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Interpreting Censorship: A Comparative Study of Obscenity and Pornography in Indian Jurisprudence

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ABSTRACT

This article presents a comprehensive study of obscenity and pornography in the Indian legal system, analyzing the provisions under statute, judicial interpretations, emerging challenges, international perspectives, and influences. Drawing from historical references like the Khajuraho temples and the Kamasutra, this study explores the delicate balance between freedom of expression and public morality in the Indian context. Through an examination of landmark court cases and evolving jurisprudence, it provides insights into the legal principles employed and the challenges in navigating this complex terrain. The article also considers international perspectives, including the use of tests like the Hicklin, Roth, and Miller tests, in determining obscenity. The purpose of this study is to contribute to the ongoing discourse on censorship, freedom of speech, and the protection of public morality, offering a nuanced understanding of the Indian legal system's approach to regulating explicit content in a diverse and rapidly changing society.

Keywords: *obscenity, pornography, Indian legal system, freedom of speech, public morality, online content, digital age, censorship, Hicklin test, Roth test, Miller test, explicit content.*

I. INTRODUCTION

Obscenity and pornography have long been subjects of legal and societal scrutiny, raising questions about the delicate balance between freedom of expression and the preservation of public morality. In the Indian legal system, interpreting and defining the boundaries of acceptable expression in the realm of obscenity and pornography has been a complex and evolving process. The cultural diversity, historical legacy, and constitutional principles of India make this study particularly intriguing.

India, with its rich cultural heritage and traditions, has a complex relationship with explicit content. The roots of this relationship can be traced back to ancient times, where the Khajuraho temples, adorned with erotic sculptures, celebrated love, desire, and human sexuality. Similarly,

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the ancient Indian text, the Kamasutra, explored the nuances of sexual relationships in a scholarly and philosophical manner. These historical references serve as a backdrop for understanding the cultural and social attitudes towards obscenity and pornography in India.

In the modern era, the legal framework governing obscenity and pornography in India has undergone significant transformations. The absence of a precise legal definition of obscenity in Indian statutes has necessitated a reliance on judicial interpretation. Landmark court cases and evolving jurisprudence have shaped the contours of acceptable expression, striking a balance between individual rights and societal concerns.

The significance of studying obscenity and pornography in the Indian legal system lies in the exploration of the delicate equilibrium between freedom of speech and expression, cultural sensibilities, and the preservation of public morality. This article aims to provide a comparative study of obscenity and pornography in Indian jurisprudence, analyzing the provisions under statute, judicial interpretations, emerging challenges, international perspectives, and influences.

The purpose of this article is to shed light on the evolving stance of Indian courts regarding obscenity and pornography, the legal principles employed in their interpretation, and the emerging challenges in navigating this complex terrain. By examining key court cases, international influences, and societal perspectives, this study aims to provide a comprehensive understanding of the Indian legal system's approach to regulating explicit content.

Through this analysis, we aim to contribute to the ongoing discourse on censorship, freedom of speech, and the protection of public morality. By exploring the historical, cultural, and legal dimensions of obscenity and pornography in the Indian context, we seek to foster a nuanced understanding of the challenges and opportunities in regulating explicit content in a diverse and rapidly changing society.

As we delve into the intricacies of obscenity and pornography in the Indian legal system, it is crucial to recognize the significance of striking a balance between individual liberties, cultural values, and societal norms. By examining the past, understanding the present, and contemplating the future, we embark on a journey that sheds light on the complexities of interpreting censorship in a nation known for its diversity and constitutional principles.

II. PROVISIONS UNDER STATUTE

Obscenity and pornography are key areas addressed by various statutes within the Indian legal system, with the aim of regulating and curbing their harmful impact on society. The Indian Penal Code (IPC) encompasses multiple relevant provisions. Section 292 of the IPC

criminalizes the sale, distribution, or public exhibition of obscene materials, while Section 293 extends this prohibition to include obscene objects or visual representations. Section 294 deals with acts or songs of an obscene nature performed or uttered in public places.² Sections 354A, 354B, 354C, and 354D provide protection against sexual harassment, assault or use of criminal force to woman with intent to disrobe, voyeurism, and stalking, respectively.³ Sections 463 and 471 address forgery of electronic records or documents, including those related to obscene or pornographic material. Section 509 criminalizes acts intended to insult the modesty of any woman through words, gestures, or actions.⁴

