SEMINAR

ON

LAW, SOCIETY AND OBSCENITY

Held on:
9th & 10th January, 1993

Venue :
YOJANA BHAWAN, LUCKNOW

INSTITUTE OF JUDICIAL TRAINING & RESEARCH, U.P.
1/19, Vishwas Khand–I, Gomtinagar, Lucknow.

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ENTRANCE

The idea to have a Seminar on obscenity arose out of pre-calendar planning for the whole year 1992-93. After those on **'Consumer Protection'** at the state level, **'Investigation and Trial'** at the national level and **'Finger Prints'** at the international level, this is the fourth in series and a new feather in our cap-cap of the Institute. That the subject received an enthusiastic support and evoked animated discussion can be gauged by the presence of delegates from various shades of opinion and walks of life.

The programmes were dispersed over two days in six sessions splintered on 'prevailing concept on obscenity', 'punishing obscenity-justification', 'criminalising obscenity', 'mensrea in obscenity', 'rigidity vs. chastity', 'modifications, if any, in existing law'.

The Seminar was, formally, opened by the Hon'ble the Lokayukta, Uttar Pradesh Mr. Justice K.N. Goyal, who aclaimed obscenity as an evergreen subject not only for critics of literature, film and television, but, also, for people of common touch and traced the comparative trends in the United States of America, England and India.

According to Hon'ble Mr. Justice S.N. Sahay, there is nothing good or bad, but thinking makes it so. Nothing is obscene, unless articulated, expressed or displayed. Folly it is to render the East unto West in that behalf. Let East be East and West be West.

In the inaugural session, after a little of introducing a, b, c, by Hon'ble Mr. Justice J.K. Mathur to set the ball rolling, many papers were called in to be gisted and salient-featured- 'some to be tested, others to be chewed and a few to be swallowed and digested'.

Mr. P.M. Bakshi, while attaching Constitutional validity to the provisions, suggests three tests of obscenity,-matter lascivious, matter

prurient and matter depraving. But, to be sure, the definition raises many points to ponder:

1. The concept is, presumably, resultordained. Dr. Zhivago, Lady Chatterly's Lover, Prajapathi, Sharma 'Satyam, Shivam, Sundaram' are not obscene, unless read or filmed. But by that time, the cat is, already, out of bag to corrupt. Then, impossible to undo the harm earlier done. After death, the doctor. It drives us to a further chain reaction of querry-making. Whether there should be pre-censorship of every type of obscenity, and if so, whether the opinion of the Board of Film Censors should preampt the exercise of judicial mind and functioning? That was the conflict between Section 79 of the Indian Penal Code and Section 51 of the Cinematograph Act for the film 'Satyam Shivam Sundaram'.

2. The third criterion involves persons likely to be depraved and polluted. What are those persons-young, old or infant; able, unable or lamentable; rich, poor or midway; complacent, competent or incompetent; penitent, pertinent or impertinent? It is all a mystery something in camera.

Professor B.B. Pandey, Faculty of Law, poses the question 'why obscenity is commercialised' and answers the same by reference to interest of public morality, individual dignity and infantile chastity.

In the opinion of Commodore P.K. Goel, JAG, Navy, law against obscenity is inseparably intertwined with public morality-a balance to be struck between freedom of speech and public decency.

Dr. Miss Sabarwal, Chairman, Bharatiya Grameen Mahila Sangh, enjoins violence with obscenity at hands of man. But what about eve-teasing and eve-abusing even!

Brig. R.P. Singh, Deputy Judge Advocate General, ARMY, shows much concern about the rising graph of scorn against feminine decency and records appreciation for graces in the Army.

Mr. V.K. Singh, Deputy Director of the Institute, pleads vehemently for saving the children from the curse of moral degradation.

Kumud Nagar, Asstt. Director Doordarshan relates obscenity to sound and fury signifying nothing.

Mr. S.P. Talukdar, Additional District and Sessions Judge, Alipore, stresses much upon the forbidden fruit, which has gone sour with the population explosion.

Mr. S.B. Aich, CJM, 24 Praganas, comments that the world is fast changing and 'hush hush' attitude towards sex matters is fast disappearing.

Mr. A.K. Sharma, CJM, Bulandshaher, advises that obscenity, being a social evil, must be eradicated by social awareness.

Dr. Surender Singh, Professor and Head of the Department of Social Works, acknowledges that obscenity is a value-vision of today-more to be charged than discharged.

Mr. Mudrarakchhas a creative artist reveals that, in olden times, it was a pardonable concept, and now a ponderable concept. 'To be or not to be'-that is the problem.

Km. Manju Rani Gupta, Judge, Small Causes, Saharanpur, blames the police and counsels introspection.

In assembly discussion, Mrs. Yameen Hazarika agrees to disagree that every lady has to be a lady Chatterly, and invites all to Khajurao, where she, being of Delhi cadre, has no jurisdiction.

Dr. K.K. Singhal, once a medico-legal expert of the Government of U.P., lauds obscenity to be a charity at home and cold-wars it in drawing room.

The Mehras from the U.S.A. speak about the revolution in the character values of their country in regard to decency and, thereby, dictate a fresh westwind from the West.

Sri R.C. Saxena, who spent more than 25 years in the U.S.A., points out the globalising of the human behaviour the world over.

Mr. Anil Rastogi, dramatist, refers to Nyog Pratha and cautions against hurried marriage and leisure repentance qua deciphering what it is and what it is not.

Mrs. Aruna Kapoor canvasses for certainty in the definition of law of obscenity.

The speakers and participants from media, medicine and literature; police, army and navy, law administration and justice and those from United States all deserve thankful appreciation for the successful and fruitful finishing of the entire proceedings. We owe a lot of gratitude to Hon'ble Mr. Justice J.K. Mathur, who was kind enough to preside over all the sessions of two days.

March 1,1994

A.B. HAJELA
Director

PART - I

Inaugural Session

INAUGURAL SESSION

The idea to have a seminar on **"Law, Society and obscenity"** arose out of a precalendar planning for the year 1992-93. After those on **"Consumer Protection"** at the state Level, **"Investigation and Trial"** at the national level and **"Finger Prints"** at the international level, this is the fourth in series and a new feather in our cap-cap of the Institute.

Of late, increase in the pornographic literature in book-stalls, blue films, in video parlours and sneaking of the Star T.V., Zee T.V. and other projections through satellites into the living rooms has raised questions about the effectiveness of laws in curbing obscenity. The problem is two fold. Firstly, whether the existing concept of obscenity is effective enough to net all the perceived deviations within its fold and secondly, whether the process of law is effective enough to implement this segment of law.

Proceedings of the inaugural session started with the welcome words by Mr. A.B. Hajela, Director, Institute of Judicial Training and Research, U.P., Lucknow. In his address after discussing the obscenity in its various dimensions and rectifications, he said that the obscenity is not a self ordained conclusive concept. It rolls with time and place.

Hon'ble Mr. Justice S.N. Sahay, Judge, Allahabad High Court, Lucknow Bench, also addressed the assemblage. According to him, there is nothing good or bad, but thinking makes it so. Nothing is obscene, unless articulated, expressed or displayed. Folly it is so render the East unto West in that behalf. Let East be East and West be West.

Seminar was formally opened by the Lokayukta of Uttar Pradesh, Hon'ble Mr. Justice K.N. Goyal with his thought provoking, lucid address. He claimed obscenity as an evergreen subject not only for critics of literature, film and television, but also, for people of common touch and

traced the comperative trends in the United States of America, England and India.

The addresses of Mr. A.B. Hajela, Hon'ble Mr. Justice S.N. Sahay and Mr. Justice K.N. Goyal are embodied, seriatum onwards.

Law Secretary-cum-Legal Remembrencer, Govt. of U.P., Mr. P.K. Sadn proposed the vote of thanks to the guests.

स्वागत भाषण

अवध बिहारी हजेला
निदेशक

श्रद्धेय लोकायुक्त जी, माननीय न्यायमूर्तिगण जी, आदरणीय न्याय सचिव जी, सम्मानित विधि आयोग, सेना, नौ सेना, विश्व विद्यालय, प्रेस, दूर दर्शन, आकाशवाणी और प्रदेशों से आये हुए अतिथिगण, प्रिय संकाय बन्धुगण तथा सज्जनों एवं देवियों।

संस्थान द्वारा "विधि, समाज और अश्लीलता" पर आयोजित इस संगोष्ठी/कार्यशाला में आप सबका हार्दिक स्वागत है नववर्ष की शुभ-कामनाओं के साथ और उस शालीनता के साथ, जो "अश्लीलता" से कोसों दूर है हेनरी वर्डसवर्थ लौंगफेलो के इन (अनुवादित) शब्दों में पनपने के लिए :

यथा धनुष में डोरी,
तथा मनुज में नारी,
उसे झुकाकर, उसको साधे,
उसे खींचकर, उसको ध्यावे,
अर्थहीनद्वय इक दूजे बिन।

पर दोनों के स्थायी प्रणय का सदैव आधार रहा है और रहेगा शील-संकोच, क्योंकि श्लील-शोभा, अश्लील-क्षोभा। दोनों का अन्तर, मानो जन्तर-मन्तर अथवा किसी इमामबाड़े, की भूलभुलैया। अभी से नहीं, चिरकाल से, साहित्य में, कला में और सब विधि के परकोटे में।

किन्तु विधि की विडम्बना अथवा असम्भव-योग के संयोग से अश्लीलता का परकोटा तो है, पर कोई परिभाषा नहीं। फिर यह परकोटा भी इंग्लैण्ड के श्वेत-कोठरा (व्हाइटहाल) की देन है। इतिहास इसका साक्षी है। सन् 1708 में एक अश्लील पुस्तक के प्रकाशक रीड को होल्ट मुख्य न्यायाधीश[1] ने यह कहकर दोष-मुक्त कर दिया कि अश्लीलता आध्यात्मिक

1. क्वीन बनाम रीड (1708) 11 मोड 142 केस नं. 205

न्यायालय का विषय है, न कि सांसारिक न्यायालय का। लगभग 2 शतक बाद भी फोर्टेस्क्यू न्यायाधीश ने अश्लीलता को दण्डनीय अपराध नहीं माना, किन्तु तदुपरान्त रिनाल्ड्स न्यायाधीश प्रोबीन न्यायाधीश और फोर्टेस्क न्यायाधीश के स्थान पर बैठे, पेज न्यायाधीश[2] ने उसे सांसारिक अपराध की संज्ञा दी। तदुपरान्त अविस्मरणीय सीमांतक रेखायें कोकबर्न मुख्य न्यायाधीश ने हिकलिन वाले मामले[3] में निम्नलिखित शब्दों में खींची, जिससे अपराधी का आशय नगण्य बना और अश्लीलता, दर्शक की आँख में सौन्दर्य की भाँति, ढोलती पायी गयी :-

> *"..... मेरे विचार से अश्लीलता की कसौटी यह है कि क्या उस सामग्री की, जिस पर अश्लील होने का आरोप लगाया गया है, प्रवृत्ति उन व्यक्तियों को दुराचारी और भ्रष्ट बनाने की है, जिनके मस्तिष्कों पर अनैतिक असर पड़ सकते है और जिनके हाथ ऐसा कोई प्रकाशन पड़ सकता है .....क्या उसकी बाबत यह बिल्कुल निश्चित है कि वह युवा स्त्री या पुरुष के अथवा आयु वाले व्यक्तियों के भी, मस्तिष्कों में अत्यधिक-अपवित्र और कामुक प्रवृत्ति के विचार उत्पन्न करेगी।"*

संयुक्त राज्य अमेरिका इस क्षेत्र में पैंतरे बदलता रहा है। रोथ वाले वाद[4] में हिकलीनियन परिभाषा को तुरन्त रिहाई दे दी गयी और "औसत व्यक्ति के सामयिक मापदण्ड" को अश्लीलता की कसौटी माना गया। आश्चर्य है कि मिस्किन[5] के बाद में हिकलीनियन परिभाषा को फिर से दुहाई दी गयी। इस प्रकार पाश्चात्य देशों एवं भारत वर्ष में अश्लीलता का हिकलीनियनशील अभी तक, स्फटिकशिला की भाँति, अक्षुण्ण है, चाहे मामलारम्भ की "शमा"[6] का हो, राजकपूर की "सत्यम् शिवम् सुन्दरम्"[7] का हो या "लेडी चैटर्लीज लवर"[8] का हो। अतएव कवि रुडयार्ड किपलिंग की यह कथनी -

> पूर्व है पूर्व तथा पश्चिम है पश्चिम।
> और कभी नहीं होगा दोनों का मिलन।।

व्यर्थ हो जाती है।

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2. आर. बनाम कर्ल (1727) 2 स्ट्रा 788
3. कबीन बनाम हिकलिन (1868) एल.आर. 3 क्यू.बी. 360
4. रोथ बनाम यूनाइटेड स्टेट्स (1957) 354 यू.एस. 476
5. मिस्किन बनाम न्यूयार्क (1966) 383 यू.एस. 502
6. चन्द्रकान्त कल्याणदास काकोडकर प्रति महाराष्ट्र राज्य (ए.आई.आर.-1970, एस.सी. 1390)
7. राजकपूर बनाम लक्ष्मण (ए.आई.आर.-1980, एस.सी. 605)
8. खैरात डी. डडेजी बनाम दि स्टेट आफ महाराष्ट्र (ए. आई.आर.-1965 एस. सी. 881)

तथापि तथाकथित परिभाषा की भाषा की लटक में एक ही खटक है। निःसन्देह अश्लीलता स्वयं-सिद्ध एकाकी सम-प्रत्यय नहीं है। वह समय व स्थान के साथ करवटें बदलती है। बोरिसपेस्टरनेक की "डा. झिवागो" और डी. लारेंस की "लेडी चैटर्लीज लवर" आदि अनेक पुस्तकों ने अपने अस्तित्व के लिये भिन्न-भिन्न देशों, संस्कृतियों, अवधियों और व्यक्तियों में धूप-छाँव देखी है और आज वे खुले साहित्य की धरोहर हैं। अन्यथा भी साहित्य, संगीत, कला, ज्ञान और विज्ञान की गहरी छाप अश्लीलता को तिरोहित करके उसे मुक्तामणि की छवि प्रदान करती है। इसी को "साहित्य की जलवायु"[9] कहते हैं, जिससे पुस्तकालय-किताब घर पोषित हैं, वरना रूखे-सूखे, खाकी-खाली खोके ही खड़े होते राम, ईशा मूसा की पुस्तकों को लिये हुए। पर किसी महिला की अस्मिता और पारदर्शिता का पारखी केवल एक ही है न्यायाधीश-अधीनस्थ न्यायालय से लेकर उच्चतम न्यायालय तक। मौखिक साक्ष्य अथवा विशेषज्ञ-साक्ष्य इन मामलों में अधिक सुसंगत नहीं, जब तक कि न्यायाधीश स्वयं प्रयुक्त भाषा से अनभिज्ञ न हो अथवा अनुवाद सत्य-प्रेषण में तत्पर न हो[10]। न्यायाधीश की यह एकाधिकारिता न्यायिक कुण्ठा ही है, क्योंकि किसी वर्ग के सापेक्ष किसी साहित्य, संगीत या कला की किसी स्थान पर शुद्धता अथवा किसी समय में शुचिता क्या है, उस तथ्य को परख हार्डी की "पागल भीड़ से दूर" बैठा एक व्यक्ति लेखक व पाठक दोनों की ओढ़नी ओढ़कर[11] ठीक-ठीक नहीं कर सकता है। अतः क्यों न इंग्लैण्ड की भाँति हम भी न्याय सभ्य विचारक (ज्यूरी ट्रायल) की परिपाटी अपनायें? यह एक विचारणीय बिन्दु है।

एक दुर्भाग्य और भी। अश्लीलता को सदैव शीला (स्त्रीलिंग) से ही जोड़ा जाता है और शलभ (पुलिंग) से कभी नहीं। पत्र-पत्रिका, पुस्तक-पुस्तिका, निमन्त्रण-आमन्त्रण, दीवार-मीनार, चित्र-चरित्र, विज्ञापन-प्रकाशन, गली-कूचे, खिड़की-दरवाजे, शौचालय-मूत्रालय कोई भी वस्तु या स्थान नहीं है, जहाँ लैला ही लैला, मेनका ही मेनका और जूलियट ही जूलियट न हो। यत्र मजनूं सुप्त, तत्र विश्वामित्र सुप्त और सर्वत्र रोम्यो गुप्त ही मिलेगा। चतुर्दिक छिः छिः, छः-छः कहीं नहीं। क्यों इस विभेदीकरण की ओर संविधान के अनुच्छेद 14,15, और 16 अपना आक्रोश नहीं दिखाते? क्यों यहाँ-वहाँ केवल "विवेकी

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9. आर. बनाम पेनगुइन बुक्स लि. (1961) क्रि.एल.आर.-176.
10. चन्द्रकान्त बनाम स्टेट आफ महाराष्ट्र (ए.आई.आर.- 1970, एस.सी. 1390).
11. सम्पोरन बोस व एक अन्य बनाम अमल मित्रा व एक अन्य (ए.आई.आर.-1986एस.सी. 967, प्रस्तर-28).

पुरुष" और "औसत पुरुष" की ही बात होती है और बुद्धिसम्पन्न ललना की बात कभी नहीं होती? लार्ड डैनिंग ने भी इस संबंध में अपना रोष प्रकट किया है[12]।

अश्लीलता से विद्ध विधि के बिछेर से बेर-बेर, एक पृथक टेर और भी है। दण्ड विधान संहिता की धारा 292, 293 और 294 में सामान्य प्राविधान हैं, जिनसे विशेष की ओर प्रयास नाटक[13], डाक[14], सिनेमा[15], नवयुवक सम्बन्धी प्रकाशन[16], सीमा शुल्क[17], अभद्र शरीर प्रदर्शन[18] से सम्बन्धित अधिनियमों में किया गया है। दण्ड प्रक्रिया संहिता की धारा-95 व 108 में भी अश्लीलता से सम्बन्धित खोज, जब्ती व प्रतिभूति के प्राविधान है। उन सबसे पारस्परिक अन्तर्बन्ध है और अन्तर्द्वन्द भी, जैसा कि राजकपूर के मामले में[19] दण्ड विधान संहिता की धारा-79 तथा चलचित्र अधिनियम की धारा- 5 टकराव में आयी थी। अतएव जब स्वच्छन्दता-प्रगल्भा की चाँदनी बढ़ रही है, जब मृगनयनी-गजगामिनी की यामिनी बढ़ रही है, जब जयशंकर प्रसाद की अबला के आंचल में दूध के स्थान पर झूठ तथा आँखों में पानी के स्थान पर भीमसेनी पड़ रहा है, जब गाँधी की महिला शिशिर, हेमन्त और बसन्त में बचने की बजाय केवल आकर्षण के लिये परिधान धारण कर रही है, और जब "करिजवा की कसक" प्रेमलीला की खुली मसक बन रही है, तो क्या कुछ कहने करने की आवश्यकता नहीं है ?

क्या इस बात की आवश्यकता नहीं है कि विभिन्न अधिनियमों में, पंखुड़ियों की भाँति, बिखरी विधियाँ गुत्त हो जायें और गुत्तों से गुलदस्ता हो जाय? क्या इस बात की आवश्यकता नहीं है कि 19वीं शताब्दी के बोल, 20 शताब्दी में शंखनाद करते हुए, 21वीं शताब्दी में पर्दापण करें? क्या इस बात की आवश्यकता नहीं है कि समस्त प्रवृत्त विधानों के परिष्कार और एकीकरण के लिए एक पृथक आयोग गठित किया जाय अथवा विधि आयोग ही अविलम्ब भूमिका निभाये? क्या इस बात की आवश्यकता नहीं है कि ऐसे

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12. "दि कैम्ब्रिली स्टोरी" द्वारा लार्ड डैनिंग पृष्ठ-95-96.
13. नाट्य प्रदर्शन अधिनियम, 1876
14. भारतीय डाकघर अधिनियम, 1898.
15. चलचित्र अधिनियम, 1952.
16. अल्पवय व्यक्ति (अपहानि रोक) अधिनियम, 1956.
17. सीमा-शुल्क अधिनियम, 1962
18. स्त्री अशिष्ट रूपण (प्रतिषेध) अधिनियम, 1986
19. राजकपूर बनाम लक्ष्मण (ए.आई.आर. 1980 एस.सी. 6057).

परिकल्पित एकीकृत विधान के विधायन से पूर्व पाश्चात्य देशों, विशेषकर इंग्लैण्ड और अमेरिका, की विधियों की अनुकरणीयता के लिए समीक्षा कर दी जाय? क्या इस बात की आवश्यकता नहीं है कि ऐसे आयोग में तथा अन्यत्र अश्लीलता के परिजन कुमार-कुमारी ही रहें और काका-काकी न हों? क्या इस बात की आवश्यकता नहीं है कि न्याय सभ्य विचारणों में युवक-युवतियों का ही अधिक योगदान रहे और बूढ़े-बूढ़ियों का नहीं? क्या इस बात की आवश्यकता नहीं है कि यम-नियम-संयम के बोलबाला को बनाये रखने के लिए "आयु वर्गीकरण सिद्धान्त[20] को अपनाया जाय, जिससे वात्सायन का काम-सूत्र, किशोर-किशोरियों के हाथों में न पड़े" अथवा "चयनात्मक श्रोतागण अश्लीलता-परख"[21] की प्रणाली अपनायी जाय, जिससे कि मनोरंजन-वृत्त में नीर-क्षीर-विवेक न होकर, नीर-नीर व क्षीर-क्षीर विवेक रहे?

आकर्षण-चुम्बन-आलिंगन के जगत की ये जीती-जागती रंगरेलियाँ ही इस संगोष्ठी की पहेलियाँ हैं, जो अब प्रत्येक से कुछ न कुछ सुनने के लिए आतुर हैं।

इन शब्दों के साथ मैं आप सबका इस संगोष्ठी में हार्दिक स्वागत करता हूं।

धन्यवाद।

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20. जैकोबेलिस बनाम ओहियो (1964) 378 यू.एस. 184
21. गिन्सबर्ग बनाम न्यूयार्क (1968) 390 यू.एस. 629

सम्बोधन

माननीय श्री न्यायमूर्ति श्रीनाथ सहाय
न्यायाधीश,
इलाहाबाद उच्च न्यायालय,
लखनऊ-पीठ, लखनऊ।

देवियों व सज्जनों, मेरा नाम दो बार बुलाया गया इस गोष्ठी को सम्बोधित करने के लिए। जो आयोजन कर्ता हैं उनके आदेश का पालन सभा के नियमों के अनुसार आवश्यक है अतएव आप लोगों के सामने उपस्थित हूं। स्वागत भाषण, माननीय लोकायुक्त के उद्घाटन भाषण के पश्चात् संगोष्ठी में विचारणीय विषय के संबंध में कुछ भी कहना अनावश्यक है। उसकी विस्तृत विवेचना, विषय का पूरा स्थापन स्वागत भाषण में किया गया है और उसकी विस्तृत विवेचना उद्घाटन भाषण में की गयी है और मैं समझता हूं कि संगोष्ठी में विचार के लिए दिशा-निर्देश, उसकी भूमिका और उसकी सामग्री के रूप में यथेष्ट प्रस्तुत कर दिया गया है।

शील और नैतिकता मानव का अनादिकाल से विचारणीय विषय रहा, जबसे 'एडम और ईव' की परिकल्पना की गयी। गार्डन आफ ईडन और फारबिडन फ्रूट की कल्पना की गयी और ये एक ही विषय के दो रूप हैं। समय-समय पर इसके वास्तविक रूप के बारे में परिवर्तन होता रहा है। विभिन्न देशों, समाज, काल में इसका स्वरूप बदलता रहा है, किन्तु इसके संबंध में मनुष्य सर्वदा सोचता रहा है और समाज और सभ्यता के विकास में इसकी बड़ी महत्वपूर्ण भूमिका रही है, इसी का निषेधात्मक रूप ही अश्लीलता है।

शील निःशील और नैतिकता के आधार पर शलील की उत्पत्ति होती है और जब उसका निषेधात्मक रूप आता है तो वह अश्लील कहा जाता है। शील क्या है और अश्लील क्या है? इसके बारे में बौद्धिक विवेचना बराबर होती रही है, किन्तु आज तक कोई उसकी सार्वभौम, सर्वमान्य कसौटी नहीं बतायी जा सकी। उसका कारण यह है कि यह सापेक्ष है, व्यक्ति सापेक्ष है, काल सापेक्ष है और देश सापेक्ष है और इसलिए बनायी भी नहीं जा सकती है। पश्चिम में वस्तु सापेक्ष भी एक प्रकार से है, उसका संकेत माननीय लोकायुक्त के भाषण

में दिया गया है। एक वस्तु एक स्थान पर श्लील हो सकती है तो अन्य स्थान पर नितान्त अश्लील मानी जाती है। पति और पत्नी के बीच में कोई अश्लीलता नहीं है। किसी भी वस्तु के श्लील या अश्लील होने की कल्पना नहीं की जा सकती किन्तु वह एक स्थान की सीमा के अन्तर्गत, और उस स्थान से बाहर जब उसका प्रदर्शन होता है या जब उसकी चर्चा होती है तो वह अश्लील हो जाती है।

बुद्धि विलास के परिप्रेक्ष्य में श्लीलता या अश्लीलता की परिभाषा कुछ भी बनाई जाए, लेकिन कुछ चीजें ऐसी हैं जो मनुष्य की अन्तरात्मा को कष्ट देती हैं।

विचार और व्यक्तिगत आचरण, जब तक वह व्यक्ति की सीमा तक रहता है जब तक उसका कोई मूल्य नहीं है। तब तक न वह श्लील है और न ही अश्लील। आपके अपने विचार ही आपका अपना आचरण है। आप अपने प्रकोष्ठ में बैठकर चाहे जो आचरण करें, अपने मस्तिष्क के प्रकोष्ठ में चाहे जिन विचारों को धारण करें, किन्तु जब वे बाहर आते हैं, उनकी अभिव्यक्ति होती है, तब वे समाज की सम्पदा बन जाते हैं और यदि उससे दूसरे लोग प्रभावित होते हैं तब वे आलोचना का विषय बनते हैं-चाहे वह वाणी के रूप में, संगीत के रूप में, चित्र के रूप में, पिकासो की पेन्टिंग के रूप में या फिल्म के रूप में आएं। किन्तु जब विचार अभिव्यक्ति के रूप में प्रकट होते हैं तो फिर उनका माप उसका मूल्यांकन होता है, उसका मापदण्ड होता है और यहीं पर श्लीलता और अश्लीलता का विचार होता है। कुछ ऐसी चीजें हैं जो कही जाए अथवा न कही जाएं, किन्तु उनको जब हम बाह्य रूप में, बाह्य आचरण के रूप में देखते हैं, तो हमको स्वयं वे उद्वेलित करती हैं, व्यथित करती हैं। अब उसी के एक अंश को जब वह अधिक हो जाता है तो उसको श्लील की अपेक्षा हम अश्लील कहते हैं।

जब हम दूसरे को झूठ बोलते हुए सुनते हैं तो हमारे मन में एक प्रकार का उद्वेग होता है और इसलिए हम असत्य को अनैतिक मानते हैं। जब हम अपने से किसी बड़े को देखते हैं, उसके प्रति सम्मान प्रकट नहीं करते हैं तो हमारे हृदय में वेदना होती है। इसके लिए किसी परिभाषा की आवश्यकता नहीं है और इसलिए वह असम्मान व अनैतिकता का रूप धारण करता है और जब हम अपने किसी भी व्यक्तिगत आचरण को, जिसको हम बाह्य

रूप में देखते हैं उससे हमको कष्ट होता है, हमारी आत्मा दुःखित होती है, तो हम केवल दुःखी ही नहीं होते हैं, किन्तु उसका दुष्प्रभाव भी पड़ने की आशंका होती है जिसे हम अश्लील कहते हैं। दुःख इस बात का है कि यह सर्वभौम होते हुए भी काल के दृष्टिकोण से अनादि होते हुए भी, समाज की दृष्टि से, देश की सीमाओं से परे होते हुए भी, सब स्थान पर इसका विचार किया गया है। किन्तु हमने अपने देश में भारतीय परिप्रेक्ष्य में विधि को विकसित करने की चेष्टा नहीं की है। डीसेन्सी और मारेलिटी को संवैधानिक प्रतिष्ठा तो दी गई है। अनुच्छेद 19(2) में डीसेन्सी और मौरेलिटी के नाम पर शील और नैतिकता के नाम पर हम विचार और अभिव्यक्ति की स्वतंत्रता को सीमित करने के लिए प्रावधान तो कर सकते हैं, किन्तु जो उसका मापदण्ड रखा गया है वह हिकलिन और राथ के आगे नहीं बढ़ पाया है।

भारत की अपनी नैतिकता है अपनी शीलता है जो पाश्चात्य देशों की नैतिकता और शीलता से सर्वथा भिन्न है मौलिक रूप से भिन्न है किन्तु जितने भी मापदण्ड अपनाए गए हैं- लेडी चैटरलीज़ लवर से लेकर आज तक जितने भी हुए हैं, आज भी हम इंग्लैण्ड की उन परिभाषाओं पर, जिन्हें इंग्लैण्ड की समाज की पृष्ठभूमि में निर्धारित किया गया है, उन्हीं मापदण्डों को लेकर और उन्हीं से यहाँ की नैतिकता को नापते हुए अश्लीलता भी नापते हैं। मेरा यह अनुमान है कि यहाँ एकत्र बुद्धिजीवियों के विचारों से भारतीय परिप्रेक्ष्य में अश्लीलता संबंधी विधि के मापदण्ड को विकसित करने में सहायता मिलेगी। यदि इस समय नहीं, तो आगे भी विचार करेंगे कि हमारे समाज, दर्शन, संस्कृति में, मौलिक अन्तर है। तो क्या हम अश्लीलता के कोई मापदण्ड का विकास भारतीय समाज में चिन्तन, भारतीय समाज की संस्कृति के परिवेश में भी बहस कर सकते हैं अथवा नहीं कर सकते हैं, यह विचारणीय है।

यदि आपने हिकलिन या राथ की बात कह कर गोष्ठी को समाप्त कर दिया तो इसके सिवाय कि आप केवल शब्दानुवाद को उसके गुणानुवाद करके अपने कार्य की इतिश्री समझ लें, इससे आगे कुछ बात नहीं बढ़ती, किन्तु उसके लिए आपको यह देखना पड़ेगा कि हमारे संस्कारों का आग्रह क्या है? वह कौन सी बात है जो भारतीय पृष्ठभूमि में हमारी अन्तरात्मा को उद्वेलित करती है और क्या उस प्रकार के हम किसी भी मापदण्ड का विकास

यहाँ पर कर सकते हैं कि नहीं। मैं समझता हूं कि इस गोष्ठी में इस प्रकार से कुछ भी निष्कर्ष निकल सके या इस गोष्ठी में भाग लेने वालो को इन विचारों से कुछ भी इस प्रकार की प्रेरणा मिल सके, तो शील और नैतिकता अश्लीलता आदि विधि के विकास में और उसके सामाजिक विकास में बहुत ही सहायता मिलेगी।

भारतीय समाज के लिए, भारतीय लोगों के लिए हम, किस प्रकार से विधि का विकास कर सकते हैं और आप लोगों से जो प्रकाश मिलेगा उस प्रकाश का उपभोग आगे किसी प्रसंग में न्यायालय भी कर सकेंगे, और केवल पाश्चात्य देशों के दर्शन और मापदण्डों से बंधे नहीं रहेंगे। मैं संगोष्ठी के आयोजकों को धन्यवाद देता हूं कि उन्होंने मुझे अवसर दिया, किन्तु इस प्रकार के स्फुट विचारों के अतिरिक्त मैं इस समय और अधिक प्रस्तुत क्या कर सकता हूं। आप लोगों ने सुना, ,

धन्यवाद।

समाज एवं अश्लीलता

माननीय श्री न्यायमूर्ति कैलाश नाथ गोयल
लोकायुक्त
उत्तर प्रदेश

अश्लीलता एक सदाबहार विषय है, साहित्य और फिल्म व टी.वी. के आलोचकों के लिए ही नहीं, आम जनता के लिए भी। कौन सा उपन्यास या कविता या कोई अन्य पुस्तक अश्लील है या नहीं इस पर कभी खत्म न होने वाली बहस चलती रहती है व प्रबुद्ध लोगों के मत देश व काल के साथ बदलते भी रहते हैं।

विस्तृत अर्थों में तो विशेषण "अश्लील" या "Obscene" का प्रयोग किसी भी प्रकार के अति अशोभनीय आचरण के लिए किया जा सकता है। उदाहरण के लिए किसी प्रदेश में भुखमरी फैली है और वहाँ कोई समृद्ध व्यक्ति आलीशान दावत आयोजित करता है तो दौलत का ऐसा प्रदर्शन उसकी समाज के प्रति संवेदनशून्यता का परिचायक है, और उसे हम अश्लील या Vulgar कह सकते हैं। किन्तु यहाँ हम इस विस्तृत अर्थ में अश्लीलता या vulgarity पर विचार नहीं कर रहे बल्कि ऐसी अश्लीलता पर जो कानून की निगाह में दण्डनीय अपराध हो या जिसके आधार पर किसी फिल्म, नाटक, टी.वी. वीडियो अथवा लाइव शो को सैंसर किया जा सके या जिसके डाक से भेजे जाने अथवा आयात-निर्यात को रोका जा सके।

इसके विषय में कई कानून हैं। भारतीय दण्ड संहिता के अतिरिक्त कस्टम्स ऐक्ट, पोस्ट आफिस ऐक्ट, सिनेमैटोग्रैफ ऐक्ट व ड्रैमेटिक परफार्मेंसेज ऐक्ट इत्यादि। मुख्य तो दण्ड संहिता की धारा 292 है। यह धारा इंग्लैंड के कानून पर ही आधारित है। अमेरिका में भारत की तरह अभिव्यक्ति की स्वतंत्रता को संविधान द्वारा मूल अधिकार के रूप में गारंटी दी गई है। उसके होते हुए भी सन् 1942 में एक केस (चैप्लिंसकी बनाम न्यू हैम्पशायर)[1] में अमरीकी सुप्रीम कोर्ट ने स्पष्ट किया था कि अश्लीलता इस मूल अधिकार परिधि में

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1. चैप्लिंसकी बनाम न्यू हैम्पशायर-(1942) 315 यू.एस. 568.

