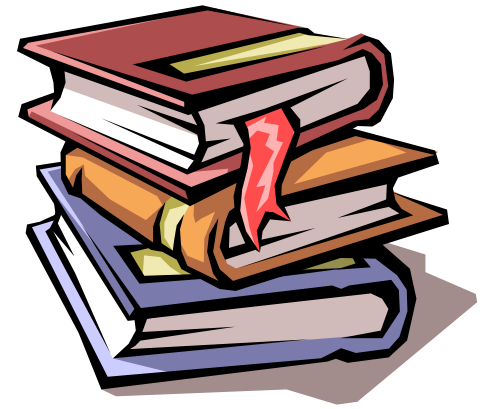




Media & Criminal Law
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Media - Criminal Law

points of convergence

- Sedition 124A
- Obscenity 292-294
- Incitement to offence or abetment ss 107-120
- Promoting enmity between groups 153A
- Imputation prejudicial to national integration 153B
- Identity of Rape Victim 228A
- Media by trial

Media: Accessory To The Crime?



SOMETHING FOR THE MEDIA TO THINK ABOUT

- A [mob of about a hundred people](#) arrived at my house at 11 this morning (Sunday, October 31, 2010.) They broke through the gate and vandalized property. They shouted slogans against me for my views on Kashmir, and threatened to teach me a lesson.
- The OB Vans of **NDTV, Times Now and News 24** were already in place ostensibly to cover the event live. TV reports say that the mob consisted largely of members of the BJP's Mahila Morcha (Women's wing). After they left, the police advised us to let them know if in future we saw any OB vans hanging around the neighborhood because they said that was an indication that a mob was on its way.
- In June this year, after a false report in the papers by Press Trust of India (PTI) two men on motorcycles tried to stone the windows of my home. They too were accompanied by TV cameramen.

Arindhati Roy questions media

- What is the nature of the agreement between these sections of the media and mobs and criminals in search of spectacle?
- Does the media which positions itself at the “scene” in advance have a guarantee that the attacks and demonstrations will be non-violent?
- What happens if there is criminal trespass (as there was today) or even something worse?
- Does the media then become accessory to the crime?
- This question is important, given that some TV channels and newspapers are in the process of brazenly inciting mob anger against me.
- In the race for **sensationalism** the line between **reporting news and manufacturing news** is becoming blurred.
- So what if a few people have to be sacrificed at the altar of TRP ratings? s

Offences Against Religion

- 1. Uttering words with deliberate intent to wound religious feelings s 298
- 2. Criminal intimidation s 503
- 3. Intentional insult to provoke breach of peace 504
- 4. Statements causing public mischief 505
- 5. Insulting the modesty of women 509

Uttering words with deliberate intent
to wound religious feelings s 298



- Thousands of believers flocked to a suburban street in the west of Mumbai in March, when drops of water began to fall from the feet of Jesus on the cross, drinking the prized liquid in the hope that it had holy powers.
- Sanal Edamaruku, president of the Indian Rationalist Association, said he inspected the site and found the source of the water to be leaking toilet drainage, making it dangerous to imbibe.
- “Any kind of miracle-mongering is ultimately to get money and power.”
- Accusing him of spreading “anti-Catholic venom” during televised debates on the crucifix, outraged religious groups in Mumbai have filed police complaints that could see **Edamaruku jailed for up to three years under India’s blasphemy law. 2012**

Ekta Kapoor vs. State of M.P. and Ors.

(11.11.2020 - MPHC) : MANU/MP/1279/2020

- **'Pyar Aur Plastic'**

The story revolves around 3 characters Dr. Sanjay who is a plastic surgeon, his girlfriend namely Priya and one another lady who is step mother of Priya. The step mother visits Dr. Sanjay for cosmetic treatments for her body transformation as a gift to her husband on his 60th birthday who is a retired Army Officer. During the course of interaction the step mother and Dr. Sanjay grow close to each other and become physically intimate with each other. On the other hand, Priya, the girlfriend of Dr. Sanjay decides to introduce him to her parents. When Dr. Sanjay meets Priya's parents, he is left dumb founded, as the step mother of Priya is the same lady who had earlier become intimate with Dr. Sanjay. However, Dr. Sanjay and Priya eventually get married. The step mother, however entices Dr. Sanjay to continue physical intimacy with her. This intimacy is discovered by Priya. Shocked Priya files divorce case against Dr. Sanjay and her step mother claims that it was Dr. Sanjay who was forcing himself on her. Priya claims Rs. 5.00 Crores along with life time of free Botox treatment from Sanjay as alimony.⁵



The complainant submits that the sole purpose of making the episode is to titillate and arouse the baser instincts of audience, that such obscene depiction on public platform has caused annoyance, that it intentionally hurts religious feelings when the male protagonist expresses disgust on knowing about 'Satyanarayan Katha' in the house of his love interest and that a particular scene breaches the sanctity of National emblem amounting to its dishonour.

The petitioner submits that during the moments of physical intimacy of step mother of Priya with Dr. Sanjay, the step mother is shown to have made Dr. Sanjay wear her husband's uniform and later during the course of intimacy she unbuttons the said blazer. This scene has been objected against by the complainant saying that it tarnishes the reputation of Indian Army.