Under the Information Technology Act (IT Act), Section 66E specifically targets the invasion of privacy by criminalizing the capturing, publishing, or transmission of sexually explicit images or videos of a person without their consent.⁵ Section 67 focuses on the publication, transmission, or sharing of obscene or sexually explicit content electronically, while Section 67A addresses the publishing or transmitting of sexually explicit material in digital form.⁶

² Sections 292, 293, and 294 address offenses related to obscenity. Section 292 prohibits the sale, distribution, or possession of obscene material, defining “obscene” as content that is lascivious or appeals to prurient interest. It carries punishments of up to two years’ imprisonment and a fine, increasing to five years for subsequent convictions. Section 293 specifically targets the sale of obscene objects to individuals under 20 years old, carrying punishments of up to three years’ which may extend to seven years imprisonment and a fine for subsequent conviction. Section 294 deals with obscene acts and songs causing annoyance to others in public places, punishable by up to three months’ imprisonment, a fine, or both. These provisions aim to regulate explicit content, protect public decency, and safeguard vulnerable individuals, particularly minors, from exposure to obscenity. *The Indian Penal Code, 1860*.

³ Sections 354A, 354B, 354C, and 354D of the Indian Penal Code address various offenses related to sexual harassment, assault with the intent to disrobe, voyeurism, and stalking. Section 354A defines sexual harassment and prescribes punishments up to three years for acts such as physical contact, demands for sexual favors, showing pornography against a woman’s will, or making sexually colored remarks. Section 354B deals with the assault or use of force with the intent to disrobe a woman, imposing imprisonment of up to seven years and a fine. Section 354C criminalizes voyeurism and the dissemination of private images, with punishments ranging from imprisonment for one to seven years. Section 354D addresses stalking and imposes imprisonment for up to five years. These provisions aim to safeguard women’s safety, dignity, and privacy by punishing offenders engaging in such acts. *Ibid.*

⁴ Sections 463, 465, 471, and 509 of the Indian Penal Code address forgery and acts intended to insult the modesty of women. Section 463 focuses on forgery, encompassing the creation of false documents or electronic records with the intent to cause harm, support false claims, commit fraud, or deceive others. While these sections do not specifically mention obscene or pornographic material, in certain cases, forgery related to such material could be addressed under these provisions. The punishment for forgery under Section 465 can include imprisonment for up to two years, a fine, or both. Section 471 deals with the fraudulent use of forged documents or electronic records, prescribing the same punishment as that for forgery. Lastly, Section 509 addresses acts intended to insult a woman’s modesty, including offensive words, gestures, or exhibits, as well as intrusion upon her privacy. Offenders convicted under this section may face simple imprisonment for up to three years, along with a fine. These provisions within the Indian Penal Code aim to discourage forgery, protect against the use of forged documents, and safeguard women’s dignity and privacy. *Ibid.*

⁵ Section 66E focuses on the punishment for violating an individual’s privacy. It states that capturing, publishing, or transmitting the image of a person’s private area without their consent, in circumstances that violate their privacy, is a punishable offense. The punishment for such a violation can include imprisonment for up to three years, a fine not exceeding two lakh rupees, or both. The section further provides explanations for key terms, including the meaning of transmission, capture, private area, publication, and circumstances violating privacy. This provision aims to protect individuals from the unauthorized capture and dissemination of their private images without their consent. *The Information Technology Act, 2000*.

⁶ Section 67 addresses the punishment for publishing or transmitting obscene material in electronic form, while

Additionally, Section 67B targets the publication, transmission, or sharing of material depicting children in sexually explicit acts or conduct.

Child pornography, a particularly abhorrent form of exploitation, is addressed under the Protection of Children from Sexual Offences Act (POCSO Act). Section 2(da) of the POCSO Act defines “child pornography” as any visual depiction of sexually explicit conduct involving a child, including the representation of their sexual organs or engagement in explicit acts. Section 11 and 12 deals with Sexual harassment and prescribes its punishment.⁷ Section 13, 14 and 15 of the Act addresses the use of a child in any form of media for pornographic purposes, its punishment and punishment for storage of child pornography.⁸ Section 67B of the IT Act complements the POCSO Act by prohibiting the publication, transmission, or sharing of material depicting children in sexually explicit acts or conduct through electronic means.⁹ Apart from that Section 20 of POCSO places an obligation on personnel working in various establishments to report cases involving sexually exploitative material or objects related to children whereas Section 21 prescribes Punishment for failure to report or record a case.¹⁰

