are worth it. It is also related to the status, reputation one has in society and the special privileges one is given, but dignity is a virtue which cannot be compared to any other thing in terms of value. Rosen, has described dignity by studying its historical perspectives in four dimensions like religion, philosophy, aesthetics and literature, a) dignity as a conferred "rank or status", b) dignity as the "intrinsic value" of the human being, c) dignity as "self possessed behavior", d) dignity as a particular right to respectful treatment. As per German philosopher Kant human beings are special, different and better from other creatures and this is because they have an intrinsic worth called "Dignity", and this is what makes them different from the rest and priceless, non-quantifiable and different from animals. Animals are there just for the serving human purposes and have no duties. Human beings hurt animals so that they are not hurt by animals in return. But it is also a fact a person who is cruel to animals will for sure become cruel to humans as well. Humans cannot be used by them to achieve any goals. Dignity is not any constitutional right, or any privilege granted by any state. Dignity has a direct relationship with the judicial and the legal system and dignity cannot be maintained till it has legal support. Therefore it becomes very important that with the help of legal system the rules should be imposed and framed in such a manner that dignity is maintained. Law and dignity have to move together and cannot be isolated from each other. To respect and protect all citizens and their dignity is duty of

all the states. Meaning and definition of dignity keeps on changing with changing times, and as and when a concept comes up it should be reviewed. Because of the absence of clear definition of the term dignity conflicts arise in the implementation of the term dignity and various constitutional rights. Dignity cannot be interchanged for anybody and anything, everybody has individual and their own dignity, also because dignity cannot be quantified. It has no price attached to it.

In this context the words of Wall Whitman are worth mentioning which are as follows:

“Where women walk in public processions in the streets the same as the men,
Where they enter the public assembly and take places the same as the men;
Where the city of the faith fullest friends stands,
Where the city of the cleanliness of the sexes stands,
There the great city stands”.²

INDECENCY AND OBSCENITY

Decency is how obscenity is defined, but not as universal. And both have something to do with the permissive extent of exposure of human flesh. There was a time when human being used to remain all naked. But gradually the process was not liked somehow and the definitions of obscene, decency, etc., had to be searched with the invent of the appropriate words. The idea of obscenity perhaps came three hundred years ago when Sir Charles Sedley exposed his person to the public gaze on the balcony of a tavern. It was taken in bad taste. What was to the dislike was the extent of exposure that too in public gaze incomplete. So the concept, extent or permissiveness of the exposure of human body in the public gaze, well, it was a case of a male. The permissiveness in the case of a female shall have to be more restricted.³

The word 'obscene' though not clearly defined in the Penal Code must be taken as meaning offensive to chastity or modesty, expressing or personating to the mind or view something that delicacy, purity and decency forbid to be expressed; anything expressing or suggesting unchaste and lustful ideas; impure; indecent; lewd. And Pornography is an obscene literature, art or photography. As held in *Ranjit D. Udeshi v. State of Maharashtra*, and *State of U.P. v. Kunjilal*, both obscenity and pornography are distinguishable. Pornography denotes writings, pictures etc., intended to arouse sexual desire while the former may include writing etc., not intended to do so, but to arouse such desire, which have a tendency. Both of course offend public decency and morals but pornography is obscene in a more aggravated form. Regarding pornographic pictures and writings there can never be a doubt that they would be obscene within the meaning of Section 292 of the Penal Code.⁶

In *Ranjit D. Udeshi (supra)* the Hon. Apex Court further observed that the test of obscenity to adopt in India is that obscenity without a preponderating social purpose or profit cannot have the constitutional protection of free speech and expression and it is obscenity in treating sex in a manner appealing to the carnal desire of human nature of having that tendency. The obscene matter in a book must be considered by itself and separately to find out whether it is so gross and its obscenity so decided that it is likely to deprave and corrupt those whose minds are open to influences of this sort and into whose hands the book is likely to fall. In this context the interest of our contemporary society and particularly the influence of the book on it must not be overlooked. It was further observed in this case that merely treating with sex and nudity in art and literature cannot be regarded as evidence of nudity or obscenity without something more. It was observed that where obscenity and art are mixed art must be so preponderating as to push the obscenity into the shadows or the obscenity is so trivial and insignificant that it can have no

effect and may be overlooked. When treatment of sex becomes offensive to public decency and morality is judged by the prevailing standards of morality in that society, then only the work may be regarded as an obscene production.

The sale, hire, distribution, public exhibition circulation, import, export or advertisement, etc., of any matter which is obscene is prohibited by the Indian Penal Code, 1860. Sections 292 and 293, IPC were amended in the year 1969 to make the existing laws more definite in explaining the term obscenity. In order to make the law relating to publication of obscene matter deterrent, the section provided enhanced punishment. The question is whether a publication includes the printing of the subject matter of obscenity or not? If there is an isolated act of printing, whether such act constitutes an offence under this section? Answering the former question in affirmative, the Hon. Apex Court in *Ravi v. State* has held that the large quantity of obscene matter, seized from the petitioner's premises, where he was running a commercial venture, and where he must obviously have been spending much time, clearly establishes the charge under Section 292 of the Penal Code. It was obviously for sale, distribution or circulation.