- The petitioner submits that he is a Managing Director of ALT Digital Media Entertainment Ltd., registered under the Companies Act, 2013 and having registered Office at C-13, Balaji House Dalai Industrial Estate (Opposite Laxmi Industrial Estate), New Link Road, Andheri (West), Mumbai (Maharashtra). This Company is a subsidiary of Balaji Telefilm, which is a Prominent Media and Entertainment Company registered under the Companies Act, 1956, which produces and has produced some well known Indian soap operas and entertainment programmes and shows in various Indian languages. On 16.4.2017, this Company launched an OTT (Over the Top) digital platform named ALT Balaji, which is a subscription based video on demand service that offers content to consumers using an internet connection over mobile, tablet devices and web browsers etc. Browsing the content transmitted on this platform is commenced by a request and viewer is required to pay a recurring subscription fee or one time subscription fee in exchange for right to view the content. The transmission of the content by SOVD (Subscription Based Video on Demand) is termed as narrow casting which is fundamentally different in nature from broadcasting. While in broadcasting, the time for transmission is chosen by broadcaster, while in narrow casting the consumer chooses the time and extent of content at place of their convenience with additional facility to play, pause and resume watching their chosen content without being interrupted by advertisements and having ability to exercise parental control.

- The frame work, rules, law and regulations applicable to broadcast services is completely inapplicable to the SOVD services. Certain policy issues that are of fundamental importance to broadcasters such as interconnect, licensing, QoS etc are completely inapplicable to SOVD services. The content which is streamed on OTT platform is not regulated by Central Board of Film Certification. Further, ALT Balaji, being an OTT platform is not covered under Cinematograph Act. The OTT service providers like ALT Balaji comes under the aegis of "Internet and Mobile Association of India" and have adopted a voluntary censorship code, which is called "Code For Self-Regulation of Online Curated Content Providers". This Code regulates the dissemination of the content, ensures that age appropriate content is made available to the audience and restrict the OTT service providers including ALT Balaji from executing and/or promoting obscene internet content. The aforesaid Code has been annexed as Annexure P/2. The petitioner submits that the allegations contained in the impugned FIR do not prima facie constitute any offence. The impugned FIR contains certain allegations against the web service. Hence, the petitioner has thought it appropriate to discuss the episode in brief.

- Prohibition of improper use of emblem.-- Notwithstanding anything contained in any other law for the time being in force, no person shall use the emblem or any colourable imitation thereof in any manner which tends to create an impression that it relates to the Government or that it is an official document of the Central Government, or as the case may be, the State Government, without the previous permission of the Central Government or of such officer of that Government as may be authorised by it in this behalf."
- As per complainant the objectionable scene attracting the above provision relates to an incident when the male protagonist is made to wear army officer's uniform by the wife of army officer before initiating sexual advancement by her and later on during the course of intimacy, forcibly unbuttons the said blazer of the uniform. As per the petitioner, the aforesaid scene is not intended in any way to harm or tarnished the reputation of Indian Army or uniform of Indian Army and the aforesaid scene is not the primal focal point of the story.

- A perusal of Section 3 of the Act makes it clear that the breach of this provision would occur only when the emblem is used in order to create an impression that it relates to the Government or it is an official document of the Central Government. This provision could apply in cases where a person actually would use such emblem on his car or uniform, or any other place, thereby giving an impression that the aforesaid car uniform etc relates to the Government, ie., it is Government property and the person shows as if he is authorized to use such property. Only such use of emblem is prohibited under the Act. Section 4 of the Act prohibits use of emblem for wrongful gain pertaining to any trade, business, patent or design etc. No other act or omission provides for punishment under the Act.
- 109. It is pertinent to mention that "The Prevention of Insults to National Honour Act, 1971", prohibits insulting National Flag and Constitution of India. This Act does not encompass National Emblem, regarding which Act of 2005 is the governing statute, provisions of which have already been discussed earlier.

Freedom and social interest

- Das, J., “social interest in individual liberty may well have to be subordinated to other greater social interests.” *AK Gopalan v. State of Madras*, AIR 1950 SC 27.
- Sections 292 and 293 of the Indian Penal Code deal with obscenity. They were added in accordance with the resolution passed by the International Convention for the Suppression and Circulation of and Traffic in Obscene Publications signed at Geneva on 12 September 1923

- What is Objectionable?
- Obscenity and pornography

Richard A. Spinello observes, Internet its remarkable growth "is not without its social costs".



Triple-ex-ministers?



Amul
Never adult-rated

The three ministers, LaxmanSavadi, C CPatil and J Krishna Palemar, caught on camera viewing obscene clips on the floor of Karnataka legislative Assembly could face jail and one of them even a non-bailable arrest-warrant. As the law stands today Mr.Savadi and Patil **can be booked under Section 292 of IPC for public exhibition, etc.**, of an obscene object. The third minister J Krishna Palemar, who was in possession of the mobile phone, could face a non-bailable warrant if a complaint is registered against him.Palemar can be convicted with **imprisonment up to five years and penalty up to Rs 5 lakh under IT Act**

Indian Test of obscenity

Ranjit D.Udeshi V State of Maharashtra (AIR 1965 SC.P.881)

- F) The test of obscenity as laid down in **Hicklin's** case.

Whether the matter is likely to deprave or corrupt those whose minds open to such immoral influences-if the material suggests to the minds of the young or old, thoughts of most impure and libidinous character...It has to be decided on a case by case basis...

Difference between Obscenity and Online Objectionable content/porn

- A book or material shall be deemed to be obscene, if it is,-
- A) lascivious
- B) appeals to the prurient interest
- C) tends to deprave or corrupt persons
who are likely to read, see or hear the material.