The legal framework also includes provisions under the Indecent Representation of Women (Prohibition Act). Section 2(c) of this Act defines “indecent representation of women” as the

Section 67A focuses on the punishment for publishing or transmitting material containing sexually explicit acts or conduct. These provisions aim to deter the dissemination of such content and provide punishment for those involved. The penalties include imprisonment for varying terms and fines ranging from five to ten lakh rupees, depending on the nature of the offense and the number of convictions. Their objective is to safeguard individuals from exposure to offensive and explicit material in the digital realm. *Ibid.*

⁷ Section 11 addresses sexual harassment committed against a child. It defines various actions that constitute sexual harassment, such as uttering explicit words, making gestures or exhibiting objects with the intent to be seen or heard by the child, showing pornographic material, following or watching the child persistently through electronic or other means, threatening to use fabricated depictions of the child, or enticing the child for pornographic purposes. Section 12 focuses on the punishment for sexual harassment, stating that the offender can be imprisoned for up to three years and may also be fined. These provisions aim to protect children from sexual exploitation and provide legal consequences for those who commit such offenses. *The Protection of Children from Sexual Offences Act, 2012.*

⁸ Section 13 of the Protection of Children from Sexual Offences Act, 2012 addresses the use of a child in pornographic material, including the representation of sexual organs, engagement in real or simulated sexual acts, or indecent portrayal. Section 14 stipulates the punishment for using a child for pornographic purposes, ranging from a minimum of five years' imprisonment to subsequent convictions leading to longer terms. Section 15 focuses on the storage of pornographic material involving a child, with penalties for failing to delete or report it, possessing it for transmission, or using it for commercial purposes. *Ibid.*

⁹ Section 67B of the Information Technology Act, 2000 pertains to the punishment for publishing or transmitting material depicting children engaged in sexually explicit acts, with imprisonment ranging from five to seven years and fines. These provisions aim to protect children from exploitation and punish those involved in child pornography. *The Information Technology Act, 2000.*

¹⁰ Section 20 imposes an obligation on personnel working in media, hotels, lodges, hospitals, clubs, studios, or photographic facilities to report any sexually exploitative material or objects involving children to the Special Juvenile Police Unit or the local police. Section 21 outlines the punishment for the failure to report or record such offenses, including imprisonment of up to six months, fines, or both for individuals, and imprisonment of up to one year with fines for those in charge of companies or institutions. These provisions emphasize the responsibility of individuals and organizations to report instances of child exploitation for appropriate action to protect children's well-being. *The Protection of Children from Sexual Offences Act, 2012.*

depiction of women in a manner that is indecent, derogatory, denigrating, or likely to corrupt public morality. Section 3 prohibits the publication or exhibition of advertisements containing indecent representation of women, while Section 4 extends the prohibition to the production, sale, distribution, or possession of books, pamphlets, or any form of material containing such representation.¹¹

It is crucial to note that the Protection of Children from Sexual Offences Act (POCSO Act) and the Information Technology Act (IT Act) specifically address the issue of child pornography, which involves the depiction of sexually explicit conduct involving children. These provisions aim to protect children from exploitation, recognizing the gravity of the harm caused and imposing stringent penalties on offenders. By criminalizing the creation, distribution, or possession of child pornography, the legislation seeks to safeguard the rights and well-being of children, ensuring their protection from the heinous act of sexual exploitation.

In conclusion, the Indian legal framework includes comprehensive provisions across multiple statutes to combat obscenity and pornography. These provisions serve to protect individuals' privacy, maintain public morality, and safeguard vulnerable groups, such as women and children, from exploitation and harm.

III. COMPARATIVE EXAMINATION

In the realm of Indian jurisprudence, a comparative examination of obscenity and pornography unveils a multifaceted landscape encompassing historical, legal, and societal dimensions. By delving into these aspects, we can gain valuable insights into how these terms are defined, regulated, and understood within the Indian legal context.