हो नहीं आता। इसी प्रकार एक अन्य प्रसिद्ध केस (रौथ का केस)[2] में कहा गया कि अश्लीलता के प्रकाशन को कोई भी सामाजिक उपयोगिता नहीं है अतः इसे संवैधानिक संरक्षण नहीं दिया जा सकता। किन्तु संवैधानिक मूल अधिकारों के बारे में उच्चतम न्यायालयों का रुख हमेशा समान नहीं रहता और न्यायाधीशों के आपसी मतभेद भी उजागर होते रहते हैं। हम देखते हैं कि सन् 1966 में तो "फैनी हाल" नामक पुस्तक को तो केवल इस आधार पर अश्लीलता के आरोप से मुक्त कर दिया गया[3] कि उसमें थोड़ा बहुत साहित्यिक गुण तो पाया ही जाता है, किन्तु बाद में 1973 में "मिलर"[4] के केस में इस बात पर बल दिया गया कि जब तक लेखन में साहित्यिक मूल्य सारवान रूप से विद्यमान न हों, तब तक इस आधार पर अश्लीलता के आरोप से उसे बरी नहीं किया जा सकता। फिर भी उक्त निर्णय का प्रभाव यह है कि केवल "हार्ड-कोर पोर्न" ही अश्लीलता की परिभाषा में रह जाता है।

इंग्लैंड में अश्लीलता शब्द सबसे पहले 125 वर्ष पूर्व "हिक्लिन"[5] के केस में आधिकारिक रूप से परिभाषित हुआ। एक व्यक्ति हिक्लिन ने एक पुस्तक प्रकाशित की थी जिसमें रोमन कैथोलिक पादरियों द्वारा कनफैशनल में महिलाओं से पूछे गये प्रश्नों व उनके द्वारा दिये गये उत्तरों का अश्लील विवरण दिया था। उसके केस में चीफ जस्टिस कॉकबर्न द्वारा दी गयी परिभाषा की यदाकदा आलोचना पुरातनपंथी के आधार पर हुई है, किन्तु दोनों देशों की संसदों ने भी उसी के अनुसार अपने-अपने अधिनियमों में इस अपराध की परिभाषा दी है व न्यायालयों ने भी उसका अनुसरण किया है।

भारत में मूल अधिकार का प्रश्न ख्वाजा अहमद अब्बास ने अपने डाक्यूमेंटरी फिल्म "ए टेल आफ फोर सिटीज"[6] के सन्दर्भ में उठाया था। उस फिल्म में कुछ वेश्याओं के जो चित्र दिये थे उन पर आपत्ति करते हुए फिल्म को "केवल वयस्कों के लिए" यानी "A" सर्टिफिकेट दिया गया था। न्यायालय में मामला लम्बित रहते हुए ही न्यायालय के आदेश के बिना ही उसे आम प्रदर्शन के लिए यानि "U" सर्टिफिकेट दे दिया गया। फिर

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2. सैमुएल रौथ बनाम यू. एस. ए.-(1957) 354 यू. एस. 476
3. (1966) एटोर्नी बनाम मासाचुसेट्स, 383 यू. एस. 413.
4. (1973) मिलर बनाम कैलीफोर्निया, 413 यू. एस. 15.
5. (1868) 3 क्यू. बी. 360 क्वीन बनाम हिक्लिन
6. ए.आई.आर. (1971) एस.सी. 481 के. ए. अब्बास बनाम यू.ओ.आई.

थी यह प्रश्न न्यायालय के विचारार्थ रखा गया कि संविधान किसी प्रकार की प्री-सेंसरशिप की ही इजाजत नहीं देता, यह दीगर बात है कि यदि कोई चीज अश्लील पाई जाय तो प्रकाशक, निर्माता या प्रदर्शक को बाद में दण्डित किया जाय। न्यायालय ने इस दलील को अस्वीकार किया। इस बात पर गौर किया गया कि अमेरिका व इंग्लैंड में भी सेंसरशिप तो है ही, भले ही वह गैर सरकारी किन्तु सर्वमान्य संस्थाओं द्वारा की जाती हो। सिनेमा एक सशक्त माध्यम है। जब कोई घटना चलती-फिरती बोलती तस्वीर के रूप में दिखाई जाती है तो उसका जो ऑडिओ विजुअल (Audio-visual) प्रभाव दर्शकों पर पड़ता है उसकी तुलना किसी पुस्तक के पढ़ने या छपे हुए चित्र को देखने के प्रभाव से नहीं की जा सकती। चीफ जस्टिस हिदायतुल्ला ने कहा कि वात्सायन के "कामसूत्र" का प्रकाशन एक बात है किन्तु उसके आधार पर एक व्यवहारिक सैक्स गाइड को फिल्मी पर्दे पर उतारना बिल्कुल अलग बात होगी। पुस्तक अनुमन्य हो भी तो ऐसी फिल्म थोड़े ही अनुमन्य हो जाएगी। यह तो कोई भविष्यवक्ता ही बता सकता है कि यह अवधारणा भी कब तक ठहर पाती है।

सुप्रीम कोर्ट में जब राज कपूर की फिल्म "सत्यम शिवम् सुन्दरम्"-[7] का मामला गया तो वह अभियोजन केवल इस आधार पर समाप्त किया गया कि जब सैंसर बोर्ड ने ही फिल्म को पास कर दिया तो उसका प्रदर्शन दण्ड संहिता के अधीन दण्डनीय नहीं हो सकता। किन्तु उसी फिल्म में जीनत अमान से जो अंग प्रदर्शन कराया गया था उसकी महिला संघों ने कटु आलोचना की, व उसके कुछ दिनों बाद 1986 में संसद ने एक कानून Indecent Representation of women (Prohibition) Act पारित कर दिया।

हमारी सुप्रीम कोर्ट ने "लेडी चैटर्लीज लवर"[8] को तो 1964 में अश्लील माना। किन्तु बाद में एक मराठी पत्रिका "रम्भा" के दीपावली अंक में प्रकाशित कहानी "शमा" को 1969 में,[9] व बंगला पत्रिका "देश" में प्रकाशित व प्रसिद्ध लेखक समरेश बसु द्वारा लिखित उपन्यास "प्रजापति" (1986) को अश्लील नहीं माना।[10]

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7. राजकपूर बनाम राज्य-ए.आई.आर. 1980 एस.सी. 605
8. रजीत के. उदेशी बनाम महाराष्ट्र-ए.आई.आर. 1965 एस.सी. 881.
9. चन्द्रकांत काकोडकर बनाम महाराष्ट्र-ए.आई.आर. 1970 एस.सी. 1390
10. समरेश बोस बनाम अमाल मित्रा-ए.आई.आर. 1986 एस.सी. 967.

अब देखें कि अश्लीलता की स्वीकृत परिभाषा क्या है। एक तो यह कि जिस चीज या पुस्तक आदि के बारे में शिकायत की जा रही हो वह कामोत्तेजक हो या कुत्सित विचारों (Prurient interest) को अपील करती हो या उसकी प्रवृत्ति ऐसे लोगों के चरित्र को भ्रष्ट करने की हो जिनके हाथों में वह पड़ने वाली हो। लेखक का आशय या intention गौण है, केवल उसकी प्रवृत्ति यानि tendency ही देखी जाएगी।

दूसरे, यह नहीं कि किसी एक भी व्यक्ति या अति संवेदनशील या छुईमुई प्रवृत्ति के व्यक्ति पर संभावित कुप्रभाव पर्याप्त होगा। साथ ही, यह भी जरूरी नहीं है कि अधिकांश लोगों के चरित्र के भ्रष्ट होने की संभावना हो। कानून केवल यह देखेगा कि क्या उसका प्रतिकूल प्रभाव काफी लोगों (a significant proportion) के चरित्र पर पड़ सकता है या नहीं (कैल्डर ऐंड बोयर्स का केस–1968 इंग्लैण्ड)।

तीसरे, यह कि पुस्तक के किसी एक छोटे से अंश को या उसमें प्रयुक्त एकाध शब्द को अलग से नहीं देखना है, बल्कि उसके बारे में राय पूरी पुस्तक या फिल्म की पृष्ठभूमि में ही (taken as whole) कायम करनी होगी।

इन प्रश्नों पर साहित्य या कला के आलोचकों, लेखकों या विशेषज्ञों की राय ग्राह्य नहीं है, क्योंकि इन पर तो कोई सामान्य व्यक्ति भी अपने अनुभव के आधार पर राय कायम कर सकता है। विशेषज्ञों की राय तो अभियुक्त के इस डिफेन्स (सफाई की दलील) पर ली जा सकती है कि पुस्तक का मैटर अश्लील होने के बावजूद वह एक अच्छी साहित्यिक या कलात्मक कृति है या यह कि उसका प्रकाशन सामाजिक–दृष्टि से लोकहित में है। धार्मिक वस्तुओं व मन्दिरों व अन्य प्राचीन इमारतों पर अश्लीलता की परिभाषा लागू नहीं है।

यह भी एक परस्पर–विरोधी बात मालूम होती है कि एक ओर तो हम कहें कि पुस्तक या फिल्म अश्लील है व दूसरी ओर यह कि उसका प्रकाशन या प्रसारण लोकहित में है। इस विरोधाभास की अच्छी विवेचना **कालडर ऐंड बोयर्स**[11] के केस में इंग्लैंड की कोर्ट आफ अपील में की गई है। न्यायाधीशों के अनुसार जूरी को एक ओर तो यह देखना चाहिए

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11. क्वीन बनाम कालडर ऐंड बोयर्स लि. (1968) 3 आल ई. रि. 644

कि पुस्तक को पढ़ने से कितने व्यक्तियों का चरित्र भ्रष्ट होने की आशंका हो सकती है, व चरित्र भ्रष्ट करने की उसकी प्रवृत्ति कितनी मात्रा में है व चरित्र किस प्रकार भ्रष्ट होने की संभावना है व दूसरी ओर पुस्तक का साहित्यक समाज-वैज्ञानिक या नैतिक मूल्य कितना है। फिर इन दोनों को तौल कर निर्णय लेना होगा कि उसका प्रकाशन जनहित में माना जा सकता है या नहीं।

किन्तु व्यवहार में ऐसी तार्किक प्रक्रिया बहुत आसान नहीं है। अश्लीलता व साहित्यिक मूल्य के कोई निश्चित पैमाने तो है नहीं। अन्ततोगत्वा निर्णय वस्तुपरक न होकर, व्यक्तिपरक ही होते हैं। इंग्लैंड में मेम्बराने जूरी के, व हमारे देश में पीठासीन जजों के विचार, संस्कार व पूर्वाग्रह ही निर्णायक [illegible] चैटरली के मामले में न्यायमूर्ति हिदायतुल्ला ने लेखक व उस [illegible] साहित्यक मूल्य को अस्वीकार नहीं किया। इस पर अभियुक्त की ओर से मुल्क राज आनन्द की गवाही भी हुई थी। किन्तु डी.ऐच. लारेंस के जीवन की पृष्ठभूमि में यह पाया गया कि वह एक हताश व्यक्ति था व उसमें समाज की मान्यताओं के प्रति विद्रोह की भावना विकसित हो गई थी, व सैक्स घटनाओं को छोड़कर शेष पुस्तक तो उबाऊ ही थी, इसलिए उसे साहित्यिक मूल्य के आधार पर अश्लीलता के आरोप से मुक्त नहीं किया जा सकता। वैसे न्यायमूर्तिगण ने माना कि आजकल प्रचलित अधिकतर कथा साहित्य में सैक्स संबंधी विवरणों का अभाव नहीं होता। उसकी तर्क-शृंखला में हम पाते हैं कि कई मुर्दे गड्ड-मड्ड हो गए हैं। इसी प्रकार दूसरी ओर "प्रजापति" उपन्यास के केस में न्यायमूर्ति अमरेन्द्र नाथ सेन स्वयं बंगला भाषा के ज्ञाता रहे होंगे। वह लेखक समरेश बसु से व उसके पक्ष में गवाही देने वाले लेखक बुद्ध देव बसु व साहित्य के प्रोफेसर नरेश गुहा से काफी प्रभावित हुए। उन विद्वानों का साक्ष्य तो केवल साहित्यिक मूल्यांकन के प्रश्न पर ग्राह्य था, अश्लीलता के प्रश्न पर नहीं, किन्तु न्यायमूर्तियों ने अश्लीलता के प्रश्न पर भी उसे ध्यान में रखा।

यहाँ एक बात और स्पष्ट कर दूं । सामान्यतया तो अश्लीलता का प्रश्न यौन-सम्बन्धों व नग्नता के चित्रण के प्रसंग में ही उठता है। किन्तु अश्लीलता का कानून मादक द्रव्यों

यानी ड्रग्स आदि के दुष्प्रचार पर भी आकर्षित हो सकता है, जैसा इंग्लैंड में स्कर्विंग[12] के केस में 1985 में स्पष्ट किया गया। ड्रग्स के मामले में यह भी माना गया कि, किसी ड्रग का चरित्र को भ्रष्ट करने में क्या योगदान हो सकता है इस विषय पर विशेषज्ञों का साक्ष्य भी ग्राह्य है क्योंकि जूरी को इन मामलों की जानकारी सामान्य रूप से नहीं होती। सैक्स संबंधित मामलों में जूरर स्वयं अपने ही अनुभव के आधार पर नतीजे पर पहुंच सकते हैं अतएव उस संदर्भ में विशेषज्ञ-साक्ष्य ग्राह्य नहीं माना जाता।

ऊपर से तो यह मालूम होता है कि इंग्लैण्ड व भारत की कानूनी मान्यतायें अमेरिका के 1973 के निर्णय की तुलना में अनुदार हैं, किन्तु व्यवहार में तो जमाने की रफ्तार को देखते हुए इन दोनों देशों में भी केवल "हार्ड कौर" पर ही कार्यवाही की जाती है। हार्ड कौर से, मोटे शब्दों में, ऐसी पुस्तक या पठनीय, दर्शनीय या प्रयोजनीय सामग्री का आशय है जिसका साहित्यिक या कलात्मक मूल्य तो शून्य ही है व उसमें केवल व्यापारिक स्वार्थ के लिए लोगों के चरित्र भ्रष्ट करने की प्रवृत्ति स्पष्ट है।

यह दूसरी बात है कि आज तो हमारे देश में भी कलाकृतियों का अच्छा खासा बाजार मूल्य हो गया है व विकसित देशों में तो लोकप्रिय लेखकों को उपन्यास लिखना शुरू करने से पहले ही बड़ी-बड़ी रकमें पेशगी में मिल जाती हैं। यह कहना कठिन है कि किसी कलाकार या लेखक के अवचेतन मन में अपनी आने वाली कृति की आर्थिक सम्भावनाओं का कितना खयाल रहेगा।

एक ओर तो लेखकों, आर्टिस्टों व फिल्मकारों द्वारा अभिव्यक्ति की स्वतंत्रता की दुहाई देकर अश्लीलता के कानून व सेंसरशिप के औचित्य को ही चुनौती दी जाती है, व दूसरी ओर महिलाओं के शरीर का व्यापारिक प्रयोजनों के लिए शोषण व अपरिपक्व किशोर-किशोरियों के चरित्र के बारे में उनके माता-पिताओं की चिन्ता, व महिलाओं पर होने वाले सैक्स अपराधों की बढ़ोतरी, इन सभी बातों पर समन्वित विचार विनिमय की आवश्यकता है।

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12. क्वीन बनाम स्कर्विंग (1985) 2 आल ई.आर. 705 सी.ए.

1976 के एक केस में श्रीमती जौर्डन[13] नाम की अभियुक्त द्वारा यह दलील दी गई कि प्रकाशित सामग्री अश्लील तो अवश्य थी, किन्तु ऐसी सामग्री का प्रकाशन जनहित में है। सफाई में एक प्रतिष्ठित मनोवैज्ञानिक विशेषज्ञ को भी पेश करने का प्रयत्न किया गया जो यह बताता कि वितरित की जाने वाली सामग्री कुछ व्यक्तियों के लिए बड़ी उपयोगी सिद्ध होती। जो व्यक्ति मनोवैज्ञानिक कारणों से अपने जीवन में संतोषपूर्ण यौन-सम्बन्ध स्थापित करने में असफल रहते हों अथवा समलैंगिक सम्बन्धों में ही रुचि रखते हों या अन्यथा विकृत मनोवृत्ति के हों उनको उस सामग्री के प्रयोग से सैक्स सम्बन्धी तनावों से मुक्ति मिल सकती थी। इस प्रकार ऐसी सामग्री एक प्रकार से सेफ्टी-वाल्व का काम करती व उन व्यक्तियों को असामाजिक व आपराधिक गतिविधियों से रोकती। किन्तु सभी न्यायालयों ने,-मामला हाउस आफ लार्डस तक लड़ा गया था,-ऐसे साक्ष्य को अग्राह्य ठहराया उन्होंने कहा कि यदि ऐसी दलील मान ली जाए तब तो किसी वस्तु या पुस्तक आदि में अश्लीलता जितनी भी अधिक पाई जाय उतना ही उसे समाजोपयोगी मानना होगा। वैसे स्वीडन, डैनमार्क आदि कुछ देशों में अश्लीलता व सैंसरशिप कानून ही समाप्त कर दिये हैं व उन देशों के अनुभवों पर ही समाजशास्त्रियों द्वारा विचार किया जा रहा है।

आज जब सैटिलाइट के जरिये सभी देशों के टी.वी. व वीडियो प्रसारण अन्य देशों में देखे जा सकते हैं, वैसे भी यह बेमानी हो गया है कि अलग-अलग देशों के न्यायालयों की क्या अलग मान्यताएँ हैं। कानून आप कुछ भी बनाइये, कानून को व्यवहार में लागू करने की भी अपनी सीमाएँ हैं।

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13. डी.पी.पी. बनाम जोर्डन (1976) 3 आल ई.आर. 775 एच.एल.

Part - II

Proceedings of the Seminar

PROCEEDINGS OF THE SEMINAR

DELEGATES VIEWS

DAY - I

SESSION - I

TIME	:	11.15 a.m.
VENUE	:	Conference Hall, Yojana Bhawan, Lucknow.
CHAIRMAN	:	Hon'ble Mr. Justice J.K. Mathur Lucknow Bench of the High Court of Judicature, Allahabad.
SUBJECT OF DISCUSSION	:	PREVAILING CONCEPT OF OBSCENITY

CHAIRMAN'S PROLOGUE

Today we treat our children liberally by permitting them to be exposed to various media even at home. This exposure has brought to the fore our concern that the media should not deprave them. This is one predominating reason for checking obscenity and making it punishable. There is a clear opinion against punishment being given for any expression.

Today we have representatives of different sections of society who are interested in this problem, having different shades of opinions. This will enrich the discussion and we hope to reach well considered and balanced conclusion.

For clarity we have divided the entire area into specific topics. Firstly we propose to discuss the concept of obscenity in law - whether the present definition is sufficient to cover all the delinquent situations, or needs either being broadened or narrowed we would try to find if existing definition needs modification.

Then we intend to discuss whether we need to punish obscenity at all, considering the counter-vailing opinions and analysing them, and if so what should be the amount of punishment. We will also consider the role of guilty intention in the culpability of obscenity.

One controversy on which I would like to invite the attention of the participants here is that the manner in which obscenity is defined in Sec. 292 (1) of I.P.C. renders it susceptible to being interpreted subjectively. Every crime must be so defined that a person who may commit it may know at the time he commits it that it is punishable by law. This is a basic principle of criminal jurisprudence. If the area of criminality is elastic it may entrap unwary persons who in genuine belief consider their act to be justifiable, only to subsequently discover that the act is being interpreted as a criminal one. This is one view of the matter.

Seen from another angle each of the depictions, writings, words etc. cannot be preclassified with a view to say with exactness what would be obscene and what would not be obscene. An utterance has to be viewed in its context. Concept of obscenity has to respond to social ethos and to that extent has to be adoptable. These contesting contentions will have to be weighed and an answer found in defining obscenity.

This is the broad canvas and the proposed strategy for guiding the discussions during the Seminar-Cum-Workshop. Any suggestions to modify the content and manner of discussion will be welcome.

To set the ball rolling, we will request the participants who have sent their papers, to introduce their papers. The discussion shall then follow.

May I now request Sri P.M. Bakshi, a Member of the Law Commission of India and an eminent jurist to introduce his paper dealing with the existing law relating to obscenity.

PRESENTATION AND DISCUSSION

Law Commission of India
through
Sri P.M. Bakshi,
Member.

We have a general law and certain special laws for obscenity. We have substantive law of obscenity and certain procedural provisions in the Code of Criminal Procedure. Sec. 292 India Penal Code punishes the creation, distribution and publication of obscene writings, pictures, paintings, representations and other objects. It covers books, periodicals, films, paintings, video recordings, Khajuraho sculptures and Konark idols. Every thing under the sun can be the subject of obscenity. In theory, criminal law contemplates conduct as well as mentality. Conduct is very widely described, but mental element is not very clearly brought out in Sec. 292 I.P.C. The whole emphasis of the section is on the effect of the obscene object on the minds of certain persons.

What is the kind of effect focussed upon in the section ? The section, now, gives us three alternative tests of obscenity. Either the matter is lascivious or matter is appealing to the prurient interest or the tendency is to deprave the person.

'Lascivious' means something which is extremely lewd. The second view talks of appealing to the 'prurient' interest, means teaching the audience something lascivious and the author, writer or painter offering the same. That means that the dormant instinct in the viewer is aroused and provoked by the author.

All the three tests of obscenity have been borrowed from Hicklin's case. But, in my view, ultimately the court will have to take into account, the social impact and social environment. that is the reason why we

have got a difference of opinion in the judgment of Justice Hidayatullah and judgment of Justice A.N. Sen.

Sec. 292 I.P.C. has a very important exception and that exception is of the publication of the matter for public good. Legislature requires the Court to balance the public good, of course, the burden of proof is upon the accused.

In Samaresh's case, Prajapati is a story of young boy, studying in college, whose parents are not living happily. The whole object of the author is to focus attention upon the evil consequences arising from the family life of the boy. This boy, not being happy with the family, tries to pursue his sexual fantasies. The author, at four or five places, tries to give a depiction of the way in which the boy indulges either in total sex or in sexual fantasies or partial sex with a number of persons. The most criticised aspect of the novel is that where boys and girls have gone for a picnic in a college party and they are moving in a particular garden, the boy just diverts himself from the main group and enters the garden Baba Loka Mandal. Then he sees a girl, the gardener's daughter, sleeping with scanty dress. He provokes her to sexual relationship. This episode, as described in the novel, is an open description, but the Supreme Court had the advantage of the opinion of two eminent Bengali persons. In their opinion the overall effect of this publication is not to provoke lust or to appeal to the prurient interest or to deprave the minds of the viewers. Rather it is to warn society that this is how the people go astray and then indulge in illicit sex.

What is the meaning of public good? I can see that in the future the exception to Sec. 292 will be more important than the main section. Main section is very old and a lot of discussion has already been done; but the exception is new and important. There must be an advancement of science or art or literature or any other public object. Public evil is to be balanced against the public good. I am of the view that in the trial of a case of obscenity assistance of experts should be provided to

courts, because it is not possible for a lay person as a judicial officer to evaluate various aspects.

There are certain special laws. It is not possible to bring out all those laws into one place, because each of them is occupying a particular position in its own segment. There is a provision in the Criminal Procedure Code for the seizure of obscence literature by the police. If you go to a book shop in a big city, you will find quite a confusing variety of publications, some of them by very famous photographer e.g. Raghu Rai, costing Rs. 1000/- It will not corrupt any body. There are books in the nature of sexual education obviously having no other objective. These are publications, which causes great problems. There are fiction, short stories and novels which are intended to present a social scene but in which sexual episodes are described in a crude manner. It is this kind of literature, which is going to be bone of contention and the police, perhaps, must be feeling much embarrassed as to where to draw the line. Police have got a lot of things to do and that is the reason why they are not able to conduct as many raids as they can. And that is good in a way.

There is another provision under sec. 11 of Custom Act, 1962, under which the Central Government may, by notification prohibit importation of books in India for various reasons, one of which is obscenity. We, all, know the controversy going on in papers now. Madona, the famous singer, has written a kind of book, which is avowedly obscene, though she does not concede the fact. Some body asked the customs people "Are you going to allow it"? They said : "Where is the Govt.'s ban on the importation of the books? What, if the Govt. keeps quiet or the book is brought to India or some one makes a suggestion to Govt. to allow it and Govt. allows it." Here, the Raj Kapoor's case of 1980 is relevant. In that case, film 'Satyam, Shivam, Sundaram' was passed by Censor but sec. 292 I.P.C. does not make an exception for a film, which has been passed by Censor. The

question arose in that case whether a person can be prosecuted for distributing a film, which is, already, passed by Censor? The Supreme Court took a sort of pragmatic view and held that distribution is justified by law u/s 79 I.P.C. and distributor cannot be prosecuted. The impact of this judgment on the other special laws is of great consequence. If the Central Govt., officially, declares that Madona's book is not obscene and it can be brought, then it will be embarassing for anybody in India to prosecute a vendor, distributor and seller of the book. Criminal Procedure Code is not often used against the obscene publications, but it can be used. Obscene material can be forfeited by a Govt. notification and not by police and the notification can only be challenged in the High Court.

There are three media– audio, video and visual. One is Cinema. The other is cassettes, which is not, officially, distributed in the theatre, but, only shown on the television or by way of own video-viewer. In the last, there are a number of programmes, which are, basically, coming through the satellite. Now the test is only one. If a Cable-T.V. operator, sitting in his own office, telecasts, through the cable, to the subscriber, a foreign picture, which is obscene, he would be guilty of an offence, because he is helping in the distribution of an obscence picture. If an Indian manufacturer of an audio-visual-cassette, which is going to the Cinema house, allows it to be distributed, both he and the Cable Operator would be guilty. There is no doubt that, if the official television in India or in any country, permits the distribution of any obscene material, those who are giving permission knowingly, might find themselves in the criminal court. In fact, there have been cases of contempt of court and defamation and other branches of criminal law, but, somehow the court took a lenient view and the matter was not proceeded. Now, in all these cases the test is: What is the effect of the publication on those, who are likely to view that particular matter?

How do we define the audience? Those, who are likely to view the matter will be fluctuating one. In the morning, childeren will be never seen, because they are at school. But, in the afternoon, most of them shall be glued to the television or the Cable T.V. At night, children may be made to sleep, but they would not go and insist on the equality. They would, also, like to see the adult picture shown at night. So this is one aspect, which should be considered in the Seminar.

SESSION - II

TIME	:	12.15 p.m.
VENUE	:	Conference Hall, Yojana Bhawan, Lucknow.
CHAIRMAN	:	Hon'ble Mr. Justice J.K. Mathur, Lucknow Bench of the High Court of Judicature, Allahabad.
SUBJECT UNDERTAKEN	:	PUNISHING OBSCENITY - JUSTIFICATION

CHAIRMAN'S WORDS

There are certain reasons that the obscenity as such ought to be punished. One of the reason to punish obscenity is, that it corrupts the young mind, the other being that it infringes the supposed principles of public morality, while the other view is that it curbs the creativity of artists. In this session we will discuss whether there is any justification for punishing obscenity.

Now I invite Prof. Pandey to address on the subject.

PRESENTATION AND DISCUSSION

University Faculty
through
Professor B.B. Pandey,
Faculty of Law,
Lucknow University.

One thing, that strikes me in connection with obscenity, is that this is an area, in which there is intense conflict between law and morality. Though law people say that law should be based on morality and share the same basic values on question of obscenity yet due to criminalisation of obscenity, the gap in between the two seems to be growing.

I would explain this from the point of view of certain trends in the kind of advertisements which do not fall on grounds of morality. I have read in the Indian Express about children being photographed nude and films going abroad. There is a great market. We read about filming stripping women and filming nude women with a view to driving some pleasure. The relationship between law and morality is under strain. Obscenity was criminalised over 100 years back. If we see the definition of crime, it is a harmful human conduct that sovereign desires to prevent. And what is the harmfulness of obscenity? It is criminalised, mainly on three grounds. One is on the ground of public morality. The other is on the ground of being harmful to youthful mind and the last is on the ground of individual dignity. Third ground has become important recently. I am taken to a very important debate that took place in England in late 50's on the question of enforcement of public moral laws between Lord Develin and Prof. Hart. Lord Develin pressed the view very strongly that morality is the theme of society and society will burst into pieces, if law of public morality is not enforced.

That view of Lord Develin was held in famous case of D.P.P. v. Stuart - known as Lady Director's case.

Prof. Hart on the other hand said, following the line taken by John Stuart Mill in 1878, that interference in liberty should not be tolerated. Unless one's freedom interfere with other's, it is justified. In case of obscenity, the harm is to the youthful mind on ground of public morality. Prof. Hart was not very sure, whether it should be criminalized or not. Now the growth in England has shown that Prof. Hart has been vindicated, because the English society is quiet. Lord Develin was proved wrong. This is one line along which controversy has taken off.

Other is one paradox of life. That is the question before crime of obscenity. We have literature on violence. Children, viewing Mala D which is obscene. We never object, when they read comics full of horror and violence. This paradox has been described in the famous old book "Love and death" a study of censorship by G. Hegman. In his words "Sex being forbidden, violence is to exchange." Murder is crime, describing murder is not a crime. Sex is not crime, describing sex is crime. Why ? Penalty for murder is death and life imprisonment, while no penalty is prescribed for writing about it. Now the third question. Even if we consider that criminalization of obscenity is suited for human being in the interest of mental health of human being. We have provisions under various laws as Sec. 294 I.P.C., 509 Cr.P.C. in particular.

We have Indecent Representation of women (Prohibition) Act 1986, which makes indecent representation an offence u/s 3 of the Act. Now we have many other categories of obscenity with photographs. We should criminalize all kinds of pornography.

डा. (कु.) के. सम्बरवाल

माननीय जी ने अभी कहा कि नैतिकता और अश्लीलता, ये दोनों पारस्परिक संबंधित हैं। वस्तुतः अश्लीलता का संबंध पूरी सामाजिकता के साथ है। यह सत्य है कि केवल एक सीमा से परे जब व्यवहार होता है, उस व्यवहार को रोकने के लिए कानून होता है। लेकिन कानून ही सब कुछ हो, ऐसी तो बात नहीं है। सबसे बड़ी बात यह है कि समाज का सारा ढांचा ही कुछ मान्यताओं के ऊपर आधारित होता है।

जब से समाज का निर्माण हुआ, व्यक्ति ने वर्ग में, समूह में बंटना आरम्भ किया, भले ही परिवार हो, समाज हो, सम्प्रदाय हो। सम्भवतः उसमें ऐसी कुछ मान्यताएँ रहीं है, जिन मान्यताओं को मानकर, विश्वास में लेकर ही व्यक्ति समाज का अच्छा नागरिक हो सकता है। वैदिक संस्कृति के अनुसार सभी व्यक्ति, जिन मान्यताओं को मानकर चलें, वह उचित है और जिन्हें न मानकर चलें, वह अनुचित है। अब उन अनुचित मान्यताओं के अनुकूल जो व्यवहार किया जाये, वह व्यवहार असामाजिक तो है ही।

मानसिकता भी एक धरातल है। नैतिकता, धार्मिक युक्तावृत्ति, शिवं सत्य सुन्दरम ये भी चर्चा हुयी। लेकिन पहले तो जनमानसिकता में यदि उसके सम्मुख एक ऐसा विषय, दृश्य, श्रव्य या काव्य आता है जो कि उसकी मानसिकता को दूषित करता है, वह भी इसलिए अपराध है कि वह अपराधी या अपराध को प्रेरित करता है। युवजनों की मानसिकता को दूषित करता है। युवा ही क्यों, वृद्धजनों की मानसिकता को भी प्रभावित करता है। हर आयु के पुरूष की मानसिकता को अश्लील दृश्य, यदि उनका संबंध नारी और सैक्स से है, तो वह उसको किसी न किसी हद तक प्रभावित करती है। यह एक मनोवैज्ञानिक सत्य है।

मेरा विषय हिंसा था और हिंसा की बढ़ती हुई प्रवृत्ति ही आज सारे विश्व को प्रभावित कर रही है, भारत को तो विशेष रूप से। जहाँ तक महिलाओं का संबंध है, यह वह देश है जहाँ यह भी कहा जा सकता है कि-"भवे नित्यं प्रसन्ना वरदा शिवा", यानी मातृ पूजा करके उससे प्रार्थना की जाती है कि हमको वरदान दो, हम सुखी रहें। माता की

शक्ति को माना भी जाता है और दूसरी ओर बहुएँ, लड़कियाँ जलाई भी जाती हैं। यह प्रवृत्ति कानूनी बन्धनों के बावजूद भी आज बढ़ती जा रही है।

उसके बढ़ते जाने के लिए दो विशेष कारण हैं। यद्यपि ये सामाजिक संगठन के लिए, उसके ढ़ाचे के लिए, तो बहुत ही हानिकारक हैं, उसकी नींव पर कुठाराघात करने वाली हैं। लेकिन इसके दो प्रमुख कारण हैं। एक कारण तो जिसे आप सीधा या बड़ा उदार कारण कह सकते हैं वह है जनमानसिकता यानी मन से, प्राण से, आस्था से, विश्वास से नारी के प्रति उसका देय देने की न तो इच्छा ही है और न उतना सम्मान ही है, और न उससे पुरुष वर्ग प्रभावित हो पाता है। परिणाम यह होता है कि नारी को नागरिक होने के नाते जो सम्मान अपेक्षित है, वह भी मिल नहीं पाता। उस जमाने की बात मैं नहीं कह रही, जिस जमाने में अकबर इलाहाबादी ने कहा था कि-

बे परदा नजर आयी जो चन्द बीबियाँ
तो अकबर गैरते कौमी से गड़ गया
पूछा जो उनसे आपका पर्दा कहाँ गया
तो कहने लगीं कि अक्ल पे मर्दों के पड़ गया।

वह प्रश्न मैं यहाँ नहीं उठा रही, क्योंकि हमारे देश में वे प्रश्न नहीं हैं। मैं केवल उसको संकेत कर रही हूं कि जो नागरिक के नाते एक महिला का ग्राह्य है, पावना है जो उसे मिलना चाहिये। वह भी मिल पा रहा है। इस कारण कि मानसिकता ऐसी नहीं बन पायी है। कारण और भी हैं जैसे महिलाओं का शिक्षा निपुण न होना, उनका आर्थिक दृष्टि से परावलम्बी होना, नेतृत्व व अन्य क्षेत्रों में उनका बहुत अधिक अग्रणी न होना। लेकिन वे सब कारण ही तो हैं-मनोवैज्ञानिक, सामाजिक। मनोवैज्ञानिक सबसे बड़ा कारण यह है कि जन-मानसिकता, लोक-मानसिकता नारी के प्रति न तो श्रद्धा की है और न नारी के प्रति सम्मान देने के ही योग्य बन पाती है।

अब उसके कारणों में कुछ तो दृश्य कारण हैं किन्तु कुछ अदृश्य कारण भी हैं। न दिखाई देने वाले कारणों में या प्रेरक कारणों में एक अश्लीलता है, जो शीलता के विरोध

में, मान्यताओं के विरोध में है। कुछ ऐसी गली सड़ी रूढ़ियाँ और मान्यताएँ भी रही हैं, जिसके कारण नारी को सही दृष्टि से नीचा ही समझा जाता है।

अश्लीलता की परिभाषा तो बड़ी गहन, सूक्ष्म और दूरदर्शी है। कोई भी ऐसा कार्य, विचार, विश्वास और दूसरा जन समाज के सामने या समूह के सामने या बहू बेटियों के सामने प्रतिपादन होना या प्रस्तुतीकरण करना अश्लीलता होनी चाहिए। अब इसमें अश्लीलता में जो पहला भाग है मानसिकता वाला, यदि वैदिक काल की बात करें तो मानसिकता से ही मनोविज्ञान आरम्भ होता है। व्यक्ति को ज्ञान होता है, फिर वह उस पर विश्वास करता है, फिर इच्छा होती है, फिर कर्म होता है। अश्लील कर्म तो बहुत बाद में आता है। सबसे पहले तो क्या शील है, उसका ज्ञान होना शिक्षा के माध्यम से उस बालक के लिए, उसके जन्म से आरम्भ होता है। फिर उसके बाद यह प्रश्न आता है कि वह उन मान्यताओं को कहाँ तक स्वीकार करता था:-

" यत जाग्रतो दूर उदैत देवं, तदो दूरय तथै वैददूरम, गमम् "

जन्म से लेकर सोते, जागते, बैठते, उठते अगर हर समय समाज का ही ध्यान रखें, लेकिन समाज का हर बालक, हर व्यक्ति, हर बढ़ता बालक उसके व्यक्तित्व का निर्माण ही इस आधार पर हो कि मुझे समाज की स्वीकृत मान्यताओं के अनुरूप ही चलना है, वही मेरे लिए उचित है, वही नैतिक है, वही मान्य है, तबतो काम ठीक चलता है और जहाँ वह उसके विरुद्ध कार्य करता है, वह उस सीमा के भीतर आ जाता है जिसे अपराध भी कहा जा सकता है।

जहाँ तक महिलाओं का प्रश्न है, बालिका को जन्म लेने का अधिकार ही नहीं दिया गया। इस संबंध में भ्रूण परीक्षण के जो प्रयोग हो रहे हैं उनसे पहले तो यही सबसे बड़ा प्रश्न आ गया है कि लड़की पैदा न हो, और जब एक हिंसा के बाद वह पैदा हो गई, बड़ी हो गई, तब तो फिर उसके शरीर का प्रयोग विभिन्न प्रकार से करना। स्वयं पति ही अपनी पत्नी को वैश्यावृत्ति कराने के लिए दिल्ली, सहारनपुर और बाहर ले जाता है। अतः वैश्यावृत्ति कराने में आर्थिक प्रश्न भी आ जाता है। मैं जानसार बाबर वगैरह की कुल्टा जनजातियों की कहानी नहीं कहती।

प्रश्न यह है कि मानसिकता से लेकर विचारात्मक, प्रदर्शनात्मक, सभी प्रकार की अश्लीलता समाज के स्वास्थ्य के लिए अत्यंत हानिकारक है। समाज के संगठन को गठित करने वाली एक बहुत बड़ी परिकल्पना, परिशृंखला तथा एक बहुत बड़ा कारण है। अब उसके लिए उपाय क्या है? निवारण क्या है? यदि अन्य सब निवारण छोड़कर हम कानून पर आ जाएँ, अन्य निवारण में तो समान अधिकार, समान अवसर, समान प्रयोग, हर प्रकार से समान समत्व वाली भावना उत्पन्न करना है। कार्यशक्ति जागृत करना उसके लिए अत्यंत आवश्यक है। रूढ़ियों का हनन होना चाहिए, लेकिन कानून इसमें क्या कर सकता है?

