
UNDERSTANDING OBSCENITY: RESOLVING JURISPRUDENTIAL AMBIGUITIES IN INDIA

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ABSTRACT

Obscenity, in common usage, describes material or conduct that offends the senses or arouses sexual impulses with the object of stirring lust or corrupting thought. Article 19(1)(a) of the Constitution of India guarantees every citizen the right to freedom of speech and expression, yet the Bharatiya Nyaya Sanhita and a cluster of allied statutes curtail that guarantee wherever expression is branded "obscene." The trouble is that "obscene," for all its dictionary certainty, has never acquired a settled legal meaning. Courts have applied the word inconsistently across decades, and that inconsistency has both narrowed the practical reach of Article 19(1)(a) and produced erratic, sometimes indefensible, applications of the penal provisions built around the concept.

This paper interrogates the statutory and judicial architecture of obscenity law in India, tracing its ambiguities and setting them against comparable frameworks in the United Kingdom and the United States. It documents episodes in which adjudicators mistook artistic nudity for indecency or treated unflinching realism as vulgarity, and it argues that Indian obscenity law needs structural reform if it is to hold public morality and creative freedom in genuine balance. In a constitutional democracy that promises equal fundamental rights to every citizen, no one person's assertion of a right should be permitted to swallow another's.

The paper closes by arguing for interpretive clarity and doctrinal fairness, urging reform that protects both the public's interest in decency and the creator's and publisher's interest in expression.

Keywords: Indecency, freedom of expression, obscenity, vulgarity, fundamental rights, punishment, offensiveness, sexuality, statutory provisions, judiciary, prurient tendency, exceptions, constitutional remedies.

Introduction

Freedom of speech and expression is not a privilege conferred by the state; it is a right that attaches to every person by virtue of being human. It is the capacity to voice one's thoughts, feelings, and convictions without external interference, and the Universal Declaration of Human Rights recognised it as such in 1948, describing it as the liberty to hold opinions unmolested and to seek, receive, and impart information and ideas through any medium, regardless of frontiers.

India's Constitution absorbs this right into Article 19(1)(a), promising every citizen the freedom to speak and to be heard, to circulate opinion, and to access information without arbitrary censorship or unreasonable punishment. That promise, however, was never framed as unconditional. Article 19(2) permits the state to impose reasonable restrictions in the interests of public order, decency, and morality, a qualification designed to keep individual liberty compatible with the demands of a functioning civil society.

The International Covenant on Civil and Political Rights reinforces the same guarantee, permitting states to restrict expression only where the restriction is provided by law and necessary for a legitimate aim such as public order or the protection of morals, a formulation that implicitly demands proportionality between the harm targeted and the breadth of the restriction. Indian courts have not always framed their obscenity rulings in these terms, but the underlying logic is the same: a restriction sweeping wider than the mischief it addresses cannot sit comfortably with Article 19(1)(a).

The question of how to regulate obscenity has taken on fresh urgency as technology accelerates the speed and scale at which content travels. The Bharatiya Nyaya Sanhita¹ (BNS), which has now taken the place of the Indian Penal Code² (IPC), supplies the principal statutory scaffolding for obscenity offences in India. Three provisions matter most:

Section 294 criminalises the sale, distribution, or public exhibition of obscene objects, where obscenity is understood as material that is lascivious, that appeals to prurient interest, or that tends to deprave or corrupt those likely to encounter it; the offence is bailable and attracts both

¹ The Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023).

² The Indian Penal Code, 1860 (Act No. 45 of 1860) (repealed).

imprisonment and fine.

Section 295 targets the sale, distribution, or exhibition of obscene material specifically to children, with enhanced punishment prescribed for repeat offenders.

Section 296 penalises obscene acts performed, or obscene songs sung, in public spaces, again through a combination of imprisonment and fine.

Internationally, the United Nations approaches the same problem through the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, an instrument designed to protect the public, young people above all, from unwanted exposure to pornography by controlling how obscene material is displayed, distributed, or circulated without consent.