In **Chandrakant Kalyandas Kakodar vs. The State Of Maharashtra** the Hon. Apex Court held that in considering the question of obscenity of a publication what the court has to see is whether a class, and not an isolated case into whose hands the book, article or story falls, suffers in its moral outlook or becomes depraved by reading it or might have impure and lecherous thoughts aroused in their minds.

LEGAL FRAMEWORK RELATING TO OBSCENITY AND INDECENT REPRESENTATION OF WOMEN IN INDIA

1. Article 21 of the Indian Constitution:

Article 21 is considered to be the Magna Carta of human lives, their dignity and liberty. It is termed as heart and real evolution of Indian legal framework and of Indian constitution. Article 21 of the Indian Constitution states that “no person shall be deprived of his life or of personal liberty except according to procedure as established by law.” It means every human being has right a dignified life, and not mere vegetative existence. In **Maneka Gandhi vs. Union of India**, it was ruled that right to live does not mean mere physical existence on this earth but it means to lead a dignified meaningful human life. In **Bandhua Mukti Morcha vs. Union of India**, it was clearly stated by court that it is fundamental right of every citizen to lead an exploitation free dignified life and it is duty of state to ensure that. This means every woman is an individual human being and has right to lead a dignified free life. In another landmark case, **Chandra Rajakumari vs. Police Commissioner Hyderabad**, it has been held holding of beauty contest is repugnant to dignity or decency of women and offends Article 21 of the Constitution only if the same is grossly indecent, scurrilous, obscene or intended for blackmailing. The government is empowered to prohibit the contest as objectionable performance under Section 3 of the Andhra Pradesh Objectionable Performances Prohibition Act, 1956.

There have been many international declarations like CEDAW, International Covenant on Civil and Political Rights, The Universal Declaration of Human Rights, etc. which also recognize, that for women or any other human being dignity and life are inseparable.

2. The Indecent Representation of Women (Prohibition) Act, 1986:

This Indecent Representation of Women (Prohibition) Act, 1986 (hereinafter referred to as the Act) punishes indecent representation of women, which means “the depiction in any manner of the figure of a woman; her form or body or any

other part thereof in such a manner as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals." The Act forbids depiction of women in an indecent or derogatory manner in mass media. Section 3 of the act states that, no person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form. Section 6 of the Act discusses about the penalty for those who are in contravention of section 3 to a fine of two thousand rupees to ten thousand rupees and in case of second default conviction of six months to five years and a fine of rupees ten thousand to five lakh rupees.

Definition of indecent also changes with changing societal norms and situations. When tennis star Boris Becker published in German Magazine "STERN" a controversial image of her with her fiancé it was appealed that it violates the moral principles of decency in India. A two judge bench of Supreme Court of India ruled that there is no violation of Section 4 of the Act and Section 292 of IPC, The photograph and the article should be seen and appreciated in the light of the message it wants to convey and not just term it as obscene. The objective behind the advertisement was that a fair skin man can also love and marry a dark skinned female i.e. love is beyond color of skin and is above human hatred and secondly it is spreading a message to eradicate evil of racism.

Also in *Ajay Goswami vs Union of India*, on examining the section 292 of IPC and Section 3, 4, 6 of the Act held that freedom of expression cannot be suppressed, unless there is a situation where such a freedom is harming the interest of the society.

National Commission for Women way back in 2012 suggested an amendment in addition to self-regulation by citizens and advertisers it is recommended to government that act should also include digital media like internet, mobile phones etc. Also the definition of 'advertisement' should include any notice, circular, label, wrapper or other document, laser, light, sound, electronic media, plus it was also proposed by commission that should be stricter implementation of law as there hardly any convictions under the law.

3. Young Person's (Harmful Publications) Act, 1956:

Harmful publications is described as any book, magazine, pamphlet leaflet, newspaper or other similar publications which contain stories told with the aid of the pictures or without the aid of the pictures or completely with pictures any of the stories which portray wholly or majorly:

1. The commission of offences, or
2. Acts of violence or cruelty, or
3. Incidents of a repulsive or horrible nature.

In such a manner that the publication will corrupt the minds and acts of the persons in whose hands it falls. Liability of act committed in such a manner is on the person who prints, sells, distributes, lets on hire, distributes, or is in possession etc of the harmful publication shall be punishable with imprisonment which may extend to around six months, or in certain cases with fine or both. As per section 3 of Young Person's (Harmful Publications) Act, 1956, if any person advertises or makes known by any means whatsoever that harmful publication can be procured from or through any person, shall be punishable with an imprisonment which may extend to around six months or with a fine or both. Further on conviction in this section, the Court can order the destruction of all the copies of the said harmful publication.

4. Penal provisions under the Indian Penal Code, 1860:

Section 292 of the Indian Penal Code reads as, Sale, etc., of obscene books, etc.—(1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting,

representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items is, if taken as a whole, such as to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

Section 293, Indian Penal Code, reads as "Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees". The sections 292 and 293 of IPC, prohibit publication of any obscene matter, it can also include lotteries, misuse of national symbols and inducing animosity amongst the different sections of society. As per these sections government has the power to forfeit all the copies of published material containing anything against above. Punishment may be in the form of imprisonment or fine, in certain cases it can be both.