कोई भी कानून, मेरी दृष्टि में, मनुष्य को नैतिक तो नहीं बना सकता, लेकिन इतना अवश्य कर सकता है कि दण्ड के भय के कारण व्यक्ति वह कार्य न करे अश्लील व्यवहार न करे। यानि उसके मनसा, वाचा कर्मणा या वाणी से, न लिखने से, न बोलने से, न दिखाने से, न व्यवहार से तथा न कोई अन्य कार्य से। इंडीसेन्ट रिप्रेजेण्टेशन आफ वीमेन (प्रोहिबिशन) ऐक्ट, 1986 में बहुत सी चीजें अभी छूट गई हैं? यही कारण है कि यह बहुत महत्वपूर्ण कानून नहीं माना गया और इसलिए उसमें बहुत कम मामलें आते हैं और जो आते हैं उनमें साक्ष्य प्राप्त करना कठिन हो जाता है। यदि साक्ष्य आ भी गयी, तो मुकदमा निस्तारित होने में अत्यधिक विलम्ब होता है।

कानून के विशेषज्ञों को बैठकर यह भी विचार करना है कि यदि वे जन-मानसिकता में बहुत दूर तक नहीं जा सकते, यह भी सम्भव नहीं है वे सामाजिक, आर्थिक और मनोवैज्ञानिक विश्लेषणों के आधार पर कानून बना ही डालें, लेकिन जो वृहदात्मक दोष हैं, उनके निवारण के लिए इसकी सीमाओं को उन्हें थोड़ा बढ़ाना चाहिए। इसमें पुनरावृति, संशोधन, परिवर्तन होना चाहिए और इसकी परिभाषा कुछ ऐसी होनी चाहिए कि जो उन क्षेत्रों तक भी, जिसमें अब तक नहीं पहुंची, पहुंच जाएँ।

दूसरा सुझाव है कि इसके संबंध में जो भी प्रकिया हो वह इतनी छोटी व प्रभावी हो कि उसका परिणाम तुरन्त ही मिले। देर से परिणाम मिलने से उसकी उपयोगिता समाप्त हो जाती है, उसका प्रभाव-तत्व ही नष्ट हो जाता है। तीसरा सुझाव मुझे यह देना है कि कानून तो बने ही हैं, बनते रहे हैं, बनते रहेंगे, समाजशास्त्री भी उसका विवेचन करते हैं,

शिक्षाशास्त्री भी प्रयत्न करते रहे हैं, लेकिन इस सबके अतिरिक्त किस प्रकार उन्हें सरलता से सहजता से कम समय में भली प्रकार से लागू किया जा सकता है, वे प्रयत्न किए जाने चाहिए, क्योंकि जो लागू करने वाला क्षेत्र है, वह विधिक प्रावधानों से अज्ञान है।

INDIAN NAVY

Through
Commd. P.K. Goel,
Judge Advocate General

Mr. Chairman, ladies and gentlemen,

Much has already been said, about the existing law on the obscenity. I have only two-three submissions. First is that law is no guarantee of a fair system. This is what was said long time back, and is valid for all times to come. The obscenity law suffers from some handicaps and one of the handicaps, which is very evidently brought out, is the process of western or so called western media taking charge in the country. The Star T.V. is being released from some other country and being shown in our country, although it is easily handled as its operators are subject to the Indian Penal Code: But the makers of those programme are somewhere else, and, in their society, things are different. We have not, yet, progressed or we have not yet achieved or we don't want to achieve, whatever the reason is, that standard, so, why the standards of some other country, be enforced on us? And some sort of law in that respect has to come. It is already late, if not too late and must be understood and must be deliberated, as to how to control this menace of obscenity which is every where in the society.

Second point which I want to make is, why are we obsessed with obscenity only against women? It has just happened that this trend is at this moment prevalent because of advertisements and other things. But, in some countries, there are shows, whilch are meant, exclusively,

for women and the nudity of man is displayed. This is, sometime or the other, bound to come. How do we prevent them?

Finally, I would submit that in the armed forces, in all the Acts, whether of Army, Navy, Air Force, Border Security Force or National Security Guard, we have a special section dealing with punishing indecent act and very heavily too. Our system of trials is different and this is not the occasion to say, but I agree with Miss Sabarwal that 99 percent of the cases are punished within one week of the commitment of the crime.

So, in conclusion, I would like to say that this distinction between vulgarism and obscenity must be done away with. In fact, I do not agree with the Supreme Court judgment that vulgarism is different from obscenity. In the nutshell, I would only submit that we should have a rethinking on these lines.

INDIAN ARMY

Through
Brigadier R.P. Singh
Dy. Judge Advocate General

It is basically a social issue. We have to consider, analyse, deliberate at great length. The Constitution of India, in Article 19, gives freedom of speech and expression, but the word 'expression' has been stretched to a very great extent, with the result that particularly after independence, we see a total deterioration in our way of life, in our way of thinking and in our expressing of views on various occasions.

The whole concept,which I wish to emphasise, is that obscenity should not be viewed only as a relation between a male and a female. Horizon of this definition should be expanded so that where ever there is lack of decency, decorum, or morality, then the things should be

regarded as obscene. Apart from the constitutional guarantee, we have legislation, like the Police Act etc.

We have, very fairly, good amount of provisions in the Army Act, and, very rarely, persons are charged under these provisions for immoral or indecent act or such type of offences. Therefore, a time has come, when we must evaluate the whole concept of obscenity in our Indian context.

Whole concept of Indian obscenity as incorporated in the Indian Penal Code and other provisions is in tune with the American and English system. It should not be so. The code of conduct, which we Indians have gone through the centuries, is quite distinct. I was, recently, very much, surprised to read a couplet in Tulsi Ramayan. After the marriage of Lord Shiva and Parvati, they retire to the Kailasham, Tulsi said 'I do not want to describe the marital relations of Lord Shiva and Parvati'. The way we conduct ourselves in public, the way, we conduct ourselves in family, has got tremendous effect and it must not follow the concept of obscenity in the limited sense of relationship between a male and a female. Secondly, I would like to emphasise, the media has come up in a very big way, and when I mean media, it is television, it means journalism, all types of media and they have to play a very effective role to check this menace 'the sooner, the better, is the prospect of our living in the present scenario.

न्यायिक प्रशिक्षण एवं अनुसंधान संस्थान, उ.प्र.

द्वारा
श्री वी.के. सिंह
उपनिदेशक

माननीय सभापति जी की अनुमति से मैं अश्लीलता के उस पक्ष को सभा के समक्ष रखना चाहता हूं जिससे किशोरों को अपराधिक प्रवृत्ति की तरफ झुकाव को बढ़ावा मिलता है। यह स्वीकृत तथ्य है कि बच्चे किसी भी देश की राष्ट्रीय धरोहर है और राज्य का यह

कर्तव्य है कि वह उनके स्वास्थ्य एवं मारल डेवलेप्मेण्ट के संबंध में समुचित केयर करे और तदनुरूप उनका डेवलेपमेण्ट सुनिश्चित करे। जहाँ तक अपने देश का प्रश्न है, संविधान के अनुच्छेद 39 में इस विषय में यह राष्ट्रीय नीति घोषित की गई है कि राज्य बच्चों के मारल डेवलेप्मेण्ट का उत्तरदायित्व संभालेगा, लेकिन वर्तमान में मनोरंजन के जो साधन सिनेमा और दूरदर्शन है, हमें यह स्वीकार करने में हिचक नहीं होनी चाहिए कि आज हम, अधिकांशतः बच्चों के साथ बैठकर अपने घर में दूरदर्शन से मनोरंजन करने में शर्मिन्दगी महसूस करते हैं। यहाँ तक दूरदर्शन पर परिवार नियोजन के विज्ञापन भी कामोत्तेजक ढंग से प्रस्तुत किये जाते हैं। मेरा निवेदन है कि जो स्टेट इन्स्ट्रूमेन्ट लिटीज हैं जिनका यह दायित्व है कि आर्टिकिल 39 के अधीन मोरेलिटी को बढ़ाने में सहायक हों वहाँ वे गिराने की तरफ ले जा रहे हैं। टी.वी. और सेन्सर बोर्ड व अन्य जो एलाइड ऐजेन्सीज हैं उनका कर्तव्य है कि वे ऐसे नार्मस बनायें कि इस तरह की अश्लीलता या अश्लील दृश्यों को न दिखाया जाय, जिससे बच्चों के मानसिक विकास पर कुप्रभाव पड़े, या अपराध की तरफ उनका झुकाव हो।

इस संदर्भ में मेरा दूसरा निवेदन भारतीय दण्ड संहिता की धारा 293 की तरफ है इसमें किशोरों के संबंध में जो अपराध घोषित किया गया है, वह अपराध दण्ड प्रक्रिया संहिता के अधीन जमानतीय अपराध है, अर्थात यदि कोई व्यक्ति किशोरों को अश्लीलता का पाठ पढ़ाता है और पकड़ा जाता है तो अनिवार्य रूप से उसे जमानत पर छोड़ना पड़ेगा। यह उस अपराध की गंभीरता को और घटाता है। जबकि होना यह चाहिए कि राज्य को यह दृष्टिकोण अपनाना चाहिए कि यह अपराध जघन्य है और उसको अजमानतीय होना ही चाहिए, इसके साथ ही इस तरह की भी व्यवस्था होनी चाहिए कि ऐसे अपराधियों को अधिकांशतः जेल में जाना पड़े। यह मेरा निवेदन है और इस सभा के इस सेमिनार के माध्यम से कि कानून में संशोधन अपेक्षित है और उन स्टेट इन्स्ट्रूमेन्टलिटीज को जो सेन्सर बोर्ड और टी.वी. अथारिटीज हैं इस विषय में विचार करें कि उन्हें कौन सा दृश्य दिखाये जिससे कि किशोरों के मन पर कोई कुप्रभाव न पड़े।

UNIVERSITY FACULTY

Through
Prof. Surendra Singh
Department of Sociology

I, basically, see the problem of obscenity as physiological, because man, by nature, is interested in opposite sex. Therefore, he is aggressive towards anything, which gives him pleasure. It is the basic inherent nature of man that he wants to derive pleasure and he feels attracted towards members of opposite sex. Sex is one of the basic physiological needs like hunger and thirst. If the society is not in a position to provide for the fulfilment of the sex, and which is a need, then obscenity is one of the forms of aberration.

In our Indian society we say that we should look women as our mother. So, are we doing this? There are injunction.-don't talk to the wife of other person, don't have a longing for the wife of another person. We are becoming materialistic, we are becoming individualists, we are becoming headonists. If, under the influence of Western education, our value system has undergone a change, and if we are after materialism and hedonism, this is a basic change in the value system, from self sacrifice to grabbing things, towards possessing things.

We are more materialistic, more hedonistic, and living in a basically money worshipping society. What for is this obscene literature, what for are those obscene films? Ultimately, through the medium of obscene literature and films, people are making money. In order to make money, people are using all kinds of techniques, all kinds of methods, including the publication of obscene literature, obscene film, and so on.I think, basically, certain arrangement has to be made, under which the basic social institution like family, educational institution, can play a vital role.

Do the parents have time to see where their children are going? Parents have to find some time to look after the activities of their

children. They will have to provide all kinds of guidance and the guardians of law - the police, the judges, have to behave in a responsible manner. When the police personnel, judges, teachers in the Universities, themselves, are reading pornographic literature and giving copies, then only God can save the Society. Parents and teachers have to present themselves as a right kind of model.

UNIVERSITY FACULTY:

Through
Professor Balraj Chauhan,
Law Faculty, Lucknow

It was said by Commodore Goel that law is no guarantee for a fair system. I would like to differ with him. The constitution, that we are having at present, and the system we want to introduce in our country, now, will have to be a guarantee for a fair system.

One Supreme Court judge of America tried to define obscenity and he said that it is just like to catch folk in the neck. I want to say that obscenity was made common law offence, when a man exposed his body in public. Need not to say that it is only the indecent representation of woman, which is obscence. I would like to bring to the notice of this august audience how much difficulty the law persons are facing. It is evident when you go through the cases decided by Supreme Court whether it is Ranjit Udeshi's case, Samresh Bose or High Courts decision in Promila Kapoor's case. They have tried to discuss every thing as in Bose case. They have tried to distinguish between obscenity and vulgarity. They have gone to the extent of saying that vulgarity may be disgusting, but if this vulgarity is not depraving, or it is not corrupting the morals of the persons in whose hand the matter may go, then certainly it may not come within the category of obscenity.

We are just talking about the advertisement of the Mala-D and others. If the obscenity is having any pre-pondering social purpose or

topic, that obscenity is permissible In 1993, we should acknowledge that we cannot go back. We are forwarding ahead. Anything, which was obscene in 1962, certainly that will not be in 1993.

There is a development - echnological, and that is why I think P.M. Bakshi rightly said that this exception appended to Section 292 was the need of the time.

I would like to say that real burden lies on a person of art, or literature, to define the word 'obscenity', because, in the Ranjit's case, Mr. Justice Hidayatullah mentioned that he called Mulkhraj Anand, and he said 'no, no there is no obscenity in this book', in Prajapathi's case, the Supreme Court called, two or three persons, they said there was no obscenity in it. But who is going to define obscenity? The persons, who are sitting at the top, the persons who are sitting in Bombay. They said 'Oh', it is very good', because they wanted to propogate the programme of family planning, - the mala - D advertisement or the advertisement of Kamsutra when it created a lot of controversy, they said it was the need of the day. The magistrate, who tried Prajapati's case or Samresh Bose case, found the matter obscene because they were trying to distinguish in two ways, whether a matter was disgusting or whether it was inviting the lust. High Court said the same thing, but the Supreme Court made the distinction between the two and they said 'No, no, it is not obscene. Because the language used is vulgar, it may be disgusting but it is not depraving or corrupting the minds of the young people or in whose hands book is going. What I am trying to say is that in Dr. Pramila Kapoor's case, when the High Court of Delhi said the book had a social purpose and the author had tried to high light conditions of Indian call girls under which they are being used. Prostitution can not be minimised, until and unless the behaviour, we want to prohibit, we know. Law is one form of social control and every one has to contribute in it.

DAY - II

SESSION - II

Time	:	10.00 a.m.
Venue	:	Conference hall, Yojana Bhawan Lucknow.
Chairman	:	Hon'ble Mr. Justice J.K. Mathur Judge, Lucknow Bench, High Court of Judicature at Allahabad
Subject	:	Criminalizing Obscenity

CHAIRMAN'S WORDS

Hon'ble Mr. Justice J.K. Mathur :

There are certain reason that the obscenity as such ought to be punished. The reasons which were given the other day which I will repeat, were firstly it is against the tenets of public morality, it has a corrupting influence on the young mind and it is offence against human dignity. It is also tried to be made out that every society has some basic tenats of morality, and, therefore, punishing obscenity is imposition of a value system, on a society, may perhaps not be a good or valid idea. Then Miss Sabbarwal dwelt in quite a detail on the impact of obscenity on women. it was detrimental to status of women in society, and that it affected her being an equal member of the society, with other male members of the society. Then Commodor Goel and Brig. R.P. Singh were telling us about the fact that in armed forces any officer whose conduct verges on obscenity is severely dealt with, and, not only that, but they also have answer the grievance of Miss Sabbarwal that in armed forces normally punishment are met within a week.

In any case, the other view was aired by Mr. Mudrarakshasa, and only two things said against culpability of obscenity was, firstly by Professor Pandey, that while singling out sexual offences, for making their description punishable, while depiction of other offences, is not punishable. I may point out that it is not the description of an offence, but the potential effect of that description which makes it culpable. Each of us can say from our own experiences that none of us had yet been provoked to commit a murder only by a description of murder. Yet, many of us would not say the same, if we read books which describe in a lewd manner, the sexual behaviour. So, description, which has been chosen, for being punished, is because of its potential to affect the behaviour to make it deviant and, therefore, something which society does not want. That is the reason for singling out sexual description, I could think of but I still would leave it open to any of my friends here, who may either support that view, or would have anything else, to say about it. But another thing said by Murdrarakshasa, the other day is, that we have to be careful in selecting for punishment any writing which we find to be obscene because if we do so indiscriminately then some very good literature is likely to be on the wrong side of this Penal Clause. What he meant there perhaps is one thing which has already been expressed by the Supreme Court in various cases, that whenever, there is any allegation about any work being obscene, it has to be seen in its context, you cannot snatch out a few sentences or a few pages from a book, to say that it is obscene. It has to be read in context of the entire work, and then seen, whether, in the overall analysis, that work is such, as is likely to corrupt the morals of the society, or persons, who are vulnerable.

We have to see the impact of the entire thing taken as a whole and I think that is what the law is, we should see that genuine artistic or literary work is not punished. But there is some out and out hard pornographic work which leaves no details at all. Some speakers here have tried to say that obscenity should not be punished at all. That is

exactly the question that we were addressing the other day and we would like you to address today and conclude whether the obscenity as such should be punished at all or not. I have just given you a gist of all that was said the other day, with a view to continue, the discussion today. Now I will invite one of you, who would like to address about the desirability of the obscenity being punished as an offence.

श्री ए.के. रस्तोगी
नाटककार

कल श्री मुद्रा जी ने एक उदाहरण दिया था। इसी प्रकार के लिखित अन्य कई उदाहरण हैं, जैसे-कम्ब रामायण या अन्य किसी रामायण में मैंने सूपर्णखा का वर्णन पढ़ा है। कम्ब रामायण में सीता का वर्णन है, इसी प्रकार से अन्य जो कार्य हैं, क्या हम उन्हें अश्लील साहित्य मानेंगे? एक नाटककार की हैसियत से कुछ उदाहरण मैं आपके समक्ष रखना चाहूंगा।

ड्रामेटिक परफार्मेन्स एक्ट, 1976 के अनुसार सरकार अपमानजनक मानहानिकारक तथा अश्लील नाटक का प्रदर्शन रोक सकती है, किन्तु दुर्भाग्यवश यह विधि कैसे लागू की जाती है। उदाहरण के लिए महाराष्ट्र में उसे बहुत सख्ती से लागू किया जाता है, वहाँ बिना अनुमति से किसी नाटक का प्रदर्शन नहीं किया जा सकता है, किन्तु वह अनुमति देने वाला अधिकारी पुलिस का दरोगा होता है, जो नाटक पढ़कर यह तय करता है कि वह नाटक प्रदर्शन योग्य है अथवा नहीं।

इसका सबसे प्रज्वलन्त उदाहरण विजय तेन्दुलकर द्वारा लिखित नाटक सखाराम बाइन्डर है। जब इसका बम्बई में सर्वप्रथम प्रदर्शन किया गया तो इसे प्रतिबन्धित कर दिया गया। सखाराम एक बुक-बाइण्डर है, जो निम्नस्तरीय समाज का प्रतिनिधित्व करता है। वह अपने घर में एक औरत लाता है, उसे घर के कायदे-कानून समझाता है तथा उसे अपनी सेक्स की इच्छा के बारे में भी बताता है, किन्तु जब वह औरत उसके माप-दण्ड में पूर्ण नहीं उतरती है, तो उसे वह बदल देता है। इस नाटक में तेन्दुलकर जी ने बहुत खुली हुई भाषा का प्रयोग किया है, जो भाषा हम उस तबके से आशा करते हैं। दिन-प्रतिदिन में देखते हैं। इसके समर्थन में तेन्दुलकर जी का यह तर्क है कि जब हम समाज के एक समूह को अपने

नाटक में प्रस्तुत करना चाहते हैं, तो यह उस समूह के व्यक्तियों के कृत्य व भाषा है जिसके माध्यम से हम उसका प्रतिनिधित्व अपने नाटक में कर सकते हैं। इसका परिणाम यह हुआ कि जब इसे उच्च न्यायालय में चुनौती दी गयी, तो इस नाटक को प्रदर्शन हेतु अनुमति दे दी गयी और वह इतना लोकप्रिय हुआ कि उसके हजारों शो किये गये। मैंने भी इसका प्रदर्शन लखनऊ में किया और इसके पहले शो को यहाँ नाटक-कर्मियों, प्रेस इत्यादि ने बहुत सराहा, किन्तु जब इसके प्रायोजित कार्यक्रम हुए तो प्रयोजकों ने नाटक में उसके सेक्स से सम्बन्धित पक्ष को बहुत उभारा। परिणामतः दर्शक इस दृष्टि से नाटक देखने आने लगे कि इसमें सेक्स का कितना प्रदर्शन किया गया है, अश्लील भाषा का कितना प्रयोग किया गया है और इसी का आनन्द लेने लगे, तब हमने इसका प्रदर्शन बन्द किया।

शीलता या अश्लीलता इस पर भी निर्भर करती है कि हम किस मानसिकता, किस मनःस्थिति, में जाकर नाटक देख रहे हैं।

इस मामले में तेन्दुलकर जी ही सबसे अधिक चर्चा का विषय रहे हैं। उन्हीं का लिखित एक अन्य नाटक "कन्यादान" है, जिसे लखनऊ में पद्मश्री से सम्मानित कलकत्ते के मशहूर निदेशक श्री श्यामानन्द जालान ने प्रदर्शित किया। उस नाटक में समाज के एक उच्च वर्ग की लड़की निम्न वर्ग के लड़के से मुहब्बत करने लगती है। उसके चरित्र को चित्रित करते समय जिन शब्दों का प्रयोग किया गया, उन्हें मैं यहाँ इस्तेमाल नहीं कर सकता हूं। किन्तु उन शब्दों को लेकर काफी तीव्र प्रतिक्रया हुई। उसमें भी मुख्य बात यह थी कि समाज के जिस वर्ग से वह लड़का आया था, उस वर्ग में किस प्रकार की भाषा का प्रयोग किया जाता है, वहाँ का वातावरण क्या है?

एक अन्य नाटक श्री सुरेन्द्र वर्मा द्वारा लिखित "सूर्य की अन्तिम किरण से पहली किरण तक" है, जिसमें श्री तेन्दुलकर जी ने बहुत खुली भाषा का प्रयोग किया है, जिसके कथानक में एक शीलवती स्त्री है जिसका पति नपुंसक है। उस जमाने में नीड़ की प्रथा प्रचलित थी। वह स्त्री एक स्वयंवर रचाती है तथा एक पुरुष को चुन लेती है, जिसके साथ वह रात्रि व्यतीत करती है। उसके वापस आने पर उसका पति, जो बहुत उद्वेलित है, उससे कहता है कि "जाकर नहा आओ" तो वह कहती है कि नहीं। तदुपरान्त उसने पूरा वर्णन

किया है कि कल रात्रि में मुझे जो सुख मिला है, जिसकी मुझे सालोसाल से दरकार थी, उसकी खुशबू अभी थोड़ी देर मेरे बदन में रहने दो, उसका इतना विस्तृत वर्णन किया है, लेकिन चूंकि वह नाटक संस्कृत भाषा में था, इसलिए उसे कभी किसी ने चुनौती नहीं दी, जबकि लोगों का कहना है कि "सखाराम बाइन्डर" एवं "सूर्य की अन्तिम किरण से पहली किरण तक" नाटक में भाषा का फर्क है। दोनों की अन्तर्वस्तु अथवा उस भाग, जिसे हम अश्लील मानते हैं, में कोई अन्तर नहीं है।

इसी प्रकार हमने एक नाटक "कमला" का प्रदर्शन किया था, जो "लिबरशेन" के ऊपर है, जिसमें एक पत्रकार एक आदिवासी युवती को खरीदकर लाता है और उसे समाज में प्रदर्शित करता है। चूंकि पुलिस और उच्च अधिकारी इस तथ्य से इन्कार करते हैं कि उनके क्षेत्र में देह व्यापार होता है। तेन्दुलकर जी ने इस नाटक में भी आज की नारी, चाहे वह पत्नी के रूप में हो या अन्य किसी रूप में, की स्थिति को स्पष्ट किया है कि वह आज भी पुरुष या अपने पति की गुलाम है। उसी का एक डायलाग है कि पति कहीं से आता है तो पत्नी को ऐसा लगता है कि शायद उसके स्पर्श से वह उत्तेजित हो गया है। पति उससे कहता है कि ऊपर चलो, पत्नी इन्कार करती है, तब पति कहता है कि "यह भी मेरी भूख है। यदि मैं छः दिनों का भूखा हूं और खाना मांगता हूं तो इसमें क्या गलत है।" इस डायलाग को दो-चार दर्शकों ने अत्यधिक आलोचना की कि दर्पण संस्था से ऐसे नाटकों की आशा नहीं करते हैं।

प्रश्न यह है कि इसमें अश्लीलता कुछ नहीं है। यह एक इंगित है, जिसके द्वारा तेन्दुलकर जी ने यह प्रदर्शित करने का प्रयास किया है कि आज हमारे समाज में स्त्री, चाहे वह खरीदी हुई हो, बेची हुई हो, पत्नी हो, या अन्य किसी भी रूप में हो, पुरुष की गुलाम है क्या हम इसको अश्लील मानें।

कल इसी संगोष्ठी में दूरदर्शन के सम्बन्ध में बहुत सी बातें कही गयी। कल रात्रि में टेलीविजन पर "मिस वर्ल्ड" प्रतियोगिता कार्यक्रम आ रहा था। इसके पिछले सप्ताह भी यह कार्यक्रम टेलीविजन पर प्रदर्शित हुआ था। इस कार्यक्रम में लड़कियों ने जो पोशाक पहनी है, यदि हमारे समाज में वह पोशाकें पहनकर निकलें, तो उन्हें अभद्र पोशाक कहा

जायेगा। किन्तु जिस समाज में, जिस परिवेश में "मिस वर्ल्ड" प्रतियोगिता हो रही है, वहाँ वह बिल्कुल अश्लील नहीं माना जाता है। क्या ऐसे कार्यक्रम टेलीविजन पर नहीं दिखाये जाने चाहिए? हमारा विचार है कि अवश्य दिखाया जाना चाहिए। जैसे स्टार टी.वी. का प्रश्न है कि उसमें कन्डोम के विज्ञापन आते हैं। आज हमारे देश में परिवार नियोजन की सख्त आवश्यकता है। बढ़ते हुए परिवार एक समस्या है और सरकार परिवार नियोजन कार्यक्रम को सफल बनाने के लिए लाखों रुपये खर्च कर रही है तो यदि पूरी शीलता के साथ विज्ञापन दिखाया जाता है तो मेरे विचार से वह अश्लील नहीं है। किन्तु बहुत से ऐसे भी विज्ञापन दिखाये जाते हैं, जो साबुन के बारे में होते हैं, कपड़ों के बारे में होते हैं, कोल्ड ड्रिंक के बारे में होते हैं, जिसमें विषय को रुचिकर बनाने के लिए उत्तेजक चित्रों का प्रदर्शन किया जाता है, जिसमें दर्शक भी उत्तेजित होते हैं। इस प्रकार के विज्ञापन अवश्य बन्द किये जाने चाहिए।

मेरा मात्र यही विचार है कि शील और अश्लील में भेद करते हुए कहीं हम उस पथ से भटक न जाय, जिसके द्वारा हम अपने नाटक के माध्यम से विषय विशेष का चित्रण करना चाहते हैं। नाटक समाज का एक दर्पण है। यदि आज हमारे समाज में शोषण हो रहा है और उसे हम नाटक या फिल्म के द्वारा नहीं दर्शाते हैं तो हम अपने उद्देश्य में असफल रहते हैं। मेरा सुझाव है कि अश्लीलता के लिए कानून अवश्य होना चाहिए, किन्तु अश्लीलता किस पर निर्भर करती है, यह एक भिन्न स्थिति है। जैसे एक फिल्म "कामसूत्र" आयी थी, जो एक सेक्स की शिक्षा सम्बन्धी फिल्म थी। समाज के पढ़े-लिखे वर्ग ने जब उस फिल्म को देखा तो उसे शिक्षा के रूप में ग्रहण किया, लेकिन जब उसी फिल्म को समाज के दूसरे वर्ग ने देखा तो उसे उत्तेजक फिल्म के रूप मे ग्रहण किया, स्पष्ट है कि यह व्यक्ति की मानसिकता, मन:स्थिति पर निर्भर करता है कि वह किसी चीज को किस प्रकार से ग्रहण करते हैं। अतः यह आवश्यक है कि अश्लीलता रोकने के लिए कानून हो, ब्लू फिल्मस बन्द की जाय, किन्तु यह ध्यान रखने की बात है कि कानून के द्वारा हमारी सांस्कृतिक धरोहर को किसी भी प्रकार से दबाने का प्रयास न किया जाय।

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कल और आज लगातार इस विषय पर चर्चा हो रही है कि अश्लीलता क्या है? जब तक हम अश्लीलता की परिभाषा नहीं समझेंगे, तब तक उसे दण्डित करने का कार्य भी सम्भव नहीं है। स्पष्ट परिभाषा के अभाव में दण्ड निर्धारण अत्यन्त दुरूह कार्य है।

शीलता को भा.दं.सं. की धारा-292, 293, 294 एवं 509 में परिभाषित किया गया है किन्तु उनमें प्रत्येक शब्द न्यायालय के समक्ष किसी भी रूप में परिभाषित किये गये नहीं कहे जा सकते। अश्लीलता की जो परिभाषा हमारे देश में है, वह विदेशों, विशेषकर, पाश्चात्य सभ्यता में नहीं है। आज सारे विश्व में साइंस एवं टेक्नोलौजी माध्यम से चाहे-अनचाहे रूप में देश-विदेश के सारे चित्र हमारे देश में आ रहे हैं। ऐसी स्थिति में विभिन्न संस्कृतियों के इस सामगम में, जो एक सामान्य संव्यवहार हो रहा है, क्या हम विदेशी संस्कृति को नकार सकेंगे? यदि हम अश्लीलता दण्डित करने की चर्चा करते हैं, तो यह भी विचार करना आवश्यक है कि उसका व्यवहारिक पक्ष क्या होगा?

इलेक्ट्रानिक मीडिया के माध्यम से विदेशों की सारी चीजें हमारे देश में आती हैं, जो हमारी संस्कृति के अनुरूप नहीं है। उनको लेकर समय-समय पर विवाद भी उत्पन्न हुए, तो हम इसे चाहे विधायिका के रूप में कम करने का प्रयास करें अथवा वकील या न्यायाधीश के रूप में निर्णीत करने का प्रयास करें, सर्वप्रथम प्रश्न यह उत्पन्न होता है कि अश्लीलता की परिभाषा क्या है?

यह सत्य है कि यदि विधि के प्राविधानों में हमेशा सारी बातों को रखना सम्भव नहीं होता है, तो हमें दिशा-निर्देश के रूप में कुछ नियम बनाने होंगे, जिसके निर्वचन के द्वारा विधि का विकास हो सके। मेरा अभिप्राय यह है कि आज हमारा समाज विदेशी संस्कृति से प्रभावित हो रहा है और यदि हम संकुचित दृष्टिकोण से इसे देखेंगे, तो समाधान कदापि सम्भव न होगा। अतः इसके विस्तृत परिप्रेक्ष्य में विचार करना होगा।

इसी से जुड़ा हुआ दूसरा पक्ष यह है कि जब इण्डियन साइकैट्रिक्स सोसाइटीज के तत्वावधान में लखनऊ में एक संगोष्ठी हुई, तो उसमें यह मानदण्ड निर्धारित हुआ कि सेक्स की शिक्षा भारत वर्ष के लिए अनिवार्य है। वैज्ञानिकों की ऐसी सभा द्वारा किए गए प्रस्ताव की अवहेलना नहीं की जा सकती है। आज हम ऐसे समाज में रह रहे हैं, जहाँ इतनी तेजी से मान्यतायें परिवर्तित हो रही है कि एक ओर वैज्ञानिक, विचारक इस विचार के हैं कि सेक्स की शिक्षा दी जाए, जो विदेशों में काफी पूर्व से ही दी जा रही है। इस विचार-धारा का हमारे विधायन पर क्या प्रभाव पड़ेगा, अश्लीलता की परिभाषा पर क्या प्रभाव पड़ेगा? हमें यह भी देखना होगा। वैज्ञानिक टेक्नोलौजी में हो रहे विकास को दृष्टिगत रखते हुए यह संभव है कि निकट भविष्य में ही हम एक-दूसरे-से व्यक्तिगत कम्प्यूटर से जुड़ सकते हैं, जिसका प्रभाव भी [illegible] पड़ेगा।

विषय का एक अन्य पक्ष है कि विधि किस प्रकार से लागू की जाएगी। इस सभा के लगभग समस्त सदस्यगण का विचार है कि अश्लीलता दण्डनीय होनी चाहिए, किन्तु "अश्लीलता कहाँ तक दण्डित हो पा रही है, यदि नहीं तो क्यों?" यह भी विचारणीय प्रश्न है।

व्यावहारिक पक्ष में साक्ष्य विचारण का एक महत्वपूर्ण अंग है। विचारण के समय अश्लीलता को सिद्ध कैसे किया जाए, जिन निर्णयज विधियों का कल संदर्भ दिया गया व जिन मुकदमों की चर्चा हुई, उनमें हमने देखा कि स्वयं उच्चतम न्यायालय एवं उच्च न्यायालयों के विद्वान न्यायमूर्तिगण भी स्वयं को इस निष्कर्ष तक पहुंचाने में असमर्थ पाते हैं और उन्होंने विशेषज्ञों की राय माँगी। क्या मात्र राय के आधार पर ही हम इस निष्कर्ष पर पहुंच सकते हैं कि कोई लेखन, पत्र अथवा कार्य अश्लील है? ऐसी स्थिति में सामान्य व्यक्ति से हम कैसे अपेक्षा कर सकते हैं कि वह यह निर्धारित कर सकेगा कि शीलता एवं अश्लीलता के मानदण्ड क्या हैं?

