IV. PUBLIC MORALITY AS A CENSORING TOOL: THE CHANGING NOTIONS OF MORALITY IN UK, USA AND INDIA

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Abstract

The renowned 1950's debate between British and American legal philosophers H.L.A. Hart and Lon L. Fuller and symbolized a foundational clash between natural law theory and legal positivism. Hart, a leading positivist, argued that law and morality are not inherently connected, although they may intersect at times. He acknowledged that societal morals influence legal development, but he viewed such connections as coincidental rather than essential. Earlier positivists like Bentham and Austin shared similar views, recognizing that legal systems and moral standards often influence each other, yet still maintained that law's legitimacy lies in its procedural structure rather than its moral grounding. In contrast, Fuller, a proponent of natural law theory, asserted that legal systems are inherently rooted in morality. He believed that laws emerge from evolving societal values and mores, and that these moral foundations are essential for creating a harmonious and functioning social order. To explore how these philosophical frameworks manifest in practice, one can examine the use of public morality as a justification for

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censoring free speech. Issues of "decency and morality" have historically played a significant role in restricting expression. However, across jurisdictions such as the United Kingdom, the United States, and India, courts have gradually shifted toward a more restrained and nuanced application of these limitations. Obscenity laws in these countries have undergone important transformations, increasingly reflecting libertarian values.

***Keywords**: morality, decency, social order, censorship, paternalism*

"I disapprove of what you say, but I will defend to the death your right to say it".

Plato (The Republic)

VIII. INTRODUCTION

Issues of "decency and morality" have historically played a significant role in restricting expression. Social customs, norms, rules, and mores all stem from the broader concept of morality—a notion that courts and policymakers around the world continue to wrestle with. Determining what is moral or immoral often remains clouded in legal ambiguity. However, it is widely acknowledged that as society evolves, so too do its moral standards and social taboos, often shifting in both form and substance over time. Freedom of speech is a constitutional cornerstone of liberal democracies and is universally acknowledged in international

human rights frameworks.[1] Broadly speaking, it encompasses the rights to conscience, thought, and choice, and culminates in the ability to express oneself without facing undue restrictions like censorship. Censorship, in contrast, refers to the act of placing limits either directly or indirectly, and by the government or other entities on the exercise of this right[2]. While libertarians often view censorship as a direct infringement on individual liberty, Communitarian theorists argue that it can serve as a *necessary constraint*—a means of limiting certain rights to protect the broader rights and well-being of the community. However, across jurisdictions such as the United Kingdom, the United States, and India, courts have gradually shifted toward a more restrained and nuanced application of these limitations. Obscenity laws in these countries have undergone important transformations, increasingly reflecting libertarian values. This research undertakes an evolutionary examination of morality, using the legal treatment of obscenity as a focal point. Through a comparative analysis of obscenity laws across different jurisdictions, the study aims to illustrate how moral perceptions have transformed alongside broader societal changes.

[1] United Nations General Assembly, *Universal Declaration of Human Rights*, UNGA Res 217 A (III) (10 December 1948); *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; *Convention for the Protection of Human Rights and Fundamental Freedoms* (European Convention on Human Rights, as amended) (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221.
[2] Bryan A Garner (ed), *Black's Law Dictionary* (11th edn, Thomson Reuters 2019).

India's ranking on the Index of Moral Freedom has shown a decline over recent years. In 2022, India was placed at the *74th position out of 160 countries*, with a performance score of 49.3%. This marked a 2.1% drop from its 2020 score[3]. India's decline is attributed to factors such as increasing restrictions on religious freedom, limitations on sexual rights, and constraints on freedom of expression. In comparison, countries like Portugal have seen significant improvements in their moral freedom scores during the same period. Recent controversy ignited in India Got Latent[4] highlights the ongoing tension in India between freedom of expression and societal norms. While digital platforms have democratized content creation, they have also raised questions about the boundaries of acceptable speech and the role of government and institutions in regulating online content. This incident serves as a case study in the challenges of balancing creative expression with cultural sensitivities in the digital age.

The Researchers intend to address the issue of censorship which is imposed on the content creators and artist in the justification of decency and public morality resulting in imposition of an indefinite deferral merely on grounds of public sentiments and ideology based on conjectures. Such censorship many a times override the Constitutional rights to exercise freedom of speech and expression and stands incongruous to the present day.

[3] *World Index of Moral Freedom* (Foundation for the Advancement of Liberty, 2024) para 3.12.
[4] *Ranveer Gautam Allahbadia v Union of India* WP (Crl) No 85/25 (X) (2025).

The research methodology opted for this study is '*Empirical*' in nature. A systematic survey and observation from the primary data collection has been done with review and references of journals, articles and publications from the secondary sources. The researchers have employed an analytical approach to evaluate the contemporary legal scenario as provided in primary and secondary data.

The present research is limited to the existing legal framework of the United States of America, United Kingdom and India. Further owing lack of resources the empirical research has not been done through physical interview.

