CHAPTER 2

Inflamed Passions and Prurient Interests
Censorship and the Staging of the Obscene Body-in-the-Text

“The relation between Reality and Relativity must haunt the court’s evaluation of obscenity, expressed in society’s pervasive humanity, not law’s penal prescriptions.”

“Social scientists and spiritual scientists will broadly agree that man lives not alone by mystic squints, ascetic chants and austere abnegation but by luscious love of Beauty, sensuous joy of companionship and moderate non-denial of normal demands of the flesh. Extreme and excesses boomerang although some crazy artists and film directors do practice Oscar Wilde’s observation: “Moderation is a fatal thing.””

“Surely, the satwa of society must rise progressively if mankind is to move towards its timeless destiny and this can be guaranteed only if the ultimate value-vision is rooted in the unchanging basics, Truth-Goodness-Beauty, Satyam, Shivam, Sundaram.”

(Krishnaiyer V. R., in Raj Kapoor and Ors vs State and Ors., 26 October 1980)\(^1\)

Introduction

This chapter draws its motivation from the curious nature of the practice of censorship in the Indian context, and the even more curious nature of the idea of obscenity. In the following

sections, we will investigate the question of the (sexualized) body in the text, whether that text is film, literature, television, pamphlet, or internet website.

Taking as a given the by now familiar displacement of the framework that sees censorship as a purely prohibitive practice, I attempt to theorise the place that the idea of the ‘obscene’ sexualized text has in the field of visibility in the Indian context. The questions that make this investigation a part of the larger thesis are as follows – Through an analysis of obscenity law in the Indian context, what do we understand of what can and cannot be seen in the public domain? What are the logics of regulation at work in relation to the “obscene” body in the text? Is obscenity really and only about the ‘moral’ regulation of sexual practice or the sexualization of the female body? Does this regulation result in the process of invisibilising this practice or this body? Why is it that there are so many obscenity cases that end in acquittals?

The chapter takes its cue from the line often quoted in writing on Indian censorship cases (from the US Supreme Court case Jacobellis vs Ohio, 1964\(^2\)) – Justice Potter Stewart’s justification for the form that obscenity law takes – “I know it when I see it…”\(^3\) Stewart offered this as the only rationale he could formulate for recognizing obscenity in a text. While this line is well known, the rest of what he said often goes unquoted – “I know it when I see it, and the motion picture in this case is not that.” This refusal to grant the film in question the status of an obscene text is as important as the first half of the sentence, which places obscenity squarely in the realm of ambiguity and subjectivity.


\(^3\) This is from the case Jacobellis vs Ohio, in which the manager of a theatre was summoned before the US Supreme Court after having been convicted for screening an obscene film (The Lovers, a French film) in the Supreme Court of Ohio. The US Supreme Court overturned this judgment, but there was a debate about the rationale behind obscenity laws. One of the Justices on the case was Potter Stewart, who offered only this as his rationale. This has been quoted over and over again in Indian jurisprudence on obscenity.
I suggest that this line (not simply as a line from an American judgment but as an utterance
which states that obscenity is judged not by intention or even content but by the effect the
text has on the judge-as-viewer/reader), and its occurrence over and over again in Indian case
law, helps us to argue that obscenity as a category of description in the Indian context is
unfixable. The fact that there is as yet no “positive” definition of the obscene, either in
Western jurisprudence or the colonial law that India inherited, and the ways in which the
courts constantly deflect from the question of what is actually obscene, is testimony to the
fact that the real concern lies elsewhere, in the transaction of a text crossing over into the
public domain and being encountered there by “the man on the street”, and in how modernity
is to be negotiated as a relation between the state and its subjects.

The chapter works against the following ideas: a) that censorship as a practice (in the case of
obscenity law) involves only the rendering invisible of the obscene object or fragment b)
that it concerns itself with only the text and nothing else c) that visibility in itself is a static
condition that is to be unquestioningly desired, in opposition to invisibility d) that the text is
self-contained, as is the body in the text, not spilling over into the realm of lived experience
and subjectivity, and e) that the field of visibility then is a set of immobile objects that are
simply ‘looked at’ by the eye of the law or of us, as readers/viewers/spectators. Instead, I
argue that obscenity law in the Indian context works to constantly summon texts before the
courts, and participates in a staging of the sexualised body as a “problem”. What becomes
clear through an analysis of case law is that the real concern surrounds the introduction of

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4 It has to be emphasized here that censorship does not involve only obscenity. As the Cinematograph
Act of 1952 states, censorship targets any film (in this case) that is against “the interests of [the sovereignty
and integrity of India] the security of the State, friendly relations with foreign States, public order, decency or
morality, or involves defamation or contempt of court or is likely to incite the commission of any offence.” But
recasting obscenity would inform an understanding of censorship as a practice, even with reference to these
other concerns.
modern technologies that enable the “common man” to access all kinds of texts – to push this further, the anxiety surrounds the formation of a public through this very circulation of texts, a public that might well be beyond the control of the state and its legal mechanisms. When we move into the present era, we find that it is not just individual texts that are charged with obscenity, it is entire mediums like newspapers and television channels, and overarching bodies like the Press Council, that are brought before the courts. And this is done through petitions filed by concerned citizens. The anxiety that effects this summoning is not related to the sexual nature of the texts, it is rather related to the question of how modernity is to be negotiated in the time of late capitalism and liberalisation. The media, increasingly privatised, are seen as becoming far too “open” and “commercial” in their reportage, and this anxiety then manifests in the form of these cases being filed.

The analysis here relies on the psychoanalytical method described in the previous chapter. Through a reading of the case law that results from obscenity cases right from the early 20th century to the early 21st century, we arrive at the fact that the problem in most cases is the circulation of texts to the ‘common man’, not simply the sexualised aspect of them.

**Background: The Life of Obscenity in the Indian Context**

Debates around obscenity have existed since the colonial era, and have addressed themselves to a variety of cultural objects (religious texts\(^5\), short stories, books\(^6\), documentary films\(^7\),

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\(^5\) For example, the 1911 case Kherode Chandra Roy Chowdhury vs Emperor, 17 November. The case was filed against the publisher, who was selling copies of an extract from the *Uriya Haribans*, a religious text. The extract in question involved a five-year old Krishna and a Radha whose body becomes the focus of the
newspapers\(^8\), TV channels, and of course, popular cinema\(^9\); they have also addressed themselves to practices such as bar dancing, indecent exposure, sexually ‘degrading’ speech, and acts such as kissing in public. We will restrict ourselves to the first kind of censorship, that of the ‘article’ and will deal with the second in Chapter 3. The reason for this is that feminism in India has a history of engaging with the question of censoring the cultural text, from the period of the 70s which witnessed the blackening of film posters and ads, to the Hindutva attacks against Deepa Mehta’s film *Fire* (1996) and artist MF Husain’s paintings\(^10\).

It has therefore also been a history of engaging with the visual and what is allowed to circulate in the eye of the public as acceptable and progressive. New positions and articulations entered the arena in the late 90s, with anti-censorship feminists arguing for “space for greater sexual expression on the part of women. There has to be a conscious attempt to struggle to create space for consensual erotica in which women are active and

\(^8\) See Ajay Goswami vs Union of India and Ors, 12 December 2006; the case filed was against The Times of India and the Hindustan Times, the Press Council and the Union of India, claiming that the constitutional right to freedom of speech and expression in the case of the press was not balanced by the adequate protection of minors/children from offensive and harmful material (sexual innuendoes and scantily clad women in pictures). The presence of existing safeguards in the form of Section 292 etc, and the emphasis on the constitutional right in article 19(1)(a), are what decided this case. http://www.indiankanoon.org/doc/561137/ - Accessed as on 27 March 2012.

\(^9\) See Raj Kapoor and Ors vs State and Ors, 26 October 1979; the case concerned the film *Satyam, Shivam, Sundaram*, and its producer, Raj Kapoor. The charges were “alleged punitive prurience, moral depravity and shocking erosion of public decency”. Artistic merit and the fact that the film had already been given the censor certificate were important in the outcome. http://www.indiankanoon.org/doc/1547506/ - Accessed as on 27 March 2012.