अन्वेषण अधिकारी, सामान्यतः, उपनिरीक्षक स्तर का अधिकारी होता है। क्या हम उससे यह अपेक्षा कर सकते हैं कि वह ऐसे नाजुक अपराध का मूल्यांकन कर सकेगा तथा विचारण में न्यायालय उसके द्वारा किए गए अन्वेषण का उचित सीमा तक उपयोग कर

सकेगा? विधिक प्रक्रिया से जुड़ा वर्ग यह जानता है कि पुलिस की इन अक्षमताओं को ध्यान में रखते हुए ही कुछ अपराधों के मामलों में अभियोजन के पूर्व अनुमति लेने के प्राविधान किए गए, जैसे आवश्यक वस्तु अधिनियम में प्राविधानित है कि-अधिनियम में वर्णित अपराधों की विवेचना इन्सपेक्टर से निम्नतर स्तर का अधिकारी नहीं करेगा तथा जिला मजिस्ट्रेट अभियोजन हेतु अनुमति देंगे। निश्चय ही अश्लीलता बहुत गम्भीर अपराध है, इस पर तुरन्त निष्कर्ष निकाल पाना कठिन होता है। ऐसी स्थिति में हमारी कार्यकारी शाखाएँ जहाँ से अभियोजन प्रारम्भ होता है, उनके संबंध में भी हमें विचार करना होगा कि इस अपराध के मामले में अभियोजन की प्रक्रिया क्या होगी तथा किन लोगों को यह अधिकार दिया जाए कि वे इन अपराधों की विवेचना कर सकें।

अंत में दण्ड का पहलू है, जिसके लिए भी एक व्यवहारिक दृष्टिकोण अपनाने की आवश्यकता है। सामान्यरूप से इस अपराध के अपराधियों के लिए सामान्य अर्थदण्ड कोई विशेष महत्व नहीं रखता। यदि वे कोई अश्लील प्रकाशन करते है, किसी फिल्म को प्रदर्शन करते हैं अथवा किसी प्रकार का अन्य कोई अपराध करते हैं तो उनकी उससे इतनी अधिक आय होती है कि सामान्य अर्थ दण्ड से उन पर कोई प्रतिकूल प्रभाव नहीं पड़ता है। मेरे विचार से, उनके लिए एक न्यूनतम दण्ड की सीमा निर्धारित की जानी चाहिए, जिसमें अर्थ दण्ड एवं कारावास दोनों ही सम्मिलित हों।

Hon'ble Mr. Justice J.K. Mathur :

One of the topics that is to be discussed today is whether the definition of obscenity should be rigid or it should be elastic - whether it needs being changed, because the present definition is not rigid, being based on the likely impact on the persons exposed to the representation, which is to be gauged by the judges. It may not be necessary to say whether expert evidence should be taken. There has been same contradiction in some cases of the Supreme Court. The law as stands today, the evidence is needed to prove that a particular person has written a particular article, had made a particular jesture, has uttered certain word, or any other visible representation, and it is for the court

to find whether they are likely to have that effect, which is envisaged in Section 292 (1). If that be so that would be punishable as the law stands today. We are going to discuss this.

Before we conclude this session I will request Mr. Pandey to express the views again about the culpability of obscenity.

UNIVERSITY FACULTY

Through
Prof. B.B. Pandey
Law faculty
Lucknow University

Thank you Mr. Chairman,

Yesterday, while talking about obscenity laws, I wanted to share, with the participants, the trends, which are very important. Currently Human Resource Development Ministry has taken a very bold stand, in refering to an expert group, the legislation of Immoral Traffic, (Prevention) Act, and the Indecent Representation of Woman Act. Human Resource Ministry has gone so far, in expressly mentioning, that after their lengthy study, if they so feel then they can amend the laws, or even delete them permanently, if they are not necessary. Second thing is that fortunately currently a conference is going on, on psychiatry, in India Scientific Society, and what they have discussed, particularly yesterday, is that sex is a very important human function. It can be put to very useful social function. It is the emotional mood of the man, and therefore, to completely blank it out, is not free from trouble. The third trend, is again a very important subject. What has happened in some of the European countries? The trend of pre-criminalisation, when you say that crime is a social, economic and political development. Each reasserts its own laws. In the United Nations Committee Report, which came out in 1981, there are specific suggestions for decriminalisation in the field of petty offences, petty property offences, sexual offences, vagrancy and

alcoholism. They say, if you can take care of these problems, through other social measures, it is much better to deal with it.

Now I will talk about obscenity as is to be criminalised. The United States, in January 1992 with growing sexual violence, had made provisions that if there is relationship between a pornographic literature and associated violence, it is punishable. If we can define obscenity, this way, on all the three grounds, morality would certainly be there, but it would not be explicit, it would be implicit. It is much more easy to say, though I am aware that in Article 19, they say that on grounds of decency and morality, restrictions can be imposed. But then, if you are saying that this offence is against the dignity of women, mental health, physical deficiency of individual, then Human Resource Ministry has given us a very important subject and we can accept it or throw it. These kinds of Seminars are very useful. Thank you.

CHAIRMAN

Hon'ble Mr. Justice J.K. Mathur

With this discussion we conclude the first part of our seminar which we had continued since yesterday. And the basic question, which we were addressing ourselves to, was whether obscenity should be punished at all. After hearing professor Pandey, I do not think we have had a single view which says that obscenity should be decriminalised altogether. It is only the question of the degree set by the various speakers about what should be made punishable, and what should not be made punishable, and also what safeguard should be provided to protect literary work or work of art. It has been said that obscenity lies in the eye of the beholder. That is one of the views as made out by Sri Rastogi, that the same thing can be seen from different point of view by different audiences and it may seem to be obscene to one and not appear to be obscene to the other. But still all of us are agreed that obscenity in some shape or form should be punished. And that is what we were all discussing. I don't think there is any person who say that obscenity

should not be punished at all, what is said is that we should shift the basis of punishment. Instead of resting on the ground of morality and decency, it should be shifted to rest itself on the specific harm it causes to the youth, the damage it causes to the dignity of the persons concerned, than the concept of morality or decency. So, this is all, but in any case, he is also of the opinion that we should punish obscenity, in some case or form. With this we conclude our discussions.

SESSION-II

Time	:	11.00 a.m.
Venue	:	Conference Hall Yajana Bhawan Lucknow.
Chairman	:	Hon'ble Mr. Justice J.K. Mathur Judge, Allahabad High Court, Lucknow-Bench
Subject-discussed	:	Mens-rea In Obscenity

CHAIRMAN'S WORDS

Now we come to the second segment of this seminar, which deals with another important technical aspect, it is not exactly technical when we go to the details of it. We may think whether we should have guilty intention also, as a componant of the offence of obscenity. Basically, the traditional offences are supposed to have some sort of a guilty mind. I say 'traditional offences' because we have come to an era when we have also created offences in which guilty intention is not needed. But in all the traditional offences we have the requirement of a guilty mind, called mansrea. In the case of Udeshi, the Supreme Court has said, that inthis offence, this is not a necessary ingredient and now that is one aspect of the matter. But if I do something unwittingly, should I be punished. If I give description of a particular situation, or a particular object, or a particular thing, for a morally accepted purpose will it amount to obscenity. Or if the same thing is done by another person, with a view to publish a pornographic literature, with a view to gain economically by its propagation, then will distinction be made between these two persons? Are we going to distinguish, the classical nudes from the ones, which are drawn or painted in the bathrooms? Should it make a difference in legal liability if the same figures are drawn but with a

different intention, under different circumstances. It is an open question for us to discuss, whether we should have the intention also, as a necessary ingredient of the crime of obscenity or whether the act itself or its possible consequences alone constitute the incriminating factors. This is the area which we are supposed to cover today-mansrea in obscenity.

न्यायिक प्रशिक्षण एवं अनुसंधान संस्थान, उ.प्र.

द्वारा
श्री आर.सी.एस. चौहान
अपर निदेशक

मेरे विचार से अश्लीलता "विधिजनित" न होकर "संस्कारजनित" अधिक है और इसके उपचार के लिए संस्कार परिवर्तन की आवश्यकता अधिक है। हमारे समाज का एक बहुत बड़ा वर्ग शिक्षा के अभाव में "शील" एवं "अश्लील" के मध्य भेद करने में असम है। उनके पास अपनी निजी इच्छाओं की पूर्ति के लिए मनोरंजन एवं पर्याप्त स्थान का अभाव है, जिसके कारण उनका प्रत्येक कार्य, आचरण, जाने-अनजाने में, अश्लीलता की श्रेणी तक पहुंच जाता है और ऐसे वातावरण में पला हुआ बच्चा जब वयस्क होता है तो उसमें वही संस्कार रहते हैं जो उसमें बचपन में पड़े हैं और पुनः उसके सामने भी अभाव की स्थिति आने के कारण वह इस अंतर को भूल जाता है। अतः मेरे विचार से इसमें दुराशय की अधिक भूमिका नहीं है।

माननीय श्री न्यायमूर्ति जे.के. माथुर

कोई भी विधि सामाजिक परिस्थितियों को विचार में लिए बिना प्रभावशाली नहीं बनाई जा सकती है। विधि समाज के लिए बनती है। हम इस विषय पर चर्चा कर रहे हैं कि अश्लीलता को दण्डित किया जाए अथवा नहीं। जिसमें सामाजिक मान्यताओं को तो हमें ध्यान में रखना ही है। मनोस्थित के बिना किये कार्य को दण्डित करने अथवा न करने का विषय ही इस समय चर्चा का विषय है।

श्री ए. के. रस्तोगी
नाटककार

अभिव्यक्ति के मामले में, एक कलाकार की हैसियत से, मैं कह सकता हूं कि किसी नाटक को, जिसकी कथावस्तु अच्छी है, सिर्फ इस कारण अश्लीलता की कोटि में नहीं रख सकते हैं कि उसमें किसी सेक्स का वर्णन है, किन्तु अभिव्यक्ति इसमें अत्यधिक महत्वपूर्ण है। जैसे – "सूर्य की अंतिम किरण से पहली किरण तक" नाटक में सुरेन्द्र वर्मा ने एक प्रणय-दृश्य को अत्यंत खूबसूरती से लिखा। उस नाटक के प्रदर्शन में हमने उस दृश्य को मात्र नीली व लाल रोशनी को स्त्री एवं पुरुष की अभिव्यक्ति के रूप में प्रदर्शित करते हुए पूरा वर्णन किया। इसी प्रकार, सखाराम बाइण्डर नाटक को दिल्ली में प्रस्तुत किया गया जिसके एक दृश्य में निदेशक ने सखाराम बाइण्डर पात्र के बेड-रूम का दृश्य दिखाया। इस प्रदर्शन में श्री विजय तेन्दुलकर भी उपस्थित थे। वह दृश्य उन्हें आपत्तिजनक लगा और उन्होंने उस नाट्यग्रुप को स्वलिखित अन्य कोई नाटक देने से मना कर दिया। कहने का तात्पर्य यह है कि अभिव्यक्ति ही सबसे अधिक महत्वपूर्ण है।

इसी प्रकार एक अमेरिकन फिल्म 'बोइंग-बोइंग' का रूपान्तरण 'पंछी जा पंछी जा' का प्रदर्शन हमने लगभग सम्पूर्ण भारत में किया। पंजाबी में 'तीन सोडिया एक महियार्त' के नाम से उसका प्रदर्शन किया गया। जिसमें एक लड़का तीन एअरहोस्टेस से प्यार करता है और उसमें प्रत्येक यह समझती है कि वह केवल उससे ही प्यार करता है। उस जमाने में पंजाबी में द्विअर्थी डायलाग के नाटक काफी लोकप्रिय थे और उस पूरे नाटक को द्विअर्थी डायलाग के आधार पर प्रदर्शित किया गया, जिससे वह काफी सफल हुआ, किन्तु उसका प्रस्तुतीकरण पूर्ण रूप से शालीनतापूर्ण नहीं था।

फिल्म प्रदर्शन के पूर्व सेंसर बोर्ड प्रमाण-पत्र देता है, किन्तु नाटक के लिए सेंसर बोर्ड के किसी प्रमाण-पत्र की आवश्यकता नहीं होती। अतः प्रस्तुतीकरण के द्वारा ही किसी भी दृश्य को शालीनता से प्रस्तुत किया जा सकता है अथवा अश्लील बनाया जा सकता है।

इसी प्रकार से पेन्टिंग्स में यदि हम निकोबार या कोचीन के जन-जाति महिलाओं की नग्न तस्वीर प्रस्तुत करें, तो उसे एक अच्छे परिप्रेक्ष्य में माना जाता है, किन्तु यदि

एक आधुनिक स्त्री का नग्न चित्र प्रस्तुत करें तो वह अवश्य ही अश्लील माना जाएगा। कहने का तात्पर्य यह है कि जिस परिप्रेक्ष्य में प्रदर्शन किया जा रहा है, निर्णय करते समय उसको विचार में अवश्य लिया जाना चाहिए।

INDIAN NAVY

Through
Commodore P.K. Goel
Judge Advocate General

On this issue of mensrea, we must divide this with a view first to understand the author and then the one, who sells or is in possession of those things. Now there are two distinct groups. The person who makes and knows what he has to make, and the person who is just selling it. At times he knows, at times he does not know. I, for one, would like to suggest that we should provide an exception that it should be no offence, if the owner could prove that he did not know what he was selling, what he was possessing. Then the burden should be shifted to a person, who is to defend his makings. In other words, put it very shortly, the author must be held liable and answerable for what he has written, in spite of mensrea, whereas the person who just sells or is in possession, must be an exception for him. And I take this vouchshafe, because, in the laws of economic warfare, when we have a dilemma like this, when there is a contraband control, or those of you who have seen the Cuban quarantine, there is a distinct provision, because it is a difficult aspect of checking at what is going at sea. So, there is a system called.....'ships' warrant, i.e. letter of assurances, where person, who is transporting those items, gives a certificate that these are not contraband, and, if at all, things are found to be contraband, then the ship is not punished which is carrying the contraband, but the person, who has issued the certificate, is punished. I am not in agreement, personally, with Udeshi's judgment irrespective of the fact whether the

person who had knowledge or not, gets punished. I am saying with a conscience, that it is difficult in practice, to find out, whether he has knowledge. He can always raise a issue, but if he can satisfy the judicial mind that he had really no knowledge, why then should he be punished? It should be those who made it.

CHAIRMAN

Hon'ble Mr. Justice J.K. Mathur:-

Most of the speakers have said that it should be basically a strict liability especially as far as the maker is concerned. Now, I would like to point out another thing that there are certain other mechanisms, and in this case especially, we have that public good clause exception, under Section 292 which can take care of certain situations. But one thing specially pointed out by Mr. Rastogi was that the environment or the circumstances or the background in which an act has been utterred, is also to be taken into account. That test has already been evolved by the Supreme Court where they have said, as I was saying right in the beginning, that no specific portion of our work can be snatched out of its totality with a view to adjudge whether it is obscene or not. The only thing, which is said by Commodore Goel, that an unwary seller should not be punished for selling obscene literature. Now again there can be views, because once you are dealing with a potentially dangerous thing, you ought to take normal care. This is one aspect of the matter. If you are dealing with literature and you are selling literature to the young people, the least the society expects from you is to see the thing you can't get away merely by saying that you don't know what was in the book. It is the other aspect of the matter. The majority of the persons appear to be of the opinion that a person who is dealing with certain material, which has a potential of being obscene, we would require that much care from that man to see that the goods which he is peddling are free from any such material, and, therefore, all of us appear to be agreed on making or letting this crime continue to be punishable.

SESSION-III

Time	:	11.45 a.m.
Venue	:	Conference Hall Yojna Bhawan, Lucknow.
CHAIRMAN	:	Hon'ble Mr. Justice J.K. Mathur Judge, Allahabad High Court, Lucknow-Bench.
Subject Of Discussion		Rigidity Versus Elasticity (Mutability Of Contemporary Morality)

CHAIRMAN'S SPEECH

We come to the last part of the discussion. We have been discussing incidentally in the earlier sessions also, whether we have to have a rigid specific definition of obscenity, that act 'A' will be obscene and 'B' will not be obscene or we can leave it as elastic as it is today, or make it more elastic, so that it can be made more effective. There is one aspect that a person ought to know beforehand that whatever he is doing is a crime. Now, therefore, we can presume that reasonable certainty of an act being a crime, is a constitutional requirement. We can't impose a person with the liability, after an act has been done and make it a crime. At the time he is doing it, he must know that it is a criminal act so that he can withdraw if he is not committing it with a view to commit a crime. So that is one technical aspect of the matter And the other is, to leave it to the discretion of the court, so that it can take cognizance of social changes also.

The social morality is not a static thing. Whatever is obscene at one level of the society, may not be obscene in another level of the society. Whatever is obscene in this part of the country may not be

obscene in another part of the country. Therefore, to give necessary basic elasticity in the law with a view to curb the specific cases of obscenity, it may be said that it may be allowed to remain elastic. These are the two countervailing propositions, one is to make it rigid i.e. that the person must know that he is committing an offence, and the other is to take care of those situations, where the court has to weigh various factors with a view to determine, whether this specific writing, or occurence or representation would be obscene or not. These are the two things we have to weigh and anything else you might suggest, with a view to find, whether the definition of obscenity should be as elastic as it is today, as subjective or should it be confined within a rigid boundary, I request you to discuss this aspect now.

Legal Expert

Gentlemen, so far as legal aspect pertaining to obscenity is concerned, we have discussed various aspects of IPC, Cr.P.C., Police Act, Army Act, Navy Act etc. In all these legislations, 'Obscenity' is not defined. There is a need to know whether, in the changing conditions, we go for the definition of obscenity or enact altogether a different law relating to obscenity. I will invite your attention to Article 19 -clause (1) Constitution of India. It is right to freedom, to make association or union, and third to practice any profession etc. These are the three provisions, in which Constitution has provided that our freedom pertaining to speech and expression should not affect the operation of existing law, or prevent State from making any law. State is at liberty to frame law also. So far as the things have been governed, we have not gone for a separate legislation. Now the time has come, that there is a spurt of Yellow journalism, various types of obscene books, etc. At least, we have not seen them in our college days. Now the question is that again I come to the same question whether to go in for a separate legislation or to define obscenity in a particular code or any other State law. If at all you go for a definition, it should not be in conformity of freedom of expression and secondly, we can make a separate law also, so far

as the execution of this aspect is concerned, execution or prohibition on obscenity cannot be effective, unless we make it a basically legal provision. I will submit that the whole concept of obscenity in the changed condition should be to define obscenity.

CHAIRMAN

Hon'ble Mr. Justice J.K. Mathur

It is not the question of choice between the two institutions. The legislature gives out the policy and gives us details as are likely to cover all the possible situations likely to arise later. It is the conscience of the judge to individualise that law in the individual situation and the advantage of giving them some elbow room that they can take into account, the specific individual situations arising in a specific case. It has been said by some of the learned speakers, that whether a particular act has been obscene or not, had to be judged in the entirity of the circumstances in which it has been uttered the entire play, the entire book, the entire article, writing or the entire representation. Now something has to be left to the court, especially in that area, where a number of unpredictable factors are to be taken into account with a view to punish. So, therefore, we know the spectrum of the views that have been expressed, in the entirity and I hope we have learnt a lot. It has given a lot of valuable opinions which may now be analysed by the Institute with a view to come to recommend what effective legislation, punishing obscenity ought to be.

Part - III

Valedictory Address

VALEDICTORY ADDRESS

Hon'ble Mr. Justice S.C. Mathur
Acting Chief Justice,
Allahabad High Court,
Allahabad.

The Chairman of the Session, My noble brethren, The Director of the Institute Sri Hajela, Members of the Faculty, Delegates to the Seminar, and Ladies and gentlemen.

I am glad that the Institute has organised this National-level-Seminar on a subject which is assuming importance not only at the national level but at the international level also. A large number of magazines circulate throughout the world containing obscene pictures and literature. In some of the countries, there is no governmental check as the right to free expression of opinion has been taken to the extreme. In other countries, including our own, there are laws to check the circulation of such material but they have not proved to be very effective. Reading of such material and viewing of such pictures by boys and girls of impressionable age depraves and corrupts them physically as well as mentally.

Obscenity in print affects the person who reads or sees the printed material. It is not so bad as obscenity in action. Obscene gestures in buses, ques, educational institutions etc. may affect the career of a girl. I have come across girls who did not pursue higher studies because the educational course desired by them was not available in an institution meant exclusivly for girls. This is an unfortunate situation and must be dealt with, with fairness and determination. Governmental action alone will not be sufficient. Social action perhaps will be more effective. It is heartening to note that social organisations have taken up the challenge and they are contributing their mite in the eradication of the evil. Here

I would like to add a word of caution. These organisations should become over-zealous. Their zeal should not affect the course of justice. Some social organisations over reacted when a husband accused of murdering his wife was granted bail or was acquitted by a court of law. They organised demonstrations outside Court premises. This is not fair. Courts have to decide cases on the basis of evidence brought on record. If the evidence is insufficient no conviction can be recorded unless the offence has been established beyond reasonable doubt.

What applies to cases of conjugal crimes applies also to the offence of obscenity when the victim and the accused belong to different genders. Therefore, the possibility of excessive reaction in a case of obscenity cannot be ruled out. It is for this reason that I plead caution.

The term obscene is of variable connotation. What looks obscene to one may not look obscene to the other. Because of this variable factor, there is bound to be lack of absolute identity in judicial verdicts.

An attempt has been made in Section 292 of the Indian Penal Code to define obscenity. Under this definition, a book, pamphlet, paper, writing, drawing, painting etc. is obscene if it is "lascivious or appeals to the prurient interest". "Lascivious" is defined as "lustful; inciting to lust". "Lust" is defined as "animal desire for sexual indulgence" A representation may incite one person to lust but the same representation may have no effect on the other. One person may examine an obscene representation again and again and get the necessary incitement by repeated examination, although he may not get it at the first examination or the second examination. Another person may throw away the representation after the first examination and thus save himself of the predicament in which the first person lands himself. There may be yet another who may not be moved by any number of repeated examinations. Such person is an extra ordinary person. Courts of law take into account the conduct of an ordinary person; not of an extra-ordinary person who may be described as a Saint or Mahatma.

Even in the assessment of the conduct of an ordinary person, perceptions may vary and, therefore, some amount of variation in judicial verdict cannot be completely ruled out.

Obscenity is not an offence by one gender against the other. It is a crime against the society. What shocks the moral conscience of the Society constituted at a given point of time, is obscene. Since judicial verdicts are likely to be variant, it is best that the Society comes forward to eradicate the evil. All efforts of the society in this direction have my good wishes and blessings.

Thank You.

Part - IV

Articles

Part - IV

Articles

LICENSING CRIMINALITY

Hon'ble Mr. Justice J.K. Mathur
Judge,
Allahabad High Court

The development of civilization is virtually the development of controls devised in respect of unbriddled personal liberty. Such restrictions are placed with a view to see that all the persons enjoy liberty to the same extent without treading on others toes.

The freedom of expression though universally accepted has always been delimited by certain parameters. These lines have to be drawn with a view to see that the liberty of expression does not embarrass or hurt other citizens and does not have any evil effect on them.

One of the most powerful modes of expression is Cinema. Films have permeated through all the economic strata and are viewed by almost all sections of the society irrespective of age, sex and class. Not only is its impact extensive, it is equally intensive. Young gullible minds are transported to the world of the silver screen and participate in action. Impressionables carry the effect of cinema outside the halls also. For them whatever the matinee idol does is not only permissible but the desirable thing to do.

"Further it has been almost universally recognised that the treatment of motion pictures must be different from the instant appeal of the motion picture, its versatility, realism (often surrealism), and its co-ordination of the visual and aural senses. The art of the cameraman, with trick photography vistavision and three dimensional representation thrown in, has made the cinema picture more true to life than even the theatre or

indeed any other form of representative art. The motion picture is able to stir up emotions more deeply than any other product of art. Its effect particularly on children and adolescents is very great since their immaturity makes them more willingly suspend their disbelief than mature men and women. They also remember the action in the picture and try to emulate or imitate what they have see", was the observation of the Supreme Court in the case of K.A. Abbas v. Union of India[1].

The films have the potential of forceful communication and any daviant communication can also be conveyed by them with a telling impact. One such potential crime is obscenity, where lewd pictures can deprave and criminalise the society, especially the young.

Indian Penal Code defines and punishes obscenity under section 292. Distribution or public exhibition of any representation which is obscene, making producing or purchasing any such thing and dealing with it in any manner has been rendered punishable.

Cinema is also a form of representation and, therefore, making, distributing, dealing in or exhibiting an obscene cinema would render a person liable to be punished under this provision. Obscenity has been defined in Sec. 292(1) as follows:-

> *"292. Sale etc. of obscene books etc.(1) for the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as whole, such as to tend to deprave and corrupt person who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it."*

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1 A.I.R. 1971 Supreme Court 481.

The test of obscenity accepted in a number of cases, is the one evolved in Hicklin's case,[2]

> *"The test of obscenity is this, whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands publication of this sort may fall.....It is quite certain that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thought of most impure and libidinous character."*

(see Ranjeet D. Udeshi v. State of Maharashtra[3] and C.K. Kakodkar vs. State of Maharashtra[4])

Cinema thus shares the restrictions placed on other modes of communication not to convey obscene representations. Any contravention can be complained about and subjected to prosecution.

But this was not effective control mechanism for cinema. Because of its very broad reach, and incisive effectiveness subsequent punishment cannot prevent the harm which is already done. The Cinematograph Act, therefore, provided for a mandatory certification before public exhibition of a film and previewing was provided as a prerequisite for grant of a certificate. This is to be done by a censor Board. Any person who exhibits the film without a certificate is liable to be punished under section 7 of this Act.

This additional constraint on the exhibition of films was found to be justified and constitutional in the case of K.A. Abbas. (Supra)

Initially there was no provision in the Cinematograph Act to protect the producer, exhibitor etc. of a cinema film from prosecution for

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2. (1868) LR 3QB 360.
3. 1965(1) S.C.R. 65.
4. 1969(2) S.C.C. 687.

obscenity in case the film was obscene. That there was no such protection even implied in the grant of licence was also recognised and stated by the Supreme Court in the case of Raj Kapoor v. State (Delhi Administration).[5]

In this case Raj Kapoor, the famous actor director, was being prosecuted for the offence under section 292 and 293 I.P.C. for having produced and exhibited a film 'Satyam Shivam Sundaram', which in certain parts was alleged to be obscene in a complaint filed against him before a Magistrate. On behalf of the accused, Raj Kapoor, a plea was raised that he having obtained a certificate under the Cinematograph Act, after due preview by the Censor Board, could not be prosecuted for the offence of obscenity. This plea was rejected by the court.

> *"The next point urged before us by Sri Iyengar is that once a certificate under the Cinematograph Act is granted, the homage to the law of morals is paid and the further challenge under the Penal Code is barred."*

It is deplorable that a power for good like the cinema, but a subtle process, and these days, by a ribald display, vulgarises the public palate, pruriently infiltrates adolescent minds, commercially panders to the lascivious appetite of rendy crowds and inflames the lecherous craze of the people who succumb to the seduction of sex and resort, in actual life, to 'horror' crimes of venereal violence. The need to banish cinematographic pornos and the societal strategy in that behalf had led to the Cinematograph Act, 1952. The Censor Board, under this Act, is charged with power to direct doctoring, tailoring, santizing and even tabooing films so that noxious obscenity may not be foul and erotic aroma make mass appeal.

"I am satisfied that the Film Censor Board, acting under Section 5-A, is specially entrusted to screen off the silver screen pictures which

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5. AIR 1980 S.C., 258

offensively invade or deprave public morals through oversex. There is no doubt and counsel on both sides agree-that a certificate by a high powered Board of Censors with specialised composition and statutory mandate is not a piece of utter inconsequence. It is relevant material, important in its impact, though not infalliable in its verdict. But the court is not barred from trying the case because the certificate is not conclusive. Nevertheless, the magistrate shall not brush aside what another tribunal has, for similar purpose, found. May be, even a rebuttable presumption arise in favour of the statutory certificate but could be negatived by positive evidence. An Act of recognition of moral worthiness by a statutory agency is not opinion evidence but an instance or transaction where the fact in issue has been asserted, recognized or affirmed.

I am not persuaded that once a certificate under the Cinematograph Act is issued the Penal Code, Protanto will hang limp. The court will examine the film and judge whether its public display, in the given time and clime, so breaches public morals or depraves basic decency as to offend the penal provisions.

I reject the extreme contention that a Board certificate bans the criminal court's jurisdiction to try for offences under section 292/293 I.P.C."

This judgment is categorical in holding that a certificate granted under the Cinematograph Act does not affect the liability for being punished under Indian Penal Code. Only the grant of a certificate would raise a presumption against obscenity, the film having been subjected to screening for it by the Censor Board. This judgment was delivered on 26.10.1979.

The same matter arising out of the prosecution of the same person, Raj Kapoor, again came up before the same bench of the Supreme Court. The same film 'Satyam Shivam Sunderam' was the subject matter

of prosecution. In this case, Raj Kapoor Vs. Laxman[6] (hereinafter referred to as Raj Kapoor II) decided less than two months later on 14.12.1979 by the same judges, the conclusions were reversed, without considering the ratio of the earlier decision, except making a brief reference that in that case Section 79 I.P.C. was not considered, to distinguish it.

> *"The position that emerges is this, jurisprudentially viewed, an act may be an offence, definitionally speaking; but a forbidden act may not spell inevitable guilt if the law itself declares that in certain circumstances it is not to be regarded as an offence. The chapter on General Exceptions operates in this province. Section 79 makes an offence a non-offence. When only when the offending act is actually justified by law or is bonafide believed by mistake of fact to be so justified. If, as here, the Board of Censors, acting within their jurisdiction and on an application made and pursued in good faith, sactions that public exhibition, the producer and connected agencies do enter the statutory harbour and are protected because Section 79 exonerates them at least in view of their bonafide belief that the certificate is justificatory. Thus the trial court when it hears the case may be appropriately apprised of the certificate under the Act and, in the light of our observations, it fills the bill under Section 79 it is right for the court to discharge the accused as the charge is groundless. In the present case, the prosecution is unsustainable because Section. 79 is exculpatory when read with Section 5A of the Act and the certificate issued thereunder. We quash the prosecution."*

In this case the Supreme Court purported to hold that the grant of certificate to a film would justify its exhibition and protect its producers and exhibitors from prosecution for an offence by virtue of the exception provided by Section 79 of the Indian penal Code.

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6. AIR 1980 S.C. 605.

The scope of this pronouncement, and the extent of protection this judgment provided, can be known from an analysis of Section 79 I.P.C. which runs as follows:-

> ***"Sec. 79, Act done by a person justified, or by mistake of fact believing himself justified, by law.*** *Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it."*

An act will stand decriminalised even when it is punishable by law if the person committing it;

a. is justified by law in doing it, or

b. believes under a mistake of fact in good faith that he is so justified in doing it.

But if the belief though bonafide is induced by mistake of law, it will not afford a protection under this provision.

Section 79 is a part of Chapter IV of the Indian Penal Code. According to Section 40 I.P.C. the word 'offence' when used in a provision forming part of this chapter, means an offence under the Indian Penal Code or under any special or local law. Thus if it be held that grant of a certificate justifies projection of the representations in a film it would protect the producers, distributors or exhibitors of a film from being prosecuted for any offence which the communication of the representation may otherwise render them liable for. Even if the film is lewd, or depraving, the producer cannot be punished for obscenity. Not only this it will keep prosecution for sedition, promoting riot, promoting enmity between different groups, making statement prejudicial to national integeration, inciting crimes, defamation, each of which is an offence punishable under Indian Penal Code, and a horde of other offences for which the representations in the film may render the producer and the

exhibitor liable for. Breach of copy-right, plagirism, Contempt of Court, indecent representation of women, indecent exposures, and numerous other offences punishable under special laws, capable of being committed with heightened effect by cinema, shall also stand condoned if the certificate is treated to be justificatory.

The legislature also did not find this to be the correct interpretation of its intention and stepped in to provide specifically that a certificate granted under the Cinematograph Act would be a valid defence only in prosecution for obscenity. This was done by amending the Cinematograph Act by Act No. 49 of 1981, to add a proviso to Sec. 5A (1).

Raj Kapoor II purported to interpret the provisions of the Cinematograph Act as they existed before the amendment, and when they did not contain any specific provision about the effect of the certification or prosecutions. On a specific explicit provision being inserted to delimit the extent of protection in the statute, the interpretation of the provisions unamended stood superseded, and it was no longer a valid precedent interpreting the amended provisions.

This amendment itself is sufficient to drain Raj Kapoor II of its precedential value. Yet it is being followed even after the amendment of the Cinematograph Act.

The extended immunity was provided by a division bench of the Allahabad High Court in Nurul Huda and others v. Amitabh Bachhan.[7] A movie 'Andha Kanoon' contained a number of passages and a song allegedly scandelising the courts and therefore an application was moved to punish the persons responsible for contemptuous utterances under Sec. 12 read with Section 2 (c) of the Contempt of court Act. The accused pleaded justification on the ground that the film had been duly certified under section 5A, and therefore they could not be prosecuted

7. 1984 Alld. Law Journal, 1254

and punished, being justified in exhibiting it, resting this plea on Raj Kapoor II. The court accepted the plea and dropped the proceedings.

This case may only be a tip of an iceberg. There are likely to be many more unreported decisions of High Courts, and stifled prosecutions in district courts relieving erring producers and exhibitors of films of their criminal liability by affording them the protection of Section 79 of the Indian Penal Code.

This sweeping plenary decriminalization could not have been intended by the legislature while providing for grant of a certificate to a film and in any case such a holiday from rule of law would be unconstitutional. In case the law wanted the films to be saved from prosecution for any crime committed by this medium of representation, it would necessarily have provided necessary sieves in the process of certification to see that criminality, if any, existing in the film is identified and removed. No such filter having been devised, the immunity from presecution could not have been intended.

Singling out films for perviews and certificates is necessarily due to the fact that the Cinematographic projections are very powerful media for dissemination of information and mere subsequent prosecutions would not effectively undo the harm already done by pretrial exhibitions. It therefore sought to place additional rigours to examine them for any potential criminality before it was permitted to be exhibited. Instead of adding to the existing control mechanism of prosecution and punishment for any proved criminality, the law could not have intended to relieve the producers and exhibitors of films from the ordinary criminal liability also, reaching a result contrary to the one intended, unshackling the medium to plunder morals, reputations and mental make ups with impunity. Ironically while the law was intended to impose more severe restrictions on the films for their added impact and extensive audience, it has been so interpret ed as to weave an impregnable citadel of immunity to harbour all the producers and exhibitors, protecting them

from prosecution and punishment for the crimes they may intentionally commit. The passport to this island of immunity is a certificate by the Censor Board. Most of the offences likely to be committed by the exhibition of the films may not even be known to the Board, while it considers the grant of certificate, and are not even mentioned in the law or directions to the Board.

Some of them are such as a Board cannot be aware of unless persons concerned, after seeing the film, point them out, for which there is no provision in the process. If a person is intentionally defamed it may not even be perceived by the Board unless they know him intimately enough, or until the person concerned explains the insinuations and innuendos. The process of certification has been structured in a manner as to be deaf to his protestations. They cannot detect contempts unless they know all Judges and cases. Similarly the person whose work has been blatantly plagiarized will have the discriminatory disability arising from the sweeping decriminalising effect of the certificate. The effect of the justification has been raised to the level of setting at nought the constitutional wrong provided by Art. 215 of the Constitution. All this could not have been intended by the law makers, or foreseen by the apex court while immunizing producers and exhibitors of a certified film.

Had the legislature intended to totally immunize the producers and exhibitors of certified film, it would necessarily have provided for persons likely to be injured by the projection, and having a remedy under the law to prosecute, an opportunity to be heard about infringement of their rights, before clipping them of their rights available under the general law of the land Decriminalisation without even an examination for the possible deviations is unreasonable, discriminatory and violative of rule of law. Additionally such deprivation of persons affected, and grant of unguided and unbriddled privilege would render such a provision unconstitutional and ultravires.