IX. THE JURISPRUDENTIAL DILEMMA OF LAW AND MORALITY

The debate over whether the moral majority can impose its views on society is not new. This issue was notably explored in the 1960s by figures like Lord Devlin, H.L.A. Hart, and Ronald Dworkin. At that time, concerns were raised over the perceived decline in sexual morality, leading the government to establish a committee to review whether laws regarding homosexuality and prostitution should be amended. The debate intensified after the committee, known as the

Wolfenden Committee, submitted its report advocating the legalization of prostitution and homosexuality. The purpose of the report was[5]

"to preserve public order and decency, to protect the citizen from what is offensive and injurious and to provide sufficient safeguards against exploitation and corruption of others especially the vulnerable, that is the young, weak in body or mind, inexperienced or those in a state of physical, official or economic dependence. The law should not intervene in the private lives of citizens or seek to enforce any particular pattern or behaviour further than necessary to carry out the above purposes".

John Stuart Mill's Harm Principle- The committee argued that certain matters should be left to individual moral judgment, a reasoning that closely aligns with John Stuart Mill's harm principle. According to this principle, as long as individual actions do not harm others, people should be free to make their own choices. The report sparked significant debate, with many influential thinkers taking opposing positions. Lord Devlin, for example, rejected the report's conclusions. He argued that society shares a common morality—an agreement on basic concepts of good and evil—that is essential for maintaining social cohesion.

[5] Catherine Elliott and Frances Quinn, *Law and Morals* (11th edn, Pearson Education Ltd 2018).

Lord Devlin's Common Morality- According to Devlin, the law has the right to uphold this common morality. He believed that practices which provoke societal disgust should be prohibited, asserting that society has the right to eliminate such practices. Furthermore, Devlin contended that the law should set a minimum standard of morality, which, in his view, should be relatively high. According to Devlin, the widespread availability of pornographic material could undermine the traditional concept of marriage and family, or alter the understanding of sex and relationships in a way that could harm society. In his view, society has the right to intervene and prevent these changes through legislation.

Ronald Dworkin -also critiqued Lord Devlin's notion of moral convictions, which Devlin defined as a form of disgust that could lead to intolerance. Dworkin distinguished between true moral convictions and mere tastes, prejudices, or flawed rationalizations based on incorrect facts or unverified beliefs. He argued that the grounds Devlin used for restricting actions or expressions were unjustifiable because they often stemmed from misguided or superficial beliefs rather than genuine moral reasoning[6] *"...the principles of democracy we follow do not call for the enforcement of the consensus (against homosexuality), for the belief that prejudices, personal aversions and rationalizations*

[6] Ronald Dworkin, *Taking Rights Seriously* (1st supp, 4th edn, Bloomsbury Publishing Plc 2005).

do not justify restricting another's freedom itself occupies a critical and fundamental position in our popular morality…"

The argument of both Hart and Dworkin lays emphasis over the fact that moral conviction entails that a very high level of public morality is necessary, but at the same time, even the highest level of morality cannot play rough shots towards the entrenched rights.

Lon Fuller and H.L.A. Hart: debate

The arguments between Herbert Hart and Lon Fuller were essentially stored in the legal system's own vaults. Although he did not argue that morality and the law are diametrically opposed or unrelated, positivist Hart held that morality and the law are not always related. Hart did not dispute that the mores of the society in which a legal system was being developed do have an impact on the formation of that system, citing the two scholars' equality of "the law as it is" and "the law as it ought to be.

Hart's preferred method did not rule out the possibility of integrating moral values into the law. This idea is particularly relevant in constitutional law, where moral values often influence the interpretation of legal provisions. for instance, Bentham believed that the state constitution might limit the legislature's authority and that moral principles could produce the substance of the aforementioned constitutional limitations. At the same time, Hart found himself in a difficult situation. First of all, a law does not cease to exist if it

transgresses moral principles. However, this does not imply that a rule that is morally just turns into a law. In keeping with the viewpoint of American authors, Hart restated that the evolution of jurisprudence showed that this body of law is essentially what actually exists; even though it may not be perfect, it is not the law that ought to be rather what it is. Complicated legal disputes, upon the view of Hart, have to be adjudicated by the principles of legal interpretation – practically, this is what precedent law is for, and the moral factors are surely to be considered.

Fuller presented an entirely different viewpoint based on the notion of natural law, which upholds and respects the legal system's foundation in age-developing mores. As a result, the law is portrayed as a tool for controlling human behaviour in order to produce a harmonious social order. Fuller further stated that the fundamental principles that form the basis of laws are more likely to be a breed of morality rather than law, and that their effectiveness stems from a widespread belief that these norms are important and correct.[7]

However, he asserted that these "fundamental rules" are implemented as regular legal principles during the regular operation of the legal system. Fuller did not imply that Hart's use of the term "intersection" to illustrate the blending of morality and the law was appropriate. So,

[7] Anatoliy A Lytvynenko, *The Hart-Fuller Debate on Law and Morality within the Prism of Legal Foundation of Right to Privacy in its Earlier Jurisprudential Interpretations* (2021) *LIAP* 157, 172.