Defences

- A) The publication of which is proved for the public good (sex education) or in the interest of science, literature, art or learning.
- B) If it is used for bonafide religious purpose.
- C) Scriptures, engravings or paintings located in Ancient monuments or Archeological sites.
- D) Materials in temples, temple cars or kept of religious purpose.

Is Porn a form of speech and expression

- A) Even though Art:19 (1) (a) guarantees freedom of expression, existing laws like sec 292 IPC, imposing reasonable restriction in the interests of public decency and morality.
- B) Obscenity means something which is offensive to modesty or decency, lewd, filthy and repulsive.

Difference between obscenity and pornography:

Ranjit D.Udeshi V State of Maharashtra (AIR 1965 SC.P.881)(contd)

- The later is intended to **arouse sexual** desire and the former do not intend to do so, but may have that tendency.
- Pornography is more aggravated form of obscenity.

Ranjit D.Udeshi V State of Maharashtra (AIR 1965 SC.P.881)(contd)

- D) Prosecution need not prove knowledge on the part of the accused.
- E) If the sale of obscene book is proved (Actus Rea), the prosecution and need not prove Mens Rea or intention by positive evidence. The law against obscenity imposes strict criminal responsibility.
- Where as Sec 67A and B emphasize on Intention of the accused.

Child pornography

- Child pornography is identified as a heinous crime that may operate as a gate to further crimes, like sex tourism and sexual abuse, aside from being a record of a sexual assault on a child
- There is a steady rise in the number of child pornography cases registered and arrests in India. According to minister of state for home M Ramachandran as told to Lok Sabha, across India, the number of cases stood at 99 in 2007, 105 in 2008 and 139 in 2009
- study conducted on child abuse by the Ministry of Women and Child Development, 30.22% of children surveyed reported they had been exposed to dirty pictures.
- INTERPOL has **cited Germany** as one of the major producers of child pornography, with the Netherlands and the United Kingdom as the major distribution centres. United States is one of the largest markets of demand for child pornography
- Ninety-four of 187 [Interpol](#) member states had laws specifically addressing child pornography as of 2008
- **67B (2008) amendment**

International Conventions and Child Porn

- The **United Nations Convention on the Rights of the Child** says in **Article 34** that **countries** are required to take all appropriate national, bilateral and multilateral measures to prevent the exploitative use of children in pornographic performances and materials
- The **Convention** carries with it an **Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography**, adopted by the United Nations General Assembly in 2000 and in force since 18th of January of 2002. Article 1 declares that states are to protect the rights and interests of child victims of trafficking, child prostitution, child pornography.

What constitutes obscenity in electronic form?

- Section 67 of the IT Act is the most serious Indian law penalizing cyber pornography.
- **Lascivious is something that tends to excite lust.**
- **Appeals to, in this context, means “arouses interest”.**
- **Prurient interest is characterized by lustful thoughts.**
- **Effect means to produce or cause.**
- **Tend to deprave and corrupt in the context of this section**
- **means “to lead someone to become morally bad”.**
- **Persons here refers to natural persons (men, women, children)**
- **and not artificial persons (such as companies, societies etc).**

To understand....

- it must tend to excite lust, or
- it must arouse interest in lustful thoughts, or
- it must cause a person to become morally bad.
- **Sameer launches a website that contains information on sex education. The website is targeted at higher secondary school students. Pooja is one such student who is browsing the said website. Her illiterate young maid servant happens to see some explicit photographs on the website and is filled with lustful thoughts**

Some illustrations

- **Publishes means “to make known to others”.**
- Sameer has just hosted a website containing his articles written in English.
- **Sameer has not published the articles.**
- An automated software released by an Internet search engine indexes Sameer’s website.
- **Sameer has still not published the articles.**
- A Chinese man, who does not understand a word of English, accidentally visits Sameer’s website.
- **Sameer has still not published the articles.**
- Pooja, who understands English, visits Sameer’s website and reads some of his articles.
- **Now, Sameer has published his articles.**

Contd....

- Transmits means to pass along, convey or spread. It is not necessary that the “transmitter” actually understands the information being transmitted.
- Sameer has just hosted a website containing his articles. Pooja uses an Internet connection provided by Noodle Ltd to visit Sameer’s website. Noodle Ltd has transmitted Sameer’s articles to Pooja. However, Noodle employees are not actually aware of the information being transmitted by their computers.

Avnish Bajaj vs. State (N.C.T.) of Delhi

- An obscene MMS clipping was listed for sale on Baazee.com on 27th November, 2004 in the name of “DPS Girl having fun”.
- Whether it amounts to publication?
- actual recording was not viewable on the website.
- The Item's description "DPS Girl having fun" should have raised alarm.
- Avnish Bajaj is the CEO of Baazee.com, a customer-to-customer website, which facilitates the online sale of property. Baazee.com receives commission from such sales and also generates revenue from advertisements carried on its web pages.