Raj Kapoor II is in any case no longer a valid precedent because the amendment of Cinematograph Act has redefined the extent of protection.

This judgment does not consider binding precedents and statutory provisions for its decision. The first ground on which the decision rests is "Section 79 exonerates them at least in view of their bonafide belief that the certificate is justificatory."

Whether a certificate granted under the Cinematograph Act justifies dissemination of representations which may be violative of law, is not a question of fact but of law. No mistake of law is condonable under Section 79 I.P.C. which protects only acts justified by law, or ones which by **mistake of fact** in good faith believed to be justified. Provisions of Section 79 specifying that only mistakes of fact are condonable, were not noticed by the court which found the certificates justificatory.

The second ground used to justify affording protection to the producers, exhibitors of certified film given in Raj Kapoor II is that the certificate is granted by an expert authority and the producer should not be driven to a lay magistrate to satisfy him that the certificate notwithstanding the film was not offensive.

This aspersion on the competence of the trial judges is an unfortunate one. The judicial system has all along required the judges to try a person for crime-whatever be its nature. In some of them technical knowledge is essential. The system admits of requisite information being made available to the judge by way of opinion produced by the parties. Whether an act is obscene or defamatory, or incites hatred etc. is not for an expert to judge. It is a layman whose response has been recognised as a touchstone. The Magistrate can and does collect opinions and reasons, and the contending parties participate in the process of analysing them. A better and more effective method has not yet been found.

And the decision of the Supreme Court, rendered by the same judges, and an earlier larger bench, have held that whether a representation is obscene is for the courts to consider, and not for the experts.

In Raj Kapoor I, the same bench though finding the Censor Board 'high powered' withspecialised composition', went on to hold that the certificate was not conclusive about the film not being obscene.

> *"The court will examine the film and judge whether its public display in the given time and clime so breaches the public morals, and depraves basic decency as to offend the penal provisions."*

This case was sought to be distinguished on the ground that in that case Section 79, I.P.C. was not considered. But this conclusion is not dependent upon or connected with the provisions of Section 79. It merely decides about the comparative advisibility of the question of obscenity in fact being decided by experts or by the courts.

Another decision in Chandra Kant Kalyandas Kakodkar vs. State of Maharastra[8] also laid down the same principle while discussing the propriety of the question of obscenity being decided by the experts.

> *"It is apparent that the question whether a particular article or story or book is obscene or not does not altogether depend on oral (expert) evidence because it is the duty of the court to ascertain whether the book or story or any passage or passages therein offend the provisions of Section 292."*

Even the very foundation for arrogating the certificate to be pedestal of a justification to permit a film to communicate anything, that the members of the Censor Board are experts, has been held without noticing the provisions of law as contained in the Cinematograph Act.

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8. AIR 1970 Supreme Court 1390

Chairman and members of the Censor Board are appointed under Section 3 of this Act. It does not prescribe any qualification for the chairman or Members of the Board. The rules also do not provide any qualifications. In concluding that the Board consists of experts, the court did not take into account these provisions. Had these provisions been considered, the court could not have held that the certificate was granted by an expert authority.

Another reason to support the justificatory potential of a certificate considedred by the Supreme Court was 'If the Board blunders, the Act provides remedies. We are sure the public spirited citizen may draw the attention of agencies under the Act to protect public interest.' In finding that the Act provides remedies, also the provisions of law were not noticed.

At the time the film is viewed for grant of certificate, it has not been exhibited and no person howsoever public spirited, can know if any part of it is objectionable. Under rule 22 (4) of the Cinematograph (Certification) Rules,

> *"All previews of films for the purpose of examination for certification and the report and record relating thereto shall be treated as confidential," further ensures that no man may know the contents of the film so as to point out any objectionable part of it.*

Thus the process of certification inherently is one which precedes public exhibition of the film and no person can know its contents. This state is further ensured by keeping the process confidential. In the face of this law, without considering it, it was held that persons could draw the attention of agencies under the Act to protect public interest, perhaps on concession.

An appeal under the Act can be filed only by a person aggrieved by refusing grant of a certificate or granting any form of certificate only

or directing modification. This would necessarily be the person who asks for a certificate that may file an appeal against non grant of a certificate or directing excisions.

Thus the holding that the Act provides remedies if Board blunders, is not in consonance with the provisions. The Central Government's powers of suspension or revocation under section 5E are also attracted only if the film is being exhibited in any form other than that for which certificate was granted, or when it is exhibited in contravention of the provisions of the Act.

Central Government's power of revision is not available for a review of the film and should not exercise to 'determine whether the film suffers from the vice of indecency or immorality' as has been held in the case of Hira Lal M. Shah vs. The Central Board of Film Certification.[9]

Thus the Supreme Court, in holding that the Act provides citizens opportunity to represent in the process of grant of certificate, did not consider the provisions of Cinematograph Act.

The decision of the Supreme Court conceding justificatory role to certification rests on findings that the members of the Censor Board are experts, and if they blunder the law provides rectificatory process, neither of which rest on the provisions of law which have not been taken into account in recording these findings but appears to rest on concessions. This decision cannot therefore, be a good precedent. And as pointed out above, it no longer spells out the contemporary legal position after Section 5A was amended to restrict the protection.

Expressly Yet it is being followed to apply Sec. 79 I.P.C. and condone serious deviations in films. It has, therefore, to be formally laid to rest. In view of the fact that 1983 amendment does protect the makers and exhibitors of certified films from being prosecuted for obscenity, it

9. AIR 1987 Bombay, 192

would be necessary that provisions of the Cinematograph Act and Rules be suitably amended to cancel the certificate after hearing any objection against the grant of the certificate, within a period of time to be fixed, and subsequent exhibition be rendered severely punishable. A citizen should have audability in the process leading to a decision which has the potential of permitting producers and exhibitors of films to deprave and corrupt the morals of the youth, of inciting violence, and of propagating or justifying breach of law.

If the law is permitted to operate in the manner it is being operated today granting a certificate to a film would continue to amount to unguided licensing of criminality.

OBSCENITY AND THE LAW-SOME BASIC POSTULATES

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INTRODUCTION

1. Society must maintain a high degree of decency and morality, otherwise it may lead to licence and lewdness. Laws against obscenity are made in the interest of public morality.

MEANING

2. The New Oxford Encyclopaedia Dictionary defines the word 'Obscene as something which is repulsive and indecent and obscene publication as those publications which tend to deprave and corrupt. The Encyclopaedia Britannica Vol. VII defines obscenity in general as "that which offends the public sense of decency" In the Black's Law Dictionary (V Edition) obscene means 'Objectionable or offensive to accepted standards of decency'.

POSITION IN ENGLISH LAW

3. In England until 1727, obscenity in books was punishable only before the spiritua' courts[1]. In 1727, it was ruled for the first time that obscenity was a common law offence.[2] In 1857, Lord Campbell enacted the Obscene Publications Act. The Act used the word 'Obscene' and provided for search, seizure and destruction of obscene books etc. and made sale, possession

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1. "Obscenity-A reasonable restriction on speech and expression" by DSN Somayazulu and HCM Patro 1968 Cr.L.J. 9 (P 60).
2. R.V. Curl (1727) 2 Stra 789 (KB) 93 ER 849.

for sale, distribution etc. a misdemeanour. However, this Act did not contain any definition of Obscenity.,

4. The Obscene Publication Act, 1857 was amended in 1959. The amended Act is liberal in exempting not only articles of literary, scientific and artistic or educational merit in the interest of public good but also other subjects of general concern. The experts' opinion is made admissible.[3] The book is to be judged as a whole rather than by isolated passage test.[4]

TEST OF OBSCENITY

5. **Hicklin Test** - Cockburn, C.J. in 1867 laid down the test of obscenity in Regina v. Hicklin[5] in the following words :-

"Whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall...It is quite certain that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character."

6. **Elements of Hicklin Test** - The essential elements of this test are :-

(a) That there should be persons whose minds are open to such immoral influences.

(b) the publication is likely to fall in their hands.

(c) the publication should have a tendency to deprave or corrupt their minds.

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3. Sec. 4(2) Obscene Publications Act, 1959.
4. Sec. 1(1) Obscene Publication Act, 1959.
5. Regina v. Hicklin (1868) 3 QB 360.

7. The Indian Penal Code (IPC) to give effect to the International convention for the Suppression of Traffic in Obscene Publications signed at Geneva on 12 Sep., 1923 in corporated Section 292 and 293 providing punishment for sale etc. of obscene material[6]. Section 294 of I.P.C. makes doing of obscene acts and singing of obscene songs punishable. I.P.C. was silent on the definition of the word 'Obscenity' in the beginning but with a view to make it more clear, the provisions were amended in 1969[7] Section 292 of IPC now explains the expression of obscenity generally on the same lines as in the Hicklin's rule.[8]

8. However, inspite of these penal provisions, it was observed that there was a growing tendency of indecent representation of women or references to women in publications, particular in advertisements. This tendency had the effect of denigrating women and were derogatory to women. Therefore, it was felt necessary to have a separate legislation to effectively prohibit the indecent representation of women through advertisements and publications etc. The Indecent Representation of Women (Prohibition) Act, 1986 was, therefore, enacted which in Section 2 States :-

"No person shall publish, or cause to be published, or arrange to take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form."

9. The term "Indecent representation of women" has been defined as 'the depiction in any manner of the figure of women, her

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6. The Penal Law of India by Dr. Hari Singh Gaur (9th Edition) Vol.II P. 1996. Sec. 292 and 293 of IPC were introduced by Obscene Publication Act, 1925 (Act VIII of 1925).
7. By Act XXXVI of 1969.
8. Sec 292 (1) of I.P.C.

form or body or any part thereof in such a manner which has the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals.'

10. The term 'Indecent' has been introduced for the first time in the realm of legal terminology with respect to obscenity. However, the term 'Obscenity' still remains undefined even after the emergence of this legislation in 1986. The last laid down test of obscenity or an obscene object in the case of Regina v. Hicklin has been included in the definition of 'indecent representation of women'. The definition includes the expression-"Is likely to deprave, corrupt or injure the public morality or morals." But it also includes the presentation of women in such a way as to have the effect of being indecent or derogatory to or denigrating women. This implies that under the existing law, any presentation of women in prohibited. The indecent representation is also obscenity. However, it will be of lessor degree whereas any representation which is positively obscene implies indecency of high degree which is bound to deprave or corrupt human mind. Indecent is at the lower end of the scale and obscene is at the upper end of the scale. However, both convey an idea which is offensive vis-a-vis recognised standard of propriety.

11. **Position in Armed Forces Law** - Almost all Acts governing armed forces provide severe punishment of any disgraceful conduct of indecent or unnatural kind.[9]

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9. The Army Act, 1950 (Sec.46), The Air Force Act, 1950 (Sec.36), The Border Security Force Act 1968 (Sec.24), The Coast Guard Act, 1978 (Sec.23), The National Security Guard Act, 1986 (Sec.23) provides a maximum punishment of seven years imprisonment where as the Navy Act, 1957 (Sec.53) provides a maximum punishment of 2 years imprisonment for uncleanness or indecent act.

APPROACH BY COURTS IN INDIA

12. The Supreme Court had held that Section 293 of the IPC is constitutionally valid and a reasonable restriction of speech and expression guaranteed under Article 19 (1)(a) of the Constitution. The Supreme Court also adopted the Hicklin test for determining whether a material is obscene or not[10] and reliance was placed on expert evidence. Earlier this test was adopted by Allahabad High Court.[11]

13. Some of the important issues regarding Obscenity decided by the courts in India are as follows :-

(a) Obscenity does not altogether depend on oral evidence but must be judged by the court. The court also highlighted the aspects that need to be considered by the court while determining obscenity.[12]

(b) The Supreme Court expressed that the responsibility to decide question of obscenity is essentially that of the court and indicated modes of deciding the question. The court also drew distinction between vulgarity and obscenity by saying :-

"A vulgar writing is not necessarily obscene, vulgarity arouses a feeling of disgust and repulsion and also boredom but does not have the effect of depraving, debasing and corrupting the morals of any reader of the novel whereas obscenity has the tendency to deprave and corrupt those whose minds are open to such immoral influences.[13]

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10. Ranjit D. Udeshi v. State of Maharashtra (AIR 1965 SC 881 : 1965 (2) Cri LJ 8).
11. State v. Thakur Prasad (AIR 1959 All 49:1959 Cri LJ 9).
12. Chandra Kanta Kalyandas v. State of Maharashtra (AIR 1970 SC 1390 : 1970 Cri LJ 8).
13. Samaresh Boste v. Amal Mitra (AIR 1986 SC 967 at p

In this case, the Supreme Court also help that emphasis on sex and use of slang and unconventional language in a novel did not make it obscene.

(c) The Supreme Court has taken a very strict attitude towards the display of obscenity through pictorial presentation. The Court observed :-

> These offences of corrupting the internal fabric of the mind have got to be treated on the same footing as the case of food adulterators and we are not prepared to show any leniency.[14]

(d) A work would not be obscene merely because it deals with sex matters;[15]. Treating of sex and nudity in Act and literature cannot be considered as Obscenity perse.[16]

(e) A book dealing with diseases or curse is not obscene although it deals with sexual enjoyment as it is intended for the use of doctors and patients.[17]

Scientific books or journals intended to advise married people as to how to lead a happy married life are not obscene even though they deal with sex indecently.[18]

The publication of sex books for the purpose of education cannot be banned on the ground that they would fall in wrong hands.[19]

(f) The object of legislature was not to prohibit the spread of sexual knowledge on scientific basis but to check it

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14. Uttam Singh v. The State (AIR 1974 SC 1230 at P.1232:1974 Cri LJ 923).
15. UttamSingh v. The State (AIR 1974 SC 1230 at P.1232:1974 Cri LJ 923).
16. Shree Ram Saksena v. Emperor (AIR 1940 Cal 290 : 41 Cri LJ 417).
17. Emperor v. Thakur Dutt (1917) 18 Cri LJ 126 (Law).
18. Giridharlal Popat Lal Shah v. The State (AIR 1956 Bom. 32 1956 Cri L.J. 206).
19. Emperor v. Harnamdas (AIR 1947 Lah. 383 : 38 Cri LJ 510).

from being used as a commercial means and thereby corrupt the minds of persons.[20]

(g) Reproduction of architectural figures from the walls of ancient temples in a journal are not obscene per se.[21]

(h) If the art is so mixed with obscenity, and the obscenity is trivial or over-shadowed, then it is permissible.[22]

(i) Religious and classical works are not obscene even though they contain passages of obscene character as the tendency of such work is not to deprave or corrupt morals. But they would become obscene if they are published separately with a view to exploit the base instinct and weakness of human nature, and is designed to arouse immoral sexual urge in human minds.[23] A story taken from a religious book and published separately in a journal does not become obscene because the story deals with beings whose conduct is not to be judged by human standards as the people reading is believe in immorality of beings who are divine.[24] But if the tendency to excite lascivious thoughts is proved, then it would be obscene in the new form, though not read as a whole in the religious book.[25]

CRITICISM OF THE LAW

14. The legacy of the British Law incorporated most of the defects and inadequacies into the Indian Law, making it vulnerable to the same attack as the Hicklin test suffered. These defects are:-

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20. Rama Murthy v. State of Mysore (AIR 1954 Mys 164 : 1954 Cri LJ 1622).
21. Sumanta Haldar v. State (AIR 1952 Cal 214 : 1952 Cri L.J. 575).
22. Public Prosecutor v. A.P. Sabapathy (1958 Cri LJ 647 (1) (Mad).
23. Kherode Chandra Roy Chowdhery v. Emperor (1911), ILR 39 Cal. 377.
24. Emperor v. Vishnu Krishna ((1913) 15 Bom. LR 307)
25. Ghulam Hussain v. Emperor (AIR 1917 Lah. 219 : 18 Cri L.J. 505).

(a) Firstly, the definition of obscenity remains unnecessarily vague and uncertain. However, hard the judges and legislatures have tried to define it and as such the offence can even be committed unknowingly. The elementary doctrine of criminal jurisprudence requires that it should always be possible to ascertain in advance with some degree of certainity that the conduct which contemplated is unlawful. The crime should be precise before one could be made liable, otherwise punishment would be imposed on the offender by ex-post facto sanction as he would not be reasonably aware of the law he is breaking.

(b) Secondly, a very important factor in criminal jurisprudence is a man should not be punished unless he had mens rea (guilty mind) and absence of guilty mind is a good defence. But even a book seller who knows nothing about the contents of a book may be held guilty and might be exposed to punishment at the vagaries of a magistrate.

(c) Thirdly, it completely ignores the purpose of the writer, artist etc. a work which might have been created with a serious artisitc, literary or scientific purpose might be condemned as obscene. This, however, is redeemed to a certain extent because of the amendment made by providing exception in Section 292 of I.P.C.

RECENT TRENDS AND ROLE OF ORGANISATIONS

15. The latest trend in the indecent representation of women has appeared through voluptuous display of women in the advertisement of film, which influence the minds of young generation and they flock to see the films, attracted by such lewd advertisements. This has become one major source of distraction exercising corruptible influence on immature and impressionistic minds of young generation. Another trend worthy

of note is advertisements on Star TV and associated problem of how to contain indecent exposure to Indian viewers.

16. Mere legislation will not curb or control the indecent representation. The legislative effort has to be supplemented with the social awareness against this menace. Different social groups and women organisations should play a very active and sincere role in this particular direction. The judiciary should continue to show positive approach in this direction.

CONCLUSION

17. It is for consideration that what is obscene or indecent keeps changing from the time to time and may not exactly be the same in different countries and culture. The modern time tendencies are not prohibits sex knowledge but it is to be spread on the scientific lines. The works of art are generally not considered as obscene. In other words, treating with sex in a manner offensive to public decency and morality, judged of by the national standards and considered likely to pander to lascivious, prurient or sexually predacious minds, must determine the result. A balance should be maintained between freedom of speech, expression and public decency as well as morality.[26]

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26. Law of Obscenity in India-Recent trends by Shyamal Kumar Mukherjee (1990 Cri LJ Journal 107).

THE LAW OF OBSCENITY: AN OVERVIEW

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When one is concerned with speech and expression, the most delicate and the most misunderstood law is the law of obscenity. Here one can see the battle between conservatiom and radicalism, the war between the old values and new values and the conflict between notions of literary freedom and conservation of moral values. Society, particularly that section which consists of parents, has definite notions which are not necessarily shared by those who write, those who paint and many others engaged in the pursuit of the creative arts. Fluctuations in Social values from time to time in this sphere are well-known. Depending upon the social notions on the subject, the law has also, from time to time, changed itself in substance and in form. But a peculiar feature of these changes in the law is, that one is as much in the dark after the change, as one was before the change. This induces one to agree with the French proverb, "the more it changes, the more it remains the same."

INDIAN PENAL CODE

The principal provision in the statutory law dealing with obscenity is section 292. Sub-section (1) of section 292 attempts to define obscenity in these terms:

> *" (1) For the purposes of sub-section (2), a book pamphlet, paper, writing, drawing, painting, representation, figure or any other object shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items is, if taken as 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."*

An Exception to section 292 provides that the section does not extent to certain objects. For the present purpose, it is sufficient to quote the Exception, clause (a) (i) reading as under:-

"**Exception.**-This section does not extend to-

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure-

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation of figure is in the interest of science, literature, art or learning or other object of general concern."

THE PHYSICAL CONDUCT

A variety of acts concerning obscene publication and obscene objects become punishable under section 292 (2) of the Indian Penal Code. In this context, the most material provisions are to be found in clauses (a) and (d) of that sub-section, quoted below:-

" 292 (2) Whoever-

(a) sells, lets to hire, distributes, publicly exhibits or in any manner "puts into circulation, or, for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatever; or

(d) advertises or makes known by any means whatsoever that any person is engaged in any act which is an offence under this section, or that any such obscene object can be procured from or through any person,

Shall be punished on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees."

TESTS OF OBSCENITY

An analysis of section 292, Indian Penal Code, as it stands, will reveal that the section presents to the reader, through the definition in sub-section (1), three alternative tests (or criteria) which deserve to be analysed. These three tests are as under:-

(i) lascivious matter; or

(ii) matter which appeals to the prurient interest; or

(iii) matter whose effect, or the effect of any one of whose items taken as a whole, is 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.

The expression 'lascivious' (the first test given in section 292) indicates something which is extremely lewd. The element of 'prurient' appeal (the second test) is obviously drawn from American Supreme Court decisions on the subject, where this expression has been used, though the expression has also been used in judgments of the Supreme Court of India. The third alternative test, wherein the tendency to deprave and corrupt the readers or the viewers or the audience is emphasised, is largely drawn from the formulation of the law in the leading English case on the subject, which reads as under:-

"I think the test of obscenity is that, whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."[1]

The formulation in the third test as given in section 292 (1), while borrowing this language, adds the qualification that (i) the effect must be viewed as a whole, and (ii) regard must be had to all relevant circumstances. However, it is left vague as to what are the 'relevant circumstances'.

THE MENTAL ELEMENT

Like many other provisions of the Indian Penal Code, section 292 is non-committal about the mental element requisite to constitute the offence. Unlike certain other provisions, it does not open with words like "knowingly". The Supreme Court, in the case relating to the book **Lady Chatteley's Lover**, specifically held that knowledge is not an essential ingredient of the section. The court observed as under:-

"We can only interpret the law as we find it, and if any exception is to be made, it is for Parliament to enact a law. As we have pointed out, the difficulty of obtaining legal evidence of the offender's knowledge of the obscenity of the book etc. has made the liability strict. Under our law, absence of such knowledge may be taken in mitigation, but it does not take the case out of the sub-section"[2].

This also is a serious deficiency in the section. For an offence for which the punishment of imprisonment is prescribed, one would normally expect the legislature to make intention or knowledge an essential ingredient of the section. It cannot be overlooked that the Constitution requires that restrictions on the freedom of speech and expression, as

1. R.V. Hicklin, L.R. (1868) 3 Q.B. 360, 371 (Cockburn, C.J.).
2. Ranjit D. Udeshi V. State Maharashrashtra, A.I.R. 1965 S.C. 881, 886, 889.

also restrictions on the carrying on of a business, must be 'reasonable'. The view that a person can be punished for an act done without knowledge of obscenity, hardly fits in with the requirement of 'reasonable restriction'. If, against the freedom of speech and expression guaranteed by the Constitution, the needs of protection of social morals are to be balanced, the weighing must be done after due regard to the requirement of reasonableness.

It would, seem that as the section stands, intention is not relevant and what the courts consider, is the tendency of the matter.[3]

CONSTITUTIONAL VALIDITY

Notwithstanding these deficiencies in the section, the section has somehow survived an attack on its constitutional validity, and the Supreme Court has held that the section imposes a reasonable restriction on the freedom of speech and expression in the interest of decency or morality as permitted by article 19(2) of the Constitution. The Supreme Court did not define obscenity, but made the following observations on the subject :-

> "In other words, treating with sex in a manner offensive to public decency and morality (and these are the words of our fundamental law), judged by our national standards and considered likely to pander to lascivious, prurient nor sexually precocious minds must determine the result. We need not attempt to bowdlerise all literature and thus rob speech and expression of freedom. A balance should be maintained between freedom of speech and expression and public decency and morality. When the latter is substantially transgressed, the former must give way."[4]

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3. Emp. v. Hari Singh, I.L.R. 28 All. 100, 101, 102, and Q.E. v. Parashram, (1895) I.L.R. 20 Bom. 193; Emp. v. Inderman, (1881) I.L.R. 3 All. 837, followed in Emp. v. Hari Singh, (1906). See also K.A. Abbas v. Union of India, A.I.R. 1971 S.C. 481, 497.

4. Ranjit D. Udeshi v. The State of Maharashtra, A.I.R. 1965 S.C. 886, 899.

CRITICISM

With great respect to the distinguished Judges who decided the above case, it is worth pointing out that the constitutional requirement of reasonableness in any restriction on the freedom of speech and expression may raise some problems, if the mental element is totally ruled out. The Supreme Court itself in later decisions seems to have adopted a more liberal test–[5,6]

POSITION REGARDING FILMS

In regard to cinematograph films, it is primarily the Board of Film Censors which exercises scrutiny over productions alleged to be legally objectionable. During recent years, with the increasing importance of television and other audio visual media, a number of controversies have arisen regarding obscenity in audio visual presentation. This topic would require separate discussion. The Supreme Court had held that where a film has been certified by the Board of Censors as fit for public exhibition, that fact is relevant in deciding whether the film is obscene, if the producer of the film is prosecuted for obscenity.[7] The court in that case did make observations indicating that finality and infallibility are beyond the courts, which must interpret and administer the law with pragmatic realism, rather than with romantic idealism or recluse extremism. The court quoted the dictum of the distinguished legal philosopher Cohen, that "the law is not a homeless, wandering ghost. It is a phase of human life located in time and space."[8]

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5. Chandrakant Kakadkar v. State of Maharashtra AIR 1970 SC 1390
6. Samresh v. State of West Bengal 1986 G.L.J. 24 (S.C.)
7. Rajkapoor v. State AIR 1980 SC 258, 210,262, 263
8. M.R. Cohen, Reason & Law (1950) Page 4

THE EXCEPTION FOR PUBLIC GOOD

Section 292, Exception (a) (1) relates to a publication sought to be justified as being for the public good. This justification is available where the book etc. is in the interest of -

(a) science,
(b) literature,
(c) art,
(d) learning, or
(e) other object of general concern.

The burden of proof of public good would rest with the accused. This exception is largely drawn from the English Act on the subject, namely, The Obscene Publications Act, 1959. The court in any concrete case will have to balance the public good likely to result from the book, against its alleged 'lascivious' character, 'prurient' appeal or tendency to 'deprave and corrupt' the likely readers. (See the definition of 'obscenity' in section 292 (1). The work 'justified' as used in the exception (in this context), leaves scope for a judicial weighing of the literary or other merits of the book as against its possible lascivious, prurient or immoral tendency. To some extent, the "social importance" aspect had been recognised in the Supreme Court case of 1965 also, but only in a limited manner.[9] In that case, the court had observed that ideas having "social importance" will prima facie be protected, unless the obscenity is so gross and decided that the interests of the public dictate the other way.

PROCEDURAL ASPECTS

Action apart from prosecution is legally available under certain provisions, noted below.

(a) Obscene newspapers, books and documents, wherever printed, can be forfeited under Section 95 of the Code of Criminal

9. Ranjit D. Udeshi v. The State of Maharashtra AIR 1965 Sc 881.

Procedure, 1973. The order of forfeiture can be challenged in the High Court within two months, by an application made under section 96 of the same Code.

(b) By section 108(i)(ii) of the same Code, a Judicial Magistrate of the first class may require a bond from a person within his local jurisdiction who (within or without such jurisdiction) commit, concerning any such obscene matter, an act specified in section 292 of the Indian Penal Code. The bond is for 'good behaviour' and its maximum duration is one year. The acts specified are-making, producing, publishing or keeping for sale, importing, exporting, conveying, selling, letting to hire, distributing, publicly exhibiting or, in any other manner, putting into circulation, obscene matter.

However, under section 108(2) of the same Code, an order of the State Government (or of some officer empowered by it) is required before taking proceedings (for forfeiture) against the editor, proprietor, printer or publisher of any publication registered under and edited, printed and published in conformity with, the Press and Registration of Books Act, 1867.

SPECIAL ACTS

Apart from the Penal Code and the Code of Criminal Procedure, there are certain other special Acts whereunder obscenity is either punishable or is otherwise relevant. Some of the important laws are as under :-

Dramatic Performances Act, 1867 (19 of 1876). Section 3 of the Act provides that whenever the State Government is of opinion that any play, pantomime or other drama is of a "scandulous" etc. nature or "likely to deprave and corrupt persons present at the performance", the State Government (or the authorised Magistrate) may prohibit its

performance. Section 6 makes it an offence to take part in the prohibited performance.

THE INDIAN POST OFFICE ACT, 1898

Section 20 of the Post Office Act provides as under :-

"20. No person shall send by post -

(a) any indecent or obscene printing, painting, photograph, lithograph, engraving, book or card or any other indecent or obscene article, or

(b) any postal article having thereon, or on the cover thereof, any words, marks or designs of an indecent, obscene, seditious, scurrilous, threatening or grossly offensive character."

CINEMATOGRAPH ACT, 1952 (37 OF 1952)

Under section 5B, a certificate for exhibition of a film is refused if the film is against decency or morality.

YOUNG PERSONS (HARMFUL PUBLICATIONS) ACT, 1956 (93 of 1956)

Section 2(a)- "harmful publication" as defined-covers any book etc. containing stories portraying the commission of offences etc.' or incidents of repulsive or horrible nature "in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting to offence, violence, crime or in any manner whatsoever."

Section 4 - gives to State Government power to forfeit a harmful publication.

Section 5 - provides for application to the High Court against a forfeiture order.

Section 6 - Police may seize "harmful" publications.

CUSTOMS ACT, 1962

Section 11 gives power to prohibit or restrict the import or export of goods of the specified description, which include obscene publications.

INDECENT REPRESENTATION OF WOMEN ACT, 1986

Although the provisions of the Penal Code and other laws appear to be fairly adequate to punish indecent representation, the Act of 1986 seems to have been enacted to deal more particularly with such representation of women.

A BRIEF ON 'OBSCENITY'

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1. DEFINITION

Before we proceed to examine the legal aspect of obscenity, we should be clear about the meaning of the word 'Obscenity'. 'Webster's New International Dictionary' defines 'obscene' as - "offensive to chastity or modesty, expressing or presenting to the mind or view something that delicacy, purity and decency forbid to be exposed, impure, indecent, unchaste, lewd. The word 'obscene' was originally used to describe anything disgusting, repulsive, filthy or foul. 'Obscenity' as observed in U.S. v. Leftis, is applied to language spoken, written or printed and to pictorial productions and includes what is foul and indecent, as well as immodest or calculated to excite impure desires. The law relating to obscene publications is practically the same in England, United States of America and India. In England the test of 'obscenity' as laid down in 'R.v. Hicklin' is that "whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hand a publication of this sort may fall".

2. HISTORICAL BACKGROUND

In the year 1923, an International convention for the suppression and circulation of, and traffic in obscene publications was held at Geneva. A resolution was passed accordingly and signed on behalf of the Governor-General in Council on 12th September, 1923. Consequently, present sections 292 and 293 of I.P.C. were substituted for the original sections in the year 1925 by 'Act 8 of 1925 Sec.2'. The select committee in their report dated 10th February 1925, intended to exclude religious, artistic and scientific writings but they did not think it necessary to

enlarge the exception, which they left to be supplemented by a substantial body of case law' which they added, make it clear that bonafide religious, artistic and scientific writings etc. are not obscene within the meaning of I.P.C.' The two sections must, then be understood as supplemented by case-law, on the subject. The exception as drafted by the select committee, was somewhat enlarged by the Legislative Assembly which added the word 'any book, pamphlet, writing, drawing, painting, representation or figure kept or used 'bonafide' for religious purposes or' to the original exception as enacted in the Act of 1860, which the select Committee had reproduced in the draft section 292 of the I.P.C. imposes a restriction on the fundamental right of individuals guaranteed by restriction permissible under clause (2) of Art. 19 of the Constitution of India.

3. LEGAL PROVISIONS

Sections 292 to Sec. 294 of Indian Penal Code deals with sales of obscene books, obscene objects to young person and obscene acts and songs. Besides, Indecent representation of Women (Prohibition) Act, 1986, deals exclusively with obscenity in respect of women. Some reflections on 'obscenity' are also observed in the following Acts viz. Immoral Traffic (Prevention) Act, 1956. The Police Act, 1861 also make indecent exposure of person punishable. The young persons (Harmful Publications) Act, 1956 is an act to prevent the dissemination of certain publications harmful to young persons and Indian Post Office Act, 1898 prohibits transmission by post of anything indecent etc. Under Army Act though there is no specific provision on obscenity but if such offences are committed by persons subject to Army Act they can be charged under Section 45 (unbecoming conduct) and Sec.46 (Certain forms of disgraceful conduct) of the Army Act.

4. NEED TO CHANGE THE CONCEPT OF OBSCENITY IN THE PRESENT SOCIO-ECONOMIC SET UP

The concept of obscenity would differ from place to place and time to time depending upon the standards of morals of contemporary society.

The standards of contemporary society in India are also fast changing. A large number of classics, novels, stories and pieces of literature which have a content of sex, love and romance are now available to adults and adolescents. If a reference to sex by itself is considered as obscene, no books can be sold except those which are purely religious. In the filed of art and cinema also the adolescents are shown situations which even a quarter of a century ago would be considered derogatory to Public Morality. Justice William, J., Brennan of US Supreme Court had observed- "Sex has undisputably been a subject of absorbing interest to mankind through the ages. But sex and obscenity are not synonymous", and there has been plenty of disagreement about when the subject of absorbing interest becomes one of prurient interest. In the present day society in India a book or a publication which deals with sex cannot per se be said to be obscene. These days great emphasis is being laid down on family planning and in that connection it has become absolutely necessary to impart education about sex of masses. Such developments are taking place not only in India but in other countries also and a need to have change in the concept of obscenity is being felt.

5. CONCLUSION

It has been observed that in the recent past the offences against modesty, decency of the women are on the increase. Apparently this is because of obscene depiction in movies, videoes, cable TV network, yellow journalism, obscene literature etc. thereby perverting the minds of the young generation. Efforts were made by social reformists like Sant Vinobha Bhave and some women organisations to ban the obscene film postures in public but it did not pick up momentum. It is not only the effective legislation but effective and proper check by the competent authorities at all levels to check this growing social menace which is assuming alarming proportions.

INCREASING MENACE OF OBSCENITY IN CONTEMPORARY INDIAN SOCIETY : A PSYCHOLO-SOCIO-LEGAL ANALYSIS OF CAUSES AND CONSEQUENCES AND MEASURES REQUIRED FOR PREVENTION AND CONTROL

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Sex and sexuality have always been the subjects of tremendous social significance. Sex has been the basis for differentiating female from male. Likewise, sexual activities have always been behind all re-production without which propagation of human species on this planet was not possible. Sex has, from time immemorial, an important aspect of the life of all human beings who have natural proclivity of getting attracted towards the opposite sex. Freud, the propounder of psychoanalysis as a method of treatment of various mental disorders, expressed the view in his early writings that mental energy which he termed as libido is most fundamentally sexual. In Freud's view, a variety of neurotic fixations, sexual aberations and debilitating guilt feelings are theoretically traceable to unresolved Oedipus and Electra complexes which were initially used to refer to a group or collection of unconscious wishes, feelings and ideas focussing on the desire to "possess" the opposite sexed parent and to eliminate the same sexual parent emerging between 3 to 5 years of age. Though these complexes are partly resolved through the child making an appropriate identification with the same sexed parent, yet their full resolution is achieved at least theoretically, when the opposite sexed parent is "rediscovered" in a mature sexual object. It is this natural wish or desire which develops interests of all human beings in matters relating to sex and motivates them to make veried kinds of efforts to satisfy

this basic physiological need which in 'Abraham Maslow's theory or hierarchy of needs' occupies the top priority.