\(^10\) This Muslim artist used Hindu goddesses in his paintings, and reworked the meanings attached to them. This act provoked outrage among those who believed that he was hurting the religious sentiments of Hindus as a community, and also degrading women through his depictions. The painting that was became the focus of a legal case is titled Bharat Mata, primarily because it represented her in the nude. See Maqbool Fida Husain vs Raj Kumar Pandey, 8 May 2008. http://www.indiankanoon.org/doc/1191397/ - Accessed as on 27 March 2012.
willing agents” (Ghosh 1999: 255). This accompanied the recasting of sexuality as “desire”\(^\text{11}\) (Menon and Nigam, 2007, 93), a process that took place in the 90s and not only at the site of the women’s movements, but at a number of other sites, shifts in Bollywood cinema to produce a new woman, media attention focused on single women or women’s relationships to sex, and importantly, the LGBT movement and the demand for a recognition of non-heteronormative desire.

These shifts have resulted in the setting up of the prohibition-sexual expression model\(^\text{12}\) of thinking about censorship, closely linked to the descriptions of the 90s as the era of sexual awakening and freedom, in which terms like ‘consensual’, ‘agents’, and ‘choice’ are not scrutinized for their investment in neo-liberal agendas\(^\text{13}\). Even in the debate over MF Hussain’s paintings, the positions were clear – those who called for the ban on his work, and those who called for freedom of expression stood on two sides but with a shared idea of where the ‘problem’ lay. For both these groups, the question of expression and the question of culture lay within the bounds of the text – the painting itself. For them, censorship as a practice was concerned with the text, and obscenity as a concern lay within the text. The notion of visibility in this case remains tied to this opposition and restricted by it, as an opposition of allowing or disallowing the presence of a (in this case sexualized) element within the text. The questions that remain unasked here are – when and why is it that these

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\(^{11}\) What is referred to here is not the psychoanalytical notion of desire and psychic drives, but the idea of a desiring subject as opposed to an oppressed subject – this meant an introduction of female pleasure in its positive sense, into a feminist understanding of women’s lives.

\(^{12}\) This is a model in which an opposition is posited between the act of prohibition/censorship, on the one hand, and that of expression/creation, on the other. Prohibition is seen as an act that is “negative”, that removes the sexually explicit or disturbing elements within a text, seeking to render them invisible. The function of the law and of groups that demand censorship is read as keeping something out of public view. The counter to this, then, is expression, a “positive” act, with media activists, filmmakers and artists staking a claim on the freedom of expression that is their constitutional right. This model denies both what the act of prohibitions produces, how it teaches people to see, speak, understand, and the contexts and histories that these events belong to.

\(^{13}\) An example of this is the response to the attacks against women in Bangalore in February 2009. The acts were largely read as violating women’s choice to wear what they wanted to and go where they wanted to, and the participation of this kind of reaction in the neo-liberal discourse on freedom and choice (in consumption, leisure, and other services), went unaddressed.
texts are brought in front of the courts, either by “citizens” who file cases, or by the police, or by advocates who chance upon them? How do these texts then get discussed or problematised within court procedures and what are the logics by which this problematisation take place? What is the charge of obscenity actually meant to put into effect as a process?

Censorship and the idea of the obscene are curious precisely because of the somewhat contradictory relationship between the substantive law that renders them static to a degree, in the constant citing of sections 292 and 294 (the obscenity law), and the ways in which this law is enacted in courtrooms and cases. An argument made by anti-censorship media activists and feminists is that the definitions of obscenity seem to have remained unchanged since the colonial period – that the law, like Section 377 (which prohibits carnal acts against the order of nature), is a direct adoption of colonial law and has to therefore be revamped to address the post-independence context. So, at a symbolic level, it is the adoption of the Hicklin test, of a model that was set up by the colonial government and carried forward into independent India. But at the level of the actual functioning of this law and the hearings on cases that are filed under it, it is impossible to fix censorship as a prohibitive practice, and obscenity law as that which demands that a part of a text be rendered invisible to the people who encounter it.

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14 For an example of this argument, see Devbrat Roy Chaudhary’s article titled “Time to shed our hypocrisy”, in India Today (May 26, 2012). The writer argues that “our laws continue to preach Victorian values” and that it is hypocritical to enforce these laws “laid down in England nearly one and a half centuries ago” in present India that is not only rapidly changing, but also has pornography circulating in various forms, albeit illegally. This reading of “hypocrisy” precisely misses the point about obscenity – that it is “not pornography” in its definition, that it is constantly looked for unlike pornography, which is there and illegal but overlooked by everyone but the police in habitual raids, and by customers who know where to find it. It is only with the advent of internet technologies that pornography as a category has become a “problem” and “present” in the public domain. (http://indiatoday.intoday.in/story/pornography-obscenity-law-indian-penal-code-sunny-leon/1/197675.html)

15 Regina vs Hicklin 1868 – Cockburn, the judge in the case, stated that the test of obscenity was “whether the tendency of the matter charged with obscenity is to deprave and corrupt those whose minds are open to such influences, and into whose hands a publication of this sort may fall.” This is quoted in every Indian verdict on obscenity, whether it convicts or acquits the people charged. See all the cases mentioned in this chapter, each and every one of them mentions the Hicklin case. See http://en.wikisource.org/wiki/Regina_v._Hicklin - Accessed as on 05 March 2012.
This fixing is impossible at various levels. At the level of the legal text (the judgment), it has been pointed out that there are lengthy descriptions of the ‘obscenity’ in question, to the extent that the legal text itself becomes a titillating object\(^{16}\). There is a constant production of what is and is not obscene, the two sides *closing in* on the object’s ‘obscene’ characteristics or parts. The obscene is then most obvious—since it is bracketed—within the texts of the judgments. It is curious that the Hicklin test came into being during a case concerning the public distribution of a pamphlet that criticised the nature of priesthood (titled “The Confession Unmasked: shewing the depravity of the Romish priesthood, the iniquity of the Confessional, and the question put to females in confessions”), “shewing” how degraded and immoral priests were and how obscene the questions put to women in the confessionals. The texts therefore contain extracts of these confessionals which are included in ‘gross’ detail; the law is therefore seen as a restriction on this kind of obscenity, but in posing as a reasonable restriction, the text of the law (that is, the judgment) is involved in this act of detailing and description, or indulges in description of its own, building fantasies around the exposed body or the sexual act (Regina vs Hicklin 1868). A good Indian example of this kind of detailing is in the case The State vs Thakur Prasad and Ors, 14 May 1958\(^{17}\), in which the instructions on sexual acts provided in the book under scrutiny (*Asli Kokshastra*), are listed out at great length, covering almost the entire text of the judgment – terms such as “Sanghata asan” (two women with one man or two men with one woman), “goyudhakam asan” (one man with many women or one woman with many men), “varikelit asan”, “Mukh maithun” (a woman giving the man oral pleasure), “bahissandam-sam”, “Chumbitakam” are all explained in graphic detail. In the Indian context, older texts are caught up in a debate around culture, religion and scriptural authority, this particular combine marking a difference from Western cases. It is only texts that have no claim to religion or the authority of tradition that are

\(^{16}\) For more on this, see Liang 2007

scrutinised purely on grounds of obscenity and cultural morality. In the 2005 case against the Tamil film *New*, the judge participates in intricate descriptions of the scenes in the film, with a listing of sexual innuendos, song lyrics and camera angles (A Arulmozhi vs The Govt of India and Ors, 5 August¹⁸). Rather than just pronouncing these texts obscene, the judge is compelled, by the very nature of obscenity law, to justify what *he reads* into the text, as a viewer or a reader.

This brings us to the other level at which the obscene is never fixable. The unfixability of what is obscene is built into the way the law is written, for the obscenity lies in the effect produced by the text, not in the text itself¹⁹. Therefore there are various cases in which the judge pronounces the article in question as not obscene since there is no evidence of the immediate effect it will have. The quotes that began this chapter, from the case against Raj Kapoor as producer of the film *Satyam Shivam Sundaram*, point to the fact that there already exists the idea of a distinction between the simply sexualized image and the obscene image, and so this is not something that needs to be seen as *absent*, by those arguing against censorship. An understanding of pleasure, entertainment, and artistic or social value as necessary to our lives, is already present within the enactment of obscenity laws, and the *staging* of the text (whether image or written text or film) as the central concern has to be seen as a symptom of the disavowal of where the real concern lies.