Historically, the origins of the concept of obscenity can be traced back to ancient civilizations. The word "obscenity" finds its roots in the Latin term *obscēnus*, *obscaenus*, which conveys notions of something "boding ill," "disgusting," or "indecent."¹² This term was often associated with acts or displays that were considered morally offensive or lewd in nature. In classical drama, certain potentially offensive content, such as murder or sex, was depicted offstage,

¹¹ Section 3 prohibits the publication or exhibition of advertisements that contain indecent representation of women. Section 4 extends this prohibition to the production, sale, distribution, or circulation of books, pamphlets, films, photographs, or any other form of media that depict indecent representation of women. However, certain exceptions are provided for material that serves a public good, has religious significance, or falls under the purview of other laws. Violation of these provisions in Section 3 and Section 4 can lead to penalties outlined in Section 6. Upon the first conviction, the offender may face imprisonment for up to two years and a fine of up to two thousand rupees. For subsequent convictions, the imprisonment term can range from six months to five years, and the fine can range from ten thousand rupees to one lakh rupees. These provisions aim to prevent the dissemination of indecent representations of women in various forms of media and ensure legal consequences for offenders. *The Indecent Representation of Women (Prohibition) Act, 1986*.

¹² Glare, P. G. W., ed. (8 March 2012). "obscēnus". Oxford Latin dictionary (2 ed.). Oxford. p. 1342.

leading to the association of obscenity with the Latin word for “offstage” (obscaena) and the Ancient Greek root “skene.”

Within the Indian legal framework, the treatment of obscenity is primarily governed by Section 292 of the Indian Penal Code, which provides guidelines for determining what constitutes obscenity. However, the interpretation of obscenity has evolved over time through judicial decisions that have taken into account contemporary community standards, public morality, and the balance between free speech and obscenity.

The term “pornography,” on the other hand, is a nonlegal term that refers to sexually explicit writing, images, or other forms of media designed to elicit sexual excitement in the reader or observer. It is derived from the Greek words for “harlot” and “writing,” pertains to depictions of erotic and lewd behavior, including works that may have artistic or literary merit.

While it is commonly understood that obscenity is a subset of pornography, the assertion that all obscenity is inherently pornographic is not entirely accurate as they are distinct concepts. Obscenity typically encompasses morally offensive, lewd, or indecent content, often including explicit sexual depictions. However, it can also extend beyond pornography to encompass other offensive or indecent forms of expression such as words or gestures that go against prevailing moral standards. On the other hand, pornography refers specifically to sexually explicit material designed to elicit sexual arousal and can encompass various media forms. Not all pornography is considered obscene, as some may be produced and consumed within legal boundaries and even have cultural or educational value. The determination of whether something is obscene or falls under the category of pornography depends on legal definitions, community standards, and contextual factors that can vary across jurisdictions and cultural contexts.

International views on obscenity and pornography vary, with different countries adopting their own legal frameworks and standards. For instance, the United States has a specific legal test for obscenity established in the landmark Supreme Court case *Miller v. California* (1973).¹³ The Miller test considers whether material is predominantly “prurient” (appealing to impure sexual desire) according to contemporary community standards, whether it is patently offensive in its portrayal of sexual acts, and whether it lacks serious literary, artistic, political, or social value when considered as a whole.

¹³ The Court established guidelines for determining obscenity, which include: (a) whether the average person, using contemporary community standards, would find the work appealing to prurient interests when taken as a whole, (b) whether the work depicts or describes sexual conduct in a clearly offensive manner as defined by state law, and (c) whether the work, as a whole, lacks serious literary, artistic, political, or scientific value. *Miller v. California*, 413 U.S. 15, 1973.

In India, the judiciary has played a crucial role in interpreting and applying laws related to obscenity and pornography. The Supreme Court's decision in the case of *Ranjit Udeshi v. State of Maharashtra (1965)*¹⁴ significantly contributed to the understanding of obscenity within the Indian legal context. The court emphasized the importance of community standards, the impact on public morality, and the delicate balance between free speech and obscenity.

Moreover, the regulation of pornography in India has undergone significant developments in recent years. The Information Technology Act of 2000 introduced provisions to address the publication, transmission, or creation of obscene content in electronic form. Additionally, the Protection of Children from Sexual Offences Act (POCSO) enacted in 2012 specifically targets child pornography and provides stringent measures for its prevention and punishment.

Debates regarding the regulation of pornography in India have gained prominence in recent years, as the internet and easy access to explicit content have sparked concerns about its potential harmful effects on society. Societal attitudes towards obscenity and pornography in India are deeply influenced by a range of cultural, religious, and moral beliefs. Traditional values and social norms play a significant role in shaping public opinion and the ongoing debates surrounding these subjects. These discussions revolve around various aspects, including the impact of pornography on issues such as gender equality, objectification, and consent.