As a legal category, obscenity is generally taken to mean explicit sexual or excretory content that offends prevailing community standards. The United States Supreme Court has distilled this into a three-part inquiry, under which material is obscene only if it appeals predominantly to prurient interest, portrays sexual conduct in a patently offensive way, and lacks serious literary, artistic, political, or scientific value. The provisions of the BNS pursue a comparable equilibrium: they attempt to protect collective decency while leaving room for the constitutional guarantee of expression, on the understanding that the freedom to originate and receive ideas across borders must still operate within limits that serve public morality, order, and decency.

What Counts as Obscene?³

Indian law treats obscenity as a broad category, encompassing any material, gesture, or act that principally appeals to prurient or voyeuristic impulse, or that portrays sexual conduct in a manner that is explicit and patently offensive. It reaches indecency conveyed through words, conduct, gesture, or image alike. In popular usage the term collapses into "pornography," and the two words are frequently treated as synonyms, even though pornography derives etymologically from the Greek *porne* (prostitute) and *graphein* (to write or depict), a narrower origin than the modern legal usage suggests.

³ David S. Allen & Robert Jensen, *Freeing the First Amendment: Critical Perspectives on Freedom of Expression* (New York University Press).

When Indian courts are asked whether particular content is obscene, they frequently draw on the logic of the Miller test, a three-part American standard discussed at length later in this paper. Within Indian jurisprudence, obscenity is understood as anything that affronts modesty, decency, or morality, or that is lewd, repugnant, or offensive by the standards of contemporary society. Decency and morality sit at the centre of this analysis. Decency is not confined to refraining from coarse language or crude gesture; it extends to conforming with the standards of propriety a community expects in both public and private conduct. The purpose of this framing is to preserve social decorum in line with prevailing community expectations.

A further complication lies in identifying whose reaction the law is supposed to measure. Early Indian rulings borrowed the Hicklin habit of asking whether material could corrupt the most susceptible reader who might conceivably encounter it, a test so elastic that almost anything could fail it, since some hypothetical vulnerable reader can always be imagined. Later doctrine narrowed the inquiry to the reaction of an average person of ordinary prudence, and narrower still to a notional "target audience" test that asks who the material was realistically made for and likely to reach, rather than who might stumble upon it by chance. This shift matters enormously in practice: a medical textbook, an art-house film, and a mass-market pamphlet are not written for the same audience, and treating them as interchangeable under a single undifferentiated standard produces exactly the kind of erratic outcomes this paper documents.

Offences such as indecent exposure and indecent publication are codified in the BNS and recognised at common law, and although vulgarity and indecency are sometimes used loosely as synonyms for obscenity, Indian law is careful to keep the three concepts distinct.

1. Vulgarity Compared with Obscenity

Vulgarity denotes language, gesture, or conduct that produces disgust or revulsion, without necessarily corroding a person's moral sensibility. Obscenity is graver: its defining feature is a tendency to deprave or corrupt those susceptible to immoral suggestion. Vulgar material may therefore be offensive without ever crossing the legal threshold into obscenity.

A useful illustration is the Bombay High Court's intervention to prevent the arrest of members of the comedy collective AIB, where the Court held that material that was undeniably vulgar had not thereby become obscene. The ruling captures the fine-grained analysis Indian courts apply when sorting coarse language from unlawful content. Merriam-Webster's definitions

track the same distinction: vulgarity is that which is "offensive in language" or "lewdly indecent," while obscenity is that which is "abhorrent to morality," "designed to incite lust or depravity," or "disgusting to the senses."

2. Indecency Compared with Obscenity

Indecency and obscenity both breach community norms, but they differ in degree. Indecency is the lesser wrong; obscenity the graver one. Every obscene item is necessarily indecent, but not every indecent item rises to the level of obscenity.

Indecency covers conduct or content that offends community standards without being overtly lewd or morally corrosive, whereas obscenity involves content that is explicit, lewd, and morally depraving. Indian law is deliberate about separating vulgarity, indecency, and obscenity, since each carries its own legal consequence, with obscenity, as the most serious of the three, drawing the strictest penalties and the closest judicial scrutiny.