¹⁹ Central Government Act 292. 1] Sale, etc., of obscene books, etc.-- 2[ (1) For the purposes of sub- section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.] See http://www.indiankanoon.org/doc/1704109/ - accessed as on 23 May 2012.
One must also establish at this point itself that obscenity is not fully contained within the realm of law and legal process. In fact, to argue that it is would be to ignore the various other sites that are constitutive of the law itself, and that decide judgments on obscenity. To go one step further, our need to study cases is driven by the actions and articulations that emerge at these other sites, that have seen various kinds of proliferation in the last two decades – what is now referred to as Hindutva groups and their ‘reactions’ to ‘Westernisation’ and ‘modernisation’; the growing concern with ‘youth’, their participation in ‘culture’, their habits, their lifestyle and patterns of consumption; the concern with what new technologies are allowing for; what is seen as the era of the spread of AIDS; the ‘commodification’ (as opposed to commercialization, which was always an aspect of the film industry) of Bollywood, as repackaged for the West and for the West-in-India; and so on – all of these caught up in an anxiety around forms of modernity that constitute our contemporary. Just so that we do not necessarily read this extra-legal universe of concerns as “new”, we can refer to Deana Heath’s analysis, in Purifying Empire: Obscenity and the Politics of Moral Regulation in Britain, India and Australial, on obscenity regulation during the colonial period. She brings to our attention a period of time when the country saw the rise of independent organizations that sought to cleanse the social of obscenity – for example, the Society for the Suppression of Obscenity, an all-Indian body founded in 1873, their goal being “the progress of the country” through the “promotion of pure, and the suppression of undoubtedly vicious, literature” (2010, 184). Heath argues that this was the effect of the failure of colonial aesthetic imperialism, only because it had succeeded so well that it had enabled self governance by the native subjects (ibid). Another body was the Students’ Social Purity League, set up in the 1890s, and this is argued to have transformed the regulation of obscenity into a biopolitical project led by the Indian elites and not the British (192). From this two things become clear – firstly, there have been, since the late 1800s, mediators, or
extra-governmental parties, invested in how the obscene is regulated in the public domain. During the British rule, these took the form of organized bodies whose stated and reformist aim was this very regulation, in the name of progress and civilization. This brings us to the second point, that the concern with obscenity started out as a set of governmental measures by the British state, an effort to control what was allowed to be imported or circulated, with a specific focus on the Sea Post Office and Postal offices around the country; it then became a project of the Indian elite, as part of a nationalist effort to demonstrate that Indian society was capable of governing itself and was inherently purer than the immoral colonisers.

In our present era, we find that this concern with obscenity does not exist in the form of organized bodies but rather in some form of the political (as formulations or utterances that emerge from “culturalist” groups that have affiliations to political parties), and/or around the figure of the citizen (as the responsibility of the individual Indian to recognize and report obscenity). We shall return to this later in the chapter.

So the aim here is not to restrict the imagination of obscenity as an object of analysis to the confines of substantive law. It is precisely through and at these other sites that the idea of the obscene ‘lives’, so to speak. But the point is also not to ignore the fact that the law is part of everyday life, and has an active presence in the media and in the minds of people. Legal cases and the debates surrounding them are the ways in which obscenity as a specific category appears in the public domain – legal modes like cutting or editing (demanded by the Censor Board), banning (as verdict in case law) and raiding (carried out by the police) are what constitute the contentious core of obscenity law. Organisations or individuals who want to fight obscenity do not any more set up societies that work at the level of the social, they file petitions with the courts to get material banned or edited out. Keeping this in mind, it is
important to address an institution like the legal system against the grain of its own logics and produce a reading of the ways in which it works (not always diminishing its role in the light of other sites of meaning production)\textsuperscript{20}. This chapter therefore examines obscenity within (in so far as \textit{within} simply means \textit{directly referring to}) the judgments produced by the legal system, to argue that in there is a constant \textit{summoning} of obscene texts to the courts, this summoning revealing the anxieties related to modernity and the ways in which bodies and texts participate in the public domain.

This chapter, then, will do two things: a) argue, through a close examination of legal cases, that obscenity, even within the law’s understanding of it, lies beyond the text; and b) introduce the question of sexuality and the female body as not always already obvious in this concern with obscenity, but as being staged as obvious, this being a symptom of the anxiety produced by the constitution of the public as a body-collective.

We will first look at the ways in which the law as a domain and censorship as a process have been rethought.

\textit{Frameworks of Destabilisation}

I. One of the most significant contestations of the prohibition-expression model and the positing of the text as the object of censorship, is that which takes into account the collective entity termed “the public”. Film scholars and historians have addressed the deployment of this entity in discourses of empire, nationalism and welfare\textsuperscript{21}. The shift introduced in the

\textsuperscript{20} Also, as evident through the work of Deana Heath, exploring all the aspects of this category are well beyond the scope of a single chapter.

\textsuperscript{21} See Ashish Rajadhyaksha’s “The Judgment: Re-forming the ‘Public’” (1999); Ravi Vasudevan’s \textit{The Melodramatic Public: Film Form and Spectatorship in Indian Cinema} (2010); SV Srinivas’ “Is There a Public
discussion on censorship by this focus on the public, is that first of all, the ‘real’ problem with the texts in question becomes more layered – they are cause for concern not just because they seem to have obscene elements, but because these ‘obscene’ elements are being encountered by ‘the public’ or are circulating in the public domain. They are therefore not just visible, they are visible to the public, to audiences, to those who might read them in ways that allow for behaviour or thought that is not in line with the responsible citizen. Visibility here becomes a transaction, rather than a static condition. It is a moment of reading or understanding or desiring. And this is why the judge has to position himself as an author, then a reader, and then the dispassionate decision-maker.

The material body of the public is not an often-stated concern in the obscenity law, while “morals” and “prurient interests” are (and thoughts that the text may induce). But the body comes into focus in the way in which censorship as a practice is justified and understood. First, there is the idea of ‘arousal’, which could indicate physical arousal as well as mental. Second, the instance of obscenity is evidenced by ‘clear and present danger’, that is, that the subject will act on the basis of the emotions aroused by the text, that there is clearly the possibility of a dangerous or a sexually depraving act, where the obscene text acts like a “spark to a powder keg” (a phrase from within case law to stress on the fact that the danger has to be immediate). Thirdly, the historical justification of censorship lies in questions of hygiene and sexual conduct – the British regarded the regulation of obscenity as a way of ensuring the health of the populations they governed, and also as a way on enforcing divisions between the British and their Indian counterparts. These become part of the ways in which the effects of the text are discussed.

in the Cinema Hall?” (2000); Lawrence Liang, Namita Malhotra and Mayur Suresh’s The Public is Watching: Sex, Laws and Videotape (2007)
So it is the body, mind and morals of the public that are the ‘real’ concern of censorship, rather than the existence of a text-in-itself.

II. Following this is the argument that the act that is most often criminalized in the case of obscenity law, is the act of putting an ‘obscene’ text into circulation and distributing it, not necessarily the act of creating the text itself (Shah 2007). The two big cases that have involved the creator of the text have been Maqbool Fida Husain vs Raj Kumar Pandey, 8 May 2008, and KA Abbas vs The Union of India and Anr, 24 September 1970 – in the case of Husain’s painting Bharat Mata, the case is embedded in the contested ground of ‘Indian’ culture and the fact of his being a Muslim painter ‘sexualizing’ a sacred Indian—read Hindu—icon marks this case as occupying the space of the contemporary, with the growth and proliferation of Hindutva groups in the country; in the case of KA Abbas’ film A Tale of Four Cities (1968), the text was created for the express purpose of demanding that precensorship of films be stopped as a practice. Other than a few cases such as these, it is the newspaper company, television channel, the publisher of the book, the bookseller, and the producer of the film, who are charged with obscenity. Even in the case of the 2008 DPS MMS scandal22, it was the CEO of Baazee.com who was charged with the sale of the clip online, not the two students who created the clip. And as mentioned earlier, in the case of Samaresh Bose, both the author and the publisher were charged with obscenity. In the case of Satyam, Shivam, Sundaram (1978), Raj Kapoor was the producer of the film, not its director. This falls in line with the second clause of the obscenity law, which pertains to the sale, distribution and hiring of objects that are by the first clause deemed obscene23. Again, the

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22 This case (Avnish Bajaj vs State, 29 May 2008) involved a sex clip made by two students of the Delhi Public School (RK Puram) – the clip was circulated by the boy, but the case was filed only when the clip was uploaded onto Baazee.com under the title “DPS girls having fun”, by a student of IIT Kharagpur. Avnish Bajaj, the CEO of Baazee, was then summoned by the Delhi High Court for having allowed this clip to be uploaded and sold on the internet (8 copies were sold by the time the clip was noticed).