It is important to note that the interpretation and enforcement of obscenity and pornography laws in India have been subject to ongoing scrutiny and criticism. Critics argue for a nuanced approach that considers artistic expression, individual freedoms, and the evolving nature of societal norms. Balancing the preservation of public morality with the protection of fundamental rights presents a constant challenge for the Indian legal system.

In conclusion, a comprehensive comparative examination of obscenity and pornography within Indian jurisprudence reveals the complex interplay of legal provisions, historical perspectives, international views, and societal attitudes. Understanding the similarities and differences between these concepts is crucial for fostering informed discussions on censorship, free speech, and the protection of public morality in India's evolving legal landscape.

IV. JUDICIAL INTERPRETATION

In the realm of obscenity and pornography, the Indian judiciary plays a pivotal role in interpreting and defining the boundaries of acceptable expression. With the absence of a precise legal definition for obscenity in Indian statutes, the courts have relied on a nuanced approach of

¹⁴ *Ranjit D. Udeshi v. State of Maharashtra, 1965 AIR 881, 1965 SCR (1) 65.*

judicial interpretation. Drawing inspiration from international frameworks and landmark judgments, the Indian judiciary has developed a distinctive jurisprudence that considers cultural sensibilities and societal norms. This section delves into the fascinating realm of judicial interpretation, exploring key court cases that have contributed to shaping India's evolving stance on obscenity and pornography. By analyzing the courts' reasoning and decisions, we can gain insights into the legal principles employed and the emerging challenges in navigating this complex terrain.

In the case of *Ranjit D. Udeshi v. State of Maharashtra*,¹⁵ the Supreme Court upheld the appellant's conviction for selling the book "Lady Chatterley's Lover" by D.H. Lawrence. The court ruled that section 292 of the Indian Penal Code, which addresses obscenity, was a reasonable restriction on the freedom of speech and expression. It applied the Hicklin test to determine obscenity, considering whether the material tended to deprave and corrupt susceptible individuals. The court emphasized that obscenity without a significant social purpose or profit did not enjoy constitutional protection. In this case, the court declared "Lady Chatterley's Lover" obscene, affirming the appellant's conviction.

In the case of *Samaresh Bose v. Amal Mitra*,¹⁶ the Supreme Court of India examined whether the Bengali novel "Prajapati" should be considered obscene. The Court rejected the application of a specific test like the Hicklin test and instead emphasized a subjective assessment of obscenity, considering the cultural and moral context of the country. It recognized the distinction between vulgarity and obscenity, stating that explicit content alone does not make a work obscene. The Court highlighted the importance of the readers' perspective and the overall artistic value of the work. This judgment underscored the need for a nuanced and context-specific approach to determining obscenity in literary works.

In the case of *Bobby Art International v. Om Pal Singh Hoon*,¹⁷ the Supreme Court of India addressed the controversy surrounding the film "Bandit Queen," which contained explicit scenes of rape and nudity. The Court emphasized that the depiction of sex should not automatically be deemed obscene, and the focus should be on how the theme is handled by the producer. It recognized the distinction between vulgarity and obscenity and stressed the need to consider the overall context of the film. The Court upheld the decision to grant the film an "A" certification without any deletions or modifications, considering the film's social relevance, message, and artistic expression. This judgment reinforces the importance of freedom of

¹⁵ *Ibid.*

¹⁶ *Samaresh Bose v. Amal Mitra*, 1986 AIR 967, 1985 SCR Supl. (3) 17, 1985.

¹⁷ *Bobby Art International and Ors. v. Om Pal Singh Hoon and Ors.*, (1996) 4 SCC 1.

expression and the need to evaluate obscenity in light of the overall context and message of the work.

In the *Suhas Katti v. Tamil Nadu*¹⁸ case, the accused was convicted for posting obscene comments on the internet under Section 67 of the Information Technology Act, 2000. The accused had posted defamatory messages about the victim after she declined his marriage proposal. The defence claimed that the messages were sent by someone else, but the court found the accused guilty based on evidence including the IP address and eyewitness testimony. The accused was sentenced to two years in prison and a fine. This judgment serves as a warning against using the internet to harass and defame others.