Publishing cyber pornography (Summary)

- **Actions covered Publishing**

- **Penalty First offence:**

- **Subsequent offence:**

- **Relevant authority**

- **Appeal lies to**

- **Investigation Authorities**

- **transmitting cyber pornography causing to be published**

- **Simple or rigorous imprisonment up to 5 years and fine up to Rs 1 lakh**

- **Simple or rigorous imprisonment up to 10 years and fine up to Rs 2 lakh**

- **Court of Session**

- **High Court**

- **1. Controller of Certifying Authorities (CCA)**

- **2. Person authorised by CCA**

- **3. Police Officer not below the rank of Deputy Superintendent**

Should we NO

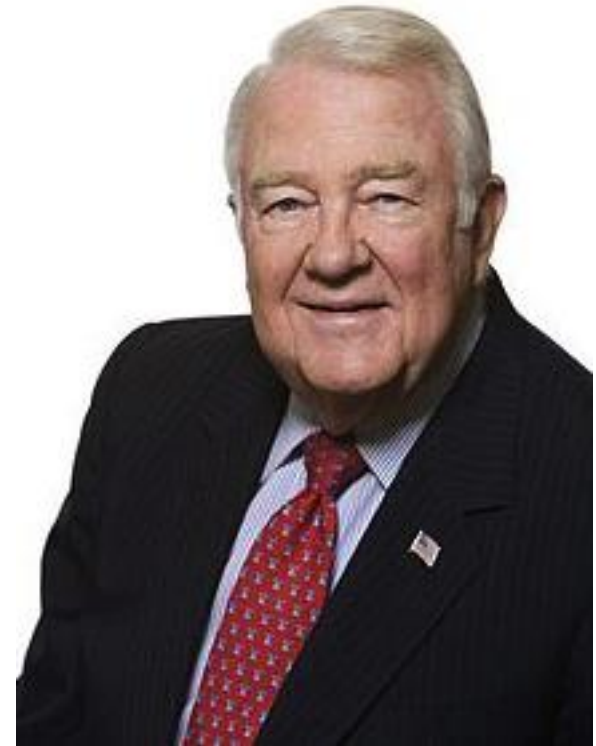
- **Ronald Dworkin** says that no conduct should be suppressed by law unless it can be shown to harm some one without any persuasive evidence of the causal influence.
- **John Stuart Mill** felt that we do not know in advance what social, moral, or intellectual developments will turn out to be possible, necessary or desirable for human beings and for their future and **free expression** intellectual and artistic something which may need to be fostered and protected as well as merely permitted is essential to **human development as a process** which does not merely happen but so far as possible is rationally understood.
- Since human beings are not just subject to their history but aspire to be conscious of it the development of human individuals, of society and of humanity in general is a process itself properly constitutes in part by **free expression and the exchange of human communication**.



Meese Commission Report:

1982 comprehensive investigation into [pornography ordered by U.S. President Ronald Reagan.](#)

- *"there was insufficient evidence that exposure to explicit sexual materials played a significant role in the causation of delinquent or criminal behavior."* In general, with regard to adults, the Commission recommended that legislation "should not seek to interfere with the right of adults who wish to do so to read, obtain, or view explicit sexual materials." .

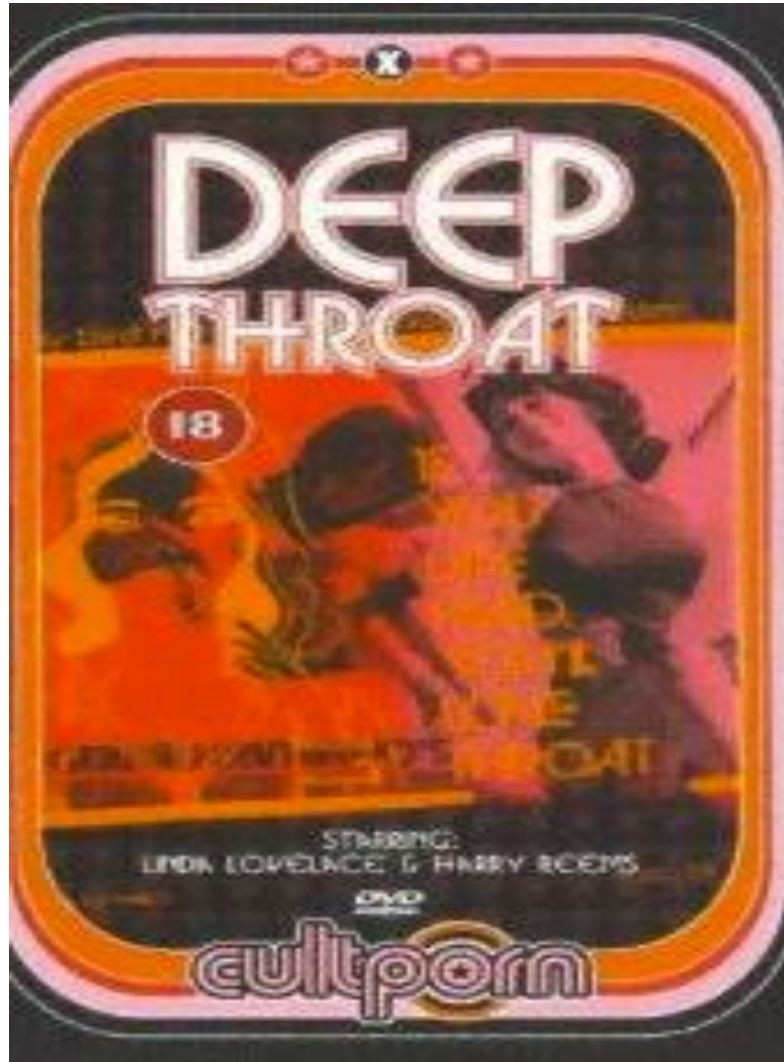


Meese
75th [United States Attorney General](#)

Yes:

- ✓ *MacKinnon* argues that it is this inequality that makes pornography sexy:
 - Inequality between men and women is what is sexy about pornography - the more unequal the sexier.
 - Pornography is defamation, gender discrimination and new terrorism.
- ✓ *Andrea Dworkin*
- ✓ *Civil rights issue*
- ✓ argue that pornography sexualises and maintains inequality by promoting women as inferior and subordinate to men.
 - It does this associating women with feminine, men with masculine and by showing the masculine (male) as dominant and women (feminine) as inferior objects to be used, controlled, and violated for male sexual pleasure. pornography is a sexually discriminatory act and should be legally actionable as such

1. Harms to persons used in pornography



- Every day I either got raped, beaten, kicked, punched, smacked, choked, degraded or **yelled** at. Sometimes, I got all of the above. Strangely enough, what bothered me the most was the endless verbal abuse. He never let **up**.