23 (Extract) “(2) 3] Whoever—
transactional nature of obscenity comes into focus. Private possession of the text is not deemed illegal. The text has to be involved in some sort of transaction, and perhaps has to travel in certain ways in the public domain. Even by the law’s reckoning, the place it occupies in the economic domain is inextricably tied to the place it occupies in the “moral”. This is why the exceptions to this subsection of the law include the following:

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

(i) the publication of which is proved to be justified as being for the public good…in the interest of science, literature, art or learning or other objects of general concern, or

(ii) which is kept or used bona fide for religious purposes;

(b) any representation sculptured, engraved, painted or otherwise represented on or in-

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958), or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

It is clear here that texts involving scientific development, the progress of literature and art, religious participation, and the preservation of history and ‘culture’, are to be distinguished from texts meant solely for profit-making purposes or entertainment (this is one of the reasons for the cinema being eyed with such suspicion and being marked as ‘special’). It is

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(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, reduces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or …” (Section 292 of the Indian Penal Code, 1860 – see http://www.indiankanoon.org/doc/1704109/. Accessed as on 23 May 2012.)
not that they are mutually exclusive, for often a film is acquitted of charges precisely on these grounds of these exceptions. It is also strange that though staged as exceptions, these justifications often attach themselves to most kinds of texts, and prove to be not so exceptional. Almost all the cases cited till now have seen these grounds for acquittal – religious value, literary value, narrative value.

III. The last, narrative value, is significant, as it brings us to the next major argument that has been made in relation to censorship law, which is the law’s investment in narrative and in the production of the seeing public (not just its regulation). The argument states that the law is not interested just in regulating what the public can and cannot see, it is interested in teaching the public how to see (Liang 2007). There is therefore the constant production of the “reasonable person” who will not ascribe wrongful or harmful meanings to a text which does not contain them. There is the idea of the intelligent public which will be able to discern for themselves which articles are harmful and which are not. There is also then the idea of the participatory public which intervenes in the processes of circulation and distribution to ensure that certain social and moral values are upheld in the public domain. This is why the case of children becomes ‘special’ because they cannot be included in the above classes of people. In this way, the law is not setting up a public that does not know, it is precisely setting up a public that does know, that understands, and acts. This public also deserves entertainment and pleasure, within the limits of an order that has to be maintained. This is why pornography, terrorism and piracy all become acts that exceed, they are forms of desire that play outside of the economies set up within the law.\footnote{Nishant Shah argues that the case of the internet is interesting precisely because the tropes of idealization and criminalization converge – every citizen is simultaneously an ideal member of the public and a criminal. See Shah 2007.}
The law’s investment in narrative is also more direct and the discussions in cases are sometimes structured by how the act of censoring will affect the narrative and the public’s understanding of the motives and message of the film. This is highly apparent in the case surrounding *Bandit Queen*. The judge in question argued that if the scenes of the protagonist Phoolan Devi being hit by the policeman or being abused by her husband are removed or reduced too much, then it is not possible for the audience to understand the extent of her ferocity or hatred or bitterness, and to understand why she chose to become a dacoit. The narrative is then disturbed and the social relevance of the film gets disrupted. The explanation for her actions is lost. This opinion goes to the extent of saying that the Parliament and Central Government, by failing to separate that which is artistic and socially valuable from that which is truly obscene and horrifying, have, “In their desire to keep films from the abnormal…excluded the moral. They have attempted to bring down the public motion picture to the level of home movies.”

The investment in narrative value sits curiously alongside a stake in realistic portrayal. In the same case of *Bandit Queen*, the judge dismissed the appeal to remove certain expletives used in the film by the characters on the grounds that this is the way in which people of that region of Chambal speak, and there is nothing obscene about realistic representations of this kind of language, since it is not meant to arouse prurient interest but is simply meant to contextualize the film. “If Nadir Shah made golgothas of skulls, must we leave them out of the story because people must be made to view a historical theme without true history?” What is apparent is therefore the fantasy of a real portrayal, just as there is the fantasy of these texts having a direct impact on the viewing or reading public. The law’s delight in the narrative and its simultaneous fantasy of the ‘truth’ in the narrative can be seen in these lines – “it is

25 See Bobby Art International etc vs Om Pal Singh Hoon and Ors, 01 May 1996
26 Ibid
27 Ibid
not a pretty story. There are no syrupy songs or pirouetting round trees. It is the serious and sad story of a woman turning: a village born female becoming a dreaded dacoit. An innocent who turns into a vicious criminal because lust and brutality have affected her psyche so. … It is in this light that the individual scenes have to be viewed.” This stake in realism is found to be curiously mirrored in feminist responses to media as well (in the context of early feminist writings on censorship). In her essay “Questions for Feminist Film Studies” Tejaswini Niranjana looks at the early articles in Manushi, pointing to not only the ‘anti-erotic ethic’ that can be traced back to Mary Wollstonecraft, but also to a “concern with realism” – “We find in many of the articles and reviews published in Manushi a concern with realism as able to guarantee both the film’s aesthetics (truth to life) and its politics (correct representations of reality leading to the formulation of “real” resolutions to the problems faced by women)” (1999).

IV. In the context of this stake in realism, another argument that is useful in shifting the grounds of the discussion on censorship makes the act of “recognition” central to it. Ashish Rajadhyaksha’s essay “Is Realism Pornographic?” deals with the writings of Pramod Navalkar, former Minister for Culture in Maharashtra. The essay points to how explicit or

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28 This ethic positioned women who derived pleasure from these forms as weak and as having submitted to dominant patriarchal desires to render them emotional and sensual beings rather than intellectual, political and rational beings. See Kaplan, Cora. “Wild Nights” in *Sea Changes: Essays on Culture and Feminism* (1986).


30 Pramod Navalkar was Minister of Culture from 1995-1999. He wrote a column titled “Bhatkyachi Bhramanti” (Journey of a Tramp) in the Marathi newspaper *Navshakti* – the column ran for 52 years and is mentioned in the Guinness Book of World Records. Navalkar is described as someone who believed in the mode of “public intervention” – he went out into the city looking for soft porn and illegal advertising, and also worked with others to rid the city of ‘eunuchs’, drugs, pimps and brothels. (http://indiatoday.intoday.in/story/pramod-navalkar-aims-to-curb-surrogate-advertising-and-soft-porn-magazines/1/288931.html). The current controversy around Aam Aadmi Party member and Delhi Law Minister Somnath Bharti carrying out a “raid” on “prostitution and drug rings” in Delhi, claiming that these are what the tendency to rape originates in, smacks of a curiously similar phenomenon at this point in time – the difference here, of course, is a stated tension between the AAP and its ministers on the one hand, and the Delhi Police on the other. The AAP still positions itself as a critic of the state (it will sweep up corruption and illegal activities), and carries out what it sees as justice in the name of “the people”. Navalkar, on the other hand, worked alongside the police in his raiding of the city. (“They held us in taxi for 3 hrs, took urine samples, said black people break laws, Ananya Bhardwaj, 17 January 2014 - http://bit.ly/1dzgaLb. Accessed as on 20 January 2014.)
hard-core pornography does not seem to be the concern as much as a whole range of practices attached to the phenomenon of modernity - “…in a clear shift of subject matter, what we are now seeing is an explicitly politicized moral censor looking at all this—looking not so much at the sex industry as at society-in-general, at society itself now theatricalised into a morbid stage of sleaze” (Rajadhyaksha 2005, 180). This strengthens the idea that the texts or objects are not in themselves a problem, the act of pointing or recognizing them is what produces them as problem. The moral censor also then stands apart as someone who does not participate in modernity but only points to it or recognizes it for what it is. This differentiation of the moral censor from those who participate in the “stage of sleaze” is mirrored in the case of the legal censor. The judge does not see himself as a member of the public, or as prone to the effects of these texts. As mentioned earlier, he claims to place himself in the position of first the author, then the reader, in order to divine the intentions of the text in the first case and the effects of it in the second. In the last instance, though, he is dispassionate judge or decision-maker. He is not even staged as the penultimate “reasonable person”, for he has to transcend the public in order to decide what is good for it. This is why a line as seemingly subjective as “I know it when I see it” (Justice Potter Stewart’s view of pornography) does not seem to contradict the rational processes of the law. As discussed in the previous chapter, this transactionary moment also shifts the grounds of how we must understand the visible and the invisible, by showing that what is visible is recognised as such.

Now that we have laid out the various arguments which problematise the prohibition-expression model, and the text-centred model of understanding both censorship as a practice and obscenity as an idea within that practice, let us move on to looking at specific questions relating to the body and sexuality within this arena. This will be done through some of the
cases that fall under obscenity law, and I will return to some of the questions raised earlier in the chapter.