Maintaining this three-way distinction matters because it protects the balance between the constitutional promise of free expression and the community's interest in decency. By marking out where acceptable conduct ends, Indian law tries to keep free speech intact while still guarding against genuine harm to public sensibility.

Obscenity and the Media in India: Legal Ambiguity in a Shifting Landscape

As one of the world's largest democracies, India has a long and changing relationship with mass communication. That relationship stretches back to the late eighteenth century, when print media, early cinema, and radio broadcasting first took root in the 1780s. Since independence, Indian media has largely kept its autonomy, with the notable exception of the 1975 Emergency, when press freedoms were sharply curtailed. Yet the substance of what media organisations publish has repeatedly drawn legal and public scrutiny, and a recurring flashpoint has been content perceived to defy accepted social norms, content routinely swept under the contested label of "obscenity."

Writers, filmmakers, performers, and visual artists have all, at one time or another, faced prosecution for allegedly disseminating obscene or offensive material. Those who favour tighter controls argue that shielding the public from such content protects shared values. But the legal apparatus governing obscenity in India is riddled with interpretive gaps, and those

gaps translate into uneven enforcement and judicial determinations that vary from bench to bench.

The explosive growth of media over the past several decades has made the case for a coherent, predictable standard more urgent still. Television, digital platforms, and the internet have opened new channels of artistic expression alongside the older forms (literature, visual art, cinema), and this proliferation demands that obscenity law be recalibrated for contemporary conditions. The task facing the legal system is to strike an equitable balance between the constitutional right to expression and the state's interest in upholding social values, a balance capable of protecting cultural and artistic diversity while resisting the temptation toward arbitrary or excessive enforcement. Only a legal approach built on clarity, consistency, and fairness can sustain both democratic principle and cultural pluralism.

The stakes of getting this balance wrong are not merely doctrinal. Every prosecution, ban, or takedown order directed at a film, novel, or advertisement carries a real economic and creative cost: producers delay releases, publishers withdraw print runs, and platforms pre-emptively remove content that might never have been found obscene had it been tested in court. This anticipatory self-censorship is arguably more corrosive than any single adverse ruling, because it operates invisibly, shaping what never gets made or published in the first place rather than what gets banned after the fact. A predictable legal standard would not eliminate this caution, but it would let creators calibrate risk with more confidence.

Legal Framework Governing Obscenity and Indecent Representation in India

The BNS contains several provisions directed at obscenity, evidence of the legislature's intent to protect public morality and decency. The core provisions are:

Section 294, which criminalises the sale, distribution, or public exhibition of obscene objects (classified as obscene where they are lascivious, appeal to prurient interest, or tend to deprave or corrupt), punishable by imprisonment and fine, with the offence categorised as bailable.

Section 295, which criminalises the sale, distribution, or exhibition of obscene objects to children, with more severe penalties reserved for repeat offenders.

Section 296, which penalises obscene acts or the singing of obscene songs in public spaces, again through imprisonment and fine.

These provisions, however useful, do not squarely address the indecent portrayal of women, a persistent problem that entrenches derogatory stereotypes and reduces women to objects of sexual gratification, feeding broader patterns of exploitation and cultural harm. The Indecent Representation of Women (Prohibition) Act, 1986 was enacted to close this gap: it criminalises improper, scandalous, or obscene depictions of women across every medium, and Section 2(c) of the Act defines "indecent representation of women" while attaching penalties to violations in publications, writings, advertisements, and artistic works.

The Cable Television Networks (Regulation) Act, 1995,⁴ regulates television broadcasting so as to keep off-air content that outrages decency or offends prevailing social standards. Rule 6(1)(o) of the Cable Television Networks Rules, 1994, read alongside Section 5 of the 1995 Act, bars the telecast of programming unfit for unrestricted public viewing, a category defined in Section 5-A of the Act

The Cinematograph Act, 1952,⁵ governs film certification. Section 4 empowers the Central Board of Film Certification to examine films for conformity with social standards, while Section 5-A deals with certification for public exhibition, machinery intended to preserve decorum and morality in cinematic content.

