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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

STUDY OF OBSCENITY AND CENSORSHIP IN MEDIA LAW

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Abstract

This article underscores the imperative to revisit and modernize obscenity laws in response to evolving media landscapes. Key considerations include refining definitions, fostering flexibility, aligning with community standards, and harmonizing with international norms. Balancing regulation with freedom of expression is crucial, aided by technological solutions and regular reviews. Educational initiatives and legal protections for digital platforms further contribute to effective and relevant obscenity laws, ensuring adaptability in the dynamic digital age.

Historical Overview of Obscenity Laws

The historical trajectory of obscenity laws reveals a nuanced evolution influenced by cultural, religious, and moral considerations. In ancient civilizations like Greece and Rome, explicit content found acceptance in various artistic expressions, albeit with restrictions imposed by certain societies deeming such materials morally offensive. The Middle Ages saw the Christian Church shaping obscenity laws, seeking to control materials perceived as heretical. The Renaissance, however, ushered in a more liberal attitude toward explicit content. The Enlightenment era championed reason and individual rights, laying the groundwork for debates on freedom of expression. The Victorian era witnessed moralistic restrictions on explicit content, while the 20th century saw landmark cases challenging traditional notions of obscenity, like the Ulysses trial in 1922 and the establishment of the Miller test in 1973. In the 21st century, technological advances, especially the internet, presented novel challenges, prompting global debates on how to regulate explicit material in the borderless digital age. This complex and dynamic process reflects the ongoing tension between freedom of expression and societal values.

Evolution of Media Censorship

- **Early Forms of Censorship:**

In ancient civilizations, rulers controlled information through manuscript destruction and restricting certain publications, often driven by political or religious motives.

- **Print Culture and Press Regulation:**

The 15th-century printing press revolutionized information spread. Governments and religious institutions sought press control through licensing and pre-publication censorship to manage ideas.

- **Political and Ideological Censorship:**

During political upheavals, censorship was a tool for controlling dissent. 20th-century totalitarian regimes, like Nazi Germany and Soviet Russia, used censorship to shape public opinion and suppress opposition.

- **Impact of Wars and Conflicts:**

Wars increased censorship as governments aimed to control information for national security. Propaganda played a role, and censorship was justified to maintain morale and control enemy narratives.

- **Broadcast Media and Regulatory Agencies:**

20th-century radio and television led to regulatory agencies overseeing content. Governments established standards aligning content with societal norms, morals, and cultural values.

- **Internet and Digital Media:**

The internet's decentralized nature posed challenges for traditional censorship. Governments implemented strategies to regulate online content, including filtering, blocking, and legal measures against certain information.

- **Social Media and Globalized Information:**

Social media platforms transformed media censorship. Governments grapple with regulating content transcending national borders, raising questions about jurisdiction and global information dissemination.

- **Challenges to Freedom of Expression:**

Censorship, often justified for public safety or morality, raises concerns about potential misuse to suppress dissent. Advocates for freedom of expression call for transparent and accountable regulatory frameworks balancing societal interests with individual rights.

The Interplay between Freedom of Expression and Censorship

The delicate balance between freedom of expression and censorship is a critical aspect of media regulation, reflecting the ongoing tension between protecting individual liberties and maintaining societal order. While freedom of expression is a fundamental right essential for democratic societies, censorship is often deemed necessary to prevent harm, protect public morals, or ensure national security. This interplay has evolved through legal frameworks, court decisions, and societal norms, with ongoing debates centering on finding a nuanced equilibrium that upholds individual rights while addressing the broader interests and values of the community.

Contemporary Challenges in Regulating Obscenity

In the modern era, regulating obscenity presents a myriad of challenges shaped by technological advancements, cultural shifts, and globalized communication. The internet and digital media have transformed the landscape, making it difficult to apply traditional censorship measures effectively. The borderless nature of online content raises questions about jurisdiction and enforcement. Additionally, diverse cultural perspectives on what constitutes obscenity further complicate regulatory efforts. The accessibility and ease of content dissemination, particularly through social media platforms, challenge authorities to adapt and develop new strategies to regulate explicit material effectively. Moreover, the evolving definition of obscenity in the context of changing societal norms adds complexity to the task of crafting and enforcing laws that strike a balance between freedom of expression and the need for reasonable regulation. Addressing these contemporary challenges requires a dynamic approach that considers the multifaceted nature of media consumption and cultural diversity while safeguarding fundamental rights and societal values.

