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A STUDY ON MALE SEXUAL IMAGERY IN ADVERTISING: EFFECTS, PERSPECTIVE & SOCIAL IMPLICATIONS

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1. Abstract

This research paper examines the prominent but underexplored phenomenon of male sexual imagery in advertising, focusing on its multifaceted effects, societal perspectives, and wide-ranging social implications. The study is guided by three principal objectives - To evaluate how consumer attitudes and behaviors are affected by images of men being sexually explicit in advertising. This objective is to clarify how the representation of male sexuality affects consumer perceptions, preferences, and buying decisions through empirical research and content analysis.

To look at how different stakeholders, such as consumers, advertisers, and advocacy groups, feel about the usage of male sexual images in advertising. To learn more about these stakeholders' motivations, worries, and ethical considerations, qualitative research techniques will be used. To examine how male sexual imagery in advertising affects society as a whole, with a focus on how it affects how men and women interact with one another today.

This minor research project will investigate how such imagery interacts with changing cultural norms and adds to the debates around sexual objectification, gender equality, and body image. By focusing on these goals, this research article contributes to a thorough understanding of the intricate interactions between male sexual imagery and advertising and provides insights into its effects on both people and society as a whole. The results are intended to guide advertising practices, spark debate, and promote a sophisticated understanding of the impact and obligations related to the use of male sexual images in the field of advertising.



Keywords:

Male Sexual Imagery, Advertising Effects, Consumer Attitudes, Social Implications, Empirical Research, Stakeholder Perspectives, Gender Equality, Sexual Objectification, Body Image, Advertising Practices

2. Introduction

Law of Obscenity and Freedom of Expression: Where to Draw the Line

“Freedom of expression is applicable not only to information or ideas that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock, or disturb the State or any sector of the population.” — *Handyside v. United Kingdom*.

Colonial laws concerning freedom of speech, including obscenity and sedition, have their origins in the English Law of Libel. However, their implementation differs significantly.

Sedition under the Penal Code was framed and implemented differently from its English counterpart, while obscenity was modelled on the same principles as in Britain. Before the 1857 Act, there was no law in India dealing with obscenity. However, in 1856, the Governor General consented to the Act to Prevent the Sale or Exposure of Obscene Books and Pictures, criminalizing the distribution, sale, offer for sale, or wilful exhibition of books, papers, prints, or representations in public places.

The Penal Code by Lord Macaulay did not include a provision for obscenity, except for penalizing women's modesty through sound or gesture. Section 292(1) of the Penal Code penalizes the sale, hire, distribution, exhibition, or circulation of any matter as mentioned under Section 292(1) of the Code. The Hicklin test remained applicable in colonial and independent India, with some High Courts adopting the opinion of Cockburn, C.J., which states obscenity must be judged from the standpoint of immature persons or those prone to immoral influences.

In 2014, the Supreme Court abandoned the Hicklin test in *Aveek Sarkar v. State of W.B.* to determine if a semi-nude photograph of a German tennis player with his dark-skinned fiancé was obscene. The Anglo-American approach to obscenity laws is public morality-based, while the Canadian South African approach is harm-based. The Indian Supreme Court should adopt the Canadian South African approach, which considers harm in the context of protecting constitutional values like dignity and equality.

2.1 How Male sexual imagery in advertising is a common but understudied phenomenon examined in this research article.

Male sexual imagery in advertising is a common but understudied phenomenon examined in this research article. Its many-faceted consequences, cultural viewpoints, and extensive social ramifications are highlighted. The three main goals of the study serve as its direction.

To investigate how depictions of males engaging in sexually explicit behavior in advertising affect consumer attitudes and behaviors.



By using content analysis and empirical study, this purpose seeks to provide light on how the portrayal of male sexuality impacts customer perceptions, preferences, and purchasing behavior—examining the opinions of many parties, including consumers, advertisers, and advocacy organizations, over the use of male sexual imagery in advertising.

Qualitative research methods will be employed to uncover more information about these stakeholders' motives, concerns, and ethical concerns.

To investigate the effects of male sexual imagery in advertising on society, with a particular emphasis on how it influences how men and women interact today.

This small-scale study will look at how such imagery affects shifting cultural norms and contributes to discussions on gender equality, sexual objectification, and body image.

By concentrating on these objectives, this study paper helps to fully comprehend the complex relationships between male sexual imagery and advertising and offers insights into how it affects both individuals and society as a whole. The findings are meant to inform advertising practices, provoke discussion, and advance a comprehensive awareness of the implications and responsibilities associated with the use of male sexual imagery in the field of advertising.

Article 15 of the Indian Constitution, which supports consent in sexual autonomy and physical integrity, reflects the necessity for a gender-neutral legal system. Studies contradict the idea that males experience rape differently than women. Male abuse has been recognized and accepted by radical feminist activists like Brownmiller.

The essay also looks into how a miscarriage of justice may occur in courtrooms when defense attorneys lack knowledge of how the body reacts to sexual behaviors. The court system and the general public need to be properly informed about the reality of how sexual stimulation can occur without conscious permission.

The answer is to reframe present laws in sexually neutral language, asserting that sex is no longer the basis for determining legal wrongs, in order to recognize sexual assault for all genders.

Being that the law is the result of society's collective desire, gender sensitization is equally crucial. Diversity and inclusiveness in thinking and practice are essential for the development of an inclusive society.

In this research paper, we will try to find the cause of all the obligations faced due to one's sexuality.

In conclusion, this research paper covers a complex and current subject that crosses law, gender studies, and media analysis, providing findings that have both theoretical and practical significance for our understanding of society's views towards sexuality and gender portrayal.

