

Media: Indecent Representation of Women

Media Law

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1944: A short Story

- Legendary Urdu Writer Sadat Hasan Manto was once dragged to court on the charge of writing obscene stories, such as the famous 1944 short story Bu (odour).
- In court, a prosecution witness claimed that Manto had used the word "bosom" to describe a woman's breasts. Manto leapt to his feet. "What else did you expect me to call a woman's breasts—peanuts?"
- Manto won his case, but nearly got thrown out of court for contempt.
- In his time, the writer frequently outraged his conservative community members by pushing the boundaries of the socially acceptable.

- The Indian Penal Code in section 292 and section 294 criminalize publishing obscene books, singing obscene songs, and doing obscene acts in or near a public place
- The Information Technology Act punishes the online transmission or publication of sexually explicit acts. The Post Office Act prohibits transmitting obscene materials by post. There are other laws as well, but the broad point is that obscenity legislation covers a vast range of daily activities.

AIB show

- AIB show premiered on social media, and then proceeded to shock, stun, impress, and forever change the boundary horizons Indians would see past.
- The 'Roast' had Karan Johar MC the official roasting of Ranveer Singh and Arjun Kapoor with other well known people from the industry. It immediately split viewers into sides. Some groups celebrated the maturity we were gaining for being able to create and laugh at such crafted, vile, and parodic comedy. Others, were alarmed at the foul language and references to religion and women.

FIR

- A Mumbai court issued FIRs to all that were involved in the show, including, Deepika Padukone and Alia Bhatt. For what? Obscenity, and sections of the law that related to Information Technology and, get this, conspiracy too. AIB featured a popular apology video on YouTube, retracted their AIB video (although copies and the good old internet still have them) and apologised to offended communities.

Kiss of love campaign 2014

- People stepped up in 2014 in Kochi, Kerala. They had first launched their successful 'Kiss of Love campaign', where the youth and other activists came to protest and practice public kissing and take a stand against moral policing. Just an hour into the event, they got their fair share of right-wing threats, and conservative groups barging in and spreading havoc at the protest.

Likes in social media

- The [Facebook page](#) got an outrageous number of likes, and social media was jumping with support for the protesters.
- They had made a mark and other cities followed. Except, Bangalore.
- The state's home minister K J George said that the police would take action as they saw fit and the continued threats from right-wing groups made the Kiss Of Love organizers rethink their plan for Bangalore's version of the protest. They decided it might be safer to chuck the plan entirely.

All India Bakchod - AIB comedy

- the Bombay high court restrained the police from arresting the comedians, remarking that although the AIB's much publicised roast of Bollywood actors Arjun Kapoor and Ranveer Singh was vulgar, it was not obscene
- According to Merriam-Webster, "vulgar" refers to something that is "offensive in language", or "lewdly or profanely indecent."
- "Obscene", on the other hand, is defined as "disgusting to the senses", "so excessive as to be offensive", and "abhorrent to morality or virtue, designed to incite lust or depravity."

Obscene

- Section 292 of the India Penal Code (IPC) says: “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 (is) such as to tend to deprave and corrupt person”.
- the very constitutionality of the anti-obscenity section 292 of the IPC was challenged in Ranjit Udeshi vs State of Maharashtra, decided more than 50 years ago, in 1964.

Upheld section 292

- It upheld section 292, as well as the government's ban on D.H. Lawrence's 1928 novel, *Lady Chatterley's Lover*, which was actually by 1960 in the process of being un-banned in a whole bunch of other countries as it was recognised as literature rather than racy smut.
- The court also decided to adopt the 1868 English test of *R vs Hicklin* for determining obscenity (which, incidentally, had been discarded in its own country of birth just a few years before India's decision).
- According to the *Hicklin* test, material is obscene if its tendency is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands it is likely to fall.

Hickline test, departed from

- There are two important aspects to this test: something obscene has to have a tendency to “deprave and corrupt”, while it also requires weak minds that are open to immoral influences.
- **they were judging what’s obscene by asking the most sensitive and easily-offended person whether something is obscene? That sounds really subjective. Is that still the test? NO**
- the courts went on a steady process of gradually undermining the Hicklin test.
- In later cases, it took on record the advice of experts in determining whether the literary merits of a work would save it from the proverbial censor’s furnace.
- It replaced the weak and vulnerable minds test with that of the average, reasonable and strong-minded person.
- And it insisted, time and again, that the work must be viewed at “as a whole”.

