

## **LAWS RELATING TO OBSCENITY AND INDECENT REPRESENTATION OF WOMEN**

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### **Abstract**

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

But with the increase in the number of offences against women in the recent time, there is an endless discussion regarding 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.

The indecent representation of women is a matter of concern which requires the proper attention of authorities and lawmakers for taking actionable decisions. But to maintain the deed, awareness is the only way to bring persistent changes to the 'representation of women,' and along with that, some strict actions need to be taken to make it a reality. Thus, it is mandatory to generate a sense of awareness among people in regards to the indecent representation of women to limit the obscene & objectionable representation of women.

**Keywords-** Advertisements, Morality, Vulgar, Pornography, Indecent, Representation, Women, Language, Relationship, Equal Justice, Obscenity.

**Introduction:**

An early English standard of obscenity was propounded by Cockburn C.J. in *Regina v. Hicklin*<sup>1</sup>. The standard is "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". The Hicklin test was initially adopted in America also but later on it was discarded in *Roth v. United States*<sup>2</sup>. In *Roth* court held that obscenity falls outside constitutional protection and should be judged by the average person applying contemporary community standards and to the most vulnerable members of society as propounded by Hicklin court.

In India, Hicklin's test has been adopted by the Supreme Court in a leading case of *Ranjeet D. Udeshi v. State of Maharashtra*<sup>3</sup>. This case has decided many issues pertaining to obscenity.

In today's modern world, the power of media & advertisement cannot be neglected. In fact, Media is considered as the fourth pillar of the Indian democracy. It is a primary source of information been delivered to people across the country. It is the media that throws light on any conflict situation in the country and reflects the verdict of the democracy. Thus, its functioning helps in developing the civil society. In the recent years, we had witnessed an enhanced alliance between media and the common people. Media's significance in today's time is more than at any other time. No doubt, media plays a leading role in proceeding and development of any nation with the action of involving, advising, and transforming the views and thoughts of people for a particular instance by putting forward the pieces of evidence and case studies related to it to give a broad overview of the situation. Media has to turn out to be a primary component of the social change in the Indian society.

The advance evolution in the field of Internet technologies has benefited billions worldwide. The expansion in Information and Communication technology and growth of digital media had brought a progressive change in media and advertisement sector. But, the great invention of the Internet comes along with its transcendental jurisdiction that caused the major threat to our society in a form of "Cybercrimes." And women are the major victim of this crime.

Acknowledging the same, there is a need to discuss and amend the laws related to Obscenity & Indecent Representation of Women in the Indian nation.

### **What is the act of Obscenity and Indecent Representation of Women? Its Concept and Meaning**

The act of Obscenity and Indecent Representation of Women refers to the representation of women figure, her structure or any other body part through publications or advertisements, paintings, writings, or any other manner in an indecent way that more likely to have a negative and offensive effect on the image of women, and is intended to corrupt, disrespect and hurt the morals of the society.

In the recent time, the rise in the usage of several digital communication channels/platforms such as WhatsApp, Skype, Snapchat, Chat on, etc. and various social media platforms like Facebook, Twitter, Instagram, etc. which has made communication a simple task of few clicks even with person sitting in the other country. But these applications have been accountable for proposing illegal and derogatory actions against women by circulating offensive and objectionable representation of women in a way of pictures, videos, and in any other manner, which disrespect the esteem of women and dishonor the courtesy and civility of the society.

### **Women and Advertisements:**

No doubt, women play a significant role in the advertising industry. There is an increasing appeal in the role of women in promoting products or any concept. Also, the presence of women in TV ads, serials, and other medium has been an upsurge. Advertisements have offered multiple career options for women as modeling, acting, fashion designing, etc. But, it is more likely that most of these advertisements induce women to be victims of offensive advertising approach, which led to represent women inoffensive way for the commercials.

Media and Advertisement play a major role in exploiting women image in an adverse and disrespectful manner. It could be in a way of the abusive picture, article, video, photograph,

write up, magazine cover, publication, etc. that is against the moral of the society and considered to be vulgar and obscene in the society. Media is responsible for promoting obscenity in the manner of broadcasting semi-nude commercial ads, videography, soft-porn news, and much more which are not acceptable in the society.

**Incidents of Women Abused:**

The first incident related to cyberstalking in India has been reported in 2000, where the assailant, a Software Engineer (30), name Manish Kathuria was arrested for disturbing a woman through chat over the Internet. The victim stated that he used abusive and annoying language and circulating her phone number over the Internet, inviting other people to call and chat with the lady. As the result of this action, the victim started receiving vulgar and objectionable calls from all around where people talked in abusive and disrespectful manner. Being getting disturbed by this matter, she reported the matter to Delhi Police. The Police actively traced the assault and caught him and filed a case against him under the section 509 of Indian Penal Code for violating the decency of a woman.