In the case of *Ajay Goswami v. Union of India*,¹⁹ a writ petition was filed before the Supreme Court of India regarding the regulation of sexually explicit materials in newspapers to protect children. The Court dismissed the petition, citing existing regulatory measures and emphasizing the need to assess publications alleged to contain obscene material as a whole. It highlighted that a blanket ban would impede the freedom of the press and concluded that the petitioner failed to establish the necessity of curbing freedom of speech and expression. The case reaffirmed the principle of judging obscenity by considering the work as a whole and not in isolation.

In the case of *Maqbool Fida Husain v. Raj Kumar Pandey*,²⁰ the renowned Indian painter Maqbool Fida Husain faced allegations of obscenity and offending public decency for his painting titled “Bharat Mata” (Mother India), which depicted India as a naked woman. The court recognized the importance of art as a form of expression and the protection of freedom of speech and expression. It considered factors such as contemporary mores, the artist’s perspective, and the overall artistic value of the painting. The court concluded that the painting did not meet the criteria for obscenity under the Indian Penal Code. It also found Husain not guilty under other relevant provisions, emphasizing the importance of artistic freedom and tolerance for diverse views within a democratic society. The court suggested that objections to artistic works should be expressed through avenues other than the criminal justice system.

In *Aveek Sarkar v. State of West Bengal*,²¹ the Supreme Court of India departed from the traditional Hicklin test and embraced the community standards test for determining obscenity. The case arose from the publication of a photograph featuring Boris Becker and Barbara Feltus

¹⁸ *Suhas Katti v. State of Tamil Nadu*, CC. No. 4680 of 2004.

¹⁹ *Ajay Goswami v. Union of India*, (2007) 1 SCC 143, 2006.

²⁰ *Maqbool Fida Husain v. Raj Kumar Pandey*, 2008 CRI. L. J. 4107.

²¹ *Aveek Sarkar v. State of West Bengal*, (2014) 4 SCC 257.

posing nude, which sparked a complaint under Section 292 of the Indian Penal Code. The Court held that obscenity should be assessed based on contemporary community standards rather than the sensibilities of a vulnerable group. Applying the community standards test, the Court found that the photograph did not arouse sexual desire or tend to corrupt viewers. Instead, it conveyed a message of racial equality and love. This judgment signifies a shift in the approach to obscenity and provides guidance on how to assess material in the Indian context, considering its context, message, and impact.

In the case of *Prajwala v. Union of India*,²² the Supreme Court addressed the issue of online child sexual abuse material (CSAM) and its regulation. The NGO Prajwala sought directions from the Court to the government and internet service providers (ISPs) to curb the spread of CSAM. The Court issued orders, including the blocking of child pornography websites, the establishment of a special unit to investigate online child sexual abuse cases, and the installation of software by ISPs to block access to websites containing CSAM. This case is significant as it highlights the responsibility of the government to combat online child sexual abuse and has implications for the regulation of online content and the protection of children from exploitation.

In *Sharat Babu Digumarti v. Government of NCT of Delhi*,²³ the Supreme Court addressed the issue of whether a person can be prosecuted under both the Indian Penal Code (IPC) and the Information Technology Act (IT Act) for the same offense. The appellant, Sharat Babu Digumarti, was charged under Section 292 of the IPC and Section 67 of the IT Act for possessing, selling, and distributing obscene material. The appellant argued that since he had been discharged under Section 67 of the IT Act, he could not be prosecuted under Section 292 of the IPC. The Supreme Court allowed the appeal, quashing the criminal prosecution against the appellant. The court held that the appellant could not be prosecuted under both the IPC and the IT Act for the same offense, and the charges under Section 292 of the IPC were not made out against him. This case clarifies the issue of dual prosecution under the IPC and the IT Act and emphasizes the importance of ensuring that charges are based on the accused's actions rather than their status or position.

In conclusion, the cases discussed in the “Judicial Interpretation” segment highlight the evolving approach of Indian courts towards issues such as obscenity, freedom of speech, and online child sexual abuse. These judgments reflect a nuanced understanding of constitutional rights, societal

²² *Prajwala v. Union of India*, SMW(Crl) No. 3 of 2015.

²³ *Sharat Babu Digumarti v. Govt. of NCT of Delhi*, 2016 SCC OnLine SC 1464.

norms, and the need to strike a balance between individual liberties and the protection of vulnerable groups. By discarding archaic tests, adopting community standards, and recognizing the importance of context and artistic expression, the courts have provided guidance and set important precedents for future cases in these areas. These decisions reflect the dynamic nature of the Indian legal system and its commitment to adapt and address contemporary challenges in the digital age.