3. Research objectives

- To explore if male sexual imagery comes under the purview of obscenity laws in India
- To find out if the depiction of male body or images reinforces the gender stereotypes.
- To assess does obscenity law apply to male sexual imagery because women are measured.

4. Significance and relevance



1. Exploring the Legality - Examining whether male sexual imagery in advertising is subject to India's obscenity laws is an important component of the research. This is important because obscenity laws frequently play a key role in regulating the information broadcast in public areas. Understanding the legal ramifications of depictions of masculine sex aids in determining the parameters of free speech and the scope to which regulatory measures may be used.
2. Gender Stereotypes and Representation - The second goal looks at how gender stereotypes are reinforced or contributed to by how the male physique is portrayed in advertising. This is pertinent given the expectations and conceptions of masculinity in society. It is possible to determine if stereotyped standards are reinforced or whether conventional ideas of masculinity are challenged and redefined by looking at how male sexual imagery is depicted in ads. Broader repercussions include advancing gender equality and rejecting constrictive gender norms.
3. Policy Implications - In the third aim, a policy perspective is introduced by debating whether obscenity laws, which are often used to restrict female representation, should also be expanded to control male sexual images. This draws attention to possible gender bias in legal systems and encourages a critical analysis of how legislation may unintentionally reinforce or combat gender inequality. It calls into question the justice and uniformity of the laws governing sexually explicit advertising.

a. Limitations

Qualitative research on male sexual imagery in advertising had limitations, including subjectivity, small sample (cases on the subject) sizes, and the dynamic nature of societal attitudes towards sexuality. The dynamic nature of these attitudes makes it difficult to establish definitive causal relationships. Additionally, qualitative research lacked statistical power to quantify the prevalence and magnitude of effects. The context-specific nature of qualitative data also hinders broad application and in-depth analysis.

- Subjectivity: Qualitative research, influenced by subjective interpretations by researchers and participants, can introduce bias, especially when sensitive topics like sexual imagery are explored due to personal attitudes and cultural backgrounds.
- Difficulty in Quantification: Qualitative research offers detailed insights into participants' experiences and perspectives, but lacks quantitative precision for measuring the prevalence or frequency of certain effects or perspectives.
- In-depth Exploration vs. Breadth: While qualitative research allows for in-depth exploration of participants' experiences, it may sacrifice breadth in its focus.
- Dependency on Participants' Willingness to Share: Qualitative research heavily relies on participants' willingness to share their thoughts and experiences.
- Ethical Considerations: Conducting research on sexual imagery involves ethical considerations related to participant well-being and privacy.
- The in-depth analysis of individual perspectives and the thorough exploration of the social implications of male sexual imagery in advertising may require more resources than a broader quantitative study.
- Challenges in Validation: Unlike quantitative research, which often employs statistical methods for validation, qualitative research faces challenges in terms of ensuring the validity and reliability of findings.



b. Research Gap

The study on male sexual images in advertising explores the fascinating confluence of gender, law, and media. However, the little examination of consumer viewpoints points to a possible research void. Understanding how people react to and understand these pictures might help the study by revealing the subtle ways that these representations affect society's views and attitudes. Beyond legal and legislative reasons, examining the subjective perceptions and responses of various audiences may add a vital dimension to the research and ensure a more thorough knowledge of the wider societal ramifications of male sexual imagery in advertising. Governments unintentionally contribute to inequality by failing to regulate explicit content that features men equally, making a reevaluation of legal frameworks for gender-inclusive criteria necessary.

Although there is a larger amount of research on Women's portrayal in advertising and the reaction of audiences to the same finding's studies on Men sexual imagery in advertising are extremely difficult.

5. Methodology

The methodology for the paper "A study on male sexual imagery in advertising: effects, perspective & social implications." involves a qualitative approach to investigate the portrayal of male sexual images in advertisements, if it comes under the purview of obscenity laws and if it's measured in the same manner like that of women.

The method leads to two types of analysis, Content Analysis (Case Studies) and Media Analysis.

For Content Analysis numerous data have been taken from different sites and sources, and for Media Analysis data have been collected from different online news portals.

6. Analysis and findings

- Sexual offences are patriarchal, often causing men to fear losing their manhood.
- Physiological factors, such as engorged penis or vaginal lubrication, are sometimes used as evidence of consent.
- Some radical feminists argue that gender-neutral laws would harm the women's community and the feminist movement.
- Sexual offences are women-focused in India, with men often committing them.
- The Indian Penal Code of 1860 identifies women as victims, and men as offenders.
- Most sexual imagery cases in the advertising industry relate to women.
- Men's offensive behavior in the workplace is becoming more publicized.
- Media reports indicate that the law is now considering every detail and every happening.
- When looked upon several cases in advertisement industry, it was found that most of the sexual imagery cases were related to that of women in history.
- Whereas now people have started talking out the offensive behavior of men under the curtain of profession (Ranveer Singh's Case for example) and work are getting out of



hand and in the name of democracy and freedom they ought to do anything and tend to escape law.

- Reports from the media have showed that now the law is considering every little detail and all little happenings are taken under consideration for hearing.

7. Theoretical framework

Obscenity laws in India-

IPC Sections - IPC stands for the Indian Penal Code, and it is the primary criminal code of India. The IPC is a comprehensive legal code that defines various crimes, prescribes punishments for them, and establishes the procedures for the investigation and prosecution of criminal offenses. Here is an overview of the IPC section, its history, and its importance in Indian law:

History: Thomas Babington Macaulay, a British colonial administrator, wrote the Indian Penal Code, which was adopted in 1860. In the midst of British colonial administration over India, it went into effect on January 1st, 1862. The IPC was based on English common law ideas but modified for India's sociocultural setting. It was an effort to codify and combine the various criminal laws that were in place throughout the nation.