Fuller seemed to derive the foundation of the legal system as a mirror of some wholly-accepted rules, which were later not once codified, developed and expounded in jurisprudence.

Generally speaking, the argument between Hart and Fuller is a conflict between understanding what law is and how it is constructed (in this case, we may use a number of auxiliary questions, such as ***"what ought to be the law,"*** *"when is the law deemed to be legitimate (from the moral side of view)?" or "is such a thing as morality known to old civil law?")*, how is law and morality related. They both stood for quite different ideologies; one supported American positivism, while the other supported naturalism.[8]

X. COMPARATIVE ANALYSIS OF OBSCENITY JURISPRUDENCE IN U.K., U.S.A. AND INDIA

A. United Kingdom

The historical accounts of U.K. shows that since ancient and medieval ages, offences like '*sedition*', '*blasphemy*' and '*heresy*' were used in order to ban circulation and publication of immoral and indecent materials. Development of printing press and other technology rapidly transported such books from across the globe to England. However, obscenity was not recognised as an offence in English law. Hence, the

[8] Steven Shavell, *Law versus Morality as Regulators of Conduct* (2002) ALER 227, 272.

court were not able to hold liable for any punishment on such grounds.[9] For the first time in 1724, Edmund Curll a bookseller, was convicted for obscenity for publication of a book entitled "*The Nun in her Smock*".[10] Later on, in 1802, William Willberforce established the society for Suppression of Vice after Royal proclamation by King George III in 1787 which was titled as 'The proclamation for the discouragement of Vice' to promote 'public morality'. Due to this there were demands for a specific legislation to criminalise obscenity, resulting in the Obscene Publication Act, 1857 which criminalized '*obscene libel*', still it was ineffective in fulfilment of its purpose.

In 1868, the landmark case of ***Regina v Hicklin***[11] came up and Lord Cockburn, C.J., gave the definition of obscenity and since then it was followed across the globe. Facts of this case involved redistribution and publication of pamphlet titled '*The Confessional Unmasked: Shewing the Depravity of the Romanish Priesthood, the Iniquity of the Confessional, and the Questions Put to Females in Confession'* by Henry Scott.[12] The famous test known as Hicklin's test was evolved which was *"whether the tendency of the matter is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands publication of this sort may fall.*"[13] Due to its pure

[9] Patrick J Kearney, *A History of Erotic Literature* (first published 1982, Macmillan) 268.
[10] ibid.
[11] (1868) LR 3 QB 360.
[12] Dany Lacombe, *Blue Politics: Pornography and the Law in the Age of Feminism* (2nd edn, University of Toronto Press 1994).
[13] Ibid.

subjective nature it received lot of criticism from various academicians and judiciary across the world. As per the test the contextual reading will be irrelevant, even an isolated part will be sufficient to make liable for obscenity also in terms of the audience the test is of the most vulnerable person which will also include a highly impressionable adolescent rather than a reasonable mind person. Hence, it can be observed that the threshold kept for this is quite low so it will be very easy to make any expressional freedom a target of this test and hold accountable for obscenity. Due to this test in history so many good content literatures were banned and burnt to ashes.[14]

Close to a century later, when *R v Martin Secker and Warburg Ltd* [15] came, then a shift in obscenity laws took place, the judiciary then adopted a liberal perspective and stated that the present attitude on the 'sex and context' has to be used for determining obscenity even with the application of Hicklin's test. This resulted in framing of a liberal law and a slight change in the societal perspective on obscenity which

[14] Some notable examples are:
1. *Radclyffe Hall*'s work *The Well of Loneliness* examines the life and challenges of a woman coping with her lesbian identity and social rejection. The book was controversial in the UK shortly after it was published in 1928. Authorities concluded that the work could corrupt vulnerable readers based on the Regina v. Hicklin principle. Consequently, British courts ruled that the book was obscene and mandated that it not be publis hed or distributed in the UK.
2. Under the rigorous obscenity standard evolved from Regina v. Hicklin, *D. H. Lawrence's Lady Chatterley's Lover* was banned in the US, UK, and other nations due to its explicit sexual descriptions and language.
3. *James Joyce's Ulysses* was outlawed in both the United States and the United Kingdom due to sections that discussed sexuality being deemed offensive under the stringent Regina v. Hicklin standard.
[15] (1954) 2 All ER 683.

was *Obscene Publications Act, 1959.* Its preamble states three objectives of the Act- "*to amend the law relating to the publication of obscene matter", "protection of literature" and the need to "strengthen the law concerning pornography.*"[16] For the very first time Obscene Article was defined in this Act as *"effect or . . . the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it."* As per this sections' interpretation it can be observed that contextual interpretation of obscenity will be considered in this law, that is a dominant effect of the entire work will be considered. Also, the audience in this legislation is changed to *'likely audience'* instead of *'most vulnerable person'* which means that what will be obscene and what will not, will be the opinion of the likely reader and not any person. In *R v Penguin*, this legislation was applied for the very first time, in this publication of the book 'Lady Chatterley's Lover' by DH Lawrence was seen. The Court gave a progressive interpretation from 1959 Act, and held that the book is not obscene in terms of artistic and dominant effect of the work.