Linda Lovelace (Deep Throat)

Evelina Giobbe, a survivor of pornography and prostitution
stated:

- I am a rare survivor. Most women who have shared my experiences are not as fortunate. It took close to 20 years to undue [sic] the physical and emotional trauma of being used in prostitution and pornography. Today I am an activist in the feminist anti-pornography movement. But the pornography that was made of me still exists. I know the men who made it. I know where some of them are. But there is nothing I can do about it. I live knowing that at any time it could surface and **be** used to humiliate me and my family. It can **be** used to ruin my professional life in the future. Because pornography is a profitable multi-billion-dollar-a-year industry, I also know that what happened to me will continue to happen to other women and girls. **They** will continue to **be** used and hurt in the same way that I was. And if they should **be** fortunate enough to escape, they will live under the same threat of exposure and blackmail that I do.

2. Indirect Harm:

State v Herberg:

324 NW 2d 346, 347 (Minn, 1982) (American case)

- ✓ On July **17, 1981**, David Herberg forced a 14-year-old girl into his car, tied her hands with his belt, and pushed her to the floor. With his knife, he cut her clothes off, then inserted the knife into her vagina, cutting her. stick a safety pin into the nipple of her own breast, and ask him to hit her. He then orally and anally raped the girl.
- ✓ He made her bum her own flesh with a cigarette, defecated and urinated in her face, and compelled her to eat the excrement and to drink her own urine from a cup.
- ✓ He strangled her to the point of unconsciousness, cut her body several times, then returned her to the place where he had abducted her.
- ✓ **In reviewing Herberg's criminal appeal, the Supreme Court of Minnesota noted that when Herberg committed these acts, he was 'giving life to some stories he had read in various pornographic books.'** **Officials seized these books from him during his arrest.**

Canadian Supreme Court case of *R v Butler*, [1992] 1 SCR the 452 (*Butler*)

- The Women's Legal Education and Action Fund (**LEAF**), argued that pornography was an issue of sex discrimination which caused systemic gender inequality and the subordination of women within society.
- Verdict: there was a 'causal relationship between obscenity and the risk of harm to society at large' and that 'the relationship between pornography and harm was sufficient to justify Parliament's intervention

Harm Continues....

- ✓ A further harm to pornography's 'actors' is the substantial risk to actors of contracting sexually transmitted diseases
 - John Holmes, a famous pornography 'actor', who died of AIDS related complications in March 1988.
- ✓ Diana E H Russell, *Against Pornography: The Evidence of Harm* (1993). In this book Russell provides commentary on over 100 pornographic photographs and cartoons. Many of the photographs show women bound, gagged, being raped, tortured, penetrated by objects and animals and in obvious pain and distress

Michale Evans (Australia)

- **A** high percentage of non-incarcerated rapists and child molesters have said that they have been incited **by** pornography to commit crimes;
- Pre-selected normal healthy male students say they are more **likely** to rape a woman after just one exposure to violent pornography;
- **A** high percentage of male junior high school students, high school students, and adults in a non-laboratory survey report imitating X-rated movies within a few days of exposure; Hundreds of women have testified in public about how they have been victimised **by** pornography;
- Ten percent of a probability sample of **930** women in San Francisco and **25%** of female subjects in an experiment on pornography in Canada reported having been upset **by** requests to enact pornography;
- Many prostitutes report that they have experienced pornography related sexual assault;
- The laws of social learning must surely apply to pornography at least as much as the mass media in general. Indeed, **I** - and others - have argued that sexual arousal and orgasm are **likely** to serve as unusually potent reinforcers of the messages conveyed **by** pornography;
- **A** large body of experimental research has shown that the viewing of violent pornography results in higher rates of aggression against women **by** male subjects

Andrea Dworkin's testimony before the Attorney General's Commission on Pornography, during its hearings at the United States Court of International Trade in New York City, Jan. 22, 1986

- ✓ Pornography is a civil rights issue for women because it is the systematic exploitation of a group of people because of a condition of birth.
- ✓ Pornography creates bigotry and hostility and aggression towards all women, targets all women, without exception.
- ✓ Pornography harms women. It harms society's image of women by **portraying them as sexual objects** who have perfect bodies and are always hungry for sex forever panting and forever young.
- ✓ Some pornography actually includes violence, culminating at the farthest extreme in "snuff" **films where women are killed or appear to be killed in front of the camera..**
- ✓ Research shows that viewing violent pornography encourages, or at least is correlated with, sexual violence as acted out by male devotees of the material. Pornography also harms some of the women who participate in it as photographic subjects or actors. Research shows that some such women may be filled with shame, despair, and self-revulsion

FREEDOM OF SPEECH AND EXPRESSION??????

WHOOSE FREEDOM AND WHAT IS EXPRESSED

- ✓ A civil rights ordinance, as opposed to a zoning ordinance, would **allow the victims of pornography to sue the makers and distributors of that pornography**, to obtain injunctions to stop the sale and distribution of pornography made of them and damages. The ordinance was the first attempt to regulate pornography as an issue of sex discrimination.
- ✓ The **Minneapolis ordinance was enacted but vetoed by the then Mayor. In 1984, Indianapolis passed a similar ordinance as legislation.** It was later held to be **unconstitutional** because it was deemed to be a violation of the **right to freedom of speech**, protected by the First Amendment to the *United States Constitution*.