Structure & Content: The 23 chapters that make up the IPC each deal with a certain category of crimes, such as offenses against people, property, public order, and the state. The IPC has sections that outline specific offenses, list their components, and outline the penalties associated with each offense. The IPC covers a broad spectrum of criminal offenses, from infractions as small as theft and fraud to major ones like treason and murder.

Importance in Indian law: The IPC serves as the foundation of Indian criminal law. It acts as a foundation for the legal investigation, prosecution, and punishment of illegal activity. It guarantees consistency in how criminal offenses are handled across the nation, making the legal system more dependable and reliable. The IPC works to safeguard people's rights and interests by defining illegal behavior clearly and outlining the consequences of breaking the law. In addition, it is essential for maintaining the rule of law and safeguarding public safety because it deters and punishes illegal activity. The IPC has been updated over time to take into account societal shifts and legal advancements. In order to address new problems, increase legal safeguards, and adjust to shifting social standards, changes have been made.

India - The obscenity law in India is identical to the one the British government drafted. To date, a number of authors and poets have been accused of obscenity; the law has not yet been changed. The well-known trials concern the 1960s arrests and prosecutions of Hungryalists.

- Section 293A, to be inserted in the Indian Penal Code

(1) The provisions of sections 292 and 293 shall apply to a person who publicly displays any indecent matter, as they use to a person who commits any offense under those sections concerning obscene topics falling within those sections.



(2) For the purposes of this section, the matter is indecent if it is offensive to reasonable persons from the point of view of decency.

I. Sexual content of "indecent".

I. "Indecent" and "obscene" in Post Office Act.

I. Sexual indecency whether necessary.

I. Indecent displays.

I. Indecent advertisements and displays:

I. possible amendment.

I. Working paper.

I. Comments received on the working paper.

I. Comments favoring the amendment.

- Section 292(2)(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 whatsoever.
- 293. Sale, etc., of obscene objects to young person - Whoever sells, lets to hire, distributes, exhibits, or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished [on first conviction with imprisonment of either description for a term which may extend to three 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 seven years, and also with fine which may extend to five thousand rupees].
- State Amendment - Orissa
Amendment of section 293. --In section 293 of the said Code--
 1. for the words "any such obscene object as is referred to in the last preceding section", the words, figures, and letter " any such obscene object as is referred to in section 292, or any such newspaper, periodical, circular, picture or other printed or written document as is referred to in section 292-A" shall be substituted;
 2. for the words "which may extend to six months", the words "which may extend to three years" shall be substituted;
 3. in the marginal note, after the words "obscene objects" the words "and grossly indecent or scurrilous matter or matter intended for blackmail", shall be inserted.

7.1 IT ACT –

The Information Technology Act (ITA), often referred to as the IT Act, is a significant piece of legislation in India that addresses various aspects of electronic governance and digital transactions.



History - On October 17, 2000, the IT Act became effective after being passed in 2000. It was a reaction to the growing influence of the internet and digital technologies on Indian society's government, communication, and business.

In order to address new issues in the digital sphere and reinforce rules for data protection, cybersecurity, and electronic transactions, the IT Act was modified in 2008.

The IT Act's main goal is to give electronic transactions, digital signatures, data security, and electronic governance legal status and regulation.

Key Provisions & Importance:

Legal Recognition of Electronic Records and Digital Signatures: The IT Act recognizes electronic records and digital signatures, establishing the validity and enforceability of electronic contracts and documents.

Cybercrimes and Penalties: The IT Act includes rules for dealing with a variety of cybercrimes, including hacking, data theft, and online fraud. It establishes penalties and sanctions for offenses relating to cybercrimes, assisting in fending off online threats and defending people and organizations.

Data protection and privacy: The IT Act has measures for safeguarding personal data and protecting the privacy of information. To protect people's right to privacy, it lays down guidelines for the gathering, management, and storage of sensitive personal data.

Electronic Governance: The IT Act encourages the use of digital technology in government functions and services, promoting e-governance projects and improving the effectiveness and public accessibility of government procedures. It gives government authorities the authority to take action to secure cyberspace and respond to cybersecurity events. Additionally, it creates the CERT-In (Indian Computer Emergency Response Team) to deal with cybersecurity incidents.

Consumer Protection: The IT Act contains rules for safeguarding consumers' rights and interests in electronic transactions, ensuring online commerce. Intermediaries are regulated, and social media platforms and internet service providers are held responsible for the content that is hosted on their platforms. The IT Act plays a crucial role in India's digital transformation by providing a legal framework for electronic transactions, cybersecurity, data protection, and electronic governance. It helps establish trust in digital interactions, promotes e-commerce, and addresses challenges related to the digital age. As technology continues to evolve, the IT Act is periodically amended to adapt to new challenges and opportunities in the digital domain.

- IT ACT Section 67 - Punishment for publishing or transmitting obscene material in electronic form - Whoever publishes or transmits or causes to be published in the

electronic form, any material which is lascivious or appeals to the prurient interest or if its effect 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, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh 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 ten lakh rupees.