V. EMERGING CHALLENGES

The regulation of obscenity and pornography presents complex and multifaceted challenges in contemporary society. As the boundaries of acceptable expression continue to evolve, it is crucial to address these challenges while upholding fundamental rights and societal values. Several key aspects require careful consideration in navigating this terrain.

- ***Balancing Freedom of Speech and Moral Concerns:***

One of the primary challenges lies in striking a delicate balance between freedom of speech and expression, as guaranteed by the constitution, and moral concerns within society. While freedom of expression is a fundamental right, it is not absolute, and reasonable restrictions may be imposed to safeguard public morality, decency, and the prevention of harm. Determining the threshold of acceptability necessitates an understanding of constitutional considerations and the limitations on free speech.

- ***Societal Impact and Public Morality:***

The regulation of obscenity and pornography is deeply influenced by societal perspectives and cultural attitudes. Societies vary in their tolerance levels, religious beliefs, and social norms, shaping their views on what constitutes obscenity and pornography. Acknowledging and respecting these societal perspectives is crucial when formulating regulations and policies. Taking into account public morality and community standards helps ensure that regulations align with the values and moral framework of the society in question.

- ***Gender Perspectives: Empowerment and Objectification:***

Gender perspectives are critical in discussions surrounding obscenity and pornography. One key aspect is the empowerment of individuals, particularly women, in the context of explicit content. Advocates argue that pornography can provide a platform for sexual agency, empowerment, and exploration. Conversely, others contend that pornography contributes to the objectification and exploitation of women. Striking a balance between safeguarding individual rights and protecting against harmful effects is a challenge that requires nuanced and sensitive

consideration.

- ***Technology and Online Content:***

The advent of digital technology and the widespread accessibility of the internet have revolutionized the distribution and consumption of explicit content. Online platforms offer anonymity, global reach, and ease of access, presenting significant challenges for regulators. Preventing the proliferation of harmful content, including child pornography, and ensuring responsible use of technology are paramount concerns. Developing effective mechanisms for content moderation, age verification, and addressing the transnational nature of online content distribution are crucial in this era of digital advancement.

These emerging challenges call for comprehensive and adaptive approaches to regulating obscenity and pornography. It requires a careful examination of constitutional considerations, societal impact, gender perspectives, and the influence of technology. Policymakers, legislators, and stakeholders must collaborate to develop legal frameworks that protect fundamental rights, uphold public morality, and address the evolving nature of obscenity and pornography in a rapidly changing digital landscape.

VI. INTERNATIONAL PERSPECTIVES AND INFLUENCES

International perspectives and influences play a crucial role in shaping the regulation of obscenity and pornography. International conventions such as the United Nations Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC) provide a framework for understanding the balance between freedom of expression and the need to protect public morality and vulnerable groups. These conventions guide national jurisdictions in formulating their legal frameworks. Additionally, assessments like the Hicklin, Roth, and Miller tests have emerged as benchmarks for determining obscenity in many countries. These tests consider factors such as the tendency to deprave and corrupt, appeals to prurient interests, and the presence of social, artistic, or literary value. They provide guidance to courts in interpreting and defining the boundaries of acceptable expression. The influence of international perspectives and tests encourages cross-cultural dialogue and the sharing of best practices, fostering a more comprehensive and nuanced approach to regulating explicit content. However, it is important to contextualize these perspectives within each jurisdiction, considering cultural, social, and legal differences to effectively address the challenges while upholding fundamental rights and societal values.

VII. CONCLUSION

This study examines obscenity and pornography in Indian jurisprudence, highlighting its complexity and evolution. The absence of a precise legal definition necessitates reliance on judicial interpretation, considering cultural sensibilities and artistic value. Balancing freedom of speech and moral concerns presents challenges, including constitutional considerations, societal impact, gender perspectives, and the impact of digital technology. International perspectives and conventions, along with tests like Hicklin, Roth, and Miller, offer guidance. Indian jurisprudence upholds constitutional rights, emphasizing context and artistic expression. Ongoing dialogue, adaptation to the digital age, and comprehensive understanding of the cultural context are crucial. Robust legal frameworks, international cooperation, and a balanced approach can effectively regulate explicit content while respecting individual rights and public morality.