Statutory Provisions:

Under the Indian Penal Code (IPC) of 1860, Sections 292-294 prohibit the publication and selling of obscene materials. However, indecent representation of women is not covered by these sections. To address this gap, the Indecent Representation of Women (Prohibition) Act of 1986 was introduced, outlawing indecent and scandalous depictions of women in various forms of media. The Cable Television Networks (Regulation) Act of 1995 and the Cinematograph Act of 1952 also play roles in regulating telecasts and cinematograph films, respectively. Additionally, the Young Persons (Harmful Publication) Act of 1956 restricts the

publication of material that could corrupt or adversely influence the minds of children or young people. The Information Technology Act of 2000 addresses the prohibition of lascivious materials in electronic forms, and the Advertising Standards Council of India (ASCI) self-regulates advertisements to ensure they align with accepted standards of public decency.

Obscenity under the Indian Penal Code (IPC), 1860:

Section 292 of the IPC penalizes obscenity, defining materials as obscene if they cater to lascivious interests and deprave or corrupt individuals in a sexual context. Section 293 provides punishment for promoting, selling, or possessing such materials. Section 294 penalizes obscene songs and acts. Notably, the Code excludes certain works from the definition of obscenity if they serve public interests, such as literature, science, history, or religion. While these provisions may seem to curtail freedom of expression, Article 19(2) of the Constitution allows for reasonable restrictions to protect public order and decency.

Cases Related to Obscenity:

Various legal cases have shaped the understanding of obscenity in India. The Supreme Court, in the case of *Ranjit D. Udeshi vs. State of Maharashtra*, applied the 'Hicklin test' to determine obscenity. The *K.A Abbas vs. Union of India* case highlighted that the mere mention of sex does not make content obscene; the context and artistic merit should be considered. Cases involving artists like M.F Hussain and controversies around movies like 'Bandit Queen' and 'Aveek Sarkar vs. State of West Bengal' have demonstrated the complexity of defining obscenity in the Indian context. The courts have emphasized the need to balance artistic expression with community standards while judging obscenity.

Introduction to Censorship Laws:

Censorship occurs when authorities limit or control the expression of ideas or opinions in various artistic forms, such as films, literature, plays, music, and paintings, based on concerns about public decency and morality. While the Indian Constitution guarantees the right to freedom of speech and expression under Article 19, this right is not absolute. Censorship finds its legal basis in the reasonable restriction clause of Article 19(2), allowing the government to curb ideas, thoughts, or opinions it deems opposing.

Cinematograph Act, 1952:

The Central Board of Film Certification (CBFC) operates under the Cinematograph Act, 1952,

defining "cinematograph" broadly to include devices for showing moving pictures. In the K.A Abbas v. Union of India case, the Supreme Court upheld film censorship as constitutionally valid under Article 19(2). The CBFC, composed of a Chairman and members appointed by the Central Government, watches films before public release, certifies them, and may cut scenes or refuse release based on its discretion. The Act recognizes four film certification categories: 'U' (Unrestricted), 'UA' (Unrestricted with caution for children below 12), 'A' (Restricted to adults), and 'S' (Restricted to a specific class).

Shyam Benegal Committee Report:

The Shyam Benegal Committee, formed in 2016, recommended liberalizing film censorship procedures. It suggested that the CBFC only decide certification categories, avoiding moral policing. The report proposed expanding certification categories and allowing filmmakers to make changes for a 'U' certification without affecting entertainment tax. The Mudgal Committee, preceding the Benegal Committee, also addressed issues related to regional bans on films.

Press Council of India Act, 1978:

The Press Council of India (PCI), akin to the CBFC, regulates the press and aims to uphold journalistic ethics. While not directly involved in censorship, the PCI handles issues related to it. Instances of self-censorship in media, often influenced by corporate interests and political funding, have been highlighted. The Cable Televisions Networks (Regulation) Act, 1995, is also used to censor television content.

Censorship of Online Content and OTT Platforms:

OTT platforms like Netflix and Amazon Prime have thrived outside the Cinematograph Act and Cable Televisions Networks Act. Digital media and online platforms initially operated without censorship, fostering creative expression. However, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, now subject digital media and OTT platforms to norms set by the PCI and the Cable Television Networks Regulation Act. The rules introduce a grievance redressal mechanism, triggering concerns about potential self-censorship.