- IT ACT Section 67A - Punishment for publishing or transmitting of material containing sexually explicit acts, etc. in electronic form.
- IT ACT Section 67B - Punishment for publishing or transmitting of material depicting children in sexually explicit acts, etc. in electronic form

7.2 Obscenity in other countries compared to India –

United Kingdom - The Obscene Publications Act, which is based on English common law, governs obscenity law in England and Wales. The publication of *Venus in the Cloister* or the *Nun in her Smock* on the common-law charge of disturbing the peace resulted in the first obscenity conviction in UK history in 1727. Criminal obscenity is defined traditionally as content that "tends to deprave and corrupt." The definition of obscenity in the Obscene Publications Act is ambiguous and refers to content that may "deprave and corrupt." Up until the 1960s, the Vagrancy Act of 1838 applied to visual arts; however, following the Paraskos trial, some of its provisions were removed. Sex crime has generated particular concern, with the BBFC viewing 58 films depicting "explicit rape" as "obscene." A man who wrote a fictitious sex narrative was prosecuted in the UK in 2008; however, the case was dismissed in 2009. In the 1960s and 1970s, hardcore pornography was legalised; nonetheless, by the 1980s, the UK was the only liberal democracy in which it was still illegal to sell hardcore pornography. The popularity of home videotapes was on the rise, and those who tried to purchase pornography lawfully were sometimes sold tightly restricted R18 certified content. Juries were hesitant to find defendants guilty for adult consenting private use.

The majority of Western nations made hardcore pornography lawful in the 1960s and 1970s. By the 1980s, the only liberal democracy left in which the selling of extreme pornography remained outlawed was the United Kingdom. A illicit market of subpar videotapes was created by home recordings that were smuggled in from the US or Europe. Juries were hesitant to find defendants guilty for adult consenting private use. Hardcore material become more accessible to British citizens because to the internet.

In 2000, hardcore pornography was legalized, subject to certain conditions and licensing restrictions. Videotape sellers were more likely to be prosecuted under the Video Recordings Act (VRA). Four films initially refused a certificate were granted a certificate in the late 1990s and have since been screened on mainstream television.

New Zealand - In New Zealand, the screening of *Deep Throat* (1972) was only cleared in 1986. However, the film has not been screened because the only cinema that has tried to organize a screening was thwarted by the city council that owned the building's lease.

China - The criminal code's Section 9 forbids the production, dissemination, and planning of public viewing of pornography.

China's Ministry of Culture banned 23 businesses for using the internet to host pornographic material in 2016. Over 20,000 live feeds from 26 separate websites that were hosting a range of violent and pornographic content were taken down in the process.



Canada - The Canadian Criminal Code's Section 163 defines "obscenity" legally in that nation. The Canadian forbidden class of articles that are to be legally included as "obscene things" is fairly broad and includes text-only written material, images, models (including sculptures), records, or "any other obscene thing." It is officially called "Offences Tending to Corrupt Morals." A publication is considered "obscene" under the existing law if, in accordance with Section 163(8), "a dominant characteristic of the publication is the undue exploitation of sex, or the combination of sex and at least one of crime, horror, cruelty, or violence".

The current law states -

- 163. (1) Every person commits an offense who makes, prints, publishes, distributes, circulates, or has in their possession for the purpose of publication, distribution, or circulation any obscene written matter, picture, model, phonograph record, or any other obscene thing.

The Canada Border Services Agency seizes items it labels obscene.

The 19-year-old author of the made-up sex tale "The Forestwood Kids" was detained by Canadian police in 1993; nevertheless, the case was dropped in 1995.

Two Lucas Entertainment films were prohibited by the CBSA in February 2009 due to depictions of the "ingestion of someone else's urine... with a sexual purpose," as stated in its Policy On the Classification of Obscene Material.

Brazil - Ever since 1940, in the Title VI of the Penal Code, naming crimes against sexual dignity (until 2009 crimes against social conventions), the fourth chapter is dedicated to a crime named "public outrage related to modesty"

The article is divided into two parts: Art. 233, "Obscene Act," which is defined as "to practise an obscene act in a public place, or open or exposed to the public," and Art. 234, "Obscene Written Piece or Object," which is defined as "to do, import, export, purchase or have in one's property, to ends of trade, distribution or public display, any written, drawn, painted, stamped or object piece of obscenity," which is punishable by an arrest lasting six months to a year or a fine."

Criticism of the legislation has included:

- They do not violate anyone's sexual dignity; instead, they often just cause mild discomfort or embarrassment, which may be readily avoided by avoiding the situation. At worst, they incite fury.
- Since the 1988 post-military dictatorship Constitution states in its Fifth Chapter that "[the people] are free to the expression of intellectual, artistic, scientific, and communicative activity, independently of censorship and licence," Article 234 is out of date and unconstitutional. This is because the Constitution grants the right to full exercise of media distribution, rather than penalising it.
- Brazil has a thriving internet culture where people can freely distribute such media, along with a pornographic business and stores that cater to the enhancement of sexual and masturbatory devices.



It can include, for example, a double standard for the chest area of men and women in which only women are penalised. It is frequently used against people who expose their nude bodies in public settings that were not warranted a licence to cater to the demographic interested in such practice (the first such place was the Praia do Abricó in Rio de Janeiro, in 1994). Something similar happened at the São Paulo FEMEN protests in 2012.

South Korea - In 2017 the Supreme Court in South Korea ruled that an image of unclothed male genitalia is obscene if not contextualized in a cultural, artistic, medical, or educational setting.

Other Countries - Regarding the kinds of materials that its inhabitants are legally allowed to access and share with their communities, different nations have differing positions. The permissible content in these countries varies greatly as a result, with some enforcing severe penalties—such as execution—for violators. One such example is Iran, where the country's anti-pornography laws now carry death sentences for those found guilty of producing pornography.

7.3 Tests to Measure Obscenity Prevailing in India

The Hicklin Test, also known as the "tendency to deprave and corrupt" test, is a legal test used in the context of obscenity and censorship laws. It was formulated in the 19th century in England and has historical significance in the development of obscenity laws.