**The Obscene Text-Body: An Elusive Object**

*CERTAINLY this picture excels in vulgarity and indecency the other nude/semi-nude pictures of women in the two issues of the magazines. However, it is in the form of a caricature. So even though it is repulsive and disgusting it would not possibly fall within the category of the term "obscene" although it borders on obscenity.*

(Sada Nand And Ors. vs State (Delhi Administration), 20 March, 1986 – in other words, the *Debonair* case 31)

*It is not necessary that the angels and saints of Michael Angelo should be made to wear breeches before they can be viewed.*

(Ranjit D Udeshi vs State of Maharashtra, 1964 – the *Lady Chatterley’s Lover* case 32)

*If the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped.*

(KA Abbas vs Union of India and Anr, 24 September 1970)

Before we discuss the fact that obscenity is not only about the body-in-the-text and the aesthetic representation of sexual acts, but in fact about the body politic and the conspiring, lying, adulterous, promiscuous, *transacting* bodies or sexual subjects in the public domain,

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we must note the fact that even within the text itself, obscenity as such seems to be an elusive quality. It is not as easy to find as we might think\textsuperscript{33}.

One imagines, as someone not familiar with the law as apparatus, that in these cases, anything that is sexually explicit is rendered obscene, and this is the assumption on the basis of which feminists, the media, and political-cultural activists set up their prohibition-expression opposition. This is also the basis on which censorship is seen as a process of rendering certain bodies and acts \textit{invisible}. But it is not simply that acts and bodies are being rendered invisible and now need to be visibilised through progressive action. It is how they are being rendered visible, the ways in which we are being made to see bodies or sexual acts, how they are being talked about, and what frames them in the field of visibility, that are significant. There are various questions addressed to the object charged with obscenity by the law – Is it sex for sex’s sake? Is the exposed body performing an aesthetic or artistic function? Who is seeing it? What are the objects that surround this body or this act in the text? What kind of narrative is it placed in? Who sold it and to whom? And the answering of these questions is not as important as the fact that the text in question, the naked body, the sexual act, is then lifted from a “pure” self-contained version of itself and placed onto various transactions – that of the viewer perceiving the text and then thinking about it; of the viewer or reader acting on it; of “passions” being aroused; of money being made; and of copies being produced. Therefore to assume that either the body or the sexual act is fixed in a narrow definition of obscenity from which it needs to be rescued would be to underestimate the law and misread it.

\textsuperscript{33} It must be noted here that this is not something that I am reading into the case law – it is blandly stated in most cases on obscenity, that the law itself doesn’t define it, that it is a vague category.
From the quotes above, we get a sense of two kinds of evasion or refusal to name the text as obscene. In the first case, the text is declared as a caricature, and as caricatures go, has value in terms of criticism of social behaviour. It is therefore not intended to arouse base desire or lust in the reader but is instead a comment on society. In the second case, the texts in question are Michelangelo’s paintings of angels and saints. They have obvious historical, scientific, theological and artistic merit and therefore cannot be obscene texts, however naked the angels and the saints are and whatever the acts they are involved in. Besides these two kinds of evasion of the charge of obscenity, there are others. Many judgments refer to the law and to preceding judgments (precedence is a vital part of the law’s performative function and how it replays its own authority, so maintaining it) in order to establish that sex or nudity in itself is not obscene. Descriptions or representations of the body and of sexual acts are or are not obscene depending on the way in which they are deployed and on what frames them. In the *Debonair* case, for example, the judge cites an earlier judgment:

> In Sreeram Saksena v. Emperor, Air, 1940 Calcutta (290), some postcards of women in the nude were said to be obscene. These pictures had been reproduced from some of the photographs contained in the picture books named "Sun Others", "Eve in the Sunlight", "Perfect Womanhood", and "Health and Efficiency" which were being sold in the market. It

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34 In this case, male behaviour upon encountering exposed female breasts. The quote follows this passage –

> “It may also be noticed that at page 8 of the June 1977 issue of the magazine there is a caricature of a nude man and a woman and the lustful eyes of the man are well set on the breasts of the woman who is sitting in his lap. Below it there is the following legend:

> "THEE yes Have It [sic]: The sexiest part of the human body is the eyes, according to students at Oregon State University. Men listed the sexiest parts of a girl as eyes, breasts, waist, bottom. Girls listed eyes, shoulders, chest muscular arms, hair and mouth.”

35 Jacques Derrida, in “The Mystical Foundations of Authority”, argues that the law has no authority that transcends its performative function. It stages itself as having authority prior to the moment of utterance or judgment, but its authority is precisely invoked with every utterance, it is an authority maintained through repetition or iteration. In this case, the constant self-referentiality or intertextuality of the law is part of its invocation of authority (1990). There is also the constant referencing of British or American judgments that have been recorded as historic in terms of opening up the law to philosophical and political questions of freedom, individualism, privacy, and so on.

36 Debonair, incidentally, was the first English magazine to conduct a sex survey on sexual attitudes of urban, educated men (1991). Savvy followed this with a similar survey on women. (See Menon and Nigam 2007, 91).
was held by their Lordships that: "A picture of a woman in the nude is not per se obscene….Unless the pictures of nude female forms are incentive to sensuality and excite impure thoughts in the minds of ordinary persons of normal temperament who may happen to look at them, they cannot be regarded as obscene within the meaning of S. 292. For the purpose of deciding whether a picture is obscene or not one has to consider to a great extent the surrounding circumstances, the pose, the posture, the suggestive element in the picture, the person into whose hands it is likely to fall, etc.”

The photographs in *Debonair* were therefore shown as having backdrops of ‘nature’, which immediately infused them with a particular *aesthetic* value and made them objects of art rather than pornography. Also, the magazine was described as dealing with a variety of subjects, like “politics, economics, business management, cinema, sports”. Of course the photographs were declared ‘vulgar’, but again, vulgarity is not obscenity, it is yet another way of side-stepping the charge of obscenity. Vulgarity (as different from obscenity) gives rise to emotions of revulsion and disgust but not to lascivious thoughts and degraded morals. Vulgarity almost becomes a question of aesthetics. “All I may say is that it is high time that the petitioners improve their standard of photographs and pictures of nude women so as to impart a really artistic and aesthetic touch to the same without, in any manner, over-stepping the standards of contemporary sexual morality.” The defending lawyer states, “They (the pictures) assert that the photographic features when examined would show that the emphasis is not on the nudeness of the female but is rather on beauty as conceived and unfolded by the artist.” Nudeness is apparently not where the emphasis lies, beauty is where it lies. This is a curious way of staging the discussion on the obscene, through an opposition of *nudeness* (which the text does not intend the reader to focus on) and *beauty* (which the text does intend the reader to focus on). Of course, one cannot take this at face value and believe in this as a

See Sada Nand And Ors. vs State (Delhi Administration), 20 March, 1986.
‘real’ difference that the judgment is making. The judge knows, the lawyer knows, the petitioners know, that beauty and nudeness are not opposed in this way, that nudeness might well in fact be the point of the photograph. The idea of aesthetic or artistic merit is brought in precisely to render this nudeness harmless. Here it is the idea of the aesthetic that gets centralized and the judge decides that the pictures are ugly and vulgar, and need to be more artistic. These are nudes in a men’s magazine, they are not Michelangelo’s paintings, but they are still not obscene.

The nude female body is excused in another scenario – when it ‘exposes’ the atrocities that have been committed against it. In the case of *Bandit Queen*, the scene where Phoolan Devi walks stark naked towards a crowd of villagers after she has been gang-raped, is seen as hardly contentious. The member of the Gujjar community who filed the case pointed to it as degrading to Indian womanhood, but the judge in the appeal refused to accept this rendering of the scene as shameful or dangerous to morals.