Sociocultural Perspectives on Obscenity in India

Cultural Variances in Defining Obscenity:

India's diverse cultural landscape results in varying definitions of obscenity across regions and communities. Cultural nuances play a significant role in determining what is deemed acceptable or offensive, making it challenging to establish a universal standard. The richness of India's cultural heritage adds complexity, necessitating context-sensitive approaches to obscenity.

Public Attitudes towards Censorship:

Public attitudes toward censorship in India showcase a mix of traditional values, societal norms, and evolving perspectives. While some advocate for strict censorship to preserve cultural values, others emphasize the importance of freedom of expression. These diverse attitudes contribute to ongoing debates on the role of censorship in balancing cultural preservation and individual liberties.

Moral Panics and Media Regulation:

Instances of moral panics, triggered by concerns over perceived threats to cultural values, can lead to calls for stricter media regulation. Controversial content or shifts in media representation may heighten anxieties, prompting authorities to consider more stringent measures. Understanding and navigating these moral panics is crucial for effective media regulation aligned with societal expectations.

Media Literacy and its Role in Addressing Obscenity in India:

Promoting media literacy is vital in addressing obscenity in India. Enhancing public awareness about interpreting media content, differentiating between artistic expression and obscenity, and fostering critical thinking empower individuals to make informed choices. A more media-literate society is better equipped to engage in constructive dialogues on censorship and cultural representation.

Technological Challenges in Addressing Obscenity

Internet and the Globalization of Obscenity:

The advent of the internet has revolutionized the dissemination of information, including content that may be considered obscene. The borderless nature of the internet allows the global

sharing of diverse cultural expressions, but it also poses challenges in regulating content that transcends geographical boundaries. Obscene materials, once confined by national borders, can now easily reach audiences worldwide, necessitating international cooperation in addressing this globalization of obscenity.

Emerging Technologies and New Frontiers in Censorship:

As technology continues to advance, new frontiers in censorship and obscenity emerge. Virtual Reality (VR), Augmented Reality (AR), and Artificial Intelligence (AI) present novel challenges in regulating immersive and AI-generated content. Deepfakes, for instance, can manipulate visuals and audio to create realistic yet fabricated content, raising concerns about the potential misuse for creating obscene material. Policymakers and tech innovators face the ongoing challenge of staying ahead of technological developments to enact effective regulations.

The Role of Social Media Platforms:

Social media platforms play a pivotal role in shaping public discourse and cultural narratives. However, they also serve as channels for the rapid dissemination of content, including potentially obscene material. The decentralized nature of social media, combined with the sheer volume of user-generated content, presents a formidable challenge in regulating and moderating content. Platforms like Facebook, Twitter, and Instagram grapple with striking a balance between providing a space for expression and curbing the spread of offensive content.

Efforts to regulate obscenity on social media involve the development of content moderation algorithms, community guidelines, and user reporting mechanisms. Yet, the sheer scale and diversity of content make it challenging to create one-size-fits-all solutions. The effectiveness of these measures relies on constant adaptation to evolving trends in online expression and the ability to address cultural nuances.

In response to public concerns and regulatory pressures, social media platforms have implemented stricter content policies, particularly regarding nudity, hate speech, and graphic violence. However, the enforcement of these policies remains an intricate task, often facing criticisms for both under and over-moderation.

Updating and Revising Laws Related to Obscenity:

In light of the constantly evolving landscape of media and communication, there exists a critical necessity to revisit and modernize laws pertaining to obscenity. This imperative task involves a thorough examination of existing statutes to ensure their continued relevance and efficacy in addressing contemporary challenges. Key aspects to be considered in this undertaking include:

1. **Precision in Definition:** Clearly articulating what qualifies as obscenity across various media formats, encompassing digital platforms and emerging technologies. This clarification should be attuned to cultural subtleties and technological advancements.
2. **Adaptability and Flexibility:** Embedding adaptability into legal frameworks to accommodate swift technological transformations and new modes of expression. This ensures that laws can evolve to meet emerging challenges without compromising the fundamental principles of obscenity regulation.
3. **Alignment with Community Norms:** Bringing obscenity laws in harmony with community standards by involving the public in the legislative process. This may involve regular surveys, public consultations, and collaborations with advocacy groups to understand societal norms and expectations.
4. **International Consistency:** Ensuring congruence with international standards to facilitate collaboration and streamline legal processes in the era of globalized media. Harmonizing laws helps minimize disparities and presents a unified approach to addressing obscenity concerns that transcend borders.
5. **Safeguarding Freedom of Expression:** Striking a delicate balance between regulating obscenity and safeguarding freedom of expression. Achieving this equilibrium requires nuanced language in laws, precisely outlining boundaries to prevent undue restrictions on legitimate forms of expression.
6. **Integration of Technological Solutions:** Incorporating technological advancements into legal frameworks to enhance enforcement capabilities. This could involve deploying artificial intelligence and content recognition technologies to identify and regulate obscene content on digital platforms.
7. **Periodic Review Mechanisms:** Establishing regular reviews of obscenity laws to ensure their ongoing relevance. This proactive approach enables lawmakers to stay abreast of emerging trends and promptly address any gaps or deficiencies in existing regulations.
8. **Educational Initiatives:** Implementing educational programs to enhance public awareness of obscenity laws and their implications. This empowers individuals to make

informed choices and contributes to fostering a culture of responsible media consumption.

9. **Legal Safeguards for Platforms:** Clarifying the legal responsibilities and protections granted to digital platforms. This includes outlining the obligations of platforms in content moderation while shielding them from undue liability for user-generated content.

Strengthening Enforcement Mechanisms

To enhance the effectiveness of obscenity regulations, it is imperative to strengthen enforcement mechanisms at various levels. This involves empowering regulatory bodies with adequate resources, personnel, and technological tools to monitor and address violations. Additionally, collaboration between law enforcement agencies, internet service providers, and technology companies becomes crucial. Implementing stricter penalties for offenders and streamlining legal procedures can act as deterrents, reinforcing the commitment to uphold community standards.

Promoting Media Literacy and Education

An integral aspect of combating obscenity lies in promoting media literacy and education. By enhancing the public's understanding of media content, individuals are better equipped to critically analyze and discern between acceptable and objectionable material. Media literacy initiatives can be integrated into formal education curricula and community programs to empower people with the skills to navigate the vast landscape of media content responsibly. Educated consumers contribute to a more discerning and vigilant society, reducing the potential impact of obscene material.

International Cooperation in Addressing Global Challenges

Given the borderless nature of the internet and the global reach of media content, addressing obscenity requires international cooperation. Countries must collaborate to harmonize legal frameworks, share best practices, and collectively combat cross-border challenges. Establishing international agreements and protocols can facilitate the extradition of offenders, ensuring that legal action is taken regardless of geographical location. International forums and organizations play a pivotal role in fostering cooperation and coordination in the face of evolving global challenges related to obscenity and inappropriate content.

By fostering a collaborative approach, nations can collectively work towards creating a safer and more responsible digital environment. This includes sharing technological expertise, intelligence, and resources to address common threats effectively. Additionally, joint efforts in research and development can lead to the creation of tools and technologies that aid in content moderation and enforcement.

CONCLUSION

In conclusion, the imperative to revisit and update obscenity laws is paramount in response to the dynamic landscape of media and communication. The evolution of technology necessitates a comprehensive review of existing statutes to ensure they effectively address contemporary challenges. Precision in defining obscenity across diverse media formats, adaptability to technological changes, alignment with community standards, and consistency with international norms are key considerations in this process.

Maintaining a delicate balance between regulating obscenity and protecting freedom of expression is crucial. Legal frameworks should incorporate flexibility to accommodate emerging forms of expression without compromising core regulatory principles. Involving the public in legislative processes, periodic reviews, and educational initiatives contribute to a more informed and engaged society.

The integration of technological solutions, such as artificial intelligence and content recognition, enhances enforcement capabilities. Platforms must be granted legal safeguards, defining their responsibilities in content moderation while avoiding undue liability.

Ultimately, a proactive approach to updating obscenity laws ensures ongoing relevance, facilitates international cooperation, and fosters responsible media consumption. By embracing technological advancements, engaging the public, and safeguarding freedom of expression, modernized obscenity laws can effectively navigate the complexities of the digital age.