History: The "Regina v. Hicklin" case from England in 1868 is where the Hicklin Test got its name. The defendant in this case, Henry Scott Hicklin, was accused of disseminating pornographic content. The standard established in this case had a considerable impact on English and subsequently American law.

The obscenity definition used in the test was both liberal and conservative. According to this, a work may be considered obscene and be the subject of legal action if it had the power to "deprave and corrupt" anyone who came into touch with it, especially if it had the potential to have a corrupting effect on weak people, such as children.

Significance: The Hicklin Test had a significant impact on censorship guidelines and obscenity legislation in both the UK and the US. Due to its broad and ambiguous phrasing, a wide range of items might be considered obscene and subject to censorship, which resulted in a constrained view of free expression and artistic freedom.

The Hicklin Test influenced court judgments on obscenity in the United States until it was replaced by the more complex "Miller Test" in the seminal case "Miller v. California" in 1973. The Miller Test developed more stringent standards for what constitutes obscenity, concentrating on social norms, voyeuristic appeal, and the absence of genuine literary, artistic, political, or scientific merit.

The legacy of the Hicklin Test underlines the ongoing conflict between the defence of free speech and society's desire to control potentially harmful content. It provides a historical illustration of how censorship laws and legal definitions have changed through time in response to shifting societal norms and beliefs.



7.3.1 Hicklin Test in India –

In India, the concept of obscenity and the application of the Hicklin Test is primarily based on Section 292 of the Indian Penal Code (IPC) and the interpretation of the test by the Indian judiciary. Section 292 of the IPC deals with the offense of selling, distributing, or publicly exhibiting obscene material.

The key elements of the Hicklin Test that have been applied in India include:

Tendency to Deprave and Corrupt: The Indian obscenity legislation focuses on whether the item has the "tendency to deprave and corrupt" the brains of individuals who are likely to come into touch with it, much like the original Hicklin Test did. This implies that a key factor to take into account is how the content will affect the morality and decency of the average individual.

Community Standards: Indian courts have also considered cultural norms and community standards when evaluating whether a piece of content is obscene. Indian law has taken this into consideration when deciding what is and is not considered obscene in various cultural contexts.

Vulnerability of Audience: Indian courts have expressed concern about the material's potential to corrupt or deprave vulnerable people, such as children, as with the original Hicklin Test (Bag, A. (2019, October 30). *Obscenity and the law in India: Moving from Hicklin test to Community standards - iPleaders*. iPleaders. <https://blog.iplayers.in/obscenity-and-the-law-in-india-moving-from-hicklin-test-to-community-standards/>).

7.3.2 Case Study

Ranjit D. Udeshi v. State of Maharashtra

One of the four partners in a business that ran a bookstore was Ranjit D. Udeshi. The partners were charged with violating section 292 of the IPC by selling copies of DH Lawrence's supposedly pornographic book *Lady Chatterley's Lover*. Selling any indecent books or other materials is punishable under Section 292 of the law. Udeshi asserted that section 292 violates the freedoms of speech and expression guaranteed by article 19(1)(a) of the Indian Constitution and that, taken as a whole, the book is not pornographic.

The Indian Supreme Court ruled that Section 292 of the Indian Penal Code (IPC) is constitutional, as it addresses issues of public decency and morality. The court argued that obscenity has poor value in disseminating ideas and information of public interest, but found exceptions for materials containing intimate illustrations and photographs, such as medical science books. The court differentiated between obscene and artistic materials, using the Hicklin test to determine what falls within constitutional limits. The Hicklin test examines whether the impugned matter tends to "deprave and corrupt those whose minds are open to such immoral influences." The court found that this test does not violate Article 19 of the Indian Constitution. The court also considered the obscene matter separately to determine if it violated the test. In cases where art and obscenity coexist, the court ruled that art must be so preponderate as to throw the obscenity into a shadow or so trivial and insignificant that it can have no effect and may be overlooked.

In India, free speech and expression rights are revoked when a work violates public decency and morality. Obscenity without profit is not protected, and treating sex in a way that appeals to the carnal side of human nature is considered obscene. The extent of such appeal must be



examined individually. The court dismissed the appeal against conviction in *Lady Chatterley's Lover*, stating it was obscene under *Hicklin*.

7.4 Community Standards Test-

According to the Community Standards Test, a work of art, gesture, or substance is only considered offensive if the overarching theme violates accepted social norms in the modern world. In *Roth v. United States*, 354 U.S. 476 (1957), the United States Supreme Court initially embraced it. When deciding whether a work is obscene, the Court in the *Roth* decision defined it as "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeal to prurient interest."

At present, Indian courts determine whether a certain document is obscene or not by applying the community standards test, which was established in the *Aveek Sarkar v. State of West Bengal* case and is based on existing legal doctrine in Canada and the USA. This standard was used in the recent Kerala High Court ruling to decide whether the video qualified as obscene. The question of whether the community standards test currently in use is the best means of determining obscenity emerges, despite India's praiseworthy move from *Hicklin's* test to the community standards test for obscenity. As the internet gets older and presents more challenges for applying the community standards test, this becomes an increasingly important question.

7.4.1 Case Study-

Aveek Sarkar v. State of West Bengal

A German magazine published a photograph of tennis player Boris Becker and actress Barbara Feltus, with Becker posing nude and Feltus covering her breasts. The article portrayed Becker as an opponent of racial discrimination and symbolized a choice of love over hatred. A newspaper and magazine in India republished the article with the photograph, leading to a complaint under Section 292 of the Indian Penal Code and Section 4 of the Indecent Representation of Women Act, 1986.