Later, Obscene Publications Act, 1964 came up, where 1959 Act criminalised only 'Publication' of the work, the new legislation made *"possession, ownership or control of an obscene article for publication*

[16] The Obscene Publications Act, 1959.

for gain" an offence.[17] Basically, this legislation entered into the private spheres of the audience. In another landmark judgment of *R v Anderson*[18], known as the *Oz trial*, it dealt with an issue where a group of students edited a magazine, where some materials had some sexual references. The Court held while acquitting the editors, that magazine contains severable content, the fact that some items were innocuous does not prevent others to be outside the ambit of obscenity.

In *R v Calder & Boyars Ltd*[19] there was this movie '*Last Exit to Brooklyn'*, where life details in Brooklyn were shown which included drugs, homosexuality and a lot of violence. The court held the movie to be outside the ambit of obscene content as the effect was to detract the audience and create a shock among them. To be obscene the effect of work should cause an aversion among the minds of the audience. During this trend apart from written work, various visual forms of media which had a larger impact on the audience came under the focus and hence television was included in 1959 Act by the Broadcasting Act, 1990.[20]

Film Censorship in UK is considered to be strictest among other forms of media, due to the larger impact on the minds of the viewers. Here,

[17] The Obscene Publications Act, 1964
[18] (1971) 3 All ER 1152
[19] [1969] 1 QB 151.
[20] Dhawal Shankar Srivastava and Zubair Ahmed Khan, *Censorship: A Moral Dilemma or an Immoral Siege on Freedom of Speech* (2022) 5 Shimla Law Review 143, 160.

Censorship happens at three level which are Director Public Prosecution, British Board of Film Classification and Local Authorities. The British Board Film Classifications. An independent and non-government body has framed guidelines for regulation of cinema. Regarding this in landmark judgment of *R v Video Appeals Committee of BBFC*[21] it was held that from adults' rights to watch some kind of videos owing to risk of the same to be inappropriate for under aged public.

In case of electronic communications, only 'grossly' offensive communication using public network is penalised as per section 127 of the Communications Act, 2003, hence a liberal perspective is seen for determination of decency along with this age-old Theatre Act, 1843 was repealed. Along with this, Children were given protection under Protection of Children Act, 1978 and the Sexual Offences Act, 2003, which penalised indecency and child pornography. A significant development took place through Criminal Justice and Immigration Act, 2008 which dealt with different forms of pornography.

Above trajectory shows the evolution of the jurisprudence of the obscenity in United Kingdom, the changes can be seen from that of a *conservative perspective of decency and morality to a liberal aspect.* If seeing the contemporary legislations and judicial precedent it can be observed that universally unaccepted expressions like paedophilia,

[21] [2000] EMLR 850.

necrophilia, self-destructive sexual assault, bestiality, etc are criminalised, other than that other forms of sexual content are subject to regulation rather than prohibition.

B. United States Of America

The United States presents a distinct legal approach due to its federal system, where both the federal government and individual states maintain their own laws on matters such as obscenity. The First Amendment, which protects the right to freedom of expression, is frequently invoked in defence of materials challenged as obscene.[22] Over time, a substantial body of case law and legislation has contributed to the development of a notably liberal legal framework regarding obscenity.

The historical development of obscenity laws in the United States has been both complex and fascinating. During the American Civil War (1861–1865), the stringent *Comstock Law* was enacted to restrict soldiers' access to obscene and pornographic materials.[23] Up until 1934, U.S. courts largely adhered to the *Hicklin* standard, which judged obscenity based on isolated passages and their potential impact on vulnerable individuals.[24] However, a significant shift occurred in 1934

[22] ibid 4.
[23] cf Weiler (n 5) 225, 240.
[24] Paul and Murray L Schwartz, *Obscenity in the Mails: A Comment on Some Problems of Federal Censorship* (1957) 106(2) University of Pennsylvania Law Review 214.

with the controversy surrounding James Joyce's novel *Ulysses*[25]. For the first time, the courts moved away from the *Hicklin* approach and adopted a more nuanced standard. They held *that obscenity should be assessed by considering the effect of the work as a whole, and from the viewpoint of an individual with average sexual sensibilities.* In this case, the court defined obscenity as acts that would lead to the stirring of the *"sex impulses or to lead[s] to sexually impure and lustful thoughts*".

The Hicklin test was ultimately discarded in the United States in the landmark case of ***Butler v. Michigan***[26]. In this case, the U.S. Supreme Court struck down a provision of the Michigan Penal Code that sought to ban any material deemed likely to corrupt minors or youth. The Court, taking a pragmatic stance, criticized this overly broad restriction, famously remarking that the law adopted a "*burn the house to roast the pig*" approach. It emphasized that such sweeping censorship was unjustified, as it denied adults access to materials that were not obscene, simply because they might be inappropriate for children.

In 1957, the U.S. Supreme Court, in a landmark decision, fully rejected the *Hicklin* Test and established a new standard for determining obscenity. This came through the case famously known as ***Roth v.***

[25] *United States v One Book called Ulysses* [1934] 72 F 2. 3d 705.
[26] [1957] 1 L Ed 2d 412

United States[27]. The criteria laid out in the majority opinion delivered by Justice William J. Brennan became known as the ***Roth Test***. The test held that: "*Obscenity is not within the area of constitutionally protected speech or press. The material in question must be judged as a whole, and it must be found to appeal to the prurient interest, according to the average person applying contemporary community standards*."

This marked a significant shift in American obscenity jurisprudence, as it emphasized evaluating the work in its entirety and introduced the notion of community standards as a benchmark, moving away from the overly restrictive and fragment-based approach of *Hicklin*. It was also laid down in this case that "*sex and obscenity are not synonymous*" and mere portrayal of sex does not constitute an offence of obscenity unless the above test is satisfied. The conjunctive test of obscenity was laid down in the most significant decision in the trajectory, ***Miller v California***[28] in 1973 which involved an obscene mailing campaign. The three prongs to constitute obscenity as laid down in the **Miller test** are –

"1. *Whether the average person applying contemporary community standards would find that the work taken as a whole appeals to the prurient interest*?

[27] [1957] 354 US 476
[28] [1973] 413 U.S. 15

2. *Whether the work depicts or describes in a patently offensive way sexual conduct specifically defined by the applicable state law?*

3. *Whether the work taken as a whole lacks serious literary, artistic, political or scientific value?"*

In the *Miller v. California* decision, the U.S. Supreme Court critiqued and ultimately rejected the interpretation of *"contemporary community standards*" as previously articulated in the *Memoirs v. Massachusetts* (*Fanny Hill*) case. The Court clarified that these standards should not be understood as uniform or national in nature. Instead, the *Miller* Court held that obscenity must be evaluated based on local or state-level community standards, recognizing that what may be deemed offensive in one region—such as Maine—may not necessarily be considered so in another, like Las Vegas. This shift underscored the importance of regional diversity in moral and cultural perceptions when applying obscenity laws. Since the *Miller* decision, *the American judiciary has gradually adopted a more liberal stance toward obscenity, allowing for broader freedoms of expression within certain boundaries*. However, despite this increasingly open-minded approach to adult obscenity, the United States maintains a stringent and uncompromising position when it comes to child pornography. Courts have consistently upheld strict prohibitions in this area, emphasizing the state's compelling interest in protecting minors from exploitation and harm.

C. India

Since the British era, Indian Penal Code, 1860) consisted the provision regarding Obscenity as an offence under section 292, now the same is incorporated in Bhartiya Nagrik Sanhita, 2023. According to it, 'obscene' is defined as *"if it is lascivious or appeals to the prurient interest or its effect, or the effect of any of its items, is if taken as a whole, such as to deprave and corrupt persons who are likely, having regard to all relevant circumstances to read, see, or hear the matter contained or embodied in it."*[29] Also, the publication, distribution, circulation, advertisement, sale and even possession of obscene material constitutes an offence.

India got its first famous case on obscenity in 1965, ***Ranjit D. Udeshi v State of Maharashtra***[30] which was primarily decided on the basis of Hicklin test. Udeshi was prosecuted under section 292 of the IPC for selling an allegedly obscene novel 'Lady Chatterley's Lover' by DH Lawrence. He argued that section 292 violated his rights to freedom of speech and expression guaranteed under Article 19(1)(a) of Indian Constitution. Even after the opinion of a renowned writer and art critic Mr. Mulk Raj Anand in his testimony, that *"the novel was a classic work of considerable literary merit and not obscene"*[31], Udeshi was found guilty by trial court, this verdict was upheld by Bombay High

[29] The Indian Penal Code 1860, s.292.
[30] [1965] 1 SCR 65.
[31] ibid.

Court and Supreme Court upheld the same in appeal. Apart from constitutional validity of the provision, a holistic and contextual reading will not make the book obscene.

Also, determination of standard should not be the vulnerable and immature teenage class instead of a reasonable man. High court countered by stating the book failed to satisfy the Hicklin's test as its principle will be applicable in India as well. Supreme Court interpreted 'obscene' term as "*offensive to modesty or decency; lewd, filthy and repulsive"* and also it should be seen that the material "*appeals to the carnal side of human nature, or having that tendency*." It was also held that the knowledge of the seller is irrelevant in such cases. The apex court held that where art and obscenity are intermingled, the artistic merit and social purpose of the work should be seen and nudity and sex should not be considered obscene. Also, the court confirmed the standard of the vulnerable and not the reasonable man or an audience alike. On the basis of this reasoning section 292 IPC was held to be constitutional.

In *Chandrakant Kalyandas Kadodkar v State of Maharashtra*[32] where 'shama' an alleged obscene short story was published; Court held the variation of morality and decency from one country to another and disregard to Udeshi judgment declared *the standard for determination*

[32] (1969) 2 SCC 687.

of obscenity should be observed from that of an average person instead of an ordinary or hypersensitive person.

In *K.A Abbas v Union of India,*[33] a documentary 'A tale of four cities' was concerned, somewhere in the middle the infamous red-light areas of Bombay was shown. Due to this scene, the documentary was denied 'U' (universal) censorship certificate and given the 'A' (Adults Only) certificate. The Court ruled against the petitioner and held cinema is a medium where it reaches larger public and have deeper influence among the public and hence some prior restraint is required. The Supreme Court can be seen putting more emphasis on the efficacy of the medium of communication, than the individual's autonomous right to use reason and come to a decision by himself rather than being persuaded to do so.

Moreover, the Court puts stress on the purpose of pre-censorship in Cinema to maintain the "values and standards of society". It is respectfully submitted that this is a highly subjective construction of societal values, because values and standards are highly transient elements, and require the vehicle of expression through debates and arguments to even undergo significant alterations. Thus, a superimposed embodiment of societal values by means of state-sanctioned prior restraints based on archaic notions of rights and

[33] (1970) 2 SCC 780.

wrongs would be essentially counter-productive to this process of societal transformation.[34]

In *Samaresh Bose v Amal Mitra*[35] the court *differentiated between obscenity and vulgarity*. It was about publication of a local Bengali novel 'Prajapati' which was published in Sharodiya Desh, a wide circulated magazine. The story revolved around a local goon and it consisted 'unconventional words' along with slangs and sexual references. The Court in this case observed that this novel can be considered vulgar but not obscene, marking a significant departure from Hicklin and Ranjit Udeshi so far, *as the judge considers the writer's intention and the ultimate effect on the readers. Acknowledging 'likely audience test' while replacing the 'the most vulnerable person' formula.* This case marks a swift transition of the jurisprudence of obscenity from the archaic Hicklin's to a contemporary change on Roth- Miller interpretation.

In 1996, fate of 'Bandit Queen' was decided in *Bobby Art International v Om Pal Singh Hoon*[36] the film was based on Phoolan devi, it contained scenes of gang rape and nudity. However, even though these scenes were manifestly displayed the Court did not consider it obscene. *It interpreted in real sense and stated the essence and purpose of the*

[34] Pratap Bhanu Mehta, *What is Constitutional Morality* (2010) 615 *Seminar* 615 <https://www.indiaseminar.com/2010/615/615_pratap_bhanu_mehta.html> accessed 12 April 2025.
[35] (1985) 4 SCC 289.
[36] [1996] 4 SCC 1.

scenes to sense abhorrence towards casteist and subjugation and held that these scenes do not incite any lascivious thoughts in mind of the audience, rather the film brings out the horrific and harsh reality of Phoolan Devi. In light of such observation the court observed that such aversion can be a defence to obscenity. The apex Court also observed while emphasizing the point in the film that the enforced 'naked parade' of Phoolan Devi was integral and central part of the whole film.

In *Ajay Goswami v Union of India*,[37] petitioner went to Court against content of newspaper which is not exactly obscene as per law, but still to provide for the prurient interest of minors. He argued that frequent sex related news, advertisement and photographs in newspapers need to be regulated. There should be clear demarcation in the paper to separate the unsuitable content on discretion basis. *The Court observed that a blanket ban on such publications will unreasonably fetter on the free working of the press which will also go against the democracy, rather insisted on the '**responsible reading'** of the public.* This judgment was landmark in media law and regulation as it helps the petition non maintainable as it would deprive the adults of the information, they are lawfully entitled to under the ambit of decency permitted in our legal system. Along with dismissing the petition court gave suggestions for robust and powerful functioning of the body Press council of India Act, 1978.

[37] [2007] 1 SCC 143.

Another landmark judgment of Supreme Court, *Aveek Sarkar v State of West Bengal*[38] marks a substantial advancement in India's comprehension of obscenity and the connection between morality and the law. The dispute started when an Indian magazine replicated a German magazine shot of tennis champion Boris Becker standing naked with his fiancée, Barbara Feltus. According to Section 292 of the Indian Penal Code, a complaint was filed claiming that the publication was obscene. The Supreme Court stressed that a work must be evaluated in its entirety and in its appropriate context rather than by isolating certain parts while ruling that the photograph was not obscene. By doing this, the Court deviated from the strict criteria established in Regina v. Hicklin, which permitted content to be condemned if any portion of it had the potential to corrupt vulnerable minds. Rather, acknowledging that cultural views on morality and decency change over time, the Court adopted the community standards test.

