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LAWS RELATING OBSCENITY AND INDECENT REPRESENTATION
OF WOMEN

ABSTRACT

In India, women mostly assessed as the representation of a devoted goddess and praised with the utmost respect.

But because of the increment in the number of offences against women in the very recent time, there can be a much discussion over the laws which dispense the crime against women. Among several misdeed actions, the infraction of "Obscenity and Indecent Representation" against women is considered to be the most disconcerted crime.

"Indecent representation of women" refers to the act of outlining the figure of a woman; her body or structure or either any other part in an adverse manner to have the impression of being indecent or offensive which more likely deprived or hurt the morals of the society. This article covers a broad overview of the concept, related offences, actions and the laws relating to the Obscenity and indecent representation of women in the Indian society.

No doubt, the Indian Judiciary has taken significant actions against the offences that outrage the modesty and violate the integrity of a woman. By formulating actionable acts to inhibit indecent representation of women across advisements or via publications, paintings, writings or through any other way and for the events related to it to restrict the crimes against women.

The Indian judiciary system has constituted many laws in respect to the obscenity and indecent representation of women that specifically regulate and restrict the activities of improper representation of women & strictly evoked that no material or related content should involve anything that is vulgar, obscene, offensive, and virulent to the standards of the society.

CONCEPT OF OBSCENITY

The word "obscenity" is derived from the Latin word 'obscaena'. The word can be used to indicate a strong moral repugnance, in expression such as 'obscene profits' or 'the obscenity of war. According to dictionary meaning, "it is offensive to chastity, delicacy or decency, expressing or presenting to the mind of view something that decent, delicacy and purity forbid to be exposed, offensive to morals, indecent, impure".

According to the Webster's New International Dictionary, "It is offensive to chastity or modesty, expressing or preventing to the mind or view something that delicacy, purity or decency forbid to be exposed, impure as obscene language, obscene picture, impure, indecent, unchaste, lewd.

In [Aveek Sarkar v. State of West Bengal](#) the Supreme Court held that held that "the question of obscenity must be seen in the context in which the photograph appears and the message it wants to convey. The Court further said that the correct test to determine obscenity would be 'Community Standards Test' and not Hicklin Test" Applying the 'Community Tolerance Test' the Court held that the decisions in such cases must be taken keeping in mind the contemporary national standards and not that of a group of sensitive persons. If the society accepts the portrayal of sexual activities on the silver screen, the Court must not strike it down for the sake of a few sensitive persons. If it is acceptable to the society in general, the court must accept it too.

Article 21

Article 21 is considered to be 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 Constitution of India states "[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 to live and live with dignity, and not have existence similar to that of animals. It also means that every citizen has right to livelihood, good hygienic conditions, good standard of living.

This right is stated in the, directive principles of state policy as well. The concept can be well understood with some case laws. This earth but it means to lead a dignified meaningful human life. In [Bandhua Mukti Morcha V. 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 Raja Kumar V. 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.

JUDICIAL INTERPRETATION OF OBSCENITY

In the absence of definition of obscenity in the IPC, the task of defining it, thus, has been done by courts in India. The apex court has also evolved a test of obscenity.¹⁰ Indian courts chosen to adopt the Hicklin Test but then it deviated to modern Community Standard Test with time to define obscenity. In the landmark case of [Ranjit D. Udeshi vs State of Maharashtra](#), a bookseller was booked under IPC for selling unedited and expurgated edition of "Lady Chatterley's lover". The case laid down what has come to be known as "test of obscenity." It says that obscenity must not be judged by a word, here a passage there. The work as a whole must be looked into and seen as to how it impact the society, reader as a whole. In the words of the court, "where obscenity and art are mixed, art must be so preponderate as to throw the obscenity into a shadow or the obscenity so trivial and insignificant that it can have no effect and may be overlooked. It is necessary that a balance should be maintained between "freedom of speech and expression" and "public decency and morality"; but when the latter is substantially transgressed the former must give way." In this case the Hicklin Test was applied. In [Chandrakant Kalyandas Kakodar vs State of Maharashtra and others](#), it held that there was no fixed rules to determine obscenity, "the

concept of obscenity would differ from country to country depending on the standards of morals of contemporary society". The Supreme Court held that in considering the question of obscenity of a publication, the court has to see 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. In [Samaresh Bose and Another v. Amal Mitra and Another](#), the Supreme Court observed that a vulgar writing is not necessarily obscene.