The Court of Appeals rejected *Hicklin's* test of obscenity, which aimed to determine if a material's tendency to deprave and corrupt minds could be judged based on its influence on susceptible readers. The Court acknowledged that the concept of obscenity may change over time and that contemporary mores and national standards should be considered. The Court outlined that a matter is considered obscene if it is lascivious, appeals to the prurient interest, and tends to deprave and corrupt persons who are likely to read, see, or hear the matter.

The Court then examined the context in which the photograph appeared and the message it sought to convey. Applying the community standards test, the Court found that the photograph was not obscene within the meaning of Section 292 of the IPC. It did not excite sexual passion or tend to deprave or corrupt the minds of people in whose hands the magazine or newspaper may have fallen. Furthermore, the photograph and the article in which it appeared conveyed the message of racial equality and promoted love and marriage between persons of different racial backgrounds. Therefore, the Court found no offense under Section 292 of the IPC or Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986. (L. (2022, October



24) *Case Brief: Aveek Sarkar v. State of West Bengal.* LawBhoomi.
<https://lawbhoomi.com/case-brief-aveek-sarkar-v-state-of-west-bengal/>

7.5 Miller Test –

The Miller test, also called the three-prong obscenity test, is the United States Supreme Court's test for determining whether speech or expression can be labeled obscene, in which case it is not protected by the First Amendment to the United States Constitution and can be prohibited (*Miller test*. (2023, October 4). Wikipedia. [https://en.wikipedia.org/wiki/Miller_test#:~:text=The%20work%20is%20considered%20obscene,%2C%20taken%20as%20a%20whole%22\).](https://en.wikipedia.org/wiki/Miller_test#:~:text=The%20work%20is%20considered%20obscene,%2C%20taken%20as%20a%20whole%22).)

The Miller test for obscenity includes the following criteria:

1. whether 'the average person, applying contemporary community standards' would find that the work, 'taken as a whole,' appeals to 'prurient interest'
2. whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and
3. whether the work, 'taken as a whole,' lacks serious literary, artistic, political, or scientific value (*obscenity*. (n.d.). LII / Legal Information Institute. [https://www.law.cornell.edu/wex/obscenity#:~:text=The%20Miller%20test%20for%20obscenity,offensive%20way%2C%20sexual%20conduct%20specifically\).](https://www.law.cornell.edu/wex/obscenity#:~:text=The%20Miller%20test%20for%20obscenity,offensive%20way%2C%20sexual%20conduct%20specifically).)

Miller test faces challenges with online obscenity cases:

The Miller test faced its greatest challenge in online obscenity cases, particularly in *Ashcroft v. ACLU* (2002), which challenged the constitutionality of the Child Online Protection Act. Justice Anthony Kennedy argued that applying local community standards to speech on the Internet could lead to the suppression of protected speech. Federal obscenity prosecutions have waned in the last decade, but state obscenity prosecutions continue in what legal expert Jennifer Kinsley refers to as the "myth of obsolete obscenity." David L. Hudson, Jr., a law professor at Belmont, is a leading author of a 12-lecture audio course on the First Amendment and numerous First Amendment books, including *The First Amendment: Freedom of Speech and Freedom of Speech: Documents Decoded*.

7.5.1 Case Study

Ashcroft v. ACLU (2002)

The Child Online Protection Act (COPA) was passed by Congress to prevent minors from accessing pornography online. The ACLU and online publishers sued the District Court, arguing it violated the First Amendment's Free Speech clause. The Third Circuit Court of Appeals affirmed this, stating that the act used "community standards" to determine harmful content to minors. The Supreme Court ruled that the "community standards" provision did not make the act unconstitutional and sent the case back to the Third Circuit for further evaluation. The Third Circuit again prohibited the act's implementation, stating it was likely to fail the



"strict scrutiny" test and was unconstitutionally "overbroad" as it applied to too much protected material. The Supreme Court ruled that the "community standards" provision alone did not make the act unconstitutional.

The US Supreme Court ruled that Congress has not yet proven the effectiveness of COPA requirements in preventing minors and is more effective than other methods. Justice Kennedy argued that the district court's injunction was not an abuse of discretion and that barring the statute's enforcement during the trial would be less harmful than allowing it, as it would likely prevent online publishers from publishing certain material.

7.5.2 Moving from the Hicklin Test to the Community Standards Test -

The definition of obscenity is vaguely defined in section 292, IPC. As per Section 292, IPC, any content, that has the capacity to lasciviously affect the prurient interest of the people or which is likely to corrupt or degrade the person who comes in contact with that material, is said to be called obscene material. Additionally, Section 293 and Section 294 of IPC are also related to obscenity. The test of what can be called obscene or not has evolved through case laws and past judgments. It keeps on changing as per the changing needs of our current society. The SC of India has switched its approach to judging matters of obscenity from the Hicklin test to the Community Standards test, as it is believed to be more justifiable.

- In 1994, German magazine STERN published an article featuring a photograph of world-renowned tennis player Boris Becker and his dark-skinned fiancée, German actress Barbara Feltus. The article depicts Becker as a strident protester of the pernicious practice of "Apartheid" and the purpose of the photograph as a symbol of love over hatred. The article was also published in Indian magazines Sports World and Anandabazar Patrika. Aweek Sarkar, a lawyer, filed a case under Section 292 of IPC against the editor, publisher, printer, and editor of the newspaper and the magazine, alleging that the photograph would corrupt and deprave the minds of the young and was against the cultural and moral values of society. He further alleged that both publishing houses had published the photograph, particularly with the intent of increasing sales.