Much emphasis was laid before us upon the fact that Phoolan Devi is shown naked being paraded in the village after being humiliated. The Tribunal observed that these visuals could but create sympathy towards the unfortunate woman in particular and revulsion against the perpetrators of crimes against women in general. The sequence was an integral part of the story. It was not sensual or sexual, and was intended to, as indeed did, create revulsion in the

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38 A short history of the case is required here. *Bandit Queen* came before the Censor Board on 17th August 1994. The Examining Committee of the Censor Board referred it to the Revising Committee under Rule 24(1) of the Cinematograph (Certification) Rules, 1983. The latter recommended that it be released with an ‘A’ certificate subject to certain modifications. An appeal was filed against the extent of these modifications and the Appellate Tribunal was given the responsibility of deciding on this matter. The Tribunal saw the film as addressing important social evils, and after greatly reducing the modifications and giving an explanation for this decision, ordered the release of the film with an ‘A’ certificate. It was then on 27th January 1996 that a petition was filed by the president of the Gujjar Gaurav Sansthan to withdraw the censor certificate of the film. This is the judgment that followed the petition. See Bobby Art International etc vs Om Pal Singh Hoon and Ors, 1 May 1996. [http://www.indiankanoon.org/doc/1400858/](http://www.indiankanoon.org/doc/1400858/) - Accessed as on 27 March 2012.

39 Om Pal Singh Hoon, president of the Gujjar Gaurav Sansthan, was the person who filed the case against the film, and his main claim was that it misrepresented the Gujjar community. He also added that it was degrading to women (this claim intending to strengthen his case).
minds of the average audience towards the tormentors and oppressors of women. “To delete or even to reduce these climactic visuals”, the Tribunal said, “would be a sacrilege.”

Similarly, in the judgment on Husain’s painting ‘Bharat Mata’

The artist's creativity in this painting is evident from the manner in which the artist by way of a tear and ruffled, unkempt, open hair of the woman tried to portray the sad and dispirited face of our nation who seems to have suffered a great deal of anguish and agony. A woman’s sorrow has been described by the way the woman is lying with her eyes closed, with one arm raised on her face and a tear dropping from the eye. The object of painting the woman in nude is also part of the same expression and is obviously not to stimulate the viewer’s prurience but instead to shake up the very conscious of the viewer and to invoke in him empathy for India….

Nudity in both the above two cases has been explained not just as acceptable but almost as necessary in order to deal with what is read as the subject of the film or the painting, that is, rape and violence on the one hand and deprivation on the other.

If the text is denied the status of obscene on these various grounds, then you might well ask what does make the cut? What succeeds in being obscene in the eyes of the law? More importantly, is it a question of time? Perhaps the same texts which would have been found obscene during the colonial period or in the early post-independence decades would not be found obscene now? This argument suggests a linear history of liberal thought, as proceeding from the dark ages to a present in which the emphasis is on freedom. For one thing, the verdicts in the obscenity cases do not present a picture of this uniform change – they do not

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40 See Maqbool Fida Husain vs Raj Kumar Pandey, 8 May 2008.
signal a shift from a more stringent law in the colonial and post-independence period, to a less stringent one in the period after liberalization. While it is true that there are generally more acquittals than convictions, there seems to be no clear-cut explanatory framework that can apply to these results. The problem with this idea of a linear transformation is also that it does not then explain why the last two decades have seen a heightened anxiety around the question of obscenity, and it has become a significant question around which political parties mobilize themselves. As the judgments in many of these cases say, obscenity is “something more”. It is more than vulgarity, more than nudity, more than the text. Similarly, censorship has to follow a logic that exceeds simply finding the text at odds with the tastes of sections of the public, or the state’s (meaning government authorities’) ideas on acceptable forms of expression. “In order for the State to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.”

What is this something more?

If we approach this question from another angle – what about those cases in which there are convictions? Don’t they stand testimony to the fact that obscenity is in fact a moral regulation of the bodily-sexual? The picture painted in the sections above seems to imply that there are very few convictions handed out, and this is not completely true. Eight out of the twenty-six odd cases that have been examined for this chapter (roughly one-thirds) ended in convictions, these being spread out over the period from 1911 to 2010. One of the more well-known convictions related to DH Lawrence’s *Lady Chatterly’s Lover* (Ranjit D Udeshi vs State of Maharashtra, 1964), in which the accused was the owner of Happy Book Stall, Bombay. The judge in this case carried out a full-blown analysis of Lawrence as a writer and his

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41 See Ajay Goswami vs Union of India and Ors, 12 December 2006.
justifications for writing about sex (including what his critics had said about him), in the end declaring that even if there was a message the book could offer its reader, this message was hard to discern for a lay reader.

So both arguments, of there being a linear history of censorship, and of there rarely being any convictions under this law, do not hold in any conclusive way. This does not take away, though, from the fact that the obscene text is still an elusive object and that the judges in these cases still need to justify why the sexual elements in the text are in fact obscene. We turn then to exploring the nature of these convictions.

If we look at texts/objects that have been banned in the last decade (whether on grounds of obscenity or other grounds such as national security or failure to adhere to the Cable TV Network Act), they include child pornography, innocuous discussion groups on Yahoo\textsuperscript{42}, Hindutva websites\textsuperscript{43}, ‘controversial’ films on caste or religion, and English TV channels. In the first case, it seems obvious. Hardcore pornography is always already illegal (though it is not as contested as one would think it to be). Child pornography is one of the few forms to be unconditionally banned, and Internet Service Providers have been ordered to block all child porn websites. This attitude towards child porn finds its mirror in the way in which children are addressed as ‘special’ in terms of obscenity law. Both the Pratibha Naitthani case against English TV channels and the Ajay Goswami case against the \textit{Times of India} and the

\textsuperscript{42} In 2003, a small Yahoo! discussion group of the Hunniewrtep National Liberation Council of Meghalaya was banned using the IT Act 2000. The charge was that the group contained material “against the Government of India and the State Government of Meghalaya.” The ISPs, instead of blocking just one group, blocked the whole of Yahoo!, leading to protests from users all over the country. Yahoo! itself refused to remove the group, citing freedom of expression. The group was then brought back and was found to be small and not more dangerous than any other. See “Censoring the Internet”, \textit{The Hindu}, 21 October 2003 - http://www.countercurrents.org/yahoo-hindu211003.htm

\textsuperscript{43} Hinduunity.org, the official website of the Bajrang Dal, was shut down in 2001 after complaints were received regarding its anti-Muslim propaganda and hate speech. It was revived later, only to encounter problems again in 2004, when it was banned and blocked from Indian ISPs for calling Vajpayee abusive names. In 2006, it came up again in a list of sites to be blocked, during the controversy surrounding the blocking of the whole of blogspot as part of an effort to block a SIMI group on blogspot.
*Hindustan Times* position the child as vulnerable to media and as incapable of distinguishing the moral from the harmful.

Children also become the most vulnerable recipients of new technologies. Questions on “the wired generation”, whether children are *physically* affected by their reliance on TV or the internet, whether the regulation of what they have access to is becoming more difficult, whether they start having sex at a younger age these days – all these locate them as an *exceptional* problem. Judge Hidayatullah, in the KA Abbas case, says, “Its (cinema’s) effect particularly on children and adolescents is very great since their immaturity makes them more willingly suspend their disbelief than mature men and women. They also remember the action in the picture and try to emulate or imitate what they have seen” (Liang 2007, 18). The anxiety surrounding children (especially in relation to new technologies of each period), has a long history in the Indian context. The questionnaire distributed by the Indian Cinematograph Committee (1927-28), in order to determine the effects of cinema and thereby make necessary changes to existing systems of censorship, asks, “Are you in favour of prohibiting all children below a certain age from visiting cinemas except for special “Children’s performances”? If so, why? What age do you suggest?” There enters then a specific anxiety about visual mediums – children are not seen as in danger of accidentally reading *Lady Chatterly’s Lover*, they are in danger of watching programmes or accessing websites that might expose them to harmful material. This anxiety around the visual medium might be one of the explanations for the frenzy around obscenity since the beginning of the 90s. This might be due to the inherently public nature of the visual text – whether in exhibitions, cinema halls or on television screens and billboards. Even many of the cases dealing with literature take objection to the fact that pictures are unnecessarily included in the text, this providing enough evidence for obscenity (eg Vinay Mohan Sharma vs Delhi Administration, 5 November
The cinema seems to be regarded as a different animal from the rest in the estimation of the law, more dangerous because of its inherently visual nature and narrative potential, and the fact that it is viewed by large numbers and is part of an industry that sees this practice as a profit-making enterprise.