The Young Persons (Harmful Publications) Act, 1956, protects minors specifically, barring publications likely to corrupt young minds or incite violence or cruelty, and it backs this prohibition with meaningful penalties, including imprisonment.

The Information Technology Act, 2000,⁶ extends the framework into digital space, criminalising the publication or transmission of lascivious or lewd electronic content likely to degrade or corrupt those exposed to it, with stringent penalties attached. In a recent illustration of this authority, the Ministry of Information and Broadcasting banned eighteen OTT platforms for streaming explicit or vulgar content, citing storylines involving inappropriate relationships, including teacher-student dynamics and incestuous themes.

In advertising, the Advertising Standards Council of India, established in 1985, enforces a self-

4 The Cable Television Networks (Regulation) Act, 1995,
[https://www.indiacode.nic.in/bitstream/123456789/15345/1/the_cable_television_networks_\(regulation\).pdf](https://www.indiacode.nic.in/bitstream/123456789/15345/1/the_cable_television_networks_(regulation).pdf).

5 The Cinematograph Act, 1952, https://www.cbfcindia.gov.in/cbfcAdmin/assets/pdf/cine_act1952.pdf.

6 The Information Technology Act, 2000,
https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf.

regulatory code requiring that advertisements avoid indecent, vulgar, or repulsive content and refrain from causing widespread offence, a mechanism meant to encourage responsible advertising while preserving public confidence.

Taken together, these statutes show a legal system stretched across many instruments, each attempting to reconcile freedom of expression with community standards. What the current regime lacks is coherence: clearer guidance, harmonised enforcement, and a more sophisticated appreciation of artistic freedom are all needed if the law is to curb genuine harm without smothering a progressive, inclusive media culture.

Part of the incoherence stems from the sheer number of statutes doing overlapping work. A single web series episode that a viewer finds objectionable could attract scrutiny under the BNS, the Information Technology Act, the Cable Television Networks Act, and the 2021 Intermediary Guidelines, each administered by a different authority with its own definition and penalty structure. This layering was never designed as a coordinated scheme; it accumulated statute by statute as new technologies appeared. Consolidating these overlapping tests, or requiring that they defer to a single interpretive standard, would go some distance toward the predictability this paper argues for.

The Definition and Challenges of Obscenity in India: Inconsistency and Judicial Struggle

Indian courts have spent decades trying to pin down what "obscenity" means, attempting to reconcile the Article 19(1)(a) guarantee of expression with the moral instincts of the wider community. The result, after all that effort, remains contested: rulings are frequently inconsistent, enforcement often arbitrary, and the underlying tension between individual liberty and collective values has never been fully resolved. Judicial findings on obscenity have tended to be subjective, generating a scattered body of case law shaped as much by the cultural mood of the moment as by settled principle.

Consider the 2007 controversy surrounding an advertisement for Amul Macho innerwear, in which actress Sana Khan was shown suggestively washing a man's undergarments; the advertisement provoked public outrage and was pulled for offending conservative sensibility. A comparable episode occurred in 1995, when an advertisement for Tuff Shoes featuring models Milind Soman and Madhu Sapre posed nude with a python was deemed obscene and withdrawn. Yet other advertisements with equally suggestive content, such as the Zatak talcum

powder commercial, in which a woman appears aroused while being measured by a tailor, escaped censure altogether, a discrepancy that exposes how unevenly the standard has been applied.

History supplies an even sharper illustration in the case of Saadat Hasan Manto, the celebrated Urdu writer repeatedly hauled before courts for the frankness of his prose. In one proceeding, his description of a woman's chest using the word "bosom" was treated by certain witnesses as indecent. Manto ultimately succeeded in defending his work as an honest reflection of social reality, but the episode remains a vivid reminder of how culturally contingent, and at times arbitrary, obscenity trials in India can be.