The other incident is of the year 2008, wherein the Chennai's fast-track court penalized a famous orthopedic surgeon for the punishment of life imprisonment for the act of taking offensive photographs of women. He used to upload those pictures over the Internet. The surgeon forced the women patients to pose obscenely in front of the camera.

**Provision of Law Against the act of Obscenity and Indecent Representation of Women**

The way in which women have been portrayed or represented in advertisements in an indecent and offensive manner is a serious concern which requires proper attention and strict action of lawmakers and jurisdiction in decision making. It has created some specific norms on the depiction of women image in media. Though to make it happen, there is a need of generating awareness which can only bring long-term effect to the 'representation of women' & along with it some strict legal process should be seized for making it actually happen. The development and progress of women are unachievable in isolation rather make it happen society and community need to put efforts hand-in-hand along with government and most importantly women should themselves be capable in bringing a better change. They should be able to take a stand and raise their voice against any offence incident or any indecent action by a person. Women should be aware of these unacceptable actions and shouldn't tolerate it and should

learn that there are specific rules and laws made by the Indian constitution against these obscene actions to protect their dignity.

The Indian legislation has constituted several laws to restrain obscenity and indecent representation of women. The laws are specifically created to restrict obscene, offensive, and hurtful acts which are against the morals of the society. Several legal provisions that include sections, codes, and acts have been considered that reflects the Indian scenario against the act of obscenity & indecent representation of women.

There are several provisions in Indian legislative system that restrict the approach of obscenity. In regards to it, the Indian constitution has crafted related penalties and punishments for such action that deprived the decency of women. The following acts are considered in regards of obscenity in Indian law:

1. Selling, distributing, circulating, exhibiting and possessing of any obscene material
2. The import, export, and transmission of any obscene material with the aforesaid purpose
3. Involving in or taking credits from a business or person involved in dealing with the obscene materials/articles
4. Advertising or selling such obscene articles and performing any acts which are opposed to the laws.

The Indian legal provisions against obscenity and indecent representation of women are mention below:

### **Indian Penal Code, 1980**

According to the Section 292 of the Indian Penal Code, there occur three tests to measure the term obscenity that are as follow:

A Paper, Pamphlet, book, writing, magazine or any other publication shall be counted to be obscene in case it is:

1. Indecent or vulgar; or
2. Address to the lascivious interest; or

3. If its impression or in case it is more than one element when taken entirely is corresponding to break to corrupt and demoralize the person who has regards to the particular situation to read, hear or see the published matter.

If the above mention conditions are executed, then, the subject is considered to be obscene and will be punishable under the legal provision.

### **Cable Television Networks (Regulation) Act, 1995**

This act banned the broadcasting of advertisement on the cable network that doesn't operate in consent to the advertisement rule. There are specific advertisement codes which are laid out under Rule 7 of the Cable Television Network Rules, 1994. Violation of these laws attracts the liabilities. It is stated in the Advertisement Code that no such advertisements should be accorded that criticize any caste, race, creed, nationality, and color in any manner.

### **The Information Technology Act, 2000**

This act has been carried out to facilitate a secure manageable environment for the electronic commerce. This act is considered to, regulates the commercial activities and thus has several provisions which attribute to punishments and offences. The lawmakers have clearly determined this act to be the supreme legislation to all the govern computer-based activities in India. Although there is a separate chapter related to Offences and for the objective of it, an important provision is section 66 that states:

Any person who publishes or broadcast or causes to produce in electronic form, anything which is indecent and addresses to lascivious interest or is corresponding to break to corrupt and demoralize the person who has regards to the particular situation to read, hear or see the item embodied, is punishable.

### **The Cable Television Network Act, 1995**

An act which deals with transmitting of programs through an addressable system. It regulates the operation of cable television network in regards to public interest. This law stated that 24 hours there cannot be a transmission of the Adult program on the television. It aims to regulate the objective program been available to the viewers which could lead to exploitation of the young generation. There are specific punishments for the objective bodies under this act.

### **The Indecent Representation of Women [prohibition] Act, 1986**

The Indecent Representation of Women [prohibition] Act, 1986, is an authoritative act that regulates the offence and indecent depiction of women through media and advertisement or either in publications, paintings, writings, magazine cover, slides, drawings, photographs, films, commercial ads, figures, and in any other way, along with the matters or incidents connected to it.