Though the specificity of the cinema cannot be denied, and nor can that of the visual, an understanding of the relationship between obscenity and technology cannot be restricted to visual media alone. Censorship as a practice arose alongside the technologies of modernity, starting with the printing press. Whether or not the text is found obscene, the question of technology surrounds it – for example, in the 1911 case concerning Natu Chori (by Dina Sundari, an Uriya poet), while the Counsel for the Crown argued that extracting certain passages and printing them in a “cheap work” (Rs 2) could not be encouraged, the judge, based on expert readers, concluded that it was not obscene. “From the evidence it appears that the Natu Chori was formerly in palm-leaf manuscript. Madhu Sudhan Rao, a retired Inspector of Schools, says he understands that the book was about 100 years in palm-leaf. In cross-examination he stated he heard from Pandit Govind Rath that the book was in palm-leaf” (Kherode Chandra Roy Chowdhury vs Emperor, 17 November 1911). The almost obsessive repetition of the fact that the text was earlier in the palm-leaf form is evidence of how technologies of modernity become a “problem” and how inextricably linked they are to the question of obscenity.

Here are two more examples to establish the way in which technology is addressed within early cases and reports on the same. One, from a 1916 case, Public Prosecutor vs

46 Dina Sundari is referred to as an “Uriya” poet in relation to the text called Uriya Haribans, which deals with the dalliances between Radha and Krishna.
The case involved the printing and publishing of a Telugu booklet ‘Vidi Natakam’, whose author was Srinadha, a famous writer of classical literature from the 15th century. Certain passages in the book were said to be obscene, and the judgment declared them to indeed be obscene, ordered the publisher to pay a fine and ordered that the copies of the book be handed over to the crown. The case is not in itself a landmark in the history of obscenity law. But it is a case in which the obscenity charge was upheld, and clearly not only because the content was judged to be so. There were other issues involved, such as circulation and public access. “In the 15th century when the book was written, the art of publication, as we understand it now, was not known. It may have been permissible among great men in those days to indulge in compositions of doubtful morality. But when a publication of that kind is reprinted and sold broadcast at the rate of one anna per copy so that it may be available to the man in the street, the question whether by this conduct the accused has not committed an offence against public morality and decency, assumes a different aspect.” This is a direct reference to the role of the printing press in shifting the grounds of legal scrutiny of the text. “The question … assumes a different aspect” – the circulation of the text is no longer circumscribed by the lack of technologies of reproduction, or rather, to put it differently, who all the text is reaching becomes more of a problem than the text itself, indeed the text is a problem only because of this circulation, and so the regulation has to address itself to the technology as much as to the text. “The opinion of men of the world and of persons who belong to the classes into whose hands this publication is likely to find its way is more entitled to weight than the judgment of scholars and of men of undisputed moral character.”

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48 Ibid
So it is not that there is already a public in place and there are new technologies that threaten to corrupt it – the public is constituted by the changes in technology and the economies of access and circulation. The text in this case is available for one anna to the man on the street. The ‘man on the street’ is in some ways constituted as a figure by the text being available to him for one anna. Similarly, there is no potentially obscene body or sexuality that then has to be hidden from public view. The public access to and discussion of the body are precisely what constitute this body or sexuality as obscene (or not) in the legal domain.

Moving on to yet another example of the anxiety caused by technology and “access”, the Report on Indecent Advertisements and Displays (109) deals at length with the debate surrounding the English Act 1980, the Protection of Children Act 1978, and the findings of the Williams Committee. The Committee is discussed as referring to a US Supreme Court decision regarding the regulation of broadcast matter. The case concerned the authority of the Federal Communications Commission to effect qualitative control of radio broadcasts, after a complaint was filed against a radio station for airing a programme called ‘Filthy Words’ (on language) which the complainant driving his fifteen-year-old son in his car ended up listening to. The Commission did not place formal sanctions on the radio station and instead banned the words in question from being aired. The Supreme Court reversed this decision, and instead of dealing with it as simply a matter of words that were in themselves obscene, brought in questions of time of day, the audience that the show would reach at that time, and the manner in which the show was broadcast.

49 The Commission did not place formal sanctions on the radio station and instead banned the words in question from being aired. The Supreme Court reversed this decision, and instead of dealing with it as simply a matter of words that were in themselves obscene, brought in questions of time of day, the audience that the show would reach at that time, and the manner in which the show was broadcast.
as a form that is easily accessed by those who are ‘young or immature’. They are “uniquely”
public in that anyone who has a radio can receive a broadcast.

The explicit references to print technology gradually disappear over time, and what we are
left with in a lot of case law are discussions on the prices of texts, the language they are
written in, and whether or not they are meant for “private circulation”. “In the present case
we are not concerned with the book entitled as the "Romance of Lust" or with the four
blocks. The short point for determination is whether the publication styled as the "Asli
Kokshastra" written in Hindi with an outer covering of a nude picture of a woman, priced at
Rs. 4 is a publication of obscene matter falling under the purview of Section 292 of the Indian
Penal Code” (The State vs Thakur Prasad, 14 May 1958). Obviously the judge here is zeroing
in on the elements of language, the “outer covering”, and the price of the book. For him,
these three work together to make the book a danger to public morality – the book is in a
language that the non-English speaking population can read and understand; it is likely to be
picked up on the basis of its cover; and most importantly, it is not priced in such a way that
the majority of the public will be denied access to it. The judge also dismisses the claim of
the author that the contents of the book have been published earlier in a well-known treatise
(one which has been translated into English).

The contention of the author is that the above is nothing but a reproduction of what is
contained in "Rati Ratna Pradipika", It was also contended that the Rati Ratna Pradipika of
Sri Deva-raja Maharaja has been translated into English by Pandit K. Rangswami iyengar the
Librarian of the Government Oriental Library Mysore, and the passages aforesaid are to be
found in Chapter V. Paragraphs 33 to 37, at pages 30 and 31 of the 1923 edition of the book.
This argument however, loses sight of the fact that that book is not a priced publication and it
is not put into the hands of the public at large, but has been expressly stated as meant "for private circulation only.

This phrase, “public at large”, is telling, because it is only when discussing the dangers of these texts that the idea of a mass of people, a populace, arises. When acquitting a text, the judge tends to focus on the merits of the text itself, or imagines a liberal reader or viewer who will gain from it. (Even in the MF Husain case, when the judge refers to internet technologies as transformative, arguing that “with the advent of the technological explosion … a person [my emphasis] sitting anywhere across the globe can get access to what ever information he has been looking for just with a click of a mouse. Therefore, it has become imperative that in this information age, jurisdiction be more circumscribed so that an artist like in the present case is not made to run from pillar to post facing proceedings” (point no. 129) – even here, he refers to “person” and not “public”.)

Returning to the convictions, the point here is that they offer up the threat of greedy populations that will act in ways that destabilize the autobiography of the nation-state. Again, in State vs Kunji Lal, 7 April 1970 (concerning 66 copies of 6 books that were being sold by the owner of Shyam Kashi Press),

Some of these books were being openly sold in market and no steps whatsoever had been taken to see that these books should reach the hands of married people only for whose benefit they purport to have been written. They were priced at Rs. 3/- to Rs. 5/- only and were most certainly likely to fall in the hands of young adolescent boys and girls....In the second place, it may be that the treatment of the subject by the well known writers at the time when they wrote their books may not be considered to be obscene in the setting of the society

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50 We have to draw out the unique character of the internet, as afar as the law is concerned. The internet, as an “explosion”, has the effect both of forcing an imagination of unfettered access, and the flip side to this, a focus on pornography as a positive category that actually has to be reckoned with as opposed to ignored as the illegal “negative” to obscenity.

as it existed then but the circulation of their ideas in the context of the contemporary society may be considered to be obscene.

Even petitioners sometimes lay claim to the distinction between the “common man” and “broadminded people”. “Petitioner who appeared in person and is a lawyer by profession urged at the hearing that the magazine in question was not meant for the common man but was meant for broadminded people belonging to the elite class and therefore the photographs/pictures published in the magazine would neither deprave nor affect the minds of the persons who would purchase and read the magazine” (Vinay Mohan Sharma vs Delhi Administration, 5 November 2007).

The “public” as a collective is seldom (or never) granted the right to view or gain pleasure from a text – texts are either acceptable for an “ordinary” man (by this is meant a category of person, one who is not overly sensitive to this kind of material, and is also of sound mind), or in themselves meritorious (meaning that the focus is on the contents of the text rather than on this virtuous text reaching large numbers of people and thereby having a positive mass effect). This returns us to the larger argument of the thesis, stated in the introduction to the first chapter, that visibility, in relation to public-ness, is a potentially disruptive transaction. The staging that takes place in relation to obscenity law and regulation is that the content of text and its signs are what matter, that visibility is inherently a condition of “representation”:

“The Press (Objectionable Matter) Act, 1951, is an Act intended to provide against the printing and publication of incitement to crime and other objectionable matter. Section 3 defines the expression "objectionable matter" for the purposes of the Act, as meaning 'inter alia' any words, signs or visible representations [my emphasis] which are "grossly indecent or are scurrilous or obscene or intended for blackmail (Clause vi)” (Shanker and Co vs The State of Madras, 28 January 1955, 2). But it is obvious from the above cases that a text
becoming visible to a large number of people, becoming fully public, as it were, and moreover, as stated in the first section of this chapter, holding the potential to constitute a public in the act of circulation, causes anxiety for the courts. Visibility is not contained within the contents or signs of the text itself.