Boris Becker

- In that case, the question was whether a photograph of Boris Becker and his fiancée, in the nude, was obscene.
- The court held that it was not, making much of the fact that Becker's arm was covering his fiancée's breasts.
- More to the point, however, the Court (finally!) discarded the 1868 Hicklin test, in favour of the 1957 American test in Roth vs United States.

Roth test

- Under Roth, obscene material must “appeal to the prurient interest”. This means that it must be such as to arouse sexual desire in the viewer—or, in the court’s own words, “excite sexual passion”.
- The AIB roast might have been “vulgar” in the sense of being offensive and in bad taste, but it was not “obscene” in the sense of being lascivious, or appealing to the prurient interest.
- **So sex is ok, sexy sex is not?** Maybe. And even sexy is okay if the judge thinks it’s art.
- That said, “prurient interest” remains a manipulable and subjective phrase, and we will probably have judges ruling on the aesthetic merits of novels and TV shows for a long time to come. Gautam Bhatia’s article in livemint

IRWA 1986

- Enacted on 23rd Dec 1986 to prohibit any representation of women indecently via advertisements or writings, paintings, figures or publications or in any other manner and for such related matters.
- Section 2 of the Act for words like Advertisement, Distribution, Label, Indecent Representation of Women, Package, and Prescribed. Under Section 3 of the Act any advertisement wherein any indecent representation of women in any form by any person who publish or arrange or take part in publication or exhibition is punishable.

Exceptions

- Any paper, pamphlet, slide, film, writing drawing photos, figures that contain indecent representation of women cannot be produced, sold or let to hire by any person but with some exceptions.
- Exception: it shall not apply to any book, paper, pamphlet, painting, writing, photograph, or any figure that is done for public good or in the interest of science, art, and literature.
- Exceptions also apply if it is used for religious purpose and sculptures, engraved, paintings of which are an ancient monument under Ancient Monument and Archaeological Sites and Remains Act 1958 or any temples or idols used for religious purposes and any film for which Part 2 of the Cinematograph Act 1952 applies.

Power to search

- Section 5 of the Act explains about the Gazetted Officer appointed by State government who can make rules with regard to entry and search any place at any time where he/she believes an offence has been committed. Seizing of any book, paper, slide, film, writing, painting, that contravenes the provisions of said Act.
- He can examine any record, document and seize it if he believes it can be used as evidence against the commission of offence under this Act.
- But entry into a private house should be done with warrant.
- Seizing of any article that cannot be separated by reason of it being embossed can also be done under the Act and CRPC 1973 provisions will apply with regard to search and seizure and such seized items should be given to nearest Magistrate for custody.

Penalty

- Penalty for the crime committed under this Act is up to 2,000 rupees and imprisonment up to 2 years for the crime done for first time and if it is repeated second time then punishment can extend to 5 years and fine too may extend up to 1 lakh rupees.
- If an offence has been committed by a company or a person incharge of such company shall be deemed to be guilty of such offence and can be liable for proceedings and punishment.
- But if anything done without their knowledge then he/she cannot be punished. If any offence is proved that it is done with consent of director, manager, secretary then that officer can be punished under the Act.

Cognisable and bailable

- Offences under this ACT are cognisable and bailable notwithstanding anything contained under CRPC 1973. No proceedings can be made against Central or State Government or any officer as such for actions done in good faith and under the provisions of this Act.

Rules for seizure of articles

- Section 10 explains that Central Government can make rules to carry out the provisions of the Act after Gazette notification. Rules are made for manner of seizure of [articles](#) and manner of seizure list made and delivered to concerned person or any other matter. Each rule made under the Act should be put before Houses of Parliament when it is in session for 30 day period and the Houses can amend the rule as such.

Rules 1987

- Indecent Representation of Women (Prohibition) Rules, 1987 dated 25th September, 1987 has been framed by Central Government which came into force on 2 October 1987. Here manner of seizure of [articles](#), packing and dealing with advertisements seized, sealing such seized [articles](#) in some cases are explained.

Aveek Sagar v West Bengal

- In a case of Aveek Sarkar & another Versus State of West Bengal, Supreme Court recently passed a judgment stating, "Nude picture of women is not obscene if it carries social message", that is a picture of a nude/semi-nude women, as such, cannot per se be called obscene unless it has the tendency to arouse feeling or revealing an overt sexual desire. The judgment passed is indisputable but many advertisements published in newspapers, magazine related to contraceptives involve picture of semi-nude women models posing in seductive gestures, soliciting and luring people to try their products. The pictures depicted in such advertisements are undeniably vulgar and designed to excite sexual passion in persons who are likely to see it and the defense taken by the media for publishing such contents is that it's an effort to spread social awareness.