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

The Constitution of India in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c), 42, 46, 47 and 51A (e) of the Constitution are of specific importance in this regard. Indian Constitution also guarantees right to live with dignity and decency. This has been held in various cases. In [Menka Gandhi v Union of India](#), it was ruled that right to life is not merely confined to physical existence but also includes within its ambit the right to live with human dignity. In [Francis Coralie v Union of Territory of Delhi](#), it was held that life means something more than just physical survival and is not confined to protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world, but includes 'the right to live with human dignity. Thus, women have the right to have a dignified life.

THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986:

The Act punishes the indecent representation of women, which means "the depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprive, corrupt or injure the public morality or morals. It states that no person shall publish or cause to publish or cause to be published or arrange to take part in the publication or exhibition of any advertisement which contains indecent representation of women in any form. „In the act, advertisement“ includes any notice, circular, label, wrapper or other document and also

includes any visible representation made by means of any light, sound, smoke or gas. The amendment suggested by the [National Commission for Women](#) suggests to amend the definition to “advertisement” includes any notice, circular, label, poster, wrapper or other document and also includes any visible representation made by means of any laser light sound, smoke, gas, fibre, optic electronic or other media” it states that no person shall produce or cause to be produced, sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any. The NCW recommended that Section 2(b) of the Act be modified to read as “Derogatory representation of women means the depiction in any manner of the figure of a woman, her form of body or any part thereof in such a way as to have the effect of being derogatory to or denigrating women and is also likely to deprive, corrupt or endanger public morality or morals.”” According to the explained information over the figure of a woman, her body or any part thereof would amount to indecent or derogatory representation if it has:

- The desire to present women as a sexual object.
- The desire to present a woman as a sexual commodity for man’s pleasure
- The desire to glorify ignoble servility as an attribute to womanhood, or
- The effect of being indecent or being derogatory to or denigrating women or;
- It is likely to deprave, corrupt or injure public morality or morals.

Woman has the human right to be a woman. She has right to live with dignity and respect. Being a human being, these rights cannot be snatched from her. A strong determination or will power, what she is in need on her part if she really wants to live a dignified and well respect full life. Simple living and high thinking gone are the days when women used to believe in this famous saying, “Simple living and High thinking”. There were less crimes against women at the time because in order days she used to live in Pardah. But woman of today is wearing provocative and scanty dresses, also indecent dress and clothing a symbol of modernity and standard. New initiations of decent presentation of women by the women society, based on Indian distinct culture and society must be introduced. Simultaneously, western culture should not be imitated despite accepting dynamic globalization process and also western culture could not be that much dominant over Indian women.

POINTS ON WOMEN LEGAL RIGHTS

⇒ Section 2(d) in the Protection of Human Rights Acts, 1993:

“Human rights are the rights which are relating to their life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”.

⇒ Protection of Women from Domestic Violence Act (2005):

“This is an act to protect women in India from all forms of violences whatever kind of it is, may be domestic violence by the husband or any of his relatives.”

⇒ The Immoral Traffic (Prevention) Act, 1986 (PITA):

“This has amended the Immoral Traffic (Suppression) Act, 1956 (SITA). This Act is the premier legislation only for prevention of trafficking for commercial sexual exploitation.”

⇒ Indecent Representation of Women (Prohibition) Act (1986):

“This act prohibits indecent representation of women through advertisements or in publications, writing, painting, figures or in any other manner.”

⇒ Dowry Prohibition Act (1961):

“This act prohibits the protocol of dowry system from the past whether it is about to giving the dowry or asking for the dowry.”

Conclusion

Women are respected in India since a long time. But unfortunately the truth is , They still facing the difficulties to get respected peacefully. They suffer a lot like they have to go through rape, dowry deaths, sexual harassment, obscenity, indecent representation and many more difficulties. It is surprising that all this happened to them despite the constitutional guarantee of equality and dignity to women, rampant discrimination and exploitation of women in India continues. The supremacy of legislature had enacted laws to curb the problem of obscenity in India but somewhere it fails to get implemented in a proper way that it has to be.

These law of obscenity was all about the 19th century but if we go to the today's era, the indecent representation of women on digital platforms is on peak. Awareness in the women

as well as society should be created and self-regulation of mass media and digital platforms are the need of hour. A strong legislative effort coupled with a wide spread social awareness with morality and ethics is needed to fight this menace so that women are not perceived as a commodity but as individual with right and dignity.