Part of the difficulty traces back to the statutory language itself. Indian obscenity law, though nominally anchored in constitutional principle, leans on broad and imprecisely drawn notions of decency and morality under Article 19(2). That imprecision opens the door to expansive restriction, and expansive restriction too easily becomes judicial overreach directed at creative expression. Compounding the problem, an overburdened judiciary and chronic delay discourage litigants from pursuing remedies at all, leaving considerable room for the law to be misused by those who invoke it.

Rather than actively protecting expression, the state frequently opts to suppress whatever creative work triggers public controversy. Books, films, and advertisements are banned in the name of public order, communal sensitivity, or the avoidance of unrest, and while such measures are framed as protective, they fall disproportionately on minority viewpoints and normalise censorship, undermining the very constitutional guarantee they claim to serve.

The judiciary remains the principal interpreter of obscenity law, yet its own record is uneven, illustrating just how hard it is to reconcile competing social values with individual liberty. Without settled doctrine, and with courts inclined to defer to popular sentiment, legitimate expression is too often stifled. As Indian society continues to change, the case for a more consistent, rights-conscious approach to obscenity adjudication becomes correspondingly stronger, so that expressive freedom is not routinely sacrificed to moral policing or an undifferentiated appeal to public order.

There is also a structural asymmetry worth noting: the parties best placed to challenge an obscenity charge, independent publishers, small production houses, individual artists, are often

least able to absorb the cost and delay of prolonged litigation, while well-resourced institutions can weather a ban far more comfortably. The result is a quiet selection bias in which legal uncertainty falls hardest on precisely the dissenting or economically marginal voices Article 19(1)(a) was designed to protect.

Judicial Precedents on Obscenity in India: Evolving Standards and Discretion

The Supreme Court has returned to the question of obscenity again and again, and its central insight has been consistent even where its outcomes have not: no single, fixed formula can capture obscenity, because each case must be judged on its own facts. That evolving jurisprudence mirrors the underlying difficulty of holding public morality, expressive freedom, and shifting social norms in balance across time and across a genuinely diverse country.

In *Ranjit D. Udeshi v. State of Maharashtra*,⁷ the Supreme Court applied the Hicklin test, borrowed from the English decision in *R v. Hicklin* (1868), to determine whether *Lady Chatterley's Lover* was obscene. The Court upheld the conviction of a bookseller under Section 292 of the erstwhile Indian Penal Code, rejecting his defence that he had not known the book's contents. It found the Hicklin approach, which asks whether material tends to corrupt and deprave those open to immoral influence, an appropriate measure, reinforcing the legislature's interest in controlling literature capable of harmful influence.

In *K.A. Abbas v. Union of India*, the Court considered a film portraying the lives of sex workers in Bombay. Drawing on American obscenity jurisprudence, it made clear that a mere reference to sexual conduct does not automatically render a work obscene, and it cautioned against measuring obscenity by the sensibilities of society's most easily offended members, an early recognition of the line separating legitimate artistic expression from genuinely offensive material.

In *Samaresh Bose v. Amal Mitra*, the Court set aside the conviction of a Bengali novelist prosecuted under Section 292 IPC for a work found obscene at trial. It adopted a more layered method, holding that judges must weigh the author's intent and the work's literary or artistic merit before condemning it, and that the likely impact on different categories of readers deserves consideration, introducing a genuinely contextual framework for the first time.

⁷ *Ranjit D. Udeshi v. State of Maharashtra*, AIR 1965 SC 881, <https://indiankanoon.org/doc/1623275/>.

In *Bobby Art International v. Om Pal Singh Hoon*,⁸ the Delhi High Court had initially blocked release of *Bandit Queen*, a film depicting the brutal life of Phoolan Devi, who suffered extensive social and sexual abuse. The Supreme Court reversed that decision and granted the film an 'A' certificate, holding that its depiction of nudity and sexual violence was necessary to convey the protagonist's suffering, and that the intent behind the imagery was to condemn abuse, not to arouse prurient interest.

In *Maqbool Fida Husain v. Raj Kumar Pandey*,⁹ the Court held that nudity by itself does not amount to obscenity, and that a work's artistic merit must be assessed within its broader cultural setting. It quashed the charges brought under Section 292 IPC, affirming that art should not be reduced to prurient material and that its cultural significance deserves primary weight.

