

## CHAPTER IX

### OBSCENITY AND BAD TASTE

#### