CHAPTER I

A LEGAL STUDY OF OBSCENITY REGARDING WOMEN IN THE PRESENT SCENARIO: AN INTRODUCTION

One of the most vexing issues of our times is to manage and balance the inherent contradictions of a traditional conservative society with male chauvinism deeply ingrained in the collective social psyche, moving towards liberalisation and globalization with ideas of women's empowerment, freedom and liberation and the desire of women to lead lives on their own terms.

In this techno savvy age, where the world has become a close knit community, where dissemination of information through the internet and MMS (multi-media messaging service) enabled mobile phones is possible within seconds, obscenity has become ubiquitous.

There are a number of factors including the changing social norms regulating sexuality, morality and open explicitness that are responsible for escalating obscenity in the society. The mass media namely television, newspapers and magazines are saturated with obscene photos, images, language and the obscene undercurrents in all communications. In the name of religion, literature, art, sculpture, cinema, fashion and beauty contests, fashion shows and calendars, the bodies of women are deliberately exposed.

The wordings in the advertisements are suitably phrased to titillate and lure male attention, creating an association of the brand with lust and desirability. An example is of Bajaj fans advertised with a picture of a woman in a provocative pose with her clothes flying and the advertisement said, 'Fan your emotions.' Another example is the 'MR' coffee where on one side of the bikini top is written
‘Buy one and get one free’. Airlines are pandering to male fantasy by portraying air hostess as sex objects. The Barbie image implies little intelligence but lots of sex appeal. It undermines dignity of women. The Singapore airlines advertises as ‘It is all about the magic of Oriental women’. Some Brazilian airlines carry explicit sexual cartoons in-flight magazines. Air New Zealand has found having no clothes is one way to ensure that passengers actually watch the flight safety video, where the pilot and cabin crew are shown wearing only body paint. It has become a ‘YouTube hit.’ A British firm introduced ‘Naked Friday’ to boost staff morale with a show of skin, where the staff striped off all their inhibitions including their clothes in the office. A growing trend among married couples is to hire ‘gigolos’ and ‘male escorts’. The culture of swinging (married couple swapping partners or experimenting with multiple partners) is growing, so people do not mind hiring an escort. Particularly disturbing is the way females are depicted in music videos where skimpily dressed girls do suggestive bump and grind routines. Shops remove the distance between the consumer and the consumed and allow direct access to the seduction radiated by the product. Advertisements convert acts of consumption into an imitation of sexual act.

The beauty contests, fashion shows and the malfunctions of wardrobe in which the clothes of the model simply drop off in front of the packed audience and thereafter the same episode appears and reappears on television and newspapers, the semi-clad dancing ‘cheer girls’ at the cricket matches, airline advertising by giving the physical attributes of their airhostesses, the bar girls at restaurants/clubs for pleasing the senses of men are all new manifestation of obscenity. The latest craze amongst the city youth is rave parties where drinks, drugs and obscene behaviour pervades. It is a sign of our times that a printed wall calendar with photographs of female models in the skimpiest of bikinis has become a major media event. So much so that there is even a regular, thirty minute program on a leading television channel called NDTV titled, ‘The making of the Kingfisher

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1 Hindustan Times, July 3, 2009, P.13
2 Ibid
3 DNA, Mumbai, December 29, 2007, P.1
The problem of obscenity involves far reaching questions about the values, morality, behaviour, attitudes of a society. Obscenity is a relative, abstract idea wholly and solely in the eyes of the beholder. No two people can be counted on to agree what is obscenity. It is difficult to precisely define obscenity just as it is to define what is good or bad. The term 'obscenity' keeps changing as per time, place and circumstance. What appears as obscene at one point of time may not appear so at another time in history. Also, what may be obscene in one society may not be so in another society. In today’s times change is only constant. There is a rapid shift in the culture and morality of the people. The divide is between the rural and urban India in terms of standards of morality and broad and open-minded behaviour. Obscenity is difficult of any objective definition as the concept varies depending on the attitudes, thinking and lifestyles of people at a given point of time. What is obscene to one in the matter of dress, behaviour, print, or electronic media may be even conservative or even prudish to another. A bikini is obscene in Saudi Arabia but is normal wear in Europe and South and North America at the beach side. Generally, the laws all over the world and even in India and judgments of the various courts from time to time consider obscenity in terms of sexual behaviour and excretory functions of the body only. The controversy about obscenity has been increasing in intensity. Obscenity continues to be a major social and legal issue in spite of the sustained efforts of legislation, judges, lawyers, policy-makers and writers to resolve it.

Obscenity, beyond a point of acceptance, is considered as immoral and illegal in almost all parts of the world. Many countries in the world have legislations prohibiting and punishing display of open obscenity. Morality is a portmanteau word with a vast heterogeneous capacity. It encompasses moral concepts, habits
of mind, standards of behaviour, religious dogmas, social mores and even manners of the people in society.

In today's contemporary world, beauty is replaced with obscenity and vulgar display of body parts, grace and modesty with the uninhabited sexuality. The sexual act is no longer a subtle elevating experience, but a gross titillating, cheap enjoyment of the material body. Procreation sex has given way to recreation sex. The erotic purity is replaced with impure explicit sexuality. Images of obscenity have become all pervasive in modern culture.

The issue of obscenity is more relevant today due to commercial exploitation of a woman's body in large scale business enterprises realizing enormous profits. India's first toon porn site savitabhabhi became a national phenomenon when it was stopped in its tracks by the department of Telecommunications through a communiqué date June 3, 2009. The sites received 2,00,000 hits a day. Most of the advertisement materials, video remixes, and websites are designed to appeal to the perverted, abnormal interest in sex and violence and reflect moral depravity. The body of women is used for men's sensual gratification through commercial use in advertisements, beauty contests, movies and plays. Advertisements focus on the sex appeal of women for marketing products. The tendency is to use the body of women as a vehicle for selling all kinds of items from men's briefs, to electronic gadgets to instant coffee. Even the World Wide Web, having global reach makes women subjects of violence and results in the commodification of women's bodies. She is reduced to an aggregate of body parts. In their form and content these materials violate and reduce fundamental standards of morality or decency. The circulation of salacious literature is widespread and is steadily increasing. The attitudes towards life, its pleasures and satisfaction and the standards of conduct espoused in such materials reflect a moral depravity. The repressed sexuality of people gets reinforced and aggravated by being exposed to obscene literature, movies, films, pictures et al. In a way, the public display of

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4 Hindustan Times, Mumbai, July 3, 2009, P. 2
obscenity also provides a justification in the viewer's minds of his own sexually divergent thoughts and practices. This reinforces the repressed sexuality of people who treat women as only bodies or machines for sexual enjoyment. Even children are increasingly being exposed to sexually explicit material which is not their age appropriate, and they lack the judgement and life experience to conceptualize. Violent computer games in which children and youth indulged in are now outdated. Kids now have access to games that goad them to sexually assault women. Children are exposed to games which involve penetrating crimes on women, involve a lot of nudity and rape, and they are out rightly vulgar. The impact of these games on their psyche is unimaginable. The gunmen in Finland who killed eight people on November 7, 2007 and wounded twelve before killing himself was an avid gamer. The proliferation of pornography is a part of the process of a rapidly developing consuming world, where things are valuable only to the extent to which they can be consumed. People become consumers of pornography for personal gratification. To the pornographic eye everything exists not for itself, but as a thing to be consumed.

Respect for women and obscenity

A nation must respect its women in order to develop and progress. A nation which considers its women to be objects of sense gratification cannot realize its full potential and become a modern progressive nation. It is thus imperative that the mindset behind enjoyment of acts of obscenity is changed to one of respect for women as complete and equal being rather than mere physical beings. Women have to be respected and given the recognition which is due to them. Woman is the mother of civilization. She is the very foundation of the society. The foundation must be strengthened through legislative protection and social awareness. Thus, every attempt should be made to eradicate the peril of obscenity regarding women from the roots of the society. Though the field of obscenity is gender neutral and laws of obscenity shield both the genders, yet the tendency is

5 DNA, Mumbai, November 9, 2009, P.4
to use, misuse and harass the female gender by exposing in a debasing manner to the male gaze the bodies of women through different mediums.

**Sexuality in Ancient India**

Ancient India was highly progressive in dealing with sexual activities of the people. Indian culture and tradition was very liberal. A German scholar remarked about the ancient Indian culture thus: *'In the soul of every Indian there dwells that pair, burning sensuality and stark renunciation of the world and flesh.'* According to tantric Shasta, sex is the basis of procreation and its suppression brings about disastrous result in human makeup. Sex used to be treated as a part of religious rituals. The performance of sexual activities between two consenting adults was regarded as a source of mental and physical pleasure. Our ancient sculptures and murals that adorn the caves of *Ajanta, Ellora, Khajuraho, Elephanta* and *Konark*, and various other temples bear testimony to the fact that in ancient India women hardly covered their torsos except with jewellery. Many old temples depict the various forms of sexual love between two human beings in their sculptures, exhibiting the highest form of erotica. The underlying message was – sex to super consciousness. Had our forefathers thought of sex as something demeaning, pervert, obscene, immoral, they would not have depicted these sculptures in their temples which were likely to be visited by people of all ages and attitudes. The rulers would not have allowed these depictions in the temples because they would not want to corrupt the visitors to the temple. There is no evidence to prove that there existed debauchery and licentiousness in the society. Even the Indian history reveals that attitude of the people towards sex was relaxed from the Pre-Vedic times till the foreign invasion. It is ironical that the land of *Kama-sutra* should turn to England and United States of America for direction on attitudes and laws on sexuality and obscenity, the very societies where denial, repression and hypocrisy on the issue was the norm, the way of life.

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5 Khosla G.D., *Pornography and Censorship in India* P.41 as quoted in *Law of Obscenity in India, USA and UK* by Inder S. Rana, Mittal Publications New Delhi,1990, P. 125
In a democratic and civilized country, both men and women, are entitled to freedom of expression and speech. A fundamental right to freedom of expression requires that women be entitled to have the independence to earn their livelihood in a manner that they choose, the right to use their bodies the way they like. But at the same time, as one lives in society, the norms of society regarding public decency have to be observed by those who are a part of the society. The laws on obscenity though they curb freedom of expression to a certain extent are for protecting and safeguarding the images of women as objects of sensual enjoyment. Obscenity can contribute to the debasement of moral standards and ultimately of character. Total freedom cannot be given because of the need to preserve society for future generation. One cannot afford to give a debase and morally corrupt society to one's descendents. Obscenity is an indirect incitement to disrespect women through promotion of sexism. The law tries to avert the moral harm. The laws against obscenity try to prevent a genuine evil. In the name of liberalization, modernization and constitutional rights of freedom of speech and expression, a trend corrupting the moral of the nation has set in. However, moral values cannot not be allowed to be sacrificed in the guise of social change. It is necessary that the Government disciplines the perpetuator of obscenity by imposing punishments on them and at the same time creates an atmosphere conducive to the voluntary development of morality, character and ideals of high virtues. Without repressing the sexuality, conditions are required to be created that will lead the people to develop a higher taste. Laws can improve people by bringing about changes in the minds of men. In the absence of established public norms, social attitudes may remain unspecific, inconclusive and unproductive.

Organized communities draw a line between the decent and the indecent, the permissible and the impermissible, the acceptable and the unacceptable. There is a
symbiotic relationship between the regulation of obscenity, commercial production of erotic representations of women and cultural formation of sexual desire.

The predicament of free expression, public morality and the law will not be resolved without deep deliberations. It is a pervasive and permanent problem of a society. Only serious exploration of the concept of obscenity will contribute to a genuine understanding of the problem.

The societal interest requires preserving genuine artistic works and arts on the one hand and to remove blatantly obscene and pornographic works on the other hand. The purpose of law is to regulate community interests and secure the safety of persons and property. This is the primary function of law. The social impact of the crime, for instance, where it relates to offences against women, offences involving moral delinquency leave a great impression on social order and public interest and therefore require exemplary treatment.

The other factor is that the supposed depravity and corruption produced by obscenity in objects is a matter of conjecture. There can be no definite solid evidence of this. The test of obscenity is the effect produced on the minds of the people who could or could not be depraved or corrupted by the alleged obscene material. When there is no comprehensible definition of the alleged crime, the defendant is left at the mercy of the personal opinion of the judge. This becomes a totally subjective basis for criminal law. One may argue that laws on obscenity while constituting a danger to the individual, provide no serious benefit to the public. The test of obscenity requires a certain degree of precision in determining the scope of the legal term obscenity. This is a difficult task. There should be a balance between creativity and protection of culture. The test of obscenity has to be flexible, because society is itself never static. The standards of morality will change from time to time. It has to be tested in the light of the freedom of speech and expression granted under the Constitution, which is again subject to reasonable restriction in the interests of sovereignty and integrity of India, and public order,
decency or morality. Contemporary morals, ideologies and standards determine if a matter is obscene or not.

Purpose of the research

The purpose of this research work is to analyze and explore the difficulties encountered by law in defining and punishing obscenity and at the same time balancing it with constitutional guarantees of freedom of speech and expression in a society characterized by pluralism and rapid change and influence from westernization. It also seeks to contribute to the development of laws regarding obscenity which will do justice to the public interest in morality and free expression with respect to the status of women. It is necessary to have a more nuanced study of obscenity for suggesting measures to make laws dealing with obscenity in India more relevant and objective, which would enable women to live a dignified life. The research is to find solutions to the problem of proliferation of obscenity regarding women and providing suitable and appropriate punishment and deterrent mechanism.

Scheme of chapterisation

In the first chapter, the concept of obscenity regarding women in the present scenario is introduced.

The second chapter analyses the status of women in India from the Vedic times to the present. There is an important connection between obscenity and women’s status in the society. In all societies, where women have better status and are granted more rights, i.e. the more a society holds a woman in reverence and gives her dignity, the less she is viewed as an object of satisfaction of the male’s lust. Therefore, it becomes pertinent to understand her position, her status in a society from time to time. The global picture of women even in the days of globalization is of a helpless and oppressed being. Crime against women is an outcome of the long history of negation of the basic rights of women.
The third chapter discusses the constitutional position of women and the judicial approach to the status of women and the rights accorded to women under the different Indian legislations. Women have acquired a status in post independence India because of a plethora of laws enacted to empower women, further strengthened by the judiciary.

In the fourth chapter there is a continuity of discussion regarding the status of women in terms of International Treaties and Conventions.

The fifth chapter covers the visible and striking features of obscenity laws of other countries specially of England and the United States of America because of the deep influence of these two countries on our people. Position of the laws regarding obscenity in other countries is discussed in order to have a good understanding of the obscenity laws.

In the sixth chapter, an attempt is made to analyse in depth the present laws in India governing obscenity, the background, purpose, and stimulation of those laws and the loopholes, inadequacies and antiquity in them. The chapter is devoted to an examination of contemporary legal issues and legal developments which have contributed to the definition of obscenity.

The last chapter is a summary of conclusions and suggestions arising out of the research study presented. In this chapter, it is endeavored to make suggestions regarding changes in the laws of obscenity in India so that they are in tune with the need of the present developments of the modern times regarding the status of women.