But it has been found that these sections are not sufficient enough in stopping growing indecent representation of women in publications and in advertisements. To decide whether a publication is obscene or not has to be decided from case to case. To find the answer the court should see the effect of the publication. Obscenity cannot be protected on the grounds of freedom of expression under Article 19(1)(a). The courts have insisted that it should be seen as to what will be effect of book on society and there should be a balance between public decency and morality but when the latter is substantially transgressed, the former should give way. Even though the word "obscene" has not been defined clearly, use of the words "shall be deemed to be obscene" but anything that creates a fiction, and is lascivious or which appeals to the prurient interest or the effect of which has tendency to deprave and corrupt persons is "obscene" within the meaning of this section.

5. Other miscellaneous provisions related to the subject matter:

- a. National Human Rights Commission (NHRC) also along with State Human Rights Commission has the power to look into protecting dignity of women in advertisements. Section 2(d) of the Protection of Human Rights Act, 1993 states that human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. In light of this section NHRC has taken cognizance of certain infringements of dignity of women that has taken place under this law.
- b. Advertising Standard Council of India (ASCI) is a self-regulated organization, which constitutes members from both advertising and non-advertising backgrounds. Advertising agencies are aware of the fact that the advertisers often manipulate facts to sell, and consumers complaints regarding advertisements is also large. Therefore ASCI has drafted code of ethics for advertisements and has brought ad agencies, advertisers and media at a common platform in terms of regulation and has drafted a code which is mandatory for all to follow. ASCI has also established a Consumer Complaints Council to look into complaints received. Its main objective is to promote responsible advertising thus enhancing the public's confidence in Advertising. The code drafted by ASCI is to ensure that advertisements are

not offensive to generally accepted standards of public decency, advertisements shall contain nothing indecent, vulgar or repulsive to cause grave or widespread offence. It is governed by most of the constitution laws of India like Indecent Representation of Women Act, Young Persons, Press Council of India, etc.

- c. The Press Council of India was established in 1978, with an objective of the freedom of the press and also to improve the standards of the newspapers and also of the news agencies in India, i.e., council is expected to assist newspapers and various agencies to have their creative freedom and yet follow a code of conduct which maintains the standards of the society, gives citizens a due sense of their rights duties and responsibilities. Editor should look into it that nothing should be published which crosses the border of decency and obscenity. If violation of this particular code happens it shall be the responsibility of the editor. As per norms of journalistic conduct of PCI, Newspapers/journalists shall not publish anything which is obscene, vulgar or offensive to public good taste, Newspapers shall not display advertisements which are vulgar or which, through depiction of a woman in nude or lewd posture, provoke lecherous attention of males as if she herself was a commercial commodity for sale. In *Shri Padmashri Prakash Singh Vs. The Editor, The Hindustan Times*, the complainant said that advertisements of massage parlours represent women in objectionable and provocative manner which are likely to have adverse moral effect on society. Newspapers and periodicals are restrained from publishing any advertisement which would violate Section 3 of the Indecent Representation of Women (Prohibition) Act, 1986 and other provisions of different Acts, accordingly in said case newspaper was directed to take advertisement off print. The council decides on the basis of recommendation of its committee.
- d. National Commission for Women The National Commission for Women was set up as a statutory body in January 1992 under the National Commission for Women Act, 1990 to:
 1. Review the Constitutional and Legal safeguards for women;
 2. Recommend remedial legislative measures;
 3. Facilitate redressal of grievances and
 4. Advise the Government on all policy matters affecting women.

It was found that the status of Indian women was better in 1990's than pre independence, but still they were facing injustices and were discriminated against, this prompted government to have an apex body to look into matters relating to women. Therefore, this statutory body was formed after various consultations with the NGO's, social workers, other experts working in the area of upliftment of women, etc. The body has made more number of females aware of their rights by organizing regular seminars, consultations and workshops. They have also suggested many amendments to various acts of constitution like Indian Penal Code, Indecent Representation of Women, Hindu Marriage Act, etc., to make the body more strict and effective. As a result number of complaints received and cases solved have gone up. Though commission has achieved a lot but due some shortcomings it cannot function to its fullest. These are commission does not have legislative powers, cannot appoint its own members and is dependent on Union Government for financial funding.

CONCLUDING REMARKS

The degrading position of women in the context of economic and financial exploitation and the ever increasing instances can be attributed to the easy and cheap availability of internet access amongst the youth which indeed has resulted in the degradation of value system which was once prevalent in the Indian society. Enactment of new laws or strengthening of the existing laws though seems to be a solution to this menace but

in my perception it cannot be the only way out. The content on the internet needs to be filtered. Individual interest cannot and shall not be permitted to outweigh the general public interest. It is the need of the hour that apart from legislative affirmative actions certain steps be also taken to reinforce and fortify the ancient value system our society was once gifted with in an effort to uplift the status of women from a mere commodity existence to an empowered, upright and independent prestigious stature to which women is entitled by virtue of her existence and not just because of an adjudged declaration.

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