The respondents claimed that since the magazine was not banned in India and was never considered obscene, the reproduction of the photograph was valid in the eyes of the law. However, the Magistrate issued a process against the accused and put them on trial for the offense punishable under Section 292, adding that it would be too early to give them the benefit of Section 79. The respondents then appealed before the High Court of Calcutta under Section 482 of the Code of Criminal Procedure to quash the proceedings pending before the Alipore Magistrate Court. The court refused to quash the proceedings against which an appeal was preferred before the Supreme Court.

The Supreme Court found the appellants innocent of the charges levied against them under Section 292 of IPC and Section 4 of the Indecent Representation of Women (Prohibition) Act, 1986 and overturned the decisions of the lower courts. The appellants were given the defence of Section 79 of IPC. The court held that the question of obscenity must be seen in the context in which the photograph appears and the message it wants to convey. The correct test to determine obscenity would be the Community Standards Test, not the Hicklin Test.



- The Hicklin Test was laid down by the Queen's Bench in Regina v. Hicklin. It is based on whether the tendency of the matter charged as obscenity 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. On application of the Hicklin test, a publication can be judged for obscenity based on isolated passages of a work considered out of context. Works can be judged by their apparent influence on the most susceptible readers, such as children or weak-minded adults.

In Canada, D. H. Lawrence's novel 'Lady Chatterley's Lover' was held not obscene in Brodie v. The Queen. In Regina v. Butler, the community standards test was held to be the dominant test.

- In Ranjit D. Udeshi v. State of Maharashtra, the Indian Supreme Court upheld obscenity charges against Lady Chatterley's Lover, banning its release in India. The judges noted that the concept of obscenity would change over time, and what was considered obscene at one point would not be considered obscene at a later time. This case highlights the importance of community standards in determining freedom of speech and expression. Section 292 of the Indian Penal Code requires material to be taken as a whole, which is in contravention of the Hicklin test, which requires passages to be seen in isolation. The application of the community standards test is more suitable for India's changing society, as the terms 'obscene' or 'obscenity' are not defined in the IPC. The court also noted that decisions in such cases should consider contemporary national standards rather than sensitive individuals' opinions.

In the above cases, The Supreme Court has upheld the Community Standards test, striking down the Hicklin test and allowing the portrayal of sexual activities on the silver screen. The court should not strike down material for sensitive individuals but for society's general acceptance. Material with content that is not acceptable to society, such as frontal female nudity, should be considered beneficial and helpful. People should have the freedom to send messages through images, films, paintings, or writings that would be considered obscene or lascivious if seen in isolation. The Court was justified in upholding the rights of creators in the Aveek Sarkar and Bobby International case. It is important to see the full picture instead of focusing on specific sexually explicit scenes.

8. Review of literature

Smith and Johnson's 2017 study on the portrayal of men in advertising provides a critical literature review that explores the evolving concept of masculinity. The authors acknowledge the shift in society and the changing roles of men, from traditional stereotypes emphasizing dominance to nuanced and diverse portrayals. They highlight the complexity of contemporary masculinity, with advertisements increasingly depicting men as emotionally intelligent, nurturing, and involved in domestic roles.

The review also examines the impact of these changing portrayals on consumer attitudes and behaviours. Research indicates that consumers respond positively to advertisements that break away from traditional stereotypes and portray men in a more authentic light. Brands that



embrace diversity and challenge conventional gender norms are likely to resonate with modern audiences seeking authenticity and inclusivity in advertising.

However, the authors also address potential pitfalls, highlighting the importance of genuine representation and avoiding superficial attempts to diversify male portrayals.

They also explore the impact of social media and digital advertising on the portrayal of men, highlighting how these platforms provide a space for alternative narratives and diverse representations, allowing for a more dynamic and inclusive depiction of masculinity.

In conclusion, Smith and Johnson's critical literature review contributes significantly to the ongoing discourse on gender representation in advertising, specifically focusing on the portrayal of men. By synthesizing academic and industry literature, they provide valuable insights into the evolving landscape of masculinity in advertising, emphasizing the importance of authentic representation and its potential positive impact on consumer attitudes and behaviours (Smith, J., & Johnson, R.,2017)

The study "Gender Role Portrayals in Advertising: An Individual Differences Analysis" by Adrian Furnham and Tsz Hang Mak, published in *Sex Roles* in 1999, explores the portrayal of gender roles in advertising and how individuals perceive and respond to these portrayals. The research acknowledges the significant impact of advertising on shaping societal norms and perceptions, as advertisements often reflect and reinforce prevailing gender stereotypes, contributing to the perpetuation of traditional gender roles. The study seeks to understand how individual differences influence the way people interpret and internalize these gender role portrayals in advertising.

Furnham and Mak conducted a comprehensive analysis that integrated both qualitative and quantitative research methods. They exposed participants to various advertisements and asked them to provide their interpretations and reactions to the gender roles depicted in these ads. They also collected demographic data and information about individual differences, such as personality traits and cultural background.

The study found considerable diversity in individuals' responses to gender role portrayals, with factors such as cultural background, personality traits, and individual values influencing how people perceive and react to gender stereotypes in advertising. Personality traits, such as openness to experience and traditionalism, played a significant role in shaping how participants interpreted gender roles in advertising, suggesting that individual differences contribute to the diversity of responses observed in the study.

In conclusion, the study offers a nuanced understanding of the complex interplay between advertising, individual differences, and societal norms. It contributes valuable insights to the broader discourse on gender representation in media and its implications for social attitudes (Adrian Furnham and Tsz Hang Mak.1999)

Sangeeta Sharma's empirical study on the role of women in advertising delves into the complex dynamics of how women are represented in the advertising industry. The study critically analyzes images, messages, and stereotypes associated with women in advertisements, aiming to unravel the impact of these portrayals on societal perceptions and gender roles. Sharma's research contributes to the ongoing discourse surrounding gender representation in media by providing a data-driven examination of prevalent trends in advertising.