The Court further noted that rather than appealing to prurient impulses, the photograph carried a social message because it was published in the context of an article discussing racial prejudice. The ruling reflects a more general idea that the law should be construed in light of modern societal norms and the constitutional protection of freedom of expression under Article 19(1)(a) of the Indian Constitution rather than enforcing antiquated or too strict moral standards. Thus, in a

[38] [2014] 4 SCC 257.

contemporary democratic society, the case emphasises the necessity of striking a balance between individual liberty and societal morality.

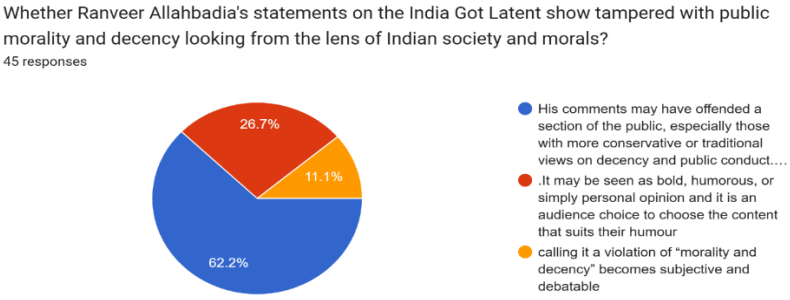
With this judgment it is crystal clear that Indian Judiciary has rejected the Hicklin test which considers obscenity through the impact on mind of a vulnerable teenager for an isolated image or sentence. However, Aveek Sarkar judgment was also criticised as it applied only one side of the Roth test, which Fanny and Miller in US has already superseded, also these two landmark judgments were not referred, making the test of obscenity still problematic and vague for future.

XI. MORALITY THROUGH LENS OF PUBLIC OPINION

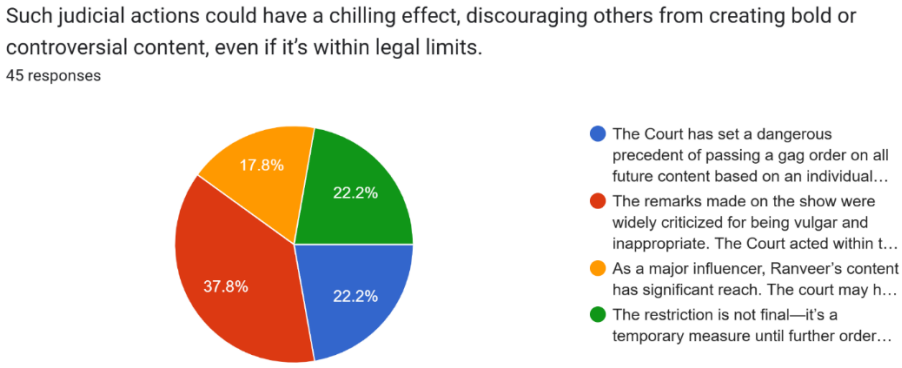
The researchers have conducted a survey seeking opinions from the public regarding the recent controversy ignited by the statement of the youtuber Ranveer Allahabadia in 'India Got Latent' show. The statement was 'Would you rather watch your parents have s** everyday for the rest of your life or join in once and stop it forever.' The survey received responses from people belonging from both legal as well as non-legal background. Mostly aged between 18-24 and few from 25-40 slot.

To the proposition, ***whether the statement tempered public morality and decency in context of Indian society?*** The majority (62.2%) hold the view point that it has offended the conservative and traditional views on decency and public conduct. However, a significant (26.7%) have seen it as bold, humorous or simply individual choice as to the

content, highlighting the perception that morality is highly subjective and depend largely on individual or cultural standard which has been supported by the researchers.



The matter is pending before Hon'ble Supreme Court; however, the researchers have sought the opinion as to ***whether the court's decision to order pre-censorship on his content be seen as undermining freedom of speech and expression?*** There is no clear majority opinion however, two significant yet opposite opinions have been received wherein, 37.8% agreed the content being vulgar and inappropriate and thus justifies court's order as reasonable restriction in line of article 19(2). However, 22.2% strongly disagree the order as it could be a dangerous precedent on all future content that has offended some group of people.



Lastly, the researchers have found that a significant portion, 53.3% have found that the current legislations dealing with the issue in hand are sufficient enough. The researchers have concluded from the overall responses reflects attention between evolving societal norms and traditional views on public decency, specially among younger and non-law respondents.

XII. CONCLUSION

D. A. Inherent Problem In Obscenity Regulation

The concept of obscenity is highly subjective

Obscenity varies greatly across cultures and contexts. One of the most common justifications for censorship is the belief that harmful literature can negatively influence the psychological development of individuals—especially children and adolescents, who are considered

more vulnerable to moral corruption. This reasoning assumes that human nature is susceptible to corrupting influences, and thus, such forces must be regulated. Literature, much like painting or other forms of art, is a reflection of the creator's inner world. A writer expresses their thoughts, and a painter translates their mental imagery onto a canvas—both shaped by personal experiences. In essence, art is an outpouring of imagination informed by lived reality.