The act stated that representation of the body, figure, and any other body part of the women, which is criticizing women and at the same time disrespecting the public morality is considered to be a punishable crime. The act punishes any sort of obscenity and indecent representation of women in any manner that refers to 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 incident or offensive which more likely deprived or hurt the morals of a society.

#### **Article 21**

Article 21 is assessed as recognizing the rights and liberty of human livelihood, their privileges, and dignity. The act is referred to as the heart of Indian laws and constitution and real assets of development to the Indian nation. Article 21 of Indian constitution states that “No individual shall be divested of their life and of their personal freedom except that the procedure being established by the law.” It implies that every human has the authority to live the life of their choice with respect and dignity and doesn’t have the existence which is similar to those of animals. Also, it refers to that every person has the right to have a respectable livelihood, good living standards, and suitable hygienic conditions. The law stated that it is the integral right of all individuals to live a respectable life and it’s the responsibility of the state to ensure this right to every citizen. It implies that every woman being an individual person has the entire right to live a dignified, decent, respectable, and modest life.

#### **Young Person’s (Harmful Publications) Act, 1956**

Harmful publications are characterized as any magazine, book, pamphlet, writing, newspaper, and any other print publication that contain stories explained with the help of pictures or even without involving the pictures, and entirely explained with the pictures. The stories that described completely or mainly:

1. Act of offences
2. The action of cruelty and violence
3. Incident of odious and horrible nature

Due to these factors, such printings will pollute the mind and actions of persons who read it. The actions shall be taken against the person(s) who involves in printing, selling, distributing, hiring process, and in possession of such publications. The act of harmful publications aims to punish the assault with imprisonment that can extend to six months, and in some case, it involves imprisonment with fine.

### **National Human Rights Commission (NHRC)**

The National Human Rights Commission (NHRC) together with the State Human Rights Commission hold the right to protect women dignity in the advertisement. The section 2(d) of the act states that human rights refer to the rights pertaining to equality, liberty, livelihood, and individual's dignity assured by the Indian Constitution or represented in the International commitment and permissible in the Indian legislation and courts. Under the section, the NHRC has seized attention over specific violations against the modesty of women which has been placed under this act.

### **The Press Council of India**

The Press Council of India was founded in the year 1978, with the aim to give autonomy to the printing press and additionally improving standards of newspapers and publishing houses in the country, which means the council is formed with the mission to assist the newspapers and other agencies to possess their creative rights and freedom in their work and along with that follow certain policies that maintain the standard and esteem of our society, creating awareness among people in regards to their rights and responsibilities. It is the responsibility of the editor to make sure that no such content shall be printed or published that crosses the line of obscenity and decency of women. The editor must be held responsible for the violation of such specific action.

According to the rule of journalist policy of PCI, any journalist or newspaper shall not print any sort of content that is vulgar, obscene, indecent, and offensive to the public morality. Along with that, the rule states that newspaper shall not print advertisements that are objectionable



and vulgar and anyhow involves representation of women in lewd posture, nude or semi-nude manner, evoked prurient attention of the males in concern to if the woman herself was an object for sale in the advertisement.

### **Women have Inherent Right to Dignity**

The concept of dignity isn't any privilege or authority offered by a state. In fact, dignity holds a clear relationship with the law and judiciary and it cannot be kept & manage without legal support. Thus, the legal system plays a crucial role in imposing and framing rules in a way which helps in maintaining the dignity of women. Legal provisions and dignity need to come together in order to bring a better change in the society.

When it comes to advertisement, the dignity of a woman is extremely sacrificed when there is no précised execution of laws. Dignity is a basic, inherent, an essential element of human livelihood. And for women, it is more of a sensitive issue. Women should not be considered as the means to attain the advertiser's benefits. It is required to depict women in a respectable and decent manner in advertisements that not only maintain the dignity of women but also retain the morals of our society. It is important to remember this; dignity is for all and is a fundamental right of every human being, and women hold the right to live the life of their own choice.

### **Conclusion**

In respect to this concern, it is concluded that proper execution of laws in addition to people awareness and at the same time educating women regarding their authorities and legal rights can result in abolishing cybercrimes and obscenity from the society. Such acts cannot be suppressed solely by sanctioning laws. Additionally, considering from the point of protecting the social norms would not be sufficient. The rise in the digital technology has evolved very faster in comparison to the growth in the rules and laws governing technology. Therefore, the existent laws seem short to control this issue. The indignation of obscenity is a matter of serious concern and thus requires the attention of lawmakers to strictly follow the legal provisions and proposed new committees and laws which would help in regulating and declining the actions of depicting the women in an obscene or indecent manner.