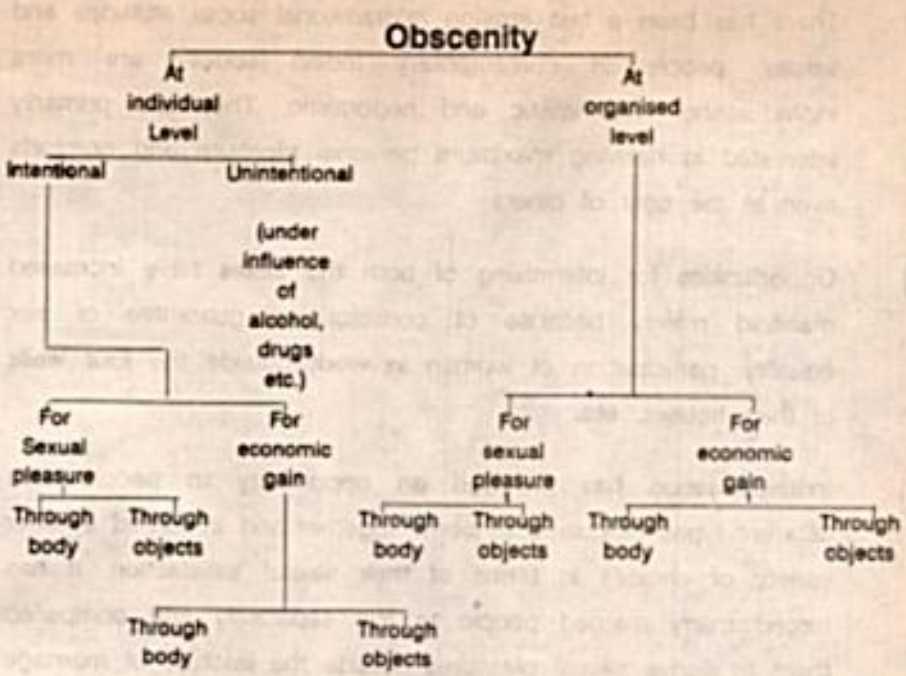
Every civilised society develops certain values to regulate all kinds of behaviour including sexual behaviour in order to ensure continuity and uniformity; and on the basis of these values, evolves certain morals which specify what is right and what is wrong, what is in the interest of society and what is not. In course of the process of socialisation, these morals are internalised by the growing individual and became part and parcel of individual's personal code generally referred to as morality. But due to a multiplicity of factors related both to personality and physical and socio-cultural environment, people feel tempted to deviate from these moral standards.

There have always been remarkable variations in what societies consider to be socially desirable and undesirable in terms of sexual behaviour as also in what they attempt to prevent or promote. In Indian society, sexual satisfaction has been permitted only through the institution of marriage which has been considered to be a sacrament and a unbreakable union between husband and wife not only in this life but in life after life. Moreover, there have been clearcut prescriptions like "न अन्य स्त्रियम अभिलेषत" (Don't have a longing for other's wives), "पर स्त्रिय नाभिभाषेत्" (Don't talk to other's wives), "मातृवत परदारेषु" (Treat the wives of others as mother), etc. prohibiting any kind of sexual activity outside the institution of marriage. Even in the matter of marriage, several restrictions like prohibition of "Sagotra' and 'Sapinda' marriage have been imposed which inhibit marriage among certain prescribed kinds of close relatives and thereby, further limit the scope of marriage. The evil of dowry which might have originated in the pastoral society from the basic desire of bride's parents to help their daughter and son-in-laws to start their newly married life with basic minimum economic security, has assumed such alarming proportions that many a girl, especially from poor middle class families having their typical norms relating to marriage, remains unmarried.

All human beings have certain common needs in sexual satisfaction being one of them, which they want to be fulfilled; and it is the basic nature of homo sapiens that they want to derive pleasure and avoid pain. 'Id' in the terminology of Freudian Psychoanalysis and 'Child Ego' in the technical jargon of Transactional Analysis as parts of human personality develop first and working on the principle of seeking pleasure and avoiding pain always demand their immediate satisfaction. Because opposite sex is an object of natural attraction and a source of pleasure, people, consciously as well as unconsciously engage themselves in matters relating to sex and indulge in various types of socially approved as well as unapproved sexual activities including obscenity.

Derived from Latin 'obsiemital' the word obscenity means different things to different people. Like beauty, obscenity remains in the eyes of the beholder. Generally, obscenity refers to anything which "offends the public sense of decency'. According to the Dictionary of Psychology, it denotes "those acts, words or pictures that are regarded as indecent and offensive about sexual and excretory matters." Legal definition of obscenity based on Section 292 of the Indian Penal Code can be attempted by maintaining that anything is obscene if it is laschvious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who may read, see or hear the matter contained or embodied in it provided it is not monumental or religious or in the interest of science, literature, art or learning or is not of general concern. Thus obscenity in the context of Indian society refers to anything which offends public sense modesty or decency or which is causing or is intended to cause sexual excitement or lust.

Obscenity may assume different forms depending upon its level in individual or organised, intention, purpose and way. A typology attempted below with the help of a chart may be helpful in understanding its various forms.



There have been a number of factors and forces which have promoted obscenity in Indian society. Important and noteworthy among these have been :

(1) The Indian society has not been in a position to make arrangement necessary for satisfaction of basic Psychological need of sex of all its members through the institution of marriage, mainly because of various types of restrictions relating to marriage, dowry, etc. and has forced its members to take recourses to various means and methods of sex satisfaction many of which like that of obscenity are not socially accepted.

(2) The natural tendency of people to get attracted towards the opposite sex as also of creating one's best image before others through apprearance, expressions, conduct, behaviour etc. is being aggravated by availability of various cosmetic goods and fashionable articles.

(3) There has been a fast erosion in traditional social attitudes and values, people in contemporary Indian society are more individualistic, materialistic and hedomistic. They are primarily interested in deriving maximum personal pleasure and comforts even at the cost of others.

(4) Opportunities for intermixing of both the sexes have increased manifold mainly because of constitutional guarantee of sex equality, participation of women in work outside the four walls of their houses, etc.

(5) Industrialisation has provided an opportunity to people with different types of culture to come together and accorded a wider variety of choices in terms of their sexual satisfaction. It has forced many married people to live separately and compelled them to derive sexual pleasures outside the institute of marriage in a socially unaccepted manner.

(6) Urbanisation has created the problem of anonymity which has provided immense freedom to people to do anything even in public without any fear of social ridicule or boycott.

(7) Startling advancements in the fields of transport and communication distance between people living in different parts of the globe and having varied kinds of culture has been reduced, and as a natural consequence, people have been motivated to evaluate the relative world of social attitudes and values prevalent in their own culture with those of other different cultures.

(8) Scarcity of accommodation in urban-industrial centres has compelled many families with many generations to live under the same roof due to which the dwellers have been the victims of varied kinds of immoral influence. Lack of privacy in their own houses has forced many of them to promote obscenity at public places like parks, sea beaches, cinema halls, etc.

(9) The influence of religion which is essentially a matter of faith on people's thinking and behaviour has been considerably eroded mainly because of increasing adoption of 'cause-and-effect' approach which is of no help in verifying the veracity of many religious injunctions and prescriptions; and this has lead to a sharp decline in self-control motivating people to derive pleasure in an uninhibited manner.

(10) our society has become a money-worshipping society in which everything including sex has been commercialised, Planned and organised efforts are being made not only to promote various types of interests and sale of goods with the help of sex by showing sexy poses in films, TV, newspapers, magazines, etc. and playing erotic voice-tones but also to trade in flesh.

(11) Traditional informal social control exercised through family, neighbourhood, caste, family friends, relatives etc. is being gradually replaced by formal social control exercised with the help of law enforced by police, courts, prisons etc. which are not only inadequate in terms of number but also in effective, mainly because these so called guardians of public morality are themselves engaging in acts violative of public morality and decency.

(12) Traditional joint families are being substituted by nuclear ones in which husband and wife are free to live according to their likes and convenience. In those nuclear families in which husband and wife both are working, not only required care and attention do not become unavailable to children but they also get opportunity during the period when their parents are out to do whatever they want. In this age of rat race, parents hardly get any time to give personal attention and provide necessary guidance and supervision to their children.

(13) Increasing use of automatic machines and availability of easy arm-chair jobs in different work organisations have made available ample leisure time at the disposal of people. This surplus energy during extra leisure time finds its easy outlet in various types of recreation.

(14) Healthy means recreation in the form of 'Bhajans', 'Keertans' etc, which used to be traditionally organised at the level of family, neighbourhood and community, have been replaced by cinema, circus, dance, halls, TV, radio, magazines, etc. presenting nude and sexy poses and erotic songs.

(15) Incidence of drug addiction, especially among youth has considerably increased. Persons under the excessive influence of drugs lose all sense of propriety and violate all norms of public decency. Moreover, these drug addicts, when short of money required for purchasing drugs, readily agree even to sell their body which can be sexually abused or filmed and depicted in any manner.

(16) Increasing incidence of corruption, political interference, favouritism, nepotism, threats from mafia dons, etc. has considerably reduced the effectiveness of mercenary organisations, bodies etc. envisaged for implementation of different laws like Indian Penal Code (Ss.292, 293 and 294), Dramatic Performances Act, Police Act (S.34), Young Persons (Harmful Publication), Act, Indian Post Offices Act (S.20), Cinematograph Act, Indecent Representation of Women (Prohibition) Act, etc. dealing with the menace of obscenity.

Obscenity has adversely affected the entire normal fabric of our society and created a condition of anomie. A number of harmful effects of obscenity are distinctly visible in different walks of life.

Noteworthy among these are :

1. Premarital relations are taking place sacramental character of Hindu marriage is being destroyed. Various types of restrictions relating to marriage are being violated and are losing their significance. Marriages are breaking. Incidence of separation and divorce is increasing, extra-marital relations are being established.

2. Various types of restrictions on sexual behaviour imposed on married couples e.g., prohibition on intercourse during and after pregnancy are being flouted. New methods of sex satisfaction like cunnilingus, fellatio, etc. are being used.

3. The basic social institution of family is disintegrating causing sufferings for all its members, particularly for children, leaving many of them as destitutes and neglected.

4. Atrocities against women are increasing. Various types of sex crimes like eveteasing, molestation, rape, adultery etc. are showing an upward trend.

5. New designs and forms of dress are being developed.

6. Different forms of sex deviation like masturbation, homosexuality etc. are taking place.

7. Taboos prohibiting sexual activity with certain categories of near relations are being broken.

8. Incidents of intercourse with minor girls are being reported every now and then.

9. New categories of problem persons needing special care and protection like unmarried mothers, sexually abused destitute young girls, illegitimate children, children of women and girls in flesh trade, destitute children, neglected children, etc. are increasing.

10. Truancy, vagrancy and juvenile delinquency are on the increase.

11. New varieties of prostitutes like call-girls, dancing girls, performing girls etc. are emerging.

12. Young boys and girls having impressionable mind and more intense desire to experience sex are not able to seriously pursue their studies because their precious time is lost in reading pornographic literature, viewing objectionable films etc.

13. A Multi-pro evenmature people are tempted to read pornographic literature and see blue films.

A multi-pronged approach is required to be adopted for prevention and control of increasing menace of obscenity evolving suitable measures and seriously implementing them, some such important measures are :

1. Parents must spare required time from their busy schedule to personally look after and supervise their growing children and set such standards by their personal conduct that children and adolescents get constructive and healthy experience in matters relating to sex.

2. Moral teaching should be the part and parcel of curriculum, particularly at the primary and high school level. Student-teacher ratio should be such as to promote close relationship enabling teacher to provide necessary guidance. Every educational institution should have uniform.

3. Healthy recreation should be made available both in the family and educational institution.

4. Villages should be equipped with various types of minimum facilities like good schools, libraries, hospitals, roads, electricity, etc. required for proper living and special efforts should be made to provide employment opportunity, particularly by providing the

required supportive services for cottage industries so that migration from rural areas to urban industrial centres may be checked.

5. An organised campaign should be organised against dowry by creating public awareness and forming social organisations to work against this evil.

6. A stricter scrutiny of all printed material should be done by creating the required organisational structure.

7. Recreational programmes developed by commercially motivated private organisations should be more vigorously scrutinised before permitting them to be organised by establishing the required organisational structure.

8. The existing laws having provisions relating to prevention and control of obscenity should be enforced by strengthening the machinery for implementation and taking suitable action against those who fail to discharge their assigned duties and responsibilities.

9. All the three wings of the government-legislature, executive and judiciary must show a determined will to check obscenity.

10. A movement should be started against obscenity by all well meaning persons in order to create awareness among people regarding its harmful effects.

CRIMINALIZATION OF OBSCENITY - A CRITICAL APPRAISAL

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Law is the official expression of what a society regards as right or wrong. In additon to its function as a set of rules by which to regulate and evaluate behaviour, the law is a handy socialization instrument for introducing and instructing new and younger members of a society into its social, cultural assumptions and beliefs as to what is acceptable and unacceptable behaviour. Though morality and law do indeed overlap and influence each other, but at times and in respect of certain instincts the bonding between the two becomes loose and they tend to drift apart. This is the case first, when the moral rules of the values of morality in respect of certain cultural assumptions and beliefs undergo radical or abrupt change, and second, when sexual liberalism becomes an accepted goal of the society. The Indian scenario today presents a classical illustration of this drift when you witness a moral revolution in the family planning campaign and commercial advertisement, on the one hand, and growing market for teenage pornography ("Gujrat troika lures lolitas with chocolates", **Indian Express Delhi** Edn., December 12, 1992), sadastic pornogaphy ("Camera unit films mob stripping women," **Indian Express,** Delhi Edn., December 19, 1992) and emergence of Gay Rights Movement, of the other.

(I) Why is obscenity criminalized?

The society arrogates to itself the right to brand some expressions in the form of writing, painting, representation etc. as obscene, indecent, pornographic or erotic. Such expressions are treated as 'harmful' and regulated or controlled through laws that entail Administrative and civil liability on the one end to penal liability on the other. It is interesting

that in 1860, when our society was much more conservative and closed, the Britishers considered it necessary to devote Ss. 292, 293 and 294 of the Penal Code to "harmfulness" associated with obscenity. The same philosophy was carried through in the Dramatic Performances Act, 1876, the Sea customs Act, 1878, the Post Office Act, 1893, the Press Act, 1951 and the Cinematograph Act, 1952.

The 'harmfulness' of obscenity lies in terms of the definiton given in section 292 of the Penal Code in the two elements

(a) lasciviousness or appeal to prurient interest, and

(b) its tendency to deprave and corrupt persons who are likely to have access to it. But what precise interests are harmed by a lascivious and depraving expression? The three interests are generally referred to in this context are:

(a) Interest of public morality

(b) Interest of individual dignity

(c) Interest of minor in healthy mental growth

Criminalization versus the constitutional Freedom of Expression.

Though Article 19.(1) (a) guarantees to every citizen freedom of speech and expression, but Article 19(2) empowers the State to impose reasonable restriction on such freedom on several grounds including "public order or morality" Similarly, free expression through creative writing etc. might as well be treated as an attribute of personal liberty guaranteed under Article 21 of the Constitution.

The legal debate on the libertarian aspect of obscenity can draw useful lessons from the famous Lord Devlin and Professor Hart controversy concerning the enforcement of public morality through criminal law in the fifties and sixties in England, Professor Hart in the

line of John Stuart Mill's essay on liberty" took a stand that the only purpose for which power can be rightly exercised over any citizen by the community against his will, is to prevent harm to others. Professor Hart has been vendicated to a large extent in as much as despite growing sex permissiveness the British society has not "split on the seams" as apprehended by Lord Devlin **(The Enforcement of Morals)**, Oxford University Press, New York, 1959).

(iii) Inherent Contradiction in social attitudes concerning description of violence and description of sex.

In a old thought provoking book **Love and Death. A study of censorship** (Hacker Art Books, New York, 1963) the author G. Legman admirable succeeds in pointing to a paradox: "Sex being forbidden, violence took its place". He quip "Murder is a Crime. Describing murder is not. Sex is not crime. Decribing **sex** is. Why? The penalty for murder is death, or lifelong imprisonment-the penalty for writing about it: fortune and lifelong fame. The penalty for fornication is.....there is no actual penalty-the penalty for describing it in print: jail and lifelong disgrace. Why this absurd contradiction? Is the creation of life really more reprehensible than its destruction?"

The answer lies in at least rationalizing our social attitudes and thinking afresh about the "harmfulness' of obscenity and the best possible ways of containing it.

महिलाओं के विरुद्ध हिंसा तथा अश्लीलता

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भारतीय ग्रामीण महिला संघ,
उत्तर प्रदेश

केवल एक सुगठित समाकलित तथा सुसंगठित समाज ही समस्त इकाईयों तथा नागरिकों को एक स्वस्थ, सम्पन्न, शान्तपूर्ण तथा उद्देश्यपूर्ण जीवन की गारन्टी कर सकता है। जब जीवन साधारण था समस्यायें बहुत कम थीं। जब से हमने विज्ञान, प्रौद्योगिकी तथा अन्य क्षेत्रों में उन्नति की है जीवन अधिक से अधिक जटिल बनता जा रहा है। अतएव समाज या समुदाय जो तत्पूर्व छोटा परन्तु सुगठित था, बड़ा होता जा रहा है तथा परिणामस्वरूप सामाजिक तंतुवृत परिवर्तित हो रहा है तथा इस प्रकार विखंडन के प्रतीकों का भागीदार बनता जा रहा है। सामाजिक विखंडन तथा असंगठन से सम्बन्धित समस्यायें विचारकों तथा सामाजिक कार्यकर्ताओं के महत्वपूर्ण तथा व्यापक ध्यान को हाल ही में आकर्षित करने लगी हैं। इन समस्याओं में से सर्वाधिक महत्वपूर्ण हिंसा से संबंधित विश्व-व्यापी घटना है। हाल के वर्षों में हमारे देश में भी समस्यायें, अन्तर्ग्रस्त व्यक्तियों की संख्या तथा जिस प्रकार का व्यवहार वे करते हैं, दोनों ही मामलों में, अत्यन्त कठिन व गम्भीर हो गयी है। किसी समुदाय में सामाजिक सामंजस्य तथा व्यवस्था बनाये रखने के लिए कुछ स्वीकृत तथा अनुमोदित मानक तथा आस्थायें रखना अनिवार्य है। यह मानक अथवा आस्थायें एक विशिष्ट प्रकार के व्यवहार की संरचना विकसित करने हेतु आधार की व्यवस्था करते हैं। किसी विशेष समुदाय के सदस्यों का बहुमत स्वेच्छया, उन्मुक्त भाव से तथा अभ्यासतः उस संरचना को स्वीकृत करता है तथा सामान्यतः उसी फैशन में व्यवहार करते हैं, परन्तु, क्योंकि जीवन निरन्तर है तथा प्रायः परिवर्तनशील है इसी प्रकार सामाजिक स्थिति है। सांस्कृतिक विन्यास तथा संरचना भी परिवर्तन के अधीन है। अतः स्वीकृत तथा अनुमोदित मानक तथा मूल्य भी, भले ही अच्छाई या बुराई के लिए हो, बदलते हैं।

हिंसा का कृत्य एक प्रकार के ऐसे व्यवहार को अंगीकृत कर रहा है जो समुदाय द्वारा अस्वीकृत तथा अनुमोदित है। यह मानकों या व्यवहार की स्वीकृत संरचना के आधार, या आदर्श सामान्य सामाजिक व्यवहार व उसकी स्थिति के प्रति अपयोजन है। प्राचीन काल में हमारे देश में स्वीकृत एवं अनुमोदित मानक तथा मूल्य, सत्य, अहिंसा, मानवता के लिए समादर तथा प्रेम, सह अस्तित्व तथा सहयोग पर आधारित थे। देश को एक बहुत लम्बी अवधि तक विदेशी शासन में रहना पड़ा था। परतन्त्रता की अवधि में वे मानक तथा मूल्य तनुकृत हो गये थे तथा इस प्रकार पर्याप्त सीमा तक समुदाय के ऊपर उनकी पकड़ का ह्रास हो गया।

तथापि, भारतवासियों को इस तथ्य पर हमने अपने समस्त नेताओं की अगाध तथा व्यावहारिक बुद्धिमत्ता द्वारा उनके विचारों तथा कृत्यों का क्षेत्र जो भी रहा हो, प्रेरित सत्य एवं अहिंसा के माध्यम से प्राप्त किया था। महात्मा गाँधी उनमें से एक थे, परन्तु स्वतंत्रता हेतु संघर्ष की उनकी कार्य प्रणाली तथा रीति सत्याग्रह का महत्व न केवल भारत के लिए है, बल्कि पूरे विश्व के लिए, विशेषकर वर्तमान में जबकि भारत में जीवन के सभी क्षेत्रों में हिंसा का बड़ा संकट फैला है तथा दृश्यमान है तथा साथ ही नाभिक युद्ध के संकट की सर्वाधिक आशंका है, जो एक क्षण में समस्त विश्व को नष्ट कर सकती है। हिंसा एक विश्व व्यापी घटना होगी, परन्तु यह अत्यधिक कष्टदायक रूप है, जब वह भारत में, हाल के समय तक, जो अहिंसा की जन्मभूमि सिद्धान्त तथा व्यवहार में रहा है, में अवलोकित हो रही है।

कोई भी राष्ट्र कभी भी समृद्ध नहीं हो सकता यदि महिलायें असुरक्षित, दुःखी तथा दयनीय स्थिति में हैं। एक ऐसे देश में, जहाँ आधी जनसंख्या, विशेषकर महिला वर्ग, न केवल अशिक्षित, अनभिज्ञ तथा अर्ध-विकसित व्यक्तित्व की है, परन्तु साथ ही विभिन्न प्रकार की हिंसा के प्रति निरंतर अनावृत है, अतः विकास की प्रक्रिया बहुत-बहुत धीमी होना अवश्यमभावी है, कुछ भी प्रयास किये जायें या राष्ट्रीय स्तर पर कार्यक्रम लिए जायें। किसी भी देश में महिलाओं की सर्वाधिक महत्व की भूमिका यह है कि वे राष्ट्र के विकास की मुख्य धारा के साथ दक्षता के साथ तैरने के योग्य हो तथा कोई भी धारा, वह कितनी

भी सशक्त क्यों न हो जो मार्ग में आये, के बावजूद भी उसका सामना करने तथा अपनी प्रतिभा एवं क्षमता का अधिकतम उपयोग करने के योग्य हो।

यह तथ्य कि भारत की स्वतंत्रता के चालीस वर्ष बाद भी, महिलायें अब भी विभिन्न रूपों तथा विभिन्न प्रकार की हिंसा से पीड़ित रहती है :- जैसे सामाजिक अन्याय, अमानवीय सामाजिक अत्याचार तथा नृशंसता जो दृढ़ तथा गम्भीर विचार तथा साथ ही हमारे सामाजिक आर्थिक पद्धति तथा सामाजिक सांस्कृतिक वातावरण में परिवर्तन लाने के लिए किसी रूप में किसी प्रकार का अभ्यारोपण का आह्वान करती है, जिससे महिलाओं के विरुद्ध किसी प्रकार की हिंसा का अस्तित्व रहना तथा पनपना असम्भव बन जाये। यह आश्चर्यजनक है कि चाहे बलवा हो या शान्ति के समय भी, सर्वाधिक आघात पाने वाले हिंसा से विपदग्रस्त सदैव महिलायें व बच्चे होते हैं।

भारतीय महिलायें ब्रिटिश साम्राज्यवाद से अपने देश को उसकी स्वतंत्रता उपलब्ध कराने के लिए, महात्मा गाँधी के उत्साहवर्धक, तथा योग्य मार्गदर्शन तथा नेतृत्व में, जो अहिंसा के उत्कृष्ट तथा दृढ़ आस्था रखने वाले तथा प्रसारक थे, पुरुषों के साथ शौर्य के साथ लड़ी थी। यह सही है कि वर्तमान सामाजिक व्यवस्था के सन्दर्भ में हिंसा प्रतिदिन का नियम बन गया है। पहले हमें यह समझना चाहिये कि हम हिंसा से क्या समझते हैं। हिंसा का अपने व्यापक रूप में अर्थ है कोई विचार, या शब्द या कृत्य जो किसी को भी दुःखी तथा दयनीय, शारीरिक या मानसिक रूप से, बना देता है। अतः यह किसी भी समाज में एक स्वीकृत या अनुमोदित मानक या मूल्य नहीं है। अक्सर यह अपने सर्वाधिक बुरे रूप में प्रकट होता है या परिणाम देता है जब वह किसी निर्बल व्यक्ति पर, मुख्यतः एक महिला पर, इस प्रकार घात करता है कि उसे असहाय, दयनीय तथा दुःखी बना दे। पाशविक बल को अक्सर एक बड़े पैमाने पर प्रयोग किया जाना किसी भी स्वस्थ एवं समाकलित समाज में व्यवहार के स्वीकृत मानकों के विरुद्ध है। हिंसा के विपरीत अहिंसा होती है। हिंसा छद्मता, छल साधन, शोषण बेईमानी तथा पाशविकता पर आधारित होती है।

हिंसा छोटे रूप में कार्य कर सकती है, परन्तु वह बड़े रूप में भी क्रियाशील हो सकती है। जो सभी सिद्धान्तों, आदर्शों तथा मानवों, जो लोकतंत्र के मूल आधार होते है,

के विनाश में परिणित हो जाते हैं। हिंसा का गाली-गलौज से लेकर हत्या तक एक बहुत विस्तृत फैलाव होता है। जब वह जनमानस को प्रभावित करने लगती है वह जंगल की आग के समान फैलती है।

यह वास्तव में आश्चर्यजनक एवं लज्जापूर्ण है कि आज भी महिला संगठनों तथा सरकार की एक प्रमुख समस्या तथा कृतिक उन महिलाओं की सहायता करना है जो सामाजिक अत्याचार-पत्नी को पीटना, घुखमरी अभित्याग, अधिक दहेज की माँग से पीड़ित है, तथा परिणामस्वरूप बहुओं के जलाने, बदनाम करने तथा महिलाओं पर, बलात्कार सहित, विभिन्न प्रकार के शारीरिक व मानसिक अत्याचार किये जाते हैं, जो असामान्य नहीं हैं। उसके विरुद्ध इन समस्त प्रकार की हिंसा के शीर्ष पर, उसे एक ऐसी सामाजिक-आर्थिक परिस्थिति का भी सामना करना पड़ता है, जो उसे देह-व्यापार में लिप्त होने के लिए बाध्य करती है। लड़कियों तथा महिलाओं मे देह-व्यापार तथा दुर्व्यापार एक गम्भीर सामाजिक समस्या के रूप में मान ली गयी है। इसका अर्थ मात्र महिलाओं का शोषण ही नहीं है, परन्तु साथ ही वह लैंगिक रूप से पारेषित रोगों तथा अस्वच्छ दशाओं तथा पास-पड़ोस में बढ़ने वाले रोगों के लिये जन्म भूमि भी उपलब्ध कराती है। पति की मृत्यु के पश्चात् सती होना भी उसके विरुद्ध एक प्रकार की हिंसा का अपराध है।

महिलाओं के विरुद्ध हिंसा के विभिन्न प्रकार तथा दिशायें होती है जो मानसिक उत्पीड़न से हत्या तक हो सकते हैं। पति के घर में नृशंस व्यवहार तथा मानसिक उत्पीड़न अक्सर सर्वाधिक खराब प्रकार के मानसिक रोगों/आत्महत्या आदि आकाल्पनिक परिणामों की ओर ले जाता है। महिलाओं के विरुद्ध सबसे खराब प्रकार की हिंसा जो हाल ही में प्रारम्भ हुई है, एमीनो-सिन्थेसिस परीक्षणों के परिणामस्वरूप है, जिसके द्वारा वास्तविक जन्म से बहुत पूर्व ही माँ के गर्भाशय में उसके लिंग की घोषणा करके उसके अस्तित्व अथवा जन्म लेने के अधिकार से ही वंचित कर दिया जाता है। यह उसके निम्न स्तर का परिणाम है जो उसे समाज में महिला के रूप में मिला है तथा उसके माता-पिता उसे अपनाना अथवा बच्चे के रूप में जीवन का आनन्द लेने अथवा जन्म लेने देना नहीं चाहते हैं।

हमारे संविधान में महिला को समान अधिकार दिये गये हैं परन्तु उनके कार्यान्वयन हेतु यथोचित सुविधायें तथा सामाजिक वातावरण उपलब्ध नहीं कराया गया है। हमारे देश में महिलाओं को सती की प्रथा को निरुत्साहित कर पति की मृत्यु के परचात् जीवित रहने के विधिक अधिकार प्रदान किये गये थे, परन्तु आज भी सती के रूप में अपने मृत पति की चिता के ऊपर महिलाओं के जलाये जाने के मामले सूचित किये जाते हैं।

स्वतंत्रता से बहुत पूर्व उसे शिशु हत्या निरोध कानून द्वारा अपने जन्म के समय हत्या न किये जाने का भी अधिकार दिया गया था। अब भी बालिका शिशुओं की उपेक्षा की जाती है तथा कुपोषण के अधीन रहने के परिणामस्वरूप अकाल मृत्यु हो जाती है। दहेज विरोधी कानून भी बहुत पहले पारित किया गया था, फिर भी आज भी बड़ी संख्या में महिलाओं को लोभ तथा अधिक दहेज के लिये जलाया जा रहा है। विधान तथा सामाजिक सुधारों ने अभी तक प्रमुखतः समाज के उच्च स्तर की महिलाओं को ही प्रभावित किया है। आधुनिक युग में भी सामयिक घटनाओं से मध्यम तथा निम्न वर्ग बहुत कम प्रभावित होते हैं। अक्सर नापसंदगी, घृणा अथवा एक समुदाय या वर्ग के लोगों का दूसरे के विरुद्ध प्रतिशोधात्मकता का भी परिणाम किसी समुदाय द्वारा, जो प्रतिरोध लेने की शक्ति या दृढ़ता दिखाना चाहता है, दूसरे समुदाय की महिलाओं के विरुद्ध हिंसा के कृत्य के रूप में निकलता है। अतः चाहे युद्ध हो या शान्ति महिलायें सामान्यतः सबसे अधिक कष्ट उठाती है। क्योंकि हिंसा व्यक्तिगत रूप से अथवा वर्गों के मामलों में क्रोध अथवा नैराश्य को दर्शाने का एक सरल माध्यम बन गयी है, महिलाओं के विरुद्ध हिंसा के कृत्य निकट भूत से अधिक संख्या में बढ़ गये हैं।

महिलाओं के विरुद्ध कृत्यों को व्यक्तिगत, निजी, दुर्बोध तथा किसी वर्ग या वर्गों पर की गयी नृसंशतता की श्रेणियों में वर्गीकृत किया जा सकता है। हिंसा के कृत्यों में से केवल कुछ श्रेणियों को ही देश के कानून द्वारा आच्छादित किया जा सकता है तथा इस प्रकार दण्डनीय है। ऐसे कुछ अन्य इस प्रकार के कार्य भी है जो नैतिकता की दृष्टि से गलत हो सकते हैं परन्तु उन्हें कानून के अन्तर्गत दण्ड नहीं दिया जा सकता। महिलाओं के विरुद्ध कुछ दूसरे हिंसा के कार्य अस्वीकृत तथा अनुमोदित हैं, परन्तु अक्सर पूर्णरूप से बिना दंडित किये रह जाते हैं तथा समाज द्वारा भी ध्यान नहीं दिया जाता। हिंसा के कृत्य

चाहे अमानवीय या अधिक हो जो पूर्णरूप से बिना दंड के या बिना ध्यान दिये छूट जाते हैं, प्रमुखतः लोगों को महिलाओं के विरुद्ध इस प्रकार के अपराध करने हेतु उत्साहित करते हैं। यहाँ तक कि हिंसा के अधिक कार्य भी अक्सर विभिन्न कारणों से बिना दंड पाये छूट जाते हैं। इनमें से एक महिलाओं के लिये समान अधिकार हेतु विधिक प्राविधानों के क्रियान्वयन हेतु सुविधाओं की कमी अथवा मंहगापन तथा क्रियान्वयन तथा महिलाओं के मामले में सामाजिक अन्याय दूर करने हेतु सामाजिक विधिक प्राविधानों के प्रशासन की लम्बी प्रक्रिया हो सकती है। इसको अपने देश में महिलाओं के विरुद्ध हिंसा के बढ़ते हुये संकट के कारणों की खोज करनी चाहिये।

यह सत्य है कि हमारे देश में वर्तमान परिस्थिति में आज तक, थोड़ा या बहुत, सामाजिक संरचना महिलाओं के ऊपर पुरुषों की महत्ता के आदर्श पर आधारित है। परिणामस्वरूप व्यवहार में महिलाओं के लिये वास्तविक समानता प्राप्त करना संभव नहीं है। महिलायें वास्तविक समानता का स्तर केवल तब ही प्राप्त कर सकती है जब समाज के, विशेषकर पुरुषों के उनके प्रति विद्यमान समग्र रुख को, जो सदियों पुरानी सड़ी हुई परम्पराओं तथा सामाजिक-आर्थिक संरचना पर आधारित हैं, मूलरूप से परिवर्तित किया जायेगा। जनसंख्या वृद्धि के साथ तथा साम्राज्यवाद के एक लम्बे समय तक राज्य के परिणामस्वरूप समस्त निर्बल वर्गों, जैसे अनुसूचित जाति, आदिवासी, असंगठित क्षेत्र के निम्न आय वाले, कर्मकार, अन्य परिश्रम करने वाले लोगों, विशेषकर, महिलायें, का शोषण तीव्र होता जा रहा है। इसे महिलाओं के विरुद्ध हिंसा के एक कारण के रूप में परिलक्षित किया जा सकता है। इसकी पर्याप्त सीमा तक इस तथ्य से अनुपूर्ति होती है कि एक महत्वपूर्ण आवश्यकता मानने के उपरान्त तथा महिलाओं के प्रति समाज के दृष्टिकोण के परिवर्तन की दिशा में गत् 40 वर्षों अथवा इससे अधिक से प्रयास करते हुए भी, लिंग पर आधारित विभेद का गलत दृष्टिकोण इतना गहन मूलित है कि व्यवहार में आज भी महिलाओं को एक निम्नतर मानव प्राणी समझा जाना जरूरी है, यद्यपि भारतीय संविधान में पुरुषों तथा महिलाओं की समानता प्रतिष्ठापित की गयी है। इस दृष्टिकोण को इस तथ्य से और अधिक व्यंजन-संचालन मिलता है कि पाठ्य पुस्तकें जो बच्चे पढ़ते हैं तथा यहाँ तक कि साहित्य, विशेषकर काल्पनिक कथायें, जो हमारी क्षेत्रीय भाषाओं में प्रकाशित किया

जाता है, दूरदर्शन, सिनेमा आदि में महिलाओं को जिस प्रकार प्रदर्शित करते हैं वह एक विनीत व्यक्ति, समर्पित, स्वयं त्याग करने वाली पत्नी, माँ बहन, पुत्री, तथा बहू होती है, परन्तु एक वैज्ञानिक, विद्वान, प्रशासक, सामाजिक कार्यकर्ता अथवा जीवन के अन्य क्षेत्रों में अग्रणी के समान नहीं होती। उसके सबसे उत्तम गुण केवल आज्ञानुवर्तन, सहिष्णुता, परिवार की सेवा, स्वयं को मिटाना तथा स्वयं को अस्वीकार करना है। उससे यह आशा की जाती है कि वह केवल एक उत्तम रसोइया, गृहणी, बहिन तथा माँ बने, परन्तु नेता, या किसी क्षेत्र में अग्रिणी या कमान्डर न बने। विनीत, अनधिज्ञ तथा शान्तिपूर्वक कष्ट सहने वाली होने के लिये उसकी प्रशंसा होती है। महिलाओं में उच्चतम ज्ञान, तीव्र समझदारी, प्रशासनिक योग्यता तथा तेज ग्रहण शक्ति की आवश्यकता नहीं समझी जाती है अथवा यहाँ तक कि महिलाओं में मान्य तथा परिलक्षित भी नहीं है। यहाँ तक कि माता-पिता भी उसके समान अधिकार को मान्यता तथा स्वीकृत नहीं देते हैं और न ही उसमें साहस बढ़ाते है तथा उसके समान अधिकार हेतु खड़े होने के लिये प्रशिक्षण देते हैं।