Pornography vs constitution.....U.S

- ✓ the Communication Decency Act, (CDA)
 - ✓ the Child Pornography Prevention Act, 1996. (CPP)
 - ✓ the Child Online Protection Act 1998 (COPA)and
 - ✓ The Children Internet Protection Act, (CIPA)2000
 - ✓ Prosecutorial Remedies and other tools to end exploitation of Children Today (PROTECT ACT) of 2003.
-
- In 1997, the U.S. Supreme Court struck down the **Communications Decency Act (CDA)**.
 - Congress responded by passing the Child Online Protection Act (COPA) to correct the constitutional defects in the CDA.
 - The Supreme Court found that COPA likely violated the First Amendment because the government had not meet its burden of proof in showing that less restrictive alternatives (especially filters) would be less effective.' °
 - **The United States has been unable to respond appropriately and provide a model for the rest of the globe for an intelligent balance of safety and privacy, adult and child use**

Ranjit case: Art or obscene?

- *Ranjit D Udeshi v. State of Maharashtra*, AIR 1965 SC 881.
- Charged u/s 292 IPC [1] for certain obscene passages in *Lady Chatterley's Lover*.
- Mr Mulk Raj Anand, a writer and art critic, was witness, who presented a detailed analysis of the novel and opined that the novel was a classic work of considerable literary merit and not obscene..

Test laid down in Ranjit

- **(1) "Where obscenity and art are mixed, art must so preponderate as to throw the obscenity into a shadow or the obscenity must be so trivial and insignificant that it can have no effect and may be overlooked. In other words, treatment of sex in a manner offensive to public decency and, judged by our national standards, considered likely to pander to lascivious, prurient or sexually precocious minds, must determine the result."**

Test

- **(2) "The test 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 obscenity is treatment of sex in a manner appealing to the carnal sides of human nature, or having that tendency."**

Test of obscenity

- **(3) "The law seeks to protect not those who can protect themselves but those whose prurient minds take delight and secret sexual pleasure from erotic writings. No doubt this is treatment of sex by an artist and hence there is some poetry even in the ugliness of sex.**

Social or moral message

- *Ranjit D Udeshi v. State of Maharashtra*, AIR 1965 SC 881. In this case it was further laid down that a work is *per se* not obscene if it contains some social or moral message.

Differing standards

- The fact that certain books are banned in some countries but not in others (Lady Chatterley's Lover for example is banned in India but not in England or the United States of America) shows the extreme subjectivity of the issue.
- constitution guarantees freedom of speech and this includes the right to see and produce obscene articles.

Hicklin not valid

- Hicklin test was retained till 1954 in UK. A mass of literature may be wholly unreadable to adolescent but that does not mean that a publisher is guilty of a criminal offence for making them available to general public.
- Hicklin is rejected in US, Ulysses case: whether to average person, the theme as a whole appeals to prurient interest?

Test in India

- It is obscene if it is,
- Lascivious, appeals to prurient interest, if its effect as a whole, tend to deprave and corrupt persons
- Intention of writer is important: Judge should place himself in writers shoes and adjudge
- Vulgarity, Nudity may not be obscene

Film Medium

- Raj Kapoor v State- satyam sivam sundaram
- Indecent Representation of Women Act 1986,



Bandit Queen- Seema biswas



Sculpture not obscenity

- Representation sculptured, engraved, painted or otherwise represented in any ancient monument, or temple or any car used for carrying idols or used for religious purposes. (Exception to 292 IPC)
- 293 Selling Obscene things. Such things can be forfeited by the Govt under CrPC.

Bobby Art International

- This was applied in ***Bobby Art International v. Om Pal Singh Hoon***, AIR 1996 SC 1846. This case related to the showing of rape scenes in the movie 'Bandit Queen'. The courts held that nakedness does not always arouse carnal passions and the intent of the producer was to arouse sympathy from the viewer. The film focused on social evils and thus was held not to be obscene.

What is the test?

- *Shri Chandrakant Kalyandas Kakodkar v. The State of Maharashtra and Others* (1969) 2 SC 687.
- court applied the *Hicklin* test strictly, and stated that “none has so far attempted a definition of obscenity because the meaning can be laid bare without attempting a definition, by describing what one must look for. It may be said that utilizing sex and nudity in art and literature cannot be regarded as evidence of obscenity without something more. It is not necessary that the angels and saints of Michelangelo should be made to wear breeches before they can be viewed.

Relevance of Hicklin Test

- It must be noted that the *Hicklin* test need not be taken as a static one as was stated in the case of *R. v. Martin Secker and Warburg Ltd.*, (1954) 1 WLR 1138, the judge in directing the jury stated that “because the test [the *Hicklin* test] was laid down in 1868 does not mean that you have to consider whether [this book] was obscene by the standards of nearly a century ago. Your task is to decide whether you think the tendency of such a book is to deprave those whole minds are open to such immoral influences and into whose hands the book may fall when published...the charge is that the tendency of the book is to corrupt and deprave not shock and disgust.”