Experience, when expressed through literature, is inherently neutral—it is neither moral nor immoral, but rather *amoral*. Whether a piece is later celebrated for its literary merit or dismissed as lacking value is a matter of subjective judgment. However, because a literary piece is fundamentally an expression, the criteria used to assess it should not be rooted in ethical or social judgments, but rather in aesthetic standards. From the earliest stages of civilization, the relationship between law and morality has been deeply intertwined. As a result, lawmakers have historically been inclined to treat depictions of religion with great sensitivity, often deeming it immoral to portray religious subjects in a negative light

What constitutes public morality?

A key question that arises is: what constitutes public morality, and can it be defined in concrete terms? How do we determine that Indian public morality is against homosexuality? Can this be objectively established? By labelling something as part of public morality, we

implicitly assume that society, culture, or a community is a unified whole. However, the problem with defining public morality is that it is often vague, inconsistent, and indeterminate. A historical examination of this concept shows that dominant voices have shaped public morality, and it is nearly impossible for all members of society to agree on any particular aspect of public policy.

For example, the Hicklin test, used by the court in the case of *Ranjit Udeshi*, was based on the premise that individuals need protection from corruption or moral depravity. This test is partly in line with John Stuart Mill's harm principle, which emphasizes that the law can intervene when harm is caused to others. However, the Hicklin test also reflects two additional legal theories: legal paternalism and legal moralism. Legal paternalism justifies law as a means to prevent individuals from harming themselves. Examples of this include laws against smoking or regulations requiring seat belts while driving. It assumes that, in certain situations, the state knows what's best for its citizens.

On the other hand, legal moralism prohibits actions based on their perceived immorality, regardless of whether harm is caused to others. This concept conflicts with the principle of liberal neutrality, which suggests that the state should remain neutral in matters of personal morality. The *Ranjit Udeshi* case can be seen as an example of legal paternalism. Here, the court argued that it needed to protect vulnerable individuals from the perceived corrupting influence of certain materials, aiming to shield them from moral depravity.

The reluctance for acceptance

Thus, it seems that what is today readily acceptable in fact becomes unacceptable when put on paper. Blood and guts are tolerated by society, except when combined with sexual love; great profit is made from sex through advertising, e.g., the women's underwear that is advertised so far beyond its market that we are daily surrounded by the feminine figure tightly constrained in a bra and panties; homosexuality is the favourite subject of many a "clean" joke; and, generally, our society produces a great deal that, if properly identified, would be called more perverse than it cares to think about.[39] All of these are permitted, and yet society seeks to remove the normal thoughts and desires of one sex for the other. The problem is being further distorted by the enactment of laws calculated to suppress sexual thoughts, for in effect, by so doing, our society is diminishing the healthy and accentuating the sick.

XIII. THE WAY FORWARD

If society continues to suppress that which is calculated to arouse sexual feelings and desires to all but those who are willing to break the law, then it can have no complaint if the result is the cessation of artistic

[39] William T Goldberg, *Two Nations, One Web: Comparative Legal Approaches to Pornographic Obscenity by the United States and United Kingdom* (2010) 90 Boston University Law Review 2121.

quality in this country. If, as many believe, something must be done to suppress this intangible thing called "obscenity," it is believed that such suppression cannot be adequately achieved through the legislature or the courts, but must be achieved through self-censorship. It is firmly believed that the American people have the ability to recognize "smut" and to reject it without the help of the public censor. As the majority in the Smith case admitted, "*any form of criminal obscenity statute applicable to a bookseller will induce some tendency to self-censorship and have some inhibitory effect on the dissemination of material not obscene.*." Since this is true, is it not a very good reason for leaving dosed, as to the "obscene," the doors barring federal and state intrusion into the area of constitutionally protected free speech and press. [40]

One of jurisprudence's main concerns for a long time has been the connection between morality and the law. Modern constitutional democracies are gradually realising that morality and law cannot be fully equated, despite the fact that early legal systems frequently drew substantially from existing moral standards. While moral convictions in society are varied, dynamic, and frequently disputed, the law must be governed by objective, predictable regulations. However, morality still has an impact on how laws are created and interpreted, especially when it comes to matters of public decency, obscenity, and individual rights.

[40] *Smith v. California* [1959] 361 U.S. 147

The gradual shift from strict moral paternalism to a more contextualised and balanced approach is demonstrated by judicial developments. Previous norms, like those outlined in Regina v. Hicklin, represented a legal framework that aimed to impose stringent moral protection by restricting speech thought to have the potential to corrupt impressionable minds. However, the shortcomings of this strategy have been acknowledged by modern law. The Supreme Court stressed in Aveek Sarkar v. State of West Bengal that utterance must be evaluated in the context of its entirety and in accordance with changing societal norms rather than discrete moral assessments.

As a result, the contemporary legal approach reflects a crucial jurisprudential realisation: although morality and the law are inextricably linked, the law must also protect individual liberty and freedom of speech. Therefore, upholding a moral balance between society ideals and constitutional liberties is the difficulty facing legal systems