परिणामस्वरूप, उसे एक कमजोर व्यक्ति या जीव के रूप में परिलक्षित किया जा रहा है, जिसे सुविधापूर्वक हिंसा से पीड़ित बनाया जा सकता है। यह विचार सदियों से प्रसारित किये जाते रहे हैं। हमारे समाज ने यहाँ तक कि महिलाओं ने उनको गहनता से आत्मसात् तथा स्वीकृत कर लिया है। यहाँ तक कि महिलायें भी स्वयं अपने में किसी बौद्धिक उपलब्धि की प्रशंसा तथा उसपर गर्व करना पसन्द नहीं करती हैं। वे अपने साहसिक, तत्परता तथा सामाजिक उत्तरदायित्व के उच्च भावबोध के कृत्यों के विषय में, यदि उनके नाम में कोई हैं भी, बात तक करने में भयाक्रांति तथा संकोच का अनुभव करती है।

महिलाओं के विरुद्ध हिंसा के कृत्य इस तथ्य के कारण सुविधापूर्वक बहुलता से हो रहे हैं, क्योंकि महिलाओं पर सामाजिक अत्याचार अथवा महिलाओं के प्रति अन्याय के प्रतिरोध के किसी प्रयास के मार्ग में, अवस्थित सामाजिक दृष्टिकोण तथा स्वयं महिलाओं में आत्म विश्वास का अभाव दृढ़ वृहत बाधा के रूप में खड़ी हो जाती है। यह अशिक्षा, निर्धनता, अज्ञानता भी हैं जो ग्रामीण क्षेत्रों, गन्दी बस्तियों, श्रमिक तथा निर्बल वर्ग से संबंधित, महिलाओं को उनके विरुद्ध अपराधों को सुलभ लक्ष्य बना देती है।

आर्थिक परतंत्रता भी महिलाओं के सभी प्रकार के दुखों का एक कारण है, परन्तु कभी-कभी, यह जानना बहुत कष्टदायक है कि यहाँ तक कि उच्च शिक्षा प्राप्त तथा आर्थिक दृष्टि से स्वतंत्र महिलायें भी सामंतवादी विचारों से आहत तथा हिंसा के कृत्यों, चाहे दुर्व्यवहार या अपरिष्कृत, वैयक्तिक या वर्ग में हो, की शिकार होती हैं। इसका कारण यह हो सकता है कि जीविकोपार्जन के क्षेत्र में भी महिलाओं को अपने नाम तथा प्रशंसा का देय अंश नहीं मिलता है। उसके घर में बहुलतापूर्ण कर्तव्यों को सम्मान न देकर तथा यहां तक कि राष्ट्र निर्माण के कार्यों में अल्प तथा अपर्याप्त साधनों के साथ उसके धनात्मक प्रत्यक्ष या परोक्ष अंशदान को भी स्वीकृति न देकर, उसके स्तर को निम्न कर दिया जाता है। उसके आदरपूर्ण जीवन के अधिकार को भी उसके नियोजकों द्वारा विशेषकर असंगठित क्षेत्र में, अल्पानुमान तथा अवमूल्यन किया जाता है, जो अक्सर उसे कहीं भी तथा किसी भी समय लैंगिक क्षुधा के लिये अपनी कामवासना को संतुष्ट करने की वस्तु की भाँति व्यवहार करने का प्रयास करते हैं, जो पुनः हिंसा का एक कृत्य है। यहाँ तक कि पति भी उसके द्वारा सम्पन्न परिवार में परिश्रम का कार्य या गृह कार्य जो खेत या फैक्ट्री या अन्य कहीं कार्य करने तथा इस प्रकार पारिवारिक आय को पर्याप्त सीमा तक अनुपूर्ति करने के अतिरिक्त होती है, के विषय में बिना ध्यान दिये हुये महिला या पत्नी होने के नाते उसकी स्थिति का लाभ उठाता है। वह किसी प्रकार के विधिक या सामाजिक रूप से दंड के भय के बिना उसे पीट कर या उसके कठिनाई से अर्जित धन को छीनकर उसके साथ नृशंसता का व्यवहार करता है। तलाक का प्राविधान होते हुये भी उस पर दबाव डाला जाता है। जो उसके माता-पिता की ओर से भी होता है कि वह अवस्थित सामाजिक दृष्टिकोण के कारण अपने पति के साथ निरन्तर कष्ट का जीवन जीने के लिये रहती रहे।

हमारे देश की महिलायें बहुत बड़ी संख्या में आर्थिक दृष्टि से परतन्त्र हैं। अतः उनके ससुराल वालों द्वारा उनके विरुद्ध जो हिंसा के कृत्य सम्पन्न किये जाते हैं, वे उनका प्रतिरोध या आपत्ति करने का साहस नहीं करती है, यद्यपि उनकी सहायता करने के लिये विधान भी है, परन्तु अधिकांश मामलों में जहाँ महिलायें कानून के द्वारा अनुतोष पाने की इच्छा रखती है, विधिक प्रक्रिया असफल हो जाती है, क्योंकि वह अत्यधिक लम्बी तथा मंहगी होती है। यह सत्य है कि जब एक विवाह खंडित हो जाता है तथा न्यायालय में एक कानूनी वाद संस्थित कर दिया जाता है, महिलायें, उस अवधि हेतु जबकि वाद लम्बित है, भरण पोषण की माँग कर सकती हैं, परन्तु पति-पत्नी के मध्य किसी अन्य विवाद से अलग भरण पोषण हेतु कोई केस की कार्यवाही दाखिल नहीं की जा सकती। यह किसी वैवाहिक याचिका का एक उप प्रमेय है। एक निर्धन महिला क्या कर सकती है जब

उसे रात और दिन बातों अथवा विभिन्न प्रकार की हिंसा का सामना करना पड़ता है तथा उसका प्रतिकार करने हेतु किसी भी कोने से धन अथवा सहायता नहीं होती। तलाक के पश्चात् भी यदि न्यायालय द्वारा एक स्थायी भरण पोषण निर्धारित कर दिया गया है पति न्यायालय द्वारा निर्धारित धनराशि को नियमित रूप से अथवा बिलकुल ही न देने के लिये बहुत से बहाने ढूंढ सकता है। यदि तलाकशुदा के पास बच्चे हैं, उनकी माँ को मानसिक रूप से यातना देने के लिये उनके अपहरण की निरंतर धमकी हमेशा रहती है। तलाक के पश्चात् अथवा अन्यथा भी दंड प्रक्रिया संहिता की धारा 125 के अन्तर्गत जब और तब, बाद संस्थित करना एक ऐसी महिला के लिये मजाक नहीं है, जो अपने पति पर पूर्ण रूप से आर्थिक दृष्टि से आश्रित थी। अतः ज्योंही एक महिला को परित्यक्त अथवा तलाक दे दिया जाता है वह निःसहाय हो जाती है।

अन्यथा भी यदि कोई व्यक्ति अपनी पत्नी के साथ नहीं रहना चाहता है वह अक्सर उसे आर्थिक दृष्टि से प्रताड़ित करने का सहारा लेता है, जो एक निश्चित भूमि है जहाँ हिंसा पनपती है।

अनेक मामलों में या तो कानून या समाज द्वारा अपराधी घोषित किये जाने के किसी भय के न होने के कारण महिलाओं पर अत्याचार किये जाते हैं, क्योंकि बलात्कार अथवा उत्पीड़न के मामलों की आहत बहुत सी महिलायें न्यायालयों में जाने का साहस नहीं करती, क्योंकि वे ऐसा करने हेतु अत्यन्त निर्धन तथा असहाय है या अपने एवं अपने परिवार के लिए एक स्थाई कलंक से बचने के उद्देश्य से। पुत्र वधु को मारना जलाने तक ही सीमित नहीं है, परन्तु उससे पीछा छुड़ाने के लिये जहर देना, गला घोटना तथा अनेक अन्य विधियाँ अपनायी जाती हैं। जब एक जवान पुत्रवधू जलकर मरती है, वह हत्या हो सकती है, क्योंकि सामान्य रूप से यह एक पुत्रवधू की हत्या का सबसे सरल उपाय चुना गया है, यह अभिवचन करते हुये कि वह रसोईगृह में कार्य कर रही थी तथा वह एक दुर्घटना थी। विभिन्न चातुर्यपूर्ण कार्य विधियों का आश्रय लिया जाता है, पुत्रवधू के साथ अधिकांश झगड़े दहेज के मुद्दे पर प्रारम्भ होते हैं। परिवार प्रसन्न होता है यदि वह उनकी आकांक्षाओं के अनुरूप दहेज लाती है, परन्तु यदि उससे असन्तुष्ट रहते हैं, तब प्रारम्भ से ही कटुता सृजित हो जाती है। अतः अन्ततः नई वधू त्यक्त कर दी जाती है तथा अनुपयोगी घोषित की जाती है। दहेज की बुरी रीति हमारे समाज में महिलाओं के निम्न सामाजिक आर्थिक स्तर का ही परिणाम है। दहेज हत्यायें हमारे, क्षय होते हुए सामाजिक मूल्यों के लक्षण मात्र हैं,

जो महिलाओं के प्रति तथा उनके विरुद्ध हिंसा के कृत्यों की ओर अग्रसर करती हैं। दहेज के लिये बढ़ती हुई मौग धन के लिये लोभ के कारण है यह एक गम्भीर चिन्ता का विषय है कि वधू को जलाने में महिलाओं के विरुद्ध हिंसा की घटनायें, जो पूर्व में एक या दो समुदायों में, मुख्यत: उत्तरी भारत में, पायी जाती थी अब दक्षिण तथा अन्य समुदायों में भी फैल रही है। हाल में विगत वर्षों में आन्ध्र प्रदेश तथा कर्नाटक में भी दहेज हत्या के बहुत से मामले हुये हैं। यह बुराई अन्य समुदायों में बढ़ रही है तथा यहाँ तक कि उन समुदायों के ही मेलागण इन नृशंस तथा अत्याचारी कोड़ियों के मामलों में अन्य समुदायों से प्रतिस्पर्धा करते हैं। दहेज हत्याओं के मामलों में भी विधिक कार्यवाही में अक्सर विलम्ब होता है तथा अभियुक्तों के विरुद्ध आपराधिक प्रक्रिया इतनी अधिक विलम्बित कर दी जाती है कि वे बिना दंड के रह जाते हैं।

देह व्यापार अथवा वेश्यावृत्ति महिलाओं के प्रति एक प्रकार की स्थायी हिंसा है जिसके बहु-आयामी कारण एवं प्रभाव हैं। इस विषय पर बहुत कम साहित्य उपलब्ध है, तथा जो थोड़ा बहुत उपलब्ध भी है वह अच्छादन, खोज तथा आँकड़ा अथवा विवादक के रूप में बहुत सीमित है। महिलाओं के प्रति इस प्रकार की स्थायी हिंसा के कारण बाहुल्यपूर्ण हैं। उनमें शामिल, महिलाओं के निम्न सामाजिक-आर्थिक स्तर से लेकर, पुरुषों के सैक्सिक प्रवृत्ति तथा पुरुष को बढ़ावा देकर आसानी से धन प्राप्त करने के लिये महिला जगत के सबसे खराब प्रकार के शोषण तक, होती है।

अहित महिला अक्सर बहुत कोमल आयु की, अवधिज्ञ तथा आर्थिक दृष्टि से कमजोर परिवारों तथा निर्धन परिवारों की होती है। पीड़ित जन, आध्यात्मिक अथवा आंतरायिक रूप से इस प्रकार के हिंसात्मक व्यापार में, शारीरिक बल द्वारा लिप्त करायी जाती है अथवा अपनी आवश्यकता की संपूर्ति कर देती है, जो धन, लोलुपता के लक्ष्य के लिये हो सकता है, सदैव आवश्यकता की पूर्ति अथवा दूसरे के लिये। देह व्यापार से पीड़ित, जिसका पूर्व अभ्यास में योगदान मूल कैरेक्टर असहभागिता का होता है, असहाय तथा दयनीय होता है। शारीरिक अभ्यास कतिपय सामाजिक-आर्थिक तथा सांस्कृतिक प्रथाओं के साथ संयुक्त होकर अल्प विकास का परिणाम रही, यहीं एक महिला को प्रतिस्थापित तथा पेट की एक सामान्य विषय वस्तु के स्तर पर अवनत कर देता है, जो इस प्रक्रिया में उसकी सहमति, बिना अन्तर्ग्रस्त किये क्रय तथा विक्रय

की जा सकती है, तथा उसके द्वारा नारीत्व का अमानवीकरण हो जाता है, जिसमें उसकी नियति किसी अन्य के द्वारा ज्ञात की जाती है। किसी समाज में एक महिला के प्रति हिंसा का सबसे खराब प्रकार का स्थायी कृत्य है।

इस प्रकार के स्थायी तथा निरंतरता वाले हिंसा के कृत्यों के अतिरिक्त, साम्प्रदायिक दंगों, किसी अकेर के विरुद्ध, अथवा नियोजित हिंसा के कार्यक्रम में महिलाओं को सदैव सर्वाधिक तथा सबसे खराब लक्ष्य बनाया जाता है। परिणामस्वरूप पीड़ित महिला को अकसर अपना शेष जीवनकाल दयनीय दशा तथा एक लज्जापूर्ण ढंग से बिताने के लिये बाध्य होना पड़ता है। कोई भी राष्ट्र न तो फल-फूल सकता है और न ही स्थायी प्रगति कर सकता है, जब उसकी जनसंख्या में से आधी हिंसा के कृत्यों, चाहे अस्थायी रूप से अथवा अपेक्षाकृत स्थायी रूप से, के अधीन हो। हमारी वास्तविक इच्छाओं, प्रयत्नों तथा सर्वाधिक प्रयासों के बावजूद भी हम अभी तक राष्ट्र निर्माण के अपने कार्य को पूरा नहीं कर सके हैं। हमारी धीमी प्रगति का कारण एक ओर तो हिंसा की सुदृढ़ लहरें हैं तथा दूसरी ओर सामाजिक-आर्थिक असंतुलन, जहाँ हमारे महिला वर्ग को पूर्ण न्याय प्राप्त नहीं हो सका है। अतः वर्तमान सामाजिक आर्थिक संरचना का उन्मूलन करने हेतु कदम उठाना आवश्यक है। यह आवश्यक है कि इस तथ्य को महत्व दिया जाय, स्वीकार किया जाय, दृढ़ता के साथ समर्थन दिया जाय, तथा उस पर कार्यवाही की जाय, यदि हम महिलाओं के जीवन, आदर पद तथा गरिमा को बचाने हेतु गम्भीर प्रयास करना चाहते हैं, जो हमारे राष्ट्र तथा देश की प्रगति तथा भलाई के लिये अनिवार्य है।

सामाजिक परिवर्तन, हिंसा सहित, जो न्यूनाधिक आये-दिन की व्यवस्था बनती जा रही है, हमारी अनेक समस्याओं को हल करने के लिए आवश्यक है। कानून तथा पुलिस बल द्वारा उसको सही तथा समय पर क्रियान्वयन समाज को व्यवस्थित रखने के लिये एक बहुत दक्षिणशाली उपकरण है, परन्तु कानून अकेला आवश्यक अथवा वाँछित सामाजिक परिवर्तन को नहीं ला सकता है। महिलाओं के विरुद्ध हिंसा के कृत्यों को समाप्त करने के लिये हमारे देश की महिलाओं के प्रति समाज के दृष्टिकोण में परिवर्तन वाँछनीय है, परन्तु यह मात्र कानूनी कार्यवाई से नहीं लाया जा सकता क्योंकि कानून हिंसा के बहुत छोटी संख्या में इस प्रकार के मामलों में कार्य करता है, जो विधिक अर्थों में अपराध की श्रेणी में

आते हैं। फिर भी वह एक बहुत शक्तिशाली भयपरतिकारी है। एक बड़ी संख्या में हिंसा के इस प्रकार के कृत्य जो नैतिक या सामाजिक अन्याय या बीभत्सता की श्रेणी में आते हैं, कानून के लौह-हाथों से बच निकलते हैं, क्योंकि उन्हें कानून की अधिकारिता के अन्तर्गत नहीं रखा जा सकता है। यह बिलकुल सही है कि "मनुष्य संसद के अधिनियमों द्वारा नैतिक नहीं बनाया जाता है।" यहाँ तक कि जो अपराधी कानून से आच्छादित होते हैं अक्सर बिना दंड के रह जाते हैं, क्योंकि अवस्थित लम्बी तथा मंहगी आपराधिक प्रक्रिया में तकनीकियाँ हैं। एक अत्यन्त महत्वपूर्ण तथ्य जिसके कारण महिलाओं के विरुद्ध हिंसा होती है, वह महिलाओं की सामाजिक प्रास्थिति तथा पद के संबंध में हमारे समाज में, व्यवहार में, प्रचलित मानसिक प्रवृत्ति दृष्टिकोण तथा पूर्वाग्रह हैं। हमारी व्यवहार की प्रवृत्ति में एक ही वस्तु के संबंध में बहुत अधिक विरोधाभास दृष्टिगत होता है, एक ओर तो देवी के रूप में महिला की पूजा की जाती है, जबकि दूसरी ओर मानव प्राणी को उसके सामान्य रूप में महिला को पुनः एक निम्न सामाजिक वस्तु के रूप में स्वीकृत किया जाता है। इस प्रकार की जन मानसिक प्रवृत्ति महिलाओं के विरुद्ध हिंसा की ओर ले जाती है। सामाजिक-आर्थिक कारक तथा परिपाटीगत विकृत आस्थायें भी, जनता के, विशेषकर मध्यम तथा निम्न मध्यम वर्गों तथा वह जो ग्रामीण क्षेत्रों से संबंधित हैं, के इस प्रकार की मानसिक प्रवृत्ति हेतु उत्तरदायी हैं।

यह साधारण रूप में महिलाओं के साथ दुर्व्यवहार के कुछ विस्तृत, सुस्पष्ट प्रत्यक्ष कारण हैं, परन्तु कुछ परोक्ष कारण तथा कारक भी हैं जो ऐसी परिस्थियाँ सृजित करने में सहायता देते हैं जो अन्ततः महिलाओं पर नृसंशता की ओर ले जाते हैं। उनमें से एक अश्लीलता है। अश्लीलता, महिलाओं के विरुद्ध हिंसा को प्रोत्साहित करने, अथवा महिलाओं के विरुद्ध हिंसा में वृद्धि करने में योगदान देने, अथवा ऐसी परिस्थियाँ सृजित करने में सहायता करने जो महिलाओं को अनादर की ओर ले जाने, की दिशा में छोटे कारणों में से एक है, परन्तु उसका अपना ही प्रभाव समस्या की गम्भीरता को विस्तीर्ण करने पर पड़ता है। अतः उसे ध्यान से देखना चाहिये तथा समय रहते नियंत्रित किया जाना चाहिये। यह तथ्य निश्चित है कि जनता को, विशेषकर युवा पीढ़ी को, अशोधनीय क्रियाओं या किसी रूप में व्यवहार, अर्थात् भाषा, भावभंगिमा, दृश्यमान सामग्री तथा अन्य के प्रति

अनावृत करना, इस प्रकार की मानसिक प्रवृत्ति तथा परिस्थिति की ओर निश्चित रूप से अग्रसर करता है जो लड़कियों तथा महिलाओं के प्रति नृशंसता उत्पन्न व उग्रत करती है तथा इसी हेतु प्रोत्साहित करती हैं, जो उनके विरुद्ध हिंसा के बराबर होती है।

अश्लीलता की एक अनन्तिम सामान्य परिभाषा किसी क्रिया का किसी भी प्रकार से अनावृत करना हो सकती है, जो पाँचों इन्द्रियों में से किसी पर भी आधारित या किसी नागरिक अथवा समाज के किसी सदस्य द्वारा सृजित या उत्पादित हो, तथा जनता में अन्य नागरिकों के दृष्टिक्षेत्र या अनुभूति के अन्तर्गत हो, जो इस कारण से अनुमोदित या स्वीकृत या समाज द्वारा अनुमोदन योग्य नहीं है, कि या तो वह समाज के अनुमोदित तथा स्वीकृत मानकों तथा व्यवहार के ढाँचे को विच्छिन्न करता है या किसी भी प्रकार ऐसी परिस्थिति की ओर ले जाता है जो अन्ततः किसी दूसरे नागरिक या नागरिकों के एक वर्ग को क्षति पहुंचाता है तथा इस प्रकार जनता की मानसिक प्रवृत्ति को शारीरिक या मानसिक रूप से भ्रष्ट करता है जिसकी परिणति सामाजिक तंतुवृत का किसी प्रकार का विखंडन होता है। अश्लीलता का कृत्य ऐसा कृत्य हो सकता है जिसे अशोभनीय, निर्लज्ज या अनादरपूर्ण कहा जा सकता है। इस प्रकार के कृत्य कामवासना या कामुकता को उत्तेजित करते हैं, पहल करते हैं, प्रदीप्त करते हैं या उद्दीपन करने में सहायक होते हैं जो महिलाओं व बच्चों के विरुद्ध हिंसा की ओर अग्रसर होकर अन्ततः अपराध में अन्तर्ग्रस्त होते हैं। वे सामाजिक परिवर्तन में बाधा डालते हैं, समाज के स्वीकृत तथा अनुमोदित व्यावहारिक ढाँचे को विच्छिन्न करते हैं, इस प्रकार कुछ आधारिक सिद्धान्तों अथवा मूल मानव मूल्यों को नष्ट करते हैं। अशोभनीय कृत्यों या व्यवहार में न केवल भाषा में प्रदर्शन या किसी प्रकार के दृश्यमान अंग विक्षेप ही सम्मिलित नहीं होते हैं, परन्तु मौन उपेक्षापूर्ण या अनादर सूचक भावभंगिमा या व्यवहार को भी आच्छादित करता है, जो एक व्यक्ति द्वारा दूसरे व्यक्ति, विशेषकर एक महिला या लड़की, के लिये किया जाता है।

महिलाओं के विरुद्ध हिंसा के कृत्य, विशेषकर गाली-गलौज, बलात्कार आदि, जनता की आँखों व मन के समक्ष आवृत अश्लील कृत्यों के कारण हैं तथा बढ़ावा पाते हैं। यह मानसिक प्रवृत्ति को तथा मानव चित्त को इस प्रकार के अपराध करने हेतु उत्तेजित करते हैं।

अश्लीलता लोगों को बलात्कार आदि अपराध करने के लिए उद्दीप्त करने का यदि एक बहुत सुदृढ़ कारण नहीं है तो, संभवतः एक अत्यन्त शक्तिशाली कारण है। इसे विधिक तथा साथ ही साथ सामाजिक अग्रभाग दोनों पर सुलझाया जा सकता है। कानून वहाँ है, परन्तु एक या दो कमियों के कारण वे निष्प्रभावी सिद्ध होते हैं हमें उस कारण का कुछ अधिक विस्तार में परीक्षण करना चाहिए।

समस्या को न केवल एक कृत संकल्प सरकार द्वारा बहुत सुदृढ़ तथा दृढ़ संकल्पी कार्यवाई द्वारा सुलझाया जा सकता है, वरन् कृत संकल्प सामाजिक कार्यकर्ताओं, शिक्षाविदों तथा अन्यों द्वारा भी, जनता की सामान्य मानसिक प्रवृत्ति में सामाजिक-आर्थिक मानसिक परिवर्तन लाकर, उनको अपना सामाजिक उत्तरदायित्व अनुभव कराने के उद्देश्य से तथा साथ ही देश के कानूनों को उचित आदर दर्शाने की भावना में तथा यह सहायता करना तथा देखना कि उनका कार्यान्वयन समुचित ढंग से सही भाव से व व्यवहार में भी होता है। अतः यह अच्छा होगा कि इस प्रकार की परिस्थितियों को उत्पन्न न होने दिया जाय जो किसी को महिलाओं के विरुद्ध हिंसा के कृत्य या अपराध करने को प्रेरित कर सके। महिलाओं के विरुद्ध हिंसा को रोकने का एक तरीका विधान है। अश्लीलता से संबंधित अधिनियमों का उद्देश्य किसी अनावृत वस्तु या किसी व्यवहार या क्रिया, जो सार्वजनिक रूप से, अपनाई गयी अश्लीलता की श्रेणी में आती हो, को रोकना है। यह अधिनियम इस प्रकार की क्रियाओं आदि के लिये, जो अप्रत्यक्ष रूप से महिलाओं के विरुद्ध हिंसा के कृत्यों को प्रोत्साहित, उत्तेजित, उत्पादित, या सहायता करते है, अपराधकारी होने का उद्देश्य पूरा करते है, क्योंकि अश्लील व्यवहार अक्सर अल्पवय लोगों के कोमल मन को प्रभावित करता है तथा उन्हें विभिन्न प्रकार की नृसंहता या अपराध या महिलाओं के विरुद्ध हिंसा का अभ्यास लेने हेतु प्रलोभित करता है अथवा कम से कम नैतिकता की लोक अवधारणाओं तथा उनके स्वस्थ सामान्य चित्त को, जिसमें महिलाओं का सम्मान निहित होता है, प्रदूषित करते है।

इस समस्या से संबंधित अधिनियम "भद्दा या अशोभनीय" को इस प्रकार से परिभाषित कर सकते है कि इसमें एक विस्तृत क्षेत्र के कार्य सम्मिलित हो सकें, यहाँ तक कि ऐसे कार्य भी जैसे अश्लील सामग्री को अल्पवय व्यक्ति को विक्रय करना आदि या ऐसी कोई सामग्री जिसके नैतिकता के लिये हानिकारक होने की सम्भावना हो या जो किसी व्यक्ति को हानि पहुँचाने हेतु सोची गयी हो या किसी को भी कोई ऐसा कृत्य करने हेतु सीधे लगना जिसका उद्देश्य किसी व्यक्ति या व्यक्तियों के [illegible] का भड़काना हो, समस्या को हल करने की दिशा में स्त्री अशिष्ट रूपण (प्रतिषेध) अधिनियम, 1986 (1986 का अधिनियम संख्या 60) एक आगे का कदम है, परन्तु उस अधिनियम के आच्छादन तथा क्षेत्र का एक सीमित या संकुचित विस्तार है, विभिन्न प्रकार की पुस्तकों, पुस्तिकाओं, सस्मारकों तथा अन्य अभिलेखों में स्त्रियों के अशिष्ट रीति से रूपण के अतिरिक्त उन्हें अशिष्ट व्यवहार के प्रति अनावृत करने की अन्य विधियाँ भी है, जिन्हें सिद्ध करने हेतु कठिनाई से कोई आधार छूटता है, परन्तु जो यदि शारीरिक रूप से नहीं तो मानसिक रूप से महिलाओं को आघात पहुंचाता है। मेरा विचार है कि इस अधिनियम के पुनर्विलोकन तथा

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संशोधन की आवश्यकता समस्या के आकार तथा बढ़ते हुए संकट की दृष्टि से है। दूसरा अधिनियम वेश्यावृत्ति अधिनियम, 1952 यथा संशोधित (1952 का अधिनियम संख्या 37) है, जिसका उद्देश्य भी फिल्मों तथा लोक मनोरंजन के अन्य सम्बन्धित दृष्टिगोचर साधनों के मामले में अश्लीलता पर रोक लगाना है। विधान तथा लाइसेंस जारी करने वाले प्राधिकारी तथा अपराधियों के लिये शास्ति या दंड दोनों की व्यवस्था के बावजूद, यह अश्लीलता तथा उसके लोक प्रदर्शन को समाप्त करने के मामले में इतने प्रभावी नहीं रहे। कारण अनेक हो सकते हैं, जैसे अधिनियमों में उन व्यक्तियों के प्रशिक्षण तथा प्राथमिकताओं में कमियाँ, जो उत्तरदायी हैं उनके क्रियान्वयन, सुधारकारिता, अन्य समस्याओं तथा मामलों की आनुषंगिकता, साक्ष्य तथा केसेज को प्रस्तुत करने आदि के लिये, परन्तु इन सब से बढ़कर अधिनियमों के प्रावधानों के समुचित, सही तथा ईमानदार क्रियान्वयन पर संकेन्द्रण करना होगा। विधायिकाओं तथा विधि विशेषज्ञों को पुनर्विलोकित करना चाहिये, तथा जिन्हें अधिनियमों में उचित संशोधनों का सुझाव देना चाहिये तथा यदि आवश्यक हो, तो कुछ नये उपाय यह देखने के लिये प्रस्तावित करें कि कैसे हम सामान्य जनता के लिये एक नैतिक तथा सामाजिक रूप से स्वस्थ वातावरण निर्मित करने की ओर बढ़ें, जिससे महिलायें समाज में अपने समुचित स्थान को पूरा व देय अंश प्राप्त कर सकें, जो किसी सभ्य एवं समाज के लिये एक अनिवार्यता है।

सामाजिक-प्रतिरोधात्मक परिवर्तन समय की बहुत बड़ी वांछित आवश्यकता है, परन्तु अकेला विधान अधिक सहायता नहीं कर सकता, जब तक कि कार्य को एक पूर्णतावादी विधि तथा समस्या की उसकी सभी दिशाओं तथा पहलुओं की ओर से छुआ तथा व्यवस्थित न किया जाय। विधान अधिकारिता हो सकता है, परन्तु वह इस प्रकार की परिस्थितियों के सृजित करने में एक विस्तृत तथा अधिक महत्वपूर्ण भूमिका भी अदा कर सकता है, जो किसी के लिये अपमानजनक व्यवहार अथवा अन्य किसी प्रकार की अश्लीलता का कार्य को सहारा लेना, यदि असम्भव नहीं तो उसे बहुत कठिन बना सकता है, विधिक अनुभाग पर तथा साथ ही साथ शिक्षाविदों, समाज सुधारकों, धार्मिक नेताओं तथा अन्यों के अबलंब, सहयोग तथा सक्रिय सहानुभूति प्राप्त करके, जनता के चित्त में अति आवश्यक सामाजिक मानसिक परिवर्तन लाने के मार्ग में अड़चनों को दूर करने के उद्देश्य से, तथा उसे एक स्वस्थ, सुखी तथा उन्नतशील ढंग की राष्ट्र निर्माण प्रक्रिया की ओर अग्रसर करने का प्रयास किया जाना चाहिये। वास्तव में अश्लीलता के आभ्यासिक अपराधियों का मानसिक रोगी को भाँति उपचार किया जा सकता है तथा अश्लीलता को एक मानसिक रोग अथवा सामाजिक दुर्व्यवहार समझा जा सकता है। कुछ मामले में उपचार को मनोवैज्ञानिक-सामाजिक-शैक्षणिक

विधि प्रभावशाली सिद्ध हो सकती है, परन्तु यह देखना अधिक महत्वपूर्ण है कि हर बच्चा एक भली-भाँति समाकलित व्यक्ति का विकास करता है तथा मूल मानव मूल्यों तथा अनुमोदित सामाजिक मानकों के प्रति आदर की आदत अर्जित करता है। एक बार जब इन मूल्यों पर आधारित शिष्टता किसी के चरित्र में सुगठित तथा आत्मसात् हो जाती है, उसका चरित्र निश्चित ही शिष्ट हो जायेगा तथा अश्लीलता के किसी प्रकार के लक्षण दृष्टिगोचर होने से दूरस्थ रहेगा। यह प्रक्रिया लम्बी तथा नीरस हो सकती है, परन्तु यह किसी भी मामले में सामाजिक स्तर पर रोग का निश्चित उपचार हो सकता है।

जब जनता के सक्रिय आलंबन के बिना कानून अकेला इतना प्रभावी नहीं होता हमें जनता के सहयोग तथा सहारे को प्राप्त करने का प्रयास करना चाहिये तथा उसके साथ ही समाज का, समग्र रूप से, महिलाओं के प्रति दृष्टिकोण में परिवर्तन लाने की कुछ अन्य विधियों की ओर अग्रतः देखना चाहिये, इस उद्देश्य से कि महिलाओं के विरुद्ध हिंसा के कृत्यों का अन्त कर दिया जाय। यह आश्चर्यजनक है कि हमारे देश में एक ओर तो प्रथाओं तथा आस्थाओं के अनुरूप महिला के रूप में देवता या देवी के अवतार की उपासना की जाती है, परन्तु दूसरी ओर जीवित महिला में सामान्यतः नृसंशता तथा हिंसा के कृत्यों से प्रभावित होती है। नारीत्व के प्रति इस प्रकार के दोहरे दृष्टिकोण को परिवर्तित किया जाना चाहिये।

हमारे समस्त नेताओं तथा समाज सुधारकों ने भूतकाल में इस अत्यन्त आवश्यक सामाजिक परिवर्तन लाने के लिये अपना सर्वोत्तम प्रयास किया था। महात्मा गाँधी का दृष्टिकोण भी हमारे समाज में महिलाओं के लिये समानता की प्रतिष्ठा सुनिश्चित करने में एक सम्बद्ध कारक था। विभिन्न रचनात्मक कार्यक्रमों में जो उन्होंने अपने लम्बे राजनैतिक जीवन तथा नेतृत्व की अवधि में लोगों के कल्याण तथा सुधार के लिये प्रारम्भ किये थे, उनमें उन्होंने सदैव महिलाओं के लिये समानता का स्थान तथा सम्भवतः अधिक अच्छी प्रतिष्ठा प्रदान की थी। महिला नेत्रियों ने भी यह सिद्ध कर दिया था कि वे किसी से भी द्वितीय नहीं थीं। महात्मा गाँधी ने देश के कोने-कोने में रहने वाली महिलाओं में भी पुरुषों के साथ-साथ जागृति उत्पन्न करने का प्रयास किया। इस प्रकार उन्होंने उन्नीसवीं शताब्दी के सामाजिक सुधारकों के अधूरे कार्य को हाथ में लिया। वह अपने मन में बिलकुल स्पष्ट थे जब उन्होंने कहा "हमारा प्रयास, जितनी अधिक महिलाओं के मन में सम्भव हो उनकी वर्तमान दशा के प्रति चेतना जागृत करने की ओर होना चाहिये। हम अपनी महिलाओं को उनकी वर्तमान दशाओं की दुःखपूर्ण वास्तविकताओं के विषय में समझा सकते हैं, जो प्रथमतः

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उन्हें किसी साहित्यिक शिक्षा के दिये जाने के अभाव के कारण है।" इसका कुछ प्रभाव उस समय समाज पर पड़ा होगा। कुछ महिलायें आगे आई तथा वे स्वतंत्रता के पश्चात् भी भली-भाँति पुरस्कृत हुई थी, परन्तु समग्र रूप में, दुखःपूर्ण वास्तविकतायें गुणित हो गयी तथा महिलाओं के प्रति दृष्टिकोण में अत्यधिक वांछित सामाजिक परिवर्तन कहीं भी देखा नहीं जा सका। अहिंसा के बजाय जब हिंसा दैनिक कार्यक्रम बन गया, महिलायें सुलभ लक्ष्य होने के कारण अधिकाधिक दुःख उठाने लगी। यह किसी भी विचारक को यह निष्कर्ष निकालना अनिवार्य बना देता है कि महिलाओं के प्रति दृष्टिकोण में सामाजिक परिवर्तन आज की चुनौती का एक मात्र उत्तर है।

शिक्षा भी एक बहुत शक्तिशाली उपकरण है जो सामाजिक परिवर्तन लायेगा, परन्तु दुर्भाग्यवश स्वतंत्रता के चालीस वर्ष के पश्चात् भी महिलाओं की शिक्षा का क्या कहना, यहाँ तक कि समग्र रूप में, हमारे साक्षरता के आंकड़े, विशेषकर हमारी ग्रामीण जनसंख्या, जिसमें विशेषकर महिलाओं के, आघातपूर्ण हैं। तथापि, शिक्षा की वर्तमान पद्धति की अग्रेतर ओवरहाल करने की आवश्यकता है तथा सामाजिक परिवर्तन लाने के लिए अधिक अच्छी मशीनरी की आवश्यकता है। हमारे महिला वर्ग की आर्थिक स्वतंत्रता कुछ सीमा तक एक उत्तर हो सकता है, परन्तु वह अकेला भी समस्या को हल नहीं कर सकता, जब तक कि एक ओर तो महिलाओं के प्रति पूरे समाज का दृष्टिकोण परिवर्तित नहीं होता तथा दूसरी ओर हम सभी, जानते हुए, तथा इच्छापूर्वक, अपने आप में अनुशासन, सत्यता, ईमानदारी, अहिंसा तथा अपने महिला-वर्ग के प्रति सही तथा आदरपूर्ण दृष्टिकोण को आत्मसात् नहीं करते। हमारी शिक्षा पद्धति, हमारी आर्थिक संरचना, हमारे जन सम्पर्क साधन के कार्यक्रम, इन सभी को सामाजिक परिवर्तन लाने हेतु, समाज के दृष्टिकोण में ऐसा परिवर्तन जो समग्र रूप में, महिलाओं के प्रति एक व्यक्ति, होने के नाते, अपने स्वयं के अधिकार से एक नागरिक होने के नाते निर्देशित होना चाहिये। केवल तब, हमारे महिला वर्ग की ओर वर्तमान में बहती हुई हिंसा की धारा को रोकना संभव हो सकेगा। यह किस प्रकार किया जाय, यह सभी विचारकों के समक्ष वर्तमान समय में एक समस्या है तथा उसका हल समाज शास्त्री, मनोवैज्ञानिक, मानवतावादी, विधिवेत्ता, विधि विशेषज्ञ, शिक्षाविद्, सांसदों, सुधारकों, अर्थशास्त्रियों, प्रशासकों तथा समस्त विचारकों द्वारा एक समन्वित रीति से अपने प्रयासों को एक साथ रखकर संयुक्त रूप से ढूंढा जाना चाहिये।

IMPACT OF OBSCENITY ON JUVENILES

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Generally speaking, any matter which tends to inflame the passions or to incite persons to indulge in acts of indecency or immorality may be termed obscene, e.g. a book containing a description of defective sexual enjoyment with advice for heightening and prolonging such enjoyment.

According to section 292 I.P.C. anything which is lascivious or appeals to the prurient interest, or tends to deprave and corrupt persons, is called obscene.

Thus, the test of obscenity in legal sense, is, "Whether the tendency of the matter is to deprave and corrupt those, whose minds are open to such immoral influences?

Books, paintings, figures, writings or films etc. which are detrimental to public morals and calculated to produce a pernicious effect in depraving and debauching the minds of the vulnerable persons are termed as 'obscene'.

Human minds are full of passions, desire and excitements which are to be controlled by social constraints. Persons who succeed in controlling their desires and passions in accordance with social order, are termed disciplined but those who fail are called delinquent. Obscenity acts as catalyst and stimulate the desires and passions of persons exposed to it and also offers suggestions for active expressions of these instincts.

The matured minds are capable of distinguishing between right and wrong, morality and immorality; but children's minds are too immature to distinguish the same. They learn by emulating and try to copy, what they see or read and may commit social offences unwittingly under the influence of obscenity. Children who are old enough to distinguish between right or wrong, may be urged to delinquency by the excitement aroused in them due to obscenity.

Thus, the most vulnerable group of society that may be easily attracted, sensitized or influenced by obscenity, are the "juveniles". Their instincts for adventure or gratification of personal urges may get stimulated by obscenity and lead them to deviant behaviour. Survey and studies have revealed that the pornographic literature and sex loaded films are the most predominant causes of juvenile delinquency.

The paragraph survey of 1961-62, on causes of juvenile delinquency, has revealed that obscene films and literatures are predominant features of an urban society and responsible for juvenile delinquency. Out of 411 juvenile delinquents, 103 fell into net due to influence of cinema.

It thus, comes out that obscenity plays an effective role in tilting juveniles to deviant behaviours.

It has been, internationally, accepted that, "Children are the most vulnerable group of society and in need of greatest social care. The state has the duty of according proper care and protection to children at all times, as it is on their physical and mental well being that the future of the nation depends".

The constitution of India also takes care of children lays down a policy to be followed by State, under Article 39(f), in following words;

"The state shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood

and youth are protected against exploitation and against moral and material abandonment".

Thus, it may, well be inferred that the child is a national asset and it is the duty of the state to look after the child with a view to ensuring full development of its personality.

Since, obscenity is a menace for juveniles, the state is obliged to see that the juveniles may not be exposed to obscenity. However, as a matter of fact, obscene pictures are sold freely, prurient films and advertisements are on increase in cinema and even in television programme.

Television & Videography have helped the cinema to reach the village folk. But we seldom witness a movie devoid of lascivious scenes even on T.V.. The prurient advertisements of family planning and certain soft drinks etc. on television, are on the increase. Now a days, prurience in movies and advertisements has reached a stage that one feels ashamed to see a movie along with children.

Albeit, Article 19(1)(a) of the constitution gives a fundamental right to freedom of speech and expression to all citizens. But this is not an unfettered right. Article 19(2) permits state to impose reasonable restrictions on the exercise of this right, in the interest of public order, decency or morality or incitement to an offence.

The State instrumentalities i.e. T.V. Authorities, Censor Board, etc. may, well, be advised to impose reasonable restrictions under law by formulating norms for displaying films and advertisments, considering the fact that millions of children are also to witness the same. Norms so formulated must be published to make it known to public at large and the same must be strictly adhered to in displaying films & advertisements.

Considering the aforesaid impact of obscenity on juveniles, it is suggested that obscene films and advertisements should not be permitted

at all in Cinema or on T.V. Special care should be taken to show only such films & advertisements on T.V. and Cinema as are devoid of lasclvious scenes.

Furthermore, obscene books, pictures or other objects should neither be permitted to be printed nor be allowed to be sold. In this context it is pertinent to note that sale etc. of obscene objects to young persons is an offence u/s. 293 of I.P.C. but it is a bailable offence. Considering gravity of offence, which may endanger the moral fabric of the national asset i.e., "Juveniles" it should be made a non-bailable offence.

OBSCENITY

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With its Latin origin, the word 'obscene' means 'on account of filth'. Ordinary and literal meaning of the word 'obscene' is 'repulsive', 'filthy', 'loathsome', 'indecent' and 'lewd'. There is no absolute and objective yardstick for judging what is obscene and as a matter of fact, it is very largely a matter of opinion. Havelock Ellis wondered as to how each one define a notion so nebulous that it resides not in the thing contemplated but in the mind of a contemplating person. Concept of obscenity largely dependes upon the contemporary sociomoral standard and differs from one place to another, from one person to another. "Lady Chatterley's Lover" by D.H. lawrence was not considered as obscene and was accepted as a piece of art in England but in India, it did not have the legal sanction. Idea of 'decency and morality' also varies from time to time. Shakespeare's 'who loves to lie with me' under the greenwood tree might have been shocking to Victorian England resulting in a change to 'who loves to work with me'. Beaudelaire's 'Fleurs du Mal' was honoured in 1949 in France, though it had to face conviction 90 years back. Annie Besant was once convicted for advocating the use of contraceptives but today, posters and films regarding family planning are felt as a dire necessity. Thus, with the change of time and climate of opinion, views about obscenity have changed. It is difficult to accept the proposition that art is for art's sake. Art cannot be wholly indifferent to its effect on society. H.G. Wells said about the functions of a novel, "it is to be social mediator, the vehicle of understanding, the instrument of self-examination, the parade of morals

and the exchange of manners, the factory of customs, the critism of laws and institutions and social dogmas and ideas."

In the words of Rabindra Nath Tagore "The question has been asked," 'What is Art?' and answers have been given by various persons. They aim at supplying us with very definite standards by which to guide our judgment of art productions. Therefore we have heard judges in the modern time giving verdict, according to some special rules of their own making, for the dethronement of immortals whose supremacy has been unchallenged for centuries". He was reluctant to define art by saying "should we begin with a definition." But definition of a thing which has a life growth is really limiting one's own vision in order to be able to see clearly. And clearness is not necessarily the only, or the most important, aspect of truth. A bull's eye lantern view is a clear view, but not a complete view. If we are to know a wheel in motion, we need not mind if all its spokes cannot be counted. When not merely the accuracy of shape, but velocity of motion, is important, we have to be content with a somewhat imperfect definition of the wheel. Living things have far reaching relationships with their surroundings, some of which are invisible and go deep down into the soil. In our zeal for definition we may lop off branches and roots of a tree to turn it into a log, which is easier to roll about from classroom to classroom, and therefore suitable for a text-book. But because it allows a nakedly clear view of itself it cannot be said that a log gives a truer view of a tree as a whole."

Art has its social responsibility and cannot be subversive to the values of life. Law as the spokesman of social conscience distinguishes art from obscenity. In the interest of the society and public good, law has to remain vigilant so that vulgarity is not permitted as art. It in no way suggests that we should only have nursery rhymes and kindergarden stories but the dominant note of the work along with its appeal to beauty and truth shall determine whether it is a work of art or not.

In the Constitution of India, the word 'obscene' has not found a place but Article 19(1) of it ensures the citizens of India the right to freedom of speech and expression. However, in the interest of decency and morality, reasonable restrictions upon such fundamental right may be imposed by law.

Sections 292, 293 and 294 of the Indian Penal Code are the main provisions in general law to deal with obscenity.

Section 292 of I.P.C. makes it an offence to sell or to exhibit or to put into circulation or to produce or even to have in his possession any obscene book, pamphlet, paper, drawing or any other obscene object whatsoever for public exhibition, circulation or sale. The section is wide enough to cover imports and exports of obscene objects for sale or public circulation. The selling of any obscene object to a person under the age of 20 years is an aggravated offence and under section 293 of I.P.C., it is punishable with imprisonment of either description for a term which may extend to six months or with fine or with both. Section 294 makes it an offence to do any obscene act in a public place and to sing or recite or utter obscene songs in or near a public place to the annoyance of others is also an offence.

Section 98 of Cr.P.C. empowers certain Magistrates, upon information and necessary enquiry, to issue warrant for search of a place used for deposits, sale, manufacture or production of any obscene object referred to in Section 292 of I.P.C. and the incriminating articles also may be seized. Legal armoury of the State includes Cinematographic Act, 1952 which requires a person desiring to exhibit any film to obtain sanction of the Board of Film Censors.

No obscene book, pamphlet, paper, drawing, painting, representation, figure or article can be lawfully brought, whether by land or sea, into India.

Section 20 of the Indian Post Office Act denies postal mailing facilities to anything indecent and obscene and prohibits transmission by post by any person of any indecent or obscene painting, printing, photograph, lithograph, engraving, book or card etc.

Besides, there are dramatic performances Act, the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 which impose further restrictions and thus, it seems, arms of law in India are long enough to deal with obscenity.

Perhaps all such laws have not given the exact answer to 'what is ooscene'. In Q.V. Hicklin, L.R. 3Q B 360, Cockburn C.J. observed that, "the test of obscenity is this, whether the tendency of the matter charged as obsecene is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands the publication of this sort may fall". Though Hicklin test can be taken as a good working guide, the objective standard for judging obscenity cannot possibly be confined to any absolute code of morals.

It has been held in 1952 Cr.L.J. 575, that, "the effect produced on any ordinary member of the 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 character nor a person of depraved mentality should be thought of as being the reader of such literature. The standard of readers is neither one of exceptional sensibility nor one withqut any sensibility whatsoever" While giving opinion on James Joyce's "Ulysses" Judge hand of U.S.A. said that the question in each case is whether a publication taken as a whole has a libidinous effect and that is universally accepted principle. U.S.A. District Judge, J.M. Woolsey held, "that the reputation of 'Ulysses' in the literary world, however, warranted by taking such time as was necessary to enable me to satisfy myself as to the intent with which the book was written, for of course, it must first be determined, whether the intent with which it was written was what is called, according to the usual phrase,

pornographic that is, written for the purpose of exploiting obscenity" ..."But in 'Ulysses', inspite of its unusual frankness, I do not detect anywhere the leer of the sensualist. I hold, therefore, that it is not pornographic."

It has been held by the Supreme Court of India (ref:- A.I.R. 1965 SC page 881) "A balance should be maintained between freedom of speech and expression and public decency and morality but when the latter is substantially transgressed the former must give way. The test to abopt in our country regard being had to our community more is that obscenity without a prepondering social purpose or profit cannot have the constitutional protection of free speech and expression and obscenity in treating with sex in a manner appealing to the carnal side of human nature, or having that tendency. Such a treating with sex is offensive to modesty and decency but the extent of such appeal in a particular book etc. are matters for consideration in each individual case."

Is the word 'obscence' linked up with sexual immorality alone? Perhaps not. To 'deprave' means to make morally bad, to pervert or corrupt morally and to corrupt minds; to render morally unsound or rotten, destroy moral purity or chastity or pervent or ruin, debase or defile. Denning has observed in 'Road to Justice', 'there is no reason that I can see why the law about obscene publication should not apply also to horrible and terrifying publication'. 'Obscene' if means 'off the scene' crude presentation of violence, depiction of murder and saddistic behaviour should also come within its sphere.

Now the question remains, if mere legislation is enough to keep the society morally pure. Answer is an emphatic 'No'. To some, pornography has been viewed as a byproduct of a highly developed civilization and cannot be treated in isolation. It is a social evil, ever on increase in a depersonalised, dehumanised, alienated world of today. To deal with 'obscenity' has become a very profitable trade today. 'Playboy', Penthouse' and similar other magazines have world wide circulation. Chief

Justice Warren Burger of U.S.A. spoke in favour of stricter standards, "more concrete than those in the past to safeguard the quality of life".

But law is not enough. It is doubtful if use of drug merely looking at the symptoms rather than the disease can free the society which has undergone a 'sexual revolution' in recent years. There may be demand for the fruit that is forbidden and sexploitation may turn into a multinational trade unless there is an united effort to bring about a change. The fact is that the remedy against this social pollution lies not in the law of crimes but in rehabilitating and revitalising public morality. With the growth of social values of life which unfortunately get neglected in the present materialised, complex society of today and in awakening the consciousness, the virus of 'obscenity' can slowly be fought out.

"For man, as well for animals, it is necessary to give expression to feelings of pleasure and displeasure, fear, anger and love. In animals, these emotional expressions have gone little beyond their bounds of usefulness. But in man, though they still have roots in their original purposes, they have spread their branches far and wide in the infinite sky high above their soil. Man has a fund of emotional energy which is not all occupied with his selfpreservation. This surplus seeks its outlet in the creation of Art, for man's civilization is built upon his surplus".

OBSCENITY-JUDICIOUS APPROACH AND MODERN OUT LOOK

Anil Kumar Sharma
Chief Judicial Magistrate,
Bulandshahar.

OBSCENITY :-

Its definition both in language and in law is vague. Word 'obscene' used in Section 292 I.P.C. has not been defined anywhere in the Code. A long series of authorities of different High Court in our country seems to adopt the meaning of this word by Cockburn, C.J. in Hicklin's case[1] in the following words:-

> *"The test of obscenity is this, whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influence and into whose hands a publication of this sort may fall."*

The Supreme Court had the occasion to consider the Hicklin's rule in the case of Ranjeet D. Udeshi v. State of Maharashtra[2] while considering the question whether the provisions enshrined in s. 292 I.P.C., contravene the fundamental right guaranteed under Article 19 (1) (a) of the Constitution or not. Their Lordships at page 888 of the report observed as under:-

> *"But even if we agree thus for, the question remains still whether the Hicklin's test is to be discarded? We do not think that it should be discarded. It makes the Court to judge obscenity in relation to impugned book, etc. and lays emphasis on the potentiality of the impugned object to deprave and corrupt by immoral influence. It will remain a question to be decided in each case and it does not compel an adverse decision in all cases."*

1. (1868) 3 Q.B. 360
2. AIR 1965 Sc. 881

However, their Lordships, made it clear that it is the obscenity in speech and expression which is offensive to modesty and decency, which is not protected by Article 19(1) of the Constitution. The freedom of speech and expression is subject to reasonable restrictions, which may be thought necessary in the interest of general public and such interest in the interest of decency and morality. It is the interest of general public which is of paramount importance and in this view of the matter, reasonable restrictions in the exercise of this right can be imposed. Their Lordships further went on to say:

> *"In other words, treating with sex in a manner offensive to public decency and morality (and these are the words of our fundamental law), judged by our national standards and considered likely to pander to lascivious, prurient or sexually precarious minds, must determine the result. We need not attempt to bowdlerise all literature and thus rob speech and expression of freedom. A balance should be maintained between freedom of speech and expression and public decency and morality, but when the latter is substantially transgressed the former must give way."*

In Udeshi's case, after considering the Hicklin's and other American cases, Hon'ble Hidayatullah J, as he then was, at the outset pointed out that it is not easy to lay down a true test because 'art has such varied facets and such individualistic appeals that in the same object the insensitive sees only obscenity because his attention is arrested not by the general or artistic appeal or message which he cannot comprehend, but by what he can see, and the intellectual sees beauty and art but nothing gross.' it was also observed in aforesaid case :

> *"...None has so far attempted a definition of obscenity because the meaning can be laid bare with attempting a definition by describing what must be looked for. It may, however, be said at once that treating with 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 Michael Angels should be made to wear breeches before they can be viewed. If the rigid test with sex as the minimum ingredient were accepted hardly any writer of fiction today would escape the fate Lawrence had in his days. Half the book shops would close and other half would deal in nothing but moral religious books which Lord Compbell boasted was the ettect to this Act."

CONCEPT OF :-

The concept of obscenity differs from country to country, society to society, age of the individual to that of others. What is considered as a piece of literature in France may be obscene in England and what is considered in both countries as not harmful to public order and morals may be obscene in our country. The standards of contemporary society in India are also changing fast. A large number of classics, novels, stories and pieces of literature having contents of love, sex and romance are available to adults and adolescents, if a reference to sex by itself is considered obscene, no book can be sold except those which are purely religious. In the field of art and cinema also the adolescent is shown situations which even a quarter century ago would be considered derogatory to public morality, but having regard to changed conditions are more taken for granted without in any way tending to debase or debauch the mind.

THE ADVERTISEMENTS :

With the advancement of science and technology, advertisements have become very common. We find across of advertisements in newspapers, magazines, radio, video cassettes, T.V. etc. and the use of HER (women) as 'bait' in the sale products from cosmetics to liquor or even motor cars is noted all over the world. This kind of publicity was taken very seriously during various workshops, seminars and symposiums in the International Women's Year, and outcome of "The Indecent Representation of Women (Prohibition) Act, 1986" is before us. Section

2(c) of this Act defines 'indecent representation of woman', as the depiction in any manner or the 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 to injure the public morality or morals.' Under the recent legislation advertisements of women is prohibited. It is indeed a good step, but how far it had checked the indecent representation of women in the advertisements? The cinema and T.V. viewing is considered to be the cheapest means of entertainment nowadays. These influence the minds of young generation, who flock to see these films, attracted by their cheap mode of advertisement. It is noteworthy that the network of T.V. had spread almost throughout the country. Several number of ads are displayed by the DOORDARSHAN in its daily telecast. The ads on family planning programme do undoubtedly educate the people to control or limit their family, but how far it is healthy that such ads are displayed at the time when almost the entire family enjoys T.V. together in the evening, by viewing the "NETWORK PROGRAMME", which contain the news and T.V. serials and in between them, when the ad of MALA-D, NIRODH, or CONDOM, COPPER-T appear on the T.V. screen, the parents or grandparents feel ashamed before their minor children, whose inquisitive eyes ask them to explain the meaning of Nirodh or Condom. Such ads de shame the parents before their children. This kind of obscene or indecent speech or expression tends to malign the minds of younger generation and if the parents do not give appropriate answer to the querries of the children, they take resort to even cheaper means of learning.

As far as the interest of 'science, literature, art or learning are concerned, they can be clearly defined. Any other type of vulgar display of female body, for a purpose not covered under the specific categories, and which intentionally or unintentionally tends to deprave and corrupt minds open to such immoral influences should be prohibited.

JUDICIAL PRONOUNCEMENTS :

In Uttam Singh's case[3], their Lordships of the Hon'ble Supreme Court have observed: "These offences of corrupting the internal fabric of the mind have got to be treated on the same footing as the case of food adulterators and we are not prepared to show any leniency. It has been generally held by the Supreme Court that wherever indecent representation of sex is avoidable it should be avoided and if it is not avoided then such representation would be punishable under Section 292 of the Indian Penal Code. In the abovementioned case, the obscene display of sexual features on the reverse side of the playing cards were of no use or utility to the purpose, for which playing cards are used.

The Courts have more often restricted the use of the term 'obscenity' to sexual immorality only. Such matters as would tend to stir in persons, into whose hands such matter is ordinarily expected to reach, sex impulse which leads to sexually impure and lustful thoughts, are declared obscene, attracting the jurisdiction of the Court to ban out such publications. The true test is not to find out when depraves the morals in any way whatsoever, but what leads to deprave only in one way, viz., by exciting sexual desires and lasvicious thoughts. The effect produced on an ordinary member of the society or a particular class of readers for which a particular publication may be meant has to be ascertained. But in my humble view, this proposition seems to be valid only for publications and not for other mode of advertisements such as radio, television etc., i.e. where you cannot ascertain the class of the listeners or viewers. It is un-questionable that scientific treatises and journals are not to be tested in the same way as books and papers which are published for being read by common men or woman. A picture of a woman in the nude is no per se obscene. The Court considered whether there is anything obscene in the object itself. While deciding whether a particular picture is obscene or not, one has to consider to a great extent the surrounding circumstances, the pose, the

3. Uttam Singh v. State AIR 1974 Sc. 1230

posture, the suggestive element in the picture, the person into whose hands it is likely to fall etc.

There had been many Indian films, having their name or title double meaning, one of them is certainly not according to the theme of the film and depicts a certain amount of obscenity. Likewise in Hindi speaking regions, films produced in South Indian languages are dubbed in Hindi, and their Hindi title is so given, as to attract the commoners of the society or the young generation, suggesting the same to be a film on SEX. The Film Censor Board, should take strict action against such film makers. More over, despite the fact that a particularfilm had been given 'A' certificate by the Censor Board, but the fact is that even minors do flock to see such films. Regular checking of the such Cinemas by the Police is required and stern action is warranted against such cinema owners/holders, who permit the minors to 'A' certificate films. No doubt, it can be said by the cinema owners that the tickets for minors can be procured by the adults, but the prohibited people can be checked at the time of their entrance into the Cinema hall.

The gist of the foregoing discussion is that it is not possible to curb or control the menace only by legislating certain enactments or rules on the subject, but it has to be coupled with widespread social awareness against this menace. Various social workers of the Clubs or action groups and Women's organisations have to play an active and sincere role in this regard. The healthy attitude of the judiciary can bear the fruits only when there is social awakening at the grass-root level and the provisions of law are strictly executed by the executive and the police coupled with certain modifications in the ads telecast and televised by the AKASHVANI AND THE DOORDARSHAN. If these steps are taken with promptitude, then mischief-mongers,who are earning gold by publishing obscene literature and making obscene films etc. can certainly by checked and controlled.

OBSCENITY

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Thanks to Charles Sedley who more than 300 years ago in England exposed his body much to the disdain and displeasure of the public and stood on the balcony. The incident led to the English Courts of Law to talk about the law of Obscenity. Journey from Charles Sedley to 'Chaturanga' a Tagore's masterpiece via Chatterley's lover, from Picasso to David Hockney, Britain's most famous living artist, there were ripples of frownings, furore with occasional fires in the World of thought anxious to reject anything outside the set standard of ethics on the plea of obscenity. Yet the term 'Obscene' remained obscure, veiled and unexplained. Is any deviation from the prevailing moral standard Obscene? Is the talk of Sex Obscene? When Dr. Pramilla Kapur, a noted Delhi-based Sociologist published a book on the Indian Call Girls, the so called upholders of morality gave her an angry look. Mr. Samaresh Basu was a famous novelist of Bengal. His two works 'Bibar', later on 'Prajapati' shook the then literary World of Bengal. He was gaged by the Police and sent for trial for 'Prajapati'. The Sub ordinate Court and then the Hon'ble High Court, Calcutta went between the lines of his book and found something objectionable and obscene. The author was subject to severe criticism until our Highest Court of law came to his rescue and declared 'Prajapati' (butterfly) not obscene. Even then, a definite definition of the word 'Obscene' remained absent. The code does not define the word 'Obscene'. Every one agrees, obscenity must be condemned and uprooted for the sake of individual, society and civilisation. But then what is Obscenity? Pundits differ, intellectuals tear hair and the legislatures by and large of the World heave a sigh of relief passing on the bucket to the Courts of law. In turn, Courts of

Law, jurors and Jurists have been ceaselessly trying to define the term 'Obscene' and till it is done, to set a few standards to measure the same.

Oxford Dictionary explains the term Obscene as 'Offensively indecent'. Again Webster's Dictionary defines 'Obscene' as something 'what is repulsive by reason of malignance, hypocrisy, cynicisn, irresponsibility, gross disregard of moral and ethical principles'. But then the questions are-what is the standard of decency or indecency? What is malignant, What are the moral and ethical principles?

Needless to say, the concept of Obscenity differs from country to country, age to age, society to society. What is considered to be obscene in France or England may not be so in our country. Again, what was considered to be Obscene in ancient times may not be treated as Obscene now. Further what is obscene in West Bengal may not be obscene in Tamil Nadu. Even in a given Society, two intellectuals differ over the matter. In Bengal when Chaturanga by Tagore was published, a section of leading intellectuals was vocal in their protest while the others accepted the same. In the same way, the publication of 'Bibar' by Samaresh Basu evoked similar reaction in the literary circle. In most modern nations the Criminality of Proceeding of diseminating obscene materials is a relatively late phenomenon. In England, during 17th Century, restrictions, were applied to anti-religious or Seditious acts or publications. In 1727, however, there was a successful prosecution for the publication of indecent matter. The Obscene publication Act came into being for the first time in 1857. This Act, however, did not contain any definition of Obscenity. Such a definition was forthcoming in 1868 in Regina vs Hicklin case in which the test of what was obscene was found to be its tendency 'to deprave and corrupt those whose minds are open to such immoral influences' and it was understood that this test would apply only to isolated paper or passages of a work. This view practically prompted the U.S.A. to frame U.S. anti-obscenity legislation, which

ultimately gave birth to the Mail Act, 1865 in a wider from by providing fine and imprisonment of any person mailing or receiving 'Obscene', 'lewd' or 'laschvious' publication. Subsequently, many nations enacted their own forms of legislation banning obscene materials. Thus, the basic legal control has been through the criminal law but most countries also provide for administrative regulation in many ways.

However, while the view expressed in the Regina v. Hicklin case was being mostly adopted, in 1934, a Newyork Superior Court in connection with one book entitled 'Ulyses' held that the criterion for obscenity was not the content of isolated paper or passages but rather 'whether a publication taken as a whole has a ludicrous effect. Later on in 1973, in a decision on five obscenity case, the Court held that those works are obscene "which appeal to prurient interest in Sex, which protray Sexual conduct in a patently offensive way and which taken as a whole do not have serious literacy artistic, political or scientific value'. Perhaps in our code section 292, 293 & 294 I.P.C. contain the spirit from the above. Mr. Cockburn Chief Justice in the Hicklin-case said that the test of obscenity is to see whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall. By and large, we have accepted this guideline. Mr. Justice Hidayatullah Chief Justice of India and the former Vice-President of our country said that 'an overall view of the obscene matter in the setting of the whole work would of course be necessary by itself and separately to find out whether it is so gross and its obscenity so decided that it is likely to deprave and corrupt those into whose hands the book is likely to fall'. Hon'ble Supreme Court in several cases held identical view. It was held that "the test to adopt in our country is that obscenity without a prepondering social purpose or profit cannot claim the constitutional protection of the speech and expression and obscenity is treating with Sex in a manner-appealing to the carnal side of the human nature or having such tendency and the extent of appeal in a particular book etc.

is a matter for consideration in each individual case"[1]. Hon'ble Court, However, gave a note of caution by observing that if a reference to Sex by itself is considered Obscene, no book can be sold except those which are purely religious.

In lady Chatterley's lover-case, his lordship set a clear-cut guideline when he said that jurors should consider the book as a whole. They should not merely consider some selective passages. They should keep their feet on the ground and not exercise questions of tastes or functions of a Censor. It was further observed that mere literary merits are not sufficient to save the book. It must be satisfied that it is of public good. Merits of the book should outbalance the obscene portion.

Section 292 I.P.C. after amendment in 1969 says that a particular thing shall be deemed to be obscene if it is lascivious or appeals to prurient interest or if its effect if taken as a whole, such as to tend to deprave and corrupt persons who are likely to read, See or hear the matter contained or ambodied in it. However, anything which is for the public good or for religious purposes or ancient object like temple, monument, Idols, Sculpture etc. is carefully kept outside the purview of this section which seeks to impose a reasonable restriction on fundamental right in order to promote public decency and morality. Thus, the exception clause of Sec. 292 I.P.C. has carefully and probably deliberately restrained us from looking back at our past to find out how the matter of obscenity was viewed and considered. The Sculptures of Konarak's Sun Temple, of Ajanta-Ellora, the episode of love between Srikrishna-Radha, the love story of Dushantya-Sakuntala, the story of birth of Satyabati, Karna and others in the Mahabharta, composition of poet Chandidas etc. can no more be brought within the realm of our discussion.

Yet, we may venture to peep into the pages of history to find out the awarness of the people about obscenity, the extent or limit of their morality, their attitude towards obscenity.

1. AIR 1965 Sc 881

In the Rigveda, there is a reference to the gambler's wife as the objects of other men's intrigues (Chap:X) and in another hymm (Chap:X) mention is made of a woman resorting to her vendxvous, one hymm in Regveda runs this; "who draws you to his house, as a widow does her husband's brother to the couch, or a woman does a man?

During pre-moghul and moghul period, there were different standards of obscenity in differnt societies. Kings and their companions had enjoyed a very large share in the matter of sexual activities and to them obscenity mostly was a thing to be prohibited amongst the ordinary people who used to live in otherwise conservative or Puritan society.

The two World wars and the Industrial revolution brought about a significant change in attitude of people towards obscenity in various societies. This was visible mostly in matrimonial relations, wearing apparels and paintings etc. Literature released an air of freedom in the matter of Sex. Dresses so long used by ballet girls, music-hall artistes and principal boys in pantomimes came to be worn by the common people who preferred to accept the style of 'thing Showers' Spartangirls to the Orthodox maxi-uniforms, Yet, inspite of use of sometimes very provocative dresses, there was no attempt to put it down in the name obscenity. In fact, during this peirod, the term Obscenity began to get a new dimension. People by and large began to talk freely about Sex. Scientific advancement, advent of some great literary personalities, and artists, frequent exchange of ideas and ideals etc. started to exert a profound influence upon the people in the world and the concept of obscenity began to assume a different meaning.

India is a land of diversity. It strives to achieve unity in diversity, ours is a conglomeration of different culture, different language, dress, food habits, society and social convention. Naturally, there cannot be any set standard to examine the question of obscenity. The style of life of primitive Andaman people vastly differs with that of southern coastal people. The position of women in the society is also found to be different

in different societies of our country. Yet, we have a common philosophy of life, common tradition and heritage. Basically, the ordinary people of India are conservative. Talk of Sex freely only a few days ago was considered to be a social offence. The influence of the Vedas, the Geeta, the Chandi the Koran and Grantha Sahib further propelled by Nanak, Chaitanrya, Sri Ramkrishna, Vivekananda shaped the Indian life and notwithstanding the inflow of English education, the Indian people even now are under the same influence. People promptly call it Pseudo Culture which deviates from the well known, principle of 'Satyam, Sivam, Sundaram'. However, while the whole world has been changing, India in the teeth of watchful eyes of the Society has been changing, may be stealthily or at a slower pace. In consequence, the orthodox view about sex-dimension, matrimonial relation etc. have been changing. In the field of Bengali literature, it was Tagore who acted as 'Bhagriath' in this respect and his few works named earlier are testimonies to this fact. Even then Tagore always believed in preserving the artistic quality and maintaining restraint in the matter of expressing Sex affairs. But the post Tagore period saw some famous and popular Novelists, artists and film personalities who come out strongly and sometimes nakedly to present the vulgarity, the corruption and the dark dots of our society. With the spread of woman education, adoption of Sex education, imitation of western film culture, the modern India has practically challenged the old values forcing the old concept of obscenity redefined. Indian thinkers no more throw a Scornful eyes to the idea of living together. 'Sita-Sati' concept of Indian womanhood no more attract the faier-Sex. Filmes now freely display the bare-bodies of both sex forcing the censor personalities to take back seat. Journal, periodical, books and other papers are full of matters which till recently were rejected as obscene. Dresses and way of life too are changing almost daily giving rise to provocative culture.

Unfortunately, with the change in style of life in our society, our legislature and legal thinkers are lagging behind.

The cardinal questions are-should the present trend of change be permitted to be on ? If so, how far ?

Undoubtedly, our society till the other day were prisoners of superstition, dogmas and unnecessary restraints. The position of woman and dignity of womanhood were at a low ebb, although in paper woman used to be glarified as mother. So the Society by and large needed a change. And the change has been pouring in. It has been coming in the form of woman education literacy drive, imparting Sex education etc. The cumulative effect of all these changes is bound to liberate people's attitude towards the concept of Obscenity. In fact, the hus-hush' attitude towards Sex-matters is fast disappearing. There is an air of liberation all around in the filed of art, man-woman relation and literacy works. But in the process, there are also aberrations at times. The Sociologists, the thinkers, the intellectuals now talk of moral terpitude, decline of social values and deviation from our rich cultural heritage and philosophy of life.

So there should be a very cautious approach to the change taking place. It must be ensured that in the name of art or public good or freedom vulgarity does not eat the vitals of our society, does not destroy the deeprooted spirit of our rich values. If the intention of any writing, art, picture or any matter is to obtain hotcake sale and make profit by pandering to the 'lascivious, prurient or sexually prececious minds' it must be prohibited. To achieve it, prevailing enactments in our Code appear to be not adequate. In my opinion, law should keep pace with the change of Society. Now-a-days, Societies are being invaded by some journals, Pictures, sex-films, models etc. depraving and debanching the minds of the people, particularly the youth. These are available in the open market to utter indifference of the administration. So while there should be more enactments of law to cope with the increasing problems, the Administration also must realise the gravity of the same and rise to the occasion. Above all, consistent movement by the saner Section of

the people against the spread of obscenity in all walks of life seems to be the imperative need of the hour, people's positive awareness is the prefect persinption.

Part - V

Suggestions

SUGGESTIONS

1. Definition of obscenity should be in tune with Indian culture. There should be no distinction between obscenity and vulgarity.

2. Definition should be flexible to include all possible acts of obscenity and to exclude the artistic expressions.

3. Obscenity should not be confined to depiction of women alone.

4. Guilty intention should be a necessary component.

5. Culpability should attach itself to direct or potential result of the utterance.

6. Provision should be made for quick and stern punishment.

7. Describing or depicting violence should also be made punishable.

8. Stringent punishment should be provided for those who trade in obscenity for pecuniary gains.

9. Offence under section 293 I.P.C. should be made cognizable & non-bailable.

10. The Government should formulate guidelines to be followed by the State-run-media.

11. Courts should take into account social ethos, too.

12. Assistance of experts should be made available to courts.