2004 Case

- In a case of 2004, a complaint was filed by a retired BSF officer against the editor of a leading newspaper publishing house in India before the Inquiry committee at New Delhi for publication of allegedly obscene material six times in one of its magazine supplement edition. The counsel for the respondent defended the respondent in the written statement filled by him stating, "That these articles/pictures are life stones of new styles of life challenging traditional social norms and values. What they have stated has to be tested by the current standards of ordinary decent people, the newspaper being in English and likely to be read only by well-educated persons".

Crimes recorded

- As per the National Crime Records Bureau (NCRB) data which is available upto 2014, a total of 895, 453, 141, 362 and 47 cases were reported in the country under Indecent Representation of Women (Prohibition) Act, 1986 during last five year i.e 2010, 2011,2012, 2013 and 2014 respectively which show a mixed trend.
- This information was given by the Union Minister of Women and Child Development, Smt Maneka Sanjay Gandhi in reply to a question in the Lok Sabha today.

Regulating Social Media

- NCW and Parliamentary Standing Committee suggested amendments to Indecent Representation of Women (Prohibition) Act, 1986
- Amendments are proposed to deal with women's projection in internet, multi-media messaging, over-the-top OTT services, and applications like Skype, Viber, WhatsApp, Chat On, Snapchat etc
- Govt decided to widen the scope of the law so as to cover such forms of media on one hand and to strengthen the existing safeguards to prevent indecent representation of women through any media form on the other.”

Widening the definition

- “proposed amendments in definition of distribution to include publication, license or uploading using computer resource, or communication device and amendment in Section 4 to include that no person shall publish or distribute or cause to be published or cause to be distributed by any means any material which contains indecent representation of women in any form”.
- The draft bill also proposes penalty similar to that provided under the Information Technology Act, 2000 and creation of a centralised authority under the aegis of the NCW.

New authority

- This authority will be headed by Member Secretary, NCW, having representatives from Advertising Standards Council of India, Press Council of India, ministry of information and broadcasting and one member having experience of working on women issues.
- To receive complaints or grievances regarding any programme or advertisement broadcast or publication and investigate/ examine all matters relating to the indecent representation of women,”

Deferred

- The Indecent Representation of Women (Prohibition) Amendment Bill, 2012 was introduced in the Rajya Sabha in December, 2012 which referred the Bill to the department-related Parliament Standing Committee for consideration.

Caravan ad banned

- In [this Caravan piece](#), the author Rosalyn D'Mello brings up the example of a Wild Stone ad where a woman in a train has a risqué fantasy of dominating a co-passenger.
- The I&B Ministry banned the ad, citing a 1994 cable TV rule that reads very similarly to the IRWA — right down to the morals and the decency.
- This, in spite of the fact that it was the woman who was having the fantasy and effectively the power over the (imaginary) situation. There are multiple other ads that have been banned on the same grounds.

Criticism

- D'Mello points out, “Ads that truly objectify women try to push them into seeking to become desirable girls and dutiful wives and mothers, and, not least, more deserving of men (most of them in desperate need of deodorants).”
- If this law will also apply online, the wide range of powers the government gives itself with vaguely worded legislation like the IT Act and cable TV content rules.
- As has happened in the past, the exact opposite outcome could be the consequence of such laws.

IT Act plus IRWA will give more powers

- the WCD Ministry is encroaching onto the internet with a censorious motive. Just like the internet has acted as a conduit and platform to the spread of communal hatred in India, it is also a breeding ground for things like rape videos and revenge porn. Governments all over the world struggle to deal with these problems, as do societies as a whole.
- Section 79 of the IT Act for an intermediary to be held responsible for content that they don't remove immediately. But it's unclear if the IRWA will continue those protections, or if current laws protect intermediaries and platforms sufficiently from liability. Protecting intermediaries from responsibility for third party content is important since it ensures that they are not incentivized to censor content proactively or pre-censor in a bid to evade liability.

Penalties – should be in proportion

- Proportional penalties are incredibly important so that laws are not weaponized for political or personal purposes by law enforcement and prosecutors. It's also important in preventing the chilling of speech — if weighing the risk of speech involves an unfairly lengthy jail term or a heavy fine, it will discourage both individuals and platforms from free expression.