It is not only cinema as a medium that is constitutive of anxieties in relation to publicness. The printing press, the radio and the internet are all in their ways technological changes that have, at a certain period in time, generated discussions on obscenity law. What lies at the core of these anxieties is precisely a concern about publicness. And in all the cases, the object in question (the booklet by the 15th century author, the filthy words broadcasted, the programme on the television (the Pratibha Naitthani case^52), have created anxiety for reasons that exceed their content. Visibility then involves questions of form, circulation, access, and the formation of subjectivities.

This could be a way of understanding the something ‘more’ that the obscenity judgments refer to – the something ‘more’ cannot be defined precisely because it does not lie in the text, it lies outside of it, in the various transactions that take place in the domain of the public, in an constant engagement with ‘publicness’. Sexuality and the body are then also rendered as ‘problems’ only within this transactional field of visibility and feminist engagements with the text and censorship have to invest themselves in investigating this particular location of the problem.

**Conclusion: The Question of History**

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I would like to start this section with questions or objections that this chapter might have raised, the most important one concerning contextualization. The cases that have been represented here range from the early 20th century to the second decade of the new millennium. The worry that then arises is – does their specific historical context not matter? The time at which these cases were filed, the locations in which these charges were made, the formations that surrounded them at that particular point in time. Deana Heath’s work involves itself in precisely this kind of historicizing (although one must point out that she seems to extend what seem to be mostly Bengal-specific references to the rest of the country). She draws out the history of obscenity regulation in India, in the form of the practices of the colonial state and then of the previously mentioned groups or societies set up during the late 19th century. These are of course tied to the ways in which the relationship between British and Indian subject, colonizer and ‘native’, civilized and primitive, Indian man and white woman, were all sought to be governed. To write this history, she first lays out the concept of aesthetic imperialism (carried out initially through English literature as that beacon which will instruct Indians in how to regulate their individual conduct; and also through the regulation of obscenity by controlling post offices and the import/export of texts).

But since in obscenity trials the colonial courtroom became what Robert Darnton terms a ‘hermeneutic battlefield’ where each side attempted to obtain ‘symbolic dominance through textual exegesis’, the failure rate of such prosecutions was high. Moreover, the sheer size of the task by the early twentieth century made even contemplating regulating the obscene a virtual impossibility, since the state was no more able to check the use of ‘obscene’ language during festivals such as Holi than it was to sort through all of the post received by the Sea Post Office… (Heath 2010, 180).
This gives us an idea that between making religious-cultural texts an exception within the law (in order to not incite violent reactions from the native population), and the sheer bulk of material that the post offices had to sort through, these in turn combined with the top-down structure that was in place (Indians were not placed in positions of authority in post offices), not only was it impossible to successfully keep “obscenity” in check, it was also a highly complicated terrain that had to be navigated, between colonial ideas of “morals” and those of the Indian elite. This then moves into the period in which the nationalist elite take hold of this project of regulation.

But by the early twentieth century it was not uncommon for individuals such as Colonel Sir Henry Stanyon to proclaim that ‘There is no country perhaps which has a stronger objection to anything like a public display of indecency and obscenity than India.’…It was yet another means, in short, of producing difference, but in contrast to the agenda of the ethnographic state the primitive had become essential to the very construction of modernity, to ‘making modernity reconcilable with itself’, by incorporating what modernity was perceived to lack (188).

According to Heath, this was what fed claims in the 1920s that Indian culture had never actually produced an obscene image, and that ‘No religion teaches us to exhibit obscene engravings or pictures” (C Duraiswami Aiyangar and Shamlal Nehru, quoted in Heath 2010, 198).

To return to the question of contextualization and history – what makes the treatment of “obscenity” different now, from the colonial or early independence period? Is it that more cases were filed by the colonial state rather than by individuals in the early twentieth century, and this has changed now? This doesn’t seem to be the case, for there were a number of cases
that were brought to the attention of the courts by people who found ‘obscene’ texts in book shops. As established already (both through the case law and through Heath’s work quoted above), it is not even as if the colonial and early Indian state were more stringent when it came to convicting persons on charges of obscenity.

One observation that can be made is that it is only recently that television or newspapers as a whole, as media, have been brought to the courts to answer to this charge. The two cases that stand out in this regard are Ajay Goswami vs Union of India and Ors (12 December 2006), where leading national newspapers (the Hindustan Times, the Times of India), and the Press Council of India, were summoned to establish that they were not endangering children by circulating certain kinds of images; the other is Pratibha Naithani\textsuperscript{53} vs Union of India and Ors (21 December 2005), in which nine television channels (Star Movies, HBO, AXN, Zee Studio, Zee Café, Star World, Hallmark and Filmy\textsuperscript{54}) were forced to go off air until they had ensured that all their content met the CBFC’s standards – the contention was that these channels were screening adult content on television, and children could easily access this content and be harmed by it. In this case, not only were the television channels forced to succumb to the Bombay High Court’s order, the judgment also listed the regulations necessary for advertisements and newspapers, and separated out television as a public medium from cinema (saying that adult viewers could watch adult films in cinema halls or through DVDs and VCDs, but not on television).

\textsuperscript{53} Pratibha Naithani teaches Political Science at St Xavier’s College, Mumbai. She is described as someone who is active when it comes to women and children’s welfare, and also that of tribals who are affected by the state’s conservation policies. This is not the only case in which her ire against the “obscene” has come to light. In 2004, she filed a petition against television channels showing content that had not been approved by the Central Board of Film Certification. In 2005-2006 she fought to get what she saw as obscene sex education material removed from text books, and won her case. Then she again filed a petition in 2005 claiming that the cable operators had violated the order passed that no adult content should be screened on television. Besides battling obscenity, Naithani also works on providing cosmetic surgery to women who have suffered acid attacks (the demand is that facial disfiguration be considered a disability and these women be provided rehabilitation and jobs).

In these two cases, we find one acquittal and one conviction, so the argument here is not that the current judiciary is stricter and more intensely concerned with morality. It is to ask – what is it that brings not single texts but entire mediums before the courts in ways never before done? Till now, the regulatory bodies and the rules laid down have sufficed, there haven’t been court cases regarding media in the generic sense. There are also issues concerning language and foreign-ness (the newspapers and the channels targeted were in English, and included material from other countries). In the Pratibha Naiithani case, the regional serials were excluded from the ban. This tells us that the concern is very much connected to the ways in which “foreign” material is being encountered by Indian viewers. This, of course, takes us right back to the oppositions that were posed during the colonial period, between material from Britain and other European countries, on the one hand, and locally produced material on the other. We now return to a phrase from Rajadhyaksha’s description of Navalkar’s writings on Bombay – the idea of the “explicitly politicized moral censor” (2005, 180). This has been picked out because it points to another difference from the earlier periods of obscenity regulation – it is no longer in the form of private societies set up exclusively for “social purity” that obscenity regulation is sought out. Now it is tied to the “politicized” censor, is precisely tied to the tensions that exist between modernity and democracy in the Indian context (a split that Rajadhyaksha discusses). Another phrase that we extract at this point is from Heath’s argument above – the idea of the colonial-Indian elite tussle over obscenity “making modernity reconcilable with itself”. We can now perhaps coin a new phrase, that of “making modernity recognizable to itself”, for this is what obscenity law in our contemporary moment seems to be deriving from – the need to make “modernity” recognizable to itself in the era following liberalization in the Indian context (not in the sense of a true modernity being revealed through the category of obscenity, but of the ideas and
forms of ‘modernity’ being brought repeatedly to the surface of public consciousness. And this is where we return to visibility as a transaction – the staging of the obscene body-in-the-text over and over again, is symptomatic of the anxieties produced at the interstices of “privatization” as a process (one that produces a discourse of privacy-autonomy-freedom in the face of antiquated and bureaucratic state mechanisms and laws), the state’s own desire to write its autobiography as a democracy, and a volatile public domain that becomes the ground on which these anxieties ‘surface’.