Test of obscenity

- *Sukanta Halдар v. The State* AIR 1952 Cal. 214 whether a defense of social good is available to an offence of obscenity?
- ‘Nara Nari’ magazine had been thought to be obscene. Publisher claimed: ‘the science of sex’ and not sex with the intent of arousal. Court found plea was merely a trick to escape censure while increasing the circulation.
- Relied upon the *Hicklin* test but modified it. “the tests to be applied to determining whether a particular object is obscene or not would depend on various circumstances. The idea as to what is obscene has varied from age to age, from region to region, dependant upon particular social conditions.

Test in Sukanta Halдар

- There cannot be an immutable standard of social values... The true is not to find out what depraves the morals in any way whatsoever, but what leads to deprave in one way which is by exciting sexual desires and lascivious thoughts. The effect produced on an ordinary member of society or a particular class of readers for which a particular publication may be meant has to be ascertained. It is neither a man of wide culture or rare character nor a person of a depraved mentality who should be thought of as being the readers of such literature.

Sameresh Bose case

- Whether **vulgarity is also obscenity**? *Samaresh Bose v. Amal Mitra* AIR 1986 SC 967.
- Bengali novelist accused of obscenity though no blatant references to sex in his book *Prajapat*. The Supreme Court held the novel to be vulgar and not obscene and stated “vulgarity arouses a feeling of disgust and revulsion and also boredom but does not have the same effect of depraving, debasing, and corrupting the morals of any reader of the novel, whereas obscenity has that tendency.”

Pratibha Naitthani v Uol

- AIR 2006 (Bom) 259: aggrieved by the telecast of "adult and obscene films shown by the electronic media" and "obscene photographs" in the print media, filed a WP before Bombay HC held TV channels were violative of the programme code under the Cable TV Network Act and the Cable TV Network Rules. issued a number of orders while hearing the case.

Directions of Division bench

- Dec 8, 2004 court restrained newspapers from publishing any advertisements that amounted to invitation to prostitution; which had a sexual overtone; or which violated Section 3 of the Indecent Representation of Women (Prohibition) Act, 1986. Dec 1, 2004 and Jan 12, 2005, DB said: absolutely imperative for the Central Government to issue appropriate guidelines regarding downlinking.

Issue

- Whether TV channels are free to telecast CBFC certified adult films despite the restriction in Clause (o) of Rule 6(1) of the Cinematograph Act Rules that no programme shall be carried on the cable service which is "unsuitable for unrestricted public exhibition"?

Right to watch adult content

- The court held that the adult viewer's right to view films with adult content is not taken away by Clause (o) of Rule 6(1). "Such a viewer can always view Adult certified films in cinema halls. He can also view such films on his private TV set by means of DVD, VCD or such other mode for which no restriction exists in law."

No violation of right

- Held restriction upon cable operators and cable service providers that no programme should be transmitted that is not suitable for unrestricted public exhibition did not violate their right to carry on trade and business.
- only films sanctioned by the CBFC, under Act and Rules, as suitable for "unrestricted public exhibition" could be telecast or transmitted on cable TV.

Regulating

- If the sale and viewing of obscene materials is banned, a huge underground market will be set up to serve the demand created for such products. The government would do better to regulate obscenity rather than ban it outright.

Sexual tensions

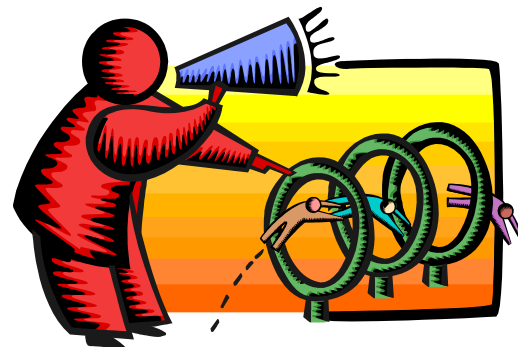
- Another argument used by pro-pornography activists include the fact that pornography has positive benefits in contributing to social well being, including the liberation of people from taboos and constraints at the level of fantasy, and providing a catharsis for individual sexual tensions.

Indecent Representation of Women (Prohibition) Act 1986

- Indecent Representation of women (prohibition) Act, 1986, prohibits indecent or obscene representation of ads and material or photos.
- Indecent representation means depiction in any manner of figure of a woman, her form or body or any part thereof in such a way 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.

Section 3 offence

- No person shall publish, or cause to publish or arrange or take part in publication or exhibition of any advertisement which contains indecent representation of women in form,



Books etc

- 4. No person shall produce or cause to 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 form



Exception

- For public good in interest of science, art, or learning, or other objects of general concern or
- Which is kept or used for religious purposes;
- Sculptured, engraved, painted or otherwise represented in ancient monuments, any temple.

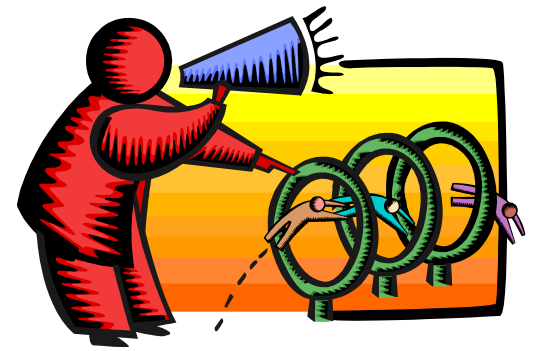


Power to enter

- Any Gazetted officer authorized by State can enter, inspect, seize material containing indecent representation of women.
- No entry in private dwelling house without warrant
- Penalty for offences under SS 3,4, 2 yrs jail plus 1000 for first, up to 5 yrs and one lakh for second and subsequent offences.