In *Ajay Goswami v. Union of India*, the Court stressed the need to shield minors from sexually exploitative content whether or not that content meets the formal legal definition of obscenity, and it reaffirmed that the relevant standard is the reaction of an average person of ordinary prudence, not a hypersensitive or excessively prudish one, a judgment that tried to hold protection of minors and protection of expression in the same frame.

A genuine turning point came in *Aveek Sarkar v. State of West Bengal*,¹⁰ where the Supreme Court abandoned the Hicklin test in favour of a Community Standards test. It held that a semi-nude photograph could not be treated as obscene unless it was likely to arouse lascivious thought or corrupt the mind of the average viewer, a more flexible, context-sensitive approach that requires material to be assessed as a whole rather than through isolated fragments.

More recent developments reflect the tension between artistic freedom and the demand for regulation in digital spaces. The Ministry of Information and Broadcasting has issued guidelines for OTT content, centred on age-appropriate classification and explicit-content warnings. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules,¹¹ 2021, require streaming platforms to self-classify programming under ratings such as U, U/A, and 18+, and to maintain a grievance-redressal mechanism for viewer

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

9 *Maqbool Fida Husain v. Raj Kumar Pandey*, decided 8 May 2008.

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

11 Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (updated 6 April 2023), Ministry of Electronics and Information Technology.

complaints.

In *Shyam Narayan Chouksey v. Union of India*¹² (2021), the Delhi High Court called for "some level of regulation" of OTT content while warning against "excessive regulation" that would chill free speech, acknowledging the government's legitimate interest in decency without licensing intrusion into creative freedom.

In *The Union of India v. K.A. Abbas* (1970), the Supreme Court affirmed the government's authority to regulate films on obscenity grounds, laying groundwork later extended to digital platforms, while stressing that this authority must operate as a reasonable restriction on, rather than a negation of, the fundamental right to expression.

This evolving case law shows a system straining toward balance, particularly as digital media multiplies the points at which expression, obscenity regulation, and public morality intersect. *Apoorva Arora & Anr. v. State (Govt. of NCT of Delhi)*¹³ sharpened the interpretation of "obscene material" under Section 67 of the Information Technology Act, 2000, aligning it with Section 292 IPC and holding that vulgar language on its own does not amount to obscenity unless it is likely to arouse lustful thought or corrupt the average adult mind, a holistic test that weighs contemporary social standards against artistic, literary, and social value.

In *Peggy Fen v. Central Board of Film Certification*¹⁴ (2022), the Court examined the Malayalam film *Churuli* and rejected a petition alleging that its language was obscene and offensive to public morality. It underscored the importance of artistic freedom under Article 19(1)(a) and insisted that films be assessed in their entirety rather than through isolated dialogue, drawing on precedents such as *State of Bihar v. Shailabala Devi* and *K.A. Abbas v. Union of India* to justify a contextual, holistic method of evaluation. Because the police found no statutory violation, the petition, which the Court considered vague and unsustainable, was dismissed.

Read together, this sequence of cases traces a single doctrinal arc. Ranjit Udeshi imported a Victorian test built around the most vulnerable imaginable reader; Abbas and Samresh Bose began carving out room for artistic intent and audience context; *Bandit Queen* and *Husain*

¹² *Shyam Narayan Chouksey v. Union of India*, decided 9 January 2018.

¹³ *Apoorva Arora v. State (Govt. of NCT of Delhi)*, decided 19 March 2024.

¹⁴ *Peggy Fen v. Central Board of Film Certification*, decided 10 February 2022.

confirmed that nudity and violence, deployed for a legitimate expressive purpose, are not obscenity merely because they are graphic; and Aveek Sarkar finally replaced Hicklin outright with a standard keyed to the average viewer and the community's contemporary tolerance. Apoorva Arora and Peggy Fen show that arc extending into digital and cinematic content decided within the last few years, suggesting the courts are, however unevenly, moving toward the audience-and-context-sensitive model this paper favours. What the arc has not yet produced is a stable, citable formula that a lower court or a platform's compliance team can apply without waiting for Supreme Court guidance case by case, and this absence of a workable rule, more than any disagreement about values, keeps generating inconsistent results at the point of first contact with the law.