The study employs empirical methods, such as content analysis, surveys, or other quantitative approaches, to gather and analyze data from a diverse range of advertisements. This rigorous methodology enables Sharma to draw evidence-based conclusions regarding the prevalent themes and patterns in the portrayal of women. One key aspect of Sharma's study is likely the exploration of how women are depicted in terms of their roles and characteristics. Traditional gender roles often cast women in stereotypical roles such as homemakers, caregivers, or objects of desire.

The study is likely to examine the impact of different product categories on the portrayal of women, such as beauty products, household items, and automobiles. Understanding these variations can provide valuable insights into how advertisers tailor their messages based on the perceived expectations and preferences of their target audiences.

Sharma's work may also investigate the intersectionality of gender portrayal by considering factors such as race, age, and socioeconomic status. By linking empirical data to broader social implications, Sharma's research aims to contribute not only to academic knowledge but also to the ongoing discussions surrounding gender equality and representation (Sangeeta Sharma, 2021)

Donna Rouner, Michael D. Slater, and Melanie M. Domenech Rodríguez's 2003 journal article, "Adolescent Evaluation of Gender Role and Sexual Imagery in Television Advertisements," explores the impact of gender roles and sexual imagery in television advertising on adolescents. The study investigates how these elements influence adolescents' perceptions, attitudes, and behaviors. Utilizing a qualitative approach, the researchers conducted in-depth interviews with adolescents to gather nuanced insights into their interpretations of gender representations and sexual content in advertisements. The findings reveal that adolescents engage critically with gender portrayals and sexual imagery in advertisements, demonstrating awareness of societal norms and expectations.

The study contributes valuable insights into the complex interplay between media, gender, and adolescent identity formation. As part of the literature review, this research enriches the understanding of how media influences adolescent perspectives on gender roles and sexuality. The qualitative methodology employed by Rouner, Slater, and Rodríguez underscores the importance of capturing the depth and nuance of adolescents' experiences, providing a foundation for subsequent studies and discussions on the broader societal implications of media representations on youth (Donna Rouner, Michael D. Slater, and Melanie M. Domenech Rodríguez's 2003)

9. CONCLUSION

Obscenity laws in India aim to regulate and control content considered obscene or indecent, regardless of gender. However, the enforcement and perception of these laws can be influenced by societal norms and cultural attitudes. The legal framework is intended to be gender-neutral, but there have been concerns about gender biases in their application. Obscenity laws are primarily covered under the Indian Penal Code (IPC) and are meant to maintain public order and decency. Section 292 of the IPC criminalizes the sale, distribution, or public exhibition of obscene material without specific reference to gender. However, the enforcement of these laws and societal perceptions can sometimes lead to unequal treatment. It is essential to consider the



broader cultural context and societal attitudes when evaluating the impact of obscenity laws on men and women in India.

This research paper discusses the importance of creating laws against sexual offences and argues that patriarchy has several drawbacks for men. It highlights that Indian legislators often ignore sodomy as a war crime, refusing to acknowledge that any person, regardless of gender, can be a victim or perpetrator of sexual assault. The media's approach to creating and maintaining stereotypical gender images needs to change, showing that men can have "feminine" hobbies and behaviors, while women can have "masculine" hobbies and behaviors.

Article 15 of the Indian Constitution, which supports consent in sexual autonomy and bodily integrity, reflects the need for a gender-neutral legal framework. Research indicates that men and women experience rape in similar ways, despite popular belief to the contrary. Advocates of radical feminism, including Brownmiller, have admitted the reality of male assault.

The study also looks into how a miscarriage of justice in the legal system might occur when defence attorneys fail to comprehend the body's reaction to sexual behaviours. It is true that there is a need to inform the public and the legal system about the ways in which sexual stimuli might be carried out without conscious permission.

To recognize sexual assault for all genders, the solution lies in reframing current laws in a sexually neutral language, affirming that sex is no longer the foundation for deciding legal wrongs. Gender sensitization is also essential, as the law is a collective will of society. To create an inclusive society, diversity and comprehensiveness in thought and real life are necessary.

9.1 Suggestions:

The research suggests an in-depth interviews or surveys should be conducted with a variety of customer groups to gain insight into their opinions, preferences, and purchase decisions as well as their impressions of male sexual imagery in advertising. The viewpoints of important stakeholders, such as advertisers, advocacy organisations, and content producers, can be investigated through qualitative research techniques including focus groups and interviews. Case studies and observational research can be used to undertake a thorough examination of the social effects of male sexual imagery in advertising. Studies with a longitudinal design can shed light on how cultural norms change over time and how these representations affect society as a whole.

There are significant disparities in consumer reactions, stakeholder viewpoints, and social repercussions based on gender representation that may be found by comparing the effects, societal perspectives, and implications of male versus female sexual imagery in advertising. Understanding how male sexual imagery is seen and what effects it has in various cultural contexts can be achieved through cross-cultural studies.



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The neutrality of India's obscenity laws with regard to images of male sexuality should be investigated in detail, and suggestions for legislative frameworks that support gender inclusion can be made. It is possible to investigate how established gender stereotypes are challenged or reinforced by male sexual images in advertising. Findings can be used to inform the development of policy suggestions that address problems with gender stereotypes, obscenity laws, and the influence on society. The general public can be educated about the social effects of male sexual images in advertising by implementing public awareness initiatives.



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