Obscenity & Indecent representation of women

- Encouraging some one to engage in a crime is an offence, for procuring obscene object is an offence 292 imprisonment and fine, Indian Penal Code
- Procuring, distributing, communicating and publishing obscene objects or writings is an offence.





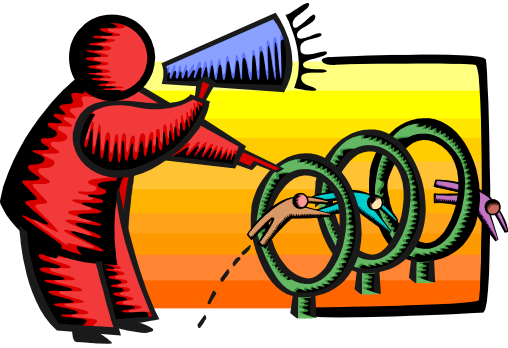
IPC

- Young Persons (Harmful Publications) Act 1956, publishing harmful material is an offence
- S 293 prohibits sale, hire, distribution, exhibition or circulation or attempt is offence. *Ranjit D Udeshi v Maharashtra*, AIR 1965 SC 881, Obscenity defined.



Controversial Tuffs Shoe Ad





Tuffs Shoe



- Model Madhu Sapre faced a trial for charges of obscenity and indecent representation of women, along with Milind Soman. A photograph of the Tuff shoes advertisement, in which Sapre had posed nude with Soman, had appeared with a news item in a newspaper on July 23, 1995, sparking off protests.

Press & IPC

- 124A Sedition: Spreading disaffection (disloyalty and all feelings of enmity) by words or writings against Govt estd by law- punishment life imp+fine.
Disapproving the measures of Govt is not disaffection.
- Not connected with violence, presuppose disaffection, calculated to disturb the tranquility of state by words or deeds leading innocents to subvert the laws or govt in the country.

Sedition

- Indian law of sedition is contained in Sections 124A political offence,
- 153A Sedition by class hatred and
- 295 Sedition by promoting religious insult
- Sedition caused by questioning territorial integrity according to Section 2 Criminal Law Amendment Act, 1961

Binayak Sengupta Case



Tendency of disorder

- Not an offence against public order, but gist is 'tendency of public disorder. Citizen can criticise without inciting to violence.
- Liability of writer or printer is rebuttable presumption, essence of this crime is intention
- Tilak Case Bangbasi, British India Govt is thoroughly dishonest, throw out violently considered to be seditious in 1941

Mao-Tse-Tung

- Book 'Extracts from Mao-Tse-Tung' was forfeited by Gujrat Government as seditious Gujrat HC said to condemn it was closing the doors of knowledge (Manubhai Tribhuvan Das v State. Six out of 184 passages were removed and order reversed
- This continues to be a threat to media's freedom.

Hate Speech

- 153A Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language and doing acts prejudicial to maintenance of harmony. 3yrs
- By words or signs or by visible representations
- By committing act prejudicial to harmony
- Organising movement, drill, to use violence
- Committing this offence at place of worship 5yrs

Prejudicial to Integration

- 153B Imputations assertions prejudicial to national integration- 3yrs + fine.
- Making an imputation that some do not bear true faith to Indian Constitution
- Asserts or propagates that some be denied of their rights as citizens of India
- Making assertions to cause disharmony or hatredness
- Committing this offence at place of worship, 5 yrs

Statements of mischief

- Publishing statement, remour or report
- With intent to cause soldier to mutiny
- With intent to cause fear or alarm to public inducing them to commit an offence against the state or against public tranquility
- With intent to cause one community to commit offences against another community, etc S 505

Offences against religion

- Injuring or defiling place of worship with intent to insult the religion- 2 yr + fine s 295,
- Malicious acts to outrage religious feelings, 3 yrs and fine, S 295A
- Uttering words etc with intent to wound religious feelings, 1 yr + fine, s 298

Sec.293

- Sec 293 of IPC, makes sale of obscene materials to young persons as aggravated act of obscenity, and the punishment is seven years and fine of Rs.5,000/-.

Offences relating to religion:-

- **Sec.295:-**
- Deliberate malicious acts intended to outrage religious feelings or insulting religion or religious beliefs. Punishment three years/fine or both. Sanction under sec 196 CRPC by District Magistrate is necessary. (Ramjilal Modi V State of U.P (SCR-1957 p-860)).

MEDIA TRIAL ?

MEDIA JUDGMENT ?

MEDIA PUNISHMENT ?

Concerns



- Right to Fair trial
- It completely overlooks the vital gap between an accused and a convict keeping at stake the golden principles of *'presumption of innocence until proven guilty'* and *'guilt beyond reasonable doubt'*
- A person is presumed to be innocent unless he is held guilty by the competent court, but here the trend is to declare a person guilty right at the time of arrest. The media is there to report facts or news and raise public issues; it is not there to pass judgments.



- TRP RATINGS: Earlier, journalism was not under pressure to push up TRP ratings or sales. So the journalists did their work with serious intent and conviction, with courage and integrity
- highlighting the *sub-judice issues into public*
- keeping at stake the sanctity of judicial procedures
- Interference with '*right to life with dignity*' of accused and suspects.
- The media trial → media verdict → media punishment
- Is it an illegitimate use of freedom and transgressing the prudent demarcation?

Google News....Taj Hotel



Shivani Bhatnagar's Murder Case





Ram Jethmlani – Villain – CNN-IBN

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Police have no clue'.
Police under pressure





show the truth and that too at the right time !!

THANK YOU