Comparative Analysis with International Jurisprudence

India's approach to obscenity bears a strong family resemblance to the American model. In *Miller v. California*, the United States Supreme Court articulated the Miller¹⁵ test, which asks whether a work appeals to prurient interest, depicts sexual conduct in a patently offensive way, and lacks serious literary, artistic, political, or scientific value. Indian courts have never formally adopted a single test of this kind, but their evolving reasoning clearly draws on these same international principles, adapted to India's distinctive social and legal context.

The United Kingdom offers a further point of comparison. The Obscene Publications Act 1857 laid the groundwork for the Hicklin test on English soil. Following the case of *Graham Coutts*, whose consumption of violent pornography preceded his murder of Jane Longhurst, Parliament passed the Criminal Justice and Immigration Act 2008, shifting emphasis away from producers of obscene material and toward individuals who possess "extreme pornography." That statute introduced a sharper definition of extreme pornographic material, focused on content designed to provoke sexual arousal, narrowing and refining the criteria for obscenity liability in the United Kingdom.

What both comparators share, and what Indian law has been slower to adopt, is a willingness to legislate the test itself rather than leave it to accrete through case law. The Miller test survives in the United States because the Supreme Court reduced decades of scattered rulings into three citable prongs a trial court can apply directly. The 2008 UK reform likewise responded to a

15 Erwin Chemerinsky, *The First Amendment* (3rd ed., Aspen Publishers).

documented harm with a precise statutory definition rather than an endlessly refined nineteenth-century test. India's doctrine has moved the same way, from Hicklin toward Community Standards, but through case law alone, without legislative codification. That gap between doctrine and statutory text is itself a source of uncertainty, since the BNS still speaks in the older vocabulary of "lascivious" and "prurient interest" without the audience-sensitive test the Supreme Court has since developed.

Towards Reform: A Way Forward

Three changes would do more than any single judgment to stabilise this area of law. First, the definition of obscenity in the BNS itself could be amended to codify the Community Standards test, so that the operative statutory language matches the test courts already apply, rather than leaving practitioners to infer the current doctrine from a chain of judgments that laypersons, and indeed many first-instance judges, are unlikely to have fully absorbed. Second, a specialised bench or standing expert panel, drawing on literary, cinematic, and legal expertise and comparable in spirit to the certification boards that already exist for film, could be empowered to give early, non-binding opinions on contested content before criminal proceedings are initiated, reducing the number of prosecutions that are ultimately abandoned or overturned only after years of litigation. Third, the overlapping statutory regimes described earlier could be harmonised so that a single piece of content is not simultaneously exposed to inconsistent standards under the BNS, the Information Technology Act, and sector-specific rules for cable and film; a unified definition, cross-referenced across statutes, would reduce the forum-shopping and unpredictability that currently attend obscenity complaints.

None of these proposals would resolve every hard case, since reasonable people will keep disagreeing about where expression ends and harm begins. But a system in which each generation of courts rebuilds the standard from first principles imposes costs a clearer statutory foundation would reduce.

Conclusion

Indian obscenity jurisprudence remains, after decades of litigation, without a single settled standard. The judiciary has softened its early reliance on the rigid Hicklin test and replaced it with more contextual frameworks, yet the underlying statutory language stays imprecise. That imprecision leaves judges operating within loosely bounded discretion that risks drifting

toward personal bias or political pressure, making it harder to hold artistic freedom and social value in the balance the Constitution intends.

As Indian courts continue to work through the meaning of obscenity, the case for clearer, more consistent legal standards only grows stronger. Such clarity would make judicial outcomes more predictable while protecting both individual rights and public order. Continued reliance on an outdated test like *Hicklin* makes it harder to keep legal norms aligned with a changing society. Standards closer to the *Miller* test or the Community Standards test, refined for the Indian context, could offer a more coherent, adaptable path forward for regulating obscene material in India.