



# FACULTY OF JURIDICAL SCIENCES

**COURSE:** LL.M. 1st Semester

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# Lecture-23



## **OFFICIAL SECRETS ACT, 1923**

This is an act, which consolidates the law relating to official secrets, and deals with offences like spying and wrongful communication of secret information. Section 3 of the Act makes it an offence if:

- o Any person for the purpose prejudicial to the public safety and the interests of the state approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or
- o Makes any sketch, plan, model or note which is calculated to be or might be or is intended to be directly or indirectly useful to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India the security of the state or friendly relations with foreign states; In a prosecution for an offence punishable under section 3(i) of the Act, with imprisonment for a term which may extend to 14 years. It is not necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the state, and notwithstanding that no such act is proved against him, he may be convicted inform the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was prejudicial to the safety or interest of the state. However, there have not been many cases of prosecution under this Act.

## **PRESS AND BOOKS REGISTRATION ACT:**

The Press and Books Registration Act, 1867 was enacted with a view to evaluating the present position of books, newspapers and magazines in the country from time to time. The prominent sections of this Act are follows:

- o Every book or paper printed within India shall have printed legibly on it the name of the printer and the place of the printing and of the publisher and the place of publication.
- o A printer can publish a paper (or anything which is of mass circulation) only after the permission of District Presidency and Divisional Magistrate.
- o On every publication, the name of the proprietor and the editor must be printed on each issue.
- o Printer and publisher should sign before the District Presidency or Sub Divisional Magistrate

after giving the information of language and periodicity of the paper and after enclosing the written authority and the declaration of the owner of the paper

- o The information of any change in the paper, language, periodicity publisher etc. must be given to the general officer and a new declaration must be received.

- o After the acceptance of the declaration if any weekly for 6 weeks or any newspaper for 3 months is-not published then its authority-letter will be treated as cancelled or invalid or unacceptable.

- o Where in any period of three months in daily, tri-weekly, bi-weekly, or fortnightly newspaper publishes issues the number of which is less than half of what should have been published in accordance with declaration will cease to have an effect and will be treated as invalid or unacceptable.

- o A declaration will be treated as cancelled if the paper is not published within one year.

- o The magistrate has power to make the declaration invalid or unacceptable by ordering to thoroughly inquire into the matter on the demand of the Press Registrar or any other person concerned.

- o If the declaration of a paper is cancelled, then the incumbent has the right to go for an appeal well-within 60 days and not beyond that.

- o It is mandatory to send one copy of every published paper to thy Press Registrar and two copies to the State Government free of cost.

- o For not complying with the press laws, the editor and the printer of the paper are punishable with a fine, which may extend to two thousand rupees or with an imprisonment, which may extend to six months or with both. o If the printer or publisher or editor is no more, then the information must reach the Magistrate or else there may be a fine, which may extend to two hundred only.

- o If any person violating the provisions of section 4 of this Act and without having a declaration possesses a press, then the Magistrate may fine him with Rs. 2000/- or with imprisonment of 6 months or with both.

- o If any person v deliberately makes a false declaration then he may be punished with a fine of Rs. 2000/- and imprisonment of 6 months if he is proved to be so before the Magistrate.
- o In India, if the Printer of a newspaper under section 11 (B) of this Act, does not send the copies to the Press Registrar, then on the complaint of the Press Registrar, he may be fined rupees fifty for each mistake.
- o For sending wrong information to the Press Registrar, a person is punishable with fine which may extend to Rs. 500/-
- o It is mandatory to send the details of the papers every year and on the directives of the Registrar; it should be punished also.
- o The state Government with the permission of the central Government may by notification in the official gazette, exclude any class of books or papers from the operation of the whole or any part of this Act.
- o This Act extends to the whole of India.

Defamation simply means tarnishing some body's image. It is an injury to a man's reputation. It means speaking or writing something damaging or diminishing the status or personality or prestige of a person or an Organization. There are two types of Defamation: Libel is a written form of defamation and Slander is a spoken form of defamation

o Whoever, by words either spoken or intended to be read, or by signs or by visible, representations makes or publishes any imputation concerning any person intending to harm, or having reason to believe that such imputation will harm the reputation of such person, is said except in cases hereinafter excepted to defame that person.

o Contempt of Court includes: charging the judge with unreason ability and inability, expressing doubts on the prestige, status, rights or fairness of the judiciary, publication of any comment on the matters, which are under the proceedings of the court and which may mislead the general public and which, lead them to be prejudiced, to cast aspersion or to attempt in influence or the judge, jury, advocates or witness of any matters which are under the proceeding of the court, to interfere in the judicial administration, to threat the witnesses, to attempt to obstruct in the police

inquiry against the order of the judge, publication of the proceedings of the court or the publications of the picture of the accused, publication of the report of the proceedings of the court and distorting the facts, etc.

## Tests for Obscenity

### 1. Hicklin test

The Hicklin's test was laid down in English law in the case of Regina v. Hicklin. On Application of Hicklin's test, a publication can be judged for obscenity based on the isolated part of the work considered out of the context. While applying Hicklin's test the work is taken out of the whole context of the work and then it is seen that if that work is creating any apparent influence on most susceptible readers, such as children or weak-minded adults.

### 2. Roth Test

In 1957, a new test was developed by US courts to judge obscenity in case of Roth v. United States, In this case it was held that only those sex-related materials which had the tendency of exciting lustful thoughts were found to be obscene and the same has to be judged from the point of view of an average person by applying contemporary community standards. This test was sharper and narrower than the Hicklin's test as it does not isolate the alleged content but limits itself to the dominant theme of the whole material and checks whether, if taken as a whole, it has any redeeming social value or not.

## Indian Courts on Obscenity:

Indian Judiciary for the first time defined obscenity in the case of **Ranjit D. Udeshi v. The State of Maharashtra**. In this case Hon'ble Supreme Court observed that the test of obscenity is, whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to immoral influences, but the test of obscenity must agree with the freedom of speech and expression guaranteed under our Constitution. Therefore, sex and nudity in art and literature cannot be regarded as evidence of obscenity without something more.<sup>2</sup>

The Court went on to admit that obscenity has been understood in the following terms:

(1) That which depraves and corrupts those whose minds are open to such immoral influences.

- (2) That which suggests thoughts of a most impure and libidinous character.
- (3) That which is hard-core pornography.
- (4) That which has a substantial tendency to corrupt by arousing lustful desires. (5) That which tends to arouse sexually impure thoughts.
- (6) That which passes the permissive limits judged of from our community standards.

In this case the Hicklin test was applied and given due regard by the court to judge obscenity.<sup>3</sup> After this case Hicklin test was continuously liberalized and applied until the recent case of Aweek Sarkar.

In another such case, **K.A. Abbas v. Union of India and Anr**<sup>4</sup>, the Hon'ble Supreme Court validated the pre-censorship of content as exception to the right to freedom of speech and expression. However, the court observed that "the censors need to take into account the value of art while making their decision. The artistic appeal or presentation of an episode robs it of its vulgarity and harm and also what may be socially good and useful and what may not."

While determining that whether a thing presented in a film is obscene or not it should be considered with the context in which that thing is being portrayed and it should not be isolated from the context. Based on this same concept as mentioned, the Supreme Court in case of **Bobby Art International & Ors. v. Ompal Singh Hoon** while dealing with the question of obscenity in the context of film called Bandit Queen, ruled that the scenes depicting must not be scene in isolation. Hon'ble court said that the so called objectionable scenes in the film have to be considered in the context of the whole film and with the context that film is seeking to transmit in respect of society.

Further, In **Chandrakant Kayandas Kakodar vs The State of Maharashtra**, the Supreme Court observed that the standards of contemporary society in India are fast changing. The adults and adolescents now have available to them a large number of classics, novels, stories and pieces of literature which have a content of sex, love and romance. In the field of art and cinema also the adolescent is shown situations which even a quarter of century ago would be considered derogatory to public morality, but having regard to changed conditions, are more taken for granted without in any way tending to debase or debauch the mind.

In case of **Director General, Directorate General of Doordarshan & Others v. Anand Patwardhan and Another**<sup>5</sup> in this case an independent filmmaker challenged doordarshan's refusal to telecast his documentary, giving reason that it contains scenes that could promote violence and its telecast would be against the policies of doordarshan. The court held that though there are some scenes of violence and social injustices in the film but because of this it cannot be said that the filmmaker supports any of that, and this depiction is only meant to convey that such social evils still exist. The Court also held that a documentary couldn't be denied exhibition on Doordarshan simply on account of its "A" or "UA" certification. The Court held that a film must be judged from an average, healthy and common sense point of view.

In case of **Maqbool Fida Husain vs Raj Kumar Pandey** Delhi High Court while dealing with the issue of whether a nude painting depicting 'Bharat Mata' can be said to be obscene or not. The court answered this in negative and went on observing that "nudity or sex alone cannot be said to be obscene."

High Court of Bombay in case of **State of Maharashtra v. Joyce Zee alia Temiko** observed that, A customer, above the age of eighteen, who goes to a hotel, where a cabaret show is run, looks forward to be entertained by obscenity and cannot complain of annoyance to which, if any, he shall be deemed to have given his consent.

In the recent landmark judgment of **Aveek Sarkar v. State of West Bengal** Hon'ble Supreme Court while dealing with the issue of obscenity finally disapproved the Hicklin's test and adopted the Roth test. The issue was revolving around a picture which was alleged to be obscene in nature.

Hon'ble Supreme Court in this case held that "the question of obscenity must be seen in the context in which the photograph appears and the message it wants to convey." The Court further said that the correct test to determine obscenity would be, Community Standards Test i.e. Roth test and not Hicklin Test. The Court observed that in every case related to check on obscenity the material in question to be 'taken as a whole'. When the matter taken as a whole and it is lascivious and tends to deprave the person who reads, see or hear that material, then only that material can be said to be obscene. The court observed that the Hicklin test is in contravention of IPC. Further court observed that as the terms 'obscene' and 'obscenity' is not defined in Indian



Law, this makes the community standard test to be more suitable for Indian Law Regime, also, the community standards test is more adaptive to any changing society.

In Bobby International case the Hon'ble Supreme Court upheld its own judgment in K. A. Abbas vs The Union Of India & Anr. wherein it was held that Sex and obscenity are not always synonymous, and it is wrong to classify sex as essentially obscene or even indecent or immoral. Further, it cannot be said with any assurance that a novel, film or video is obscene merely because some slang and unconventional words have been used, or there is emphasis on sex and description of female bodies, or there are narrations of feelings, thoughts and actions in vulgar language in it.

## SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	Section 3 of the Official Secrets Act makes it an offence if any person for the purpose prejudicial to the public safety and the interests of the state approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place;	True	False
2.	Section 3 of the Official Secrets Act Makes any sketch, plan, model or note which is calculated to be or might be or is intended to be directly or indirectly useful to any other person any secret official code	True	False
3.	The Press and Books Registration Act, 1867 was enacted with a view to evaluating the present position of books, newspapers and magazines in the country from time to time.	True	False
4.	On every publication, the name of the proprietor and the editor must be printed on each issue.	True	False
5.	The information of any change in the paper, language, periodicity publisher etc. must be given to the general officer and a new declaration must be received	True	False

**Answers: 1-(b),2-(a), 3-(a),4-(a),5-(a)**