



Obscenity Laws in India

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Why in News?

A YouTube influencer is under investigation for allegedly making **obscene comments** during a widely viewed show. A complaint has been filed under **Section 296 of the [Bharatiya Nyaya Sanhita, 2023 \(BNS\)](#)** for "obscene acts".

- This raises questions about the **legal definition of obscenity**, particularly in the digital age.

What are the Laws Governing Obscenity?

- **Section 294 of BNS 2023: Formerly [Indian Penal Code \(IPC\) Section 292](#)**, it prohibits the sale, advertisement, or public display of obscene content, including digital media.
 - Defines obscenity as material that is **sexually suggestive, meant to provoke sexual thoughts, or likely to harm people's morals or behavior**.
 - First-time offenders face up to **2 years in jail and a ₹5,000 fine**. Repeat offenders may get **up to 5 years** and a **Rs 10,000 fine**.
- **Section 296 of the BNS:** It penalizes performing **obscene acts in public**, as well as singing, reciting, or uttering obscene songs, ballads, or words in public or doing so to the annoyance of others.
 - By regulating public behavior that could offend **public morality or decency**, this section aims to uphold societal norms.
- **Section 67 of the Information Technology Act, 2000:** Punishes publishing or transmitting obscene material electronically.
 - The definition of obscene material is identical to that provided under **Section 294 of the BNS**.
 - Provides **harsher penalties** than BNS with **up to 3 years of imprisonment** and a fine of **Rs 5 lakh** for first-time offences.
- **Indecent Representation of Women (Prohibition) Act, 1986:** Prohibits **indecent depiction of women** that is derogatory, denigrating, or harms public morality.
- **POCSO Act, 2012 (Protection of Children from Sexual Offences Act):** Prohibits creating, storing, sharing, or accessing child sexual content online, with strict penalties for offenders.

How Do Courts Determine What is 'Obscene'?

- **Hicklin Test:** In *Ranjit D Udeshi v. State of Maharashtra*, 1964 the **Supreme Court of India** used the **Hicklin Test**, which was adopted by the British in the case *Queen v. Hicklin*, 1868.
 - This test determined that material is **obscene** if it has the **tendency to deprave and corrupt** those people whose minds are **open to such immoral influences**.
 - The **lowest common denominator standard** was applied, meaning content was judged based on its impact on **children or vulnerable adults**, not the average person.
 - **Criticism:** Considered **outdated and overly restrictive**. The test focused on **isolated**

parts of content rather than the work as a whole.

- **Community Standards Test:** In *Aveek Sarkar v. State of West Bengal, 2014* the **Indian Supreme Court** replaced the **Hicklin Test** with the “**community standards**” test (**CST**) to determine obscenity.
 - Courts now judge obscenity based on **contemporary societal norms**. They assess whether the overall theme of the content, taken **as a whole**, appeals to **prurient interests** (i.e., sexually arousing content without artistic, literary, or social value).
 - Courts strive to **balance fundamental rights** ([Article 19\(1\)\(a\) Free Speech](#)) with [reasonable restrictions \(Article 19\(2\)\)](#).
 - **Judicial Precedents:** *Boris Becker Nude Photo Case, 2014* the SC ruled that **nudity alone is not obscene** if it has **artistic or social merit**.
 - Courts take into account whether the work serves a literary, artistic, political, or scientific purpose before determining its obscenity.
 - In the 2024 College Romance Web Series case, the SC ruled that vulgar language isn't obscene unless it arouses sexual thoughts.
 - **Shortcomings:** CST is **subjective and varies by region** (based on geography, culture, and social norms), leading to inconsistent judgments. It struggles to keep up with **evolving social norms and lacks clear definitions**, causing ambiguity in legal interpretations.

Public Morality, Decency and Freedom of Expression

- **Morality:** It is the set of principles that define right and wrong behavior based on societal, cultural, or personal beliefs about ethics and justice.
 - In [Navtej Singh Johar vs. Union of India, 2018](#) the Supreme Court held that constitutional morality takes precedence over public morality, emphasizing justice over social norms.
- **Decency:** Avoids obscene language and gestures (*B. Manmohan And Ors. vs State Of Mysore And Ors, 1965*).
- **Freedom of Expression and Obscenity:** Freedom of expression under [Article 19\(1\)\(a\)](#) of the Indian Constitution is subject to reasonable restrictions under [Article 19\(2\)](#), including to **prevent obscenity and uphold societal morality**.

Read more: [Obscenity Laws in India](#)

<https://www.drishtijudiciary.com/en>

Drishti Mains Question:

Discuss the evolution of obscenity laws in India and its impact on freedom of speech?

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Mains

Q. Examine the scope of Fundamental Rights in the light of the latest judgement of the Supreme Court on Right to Privacy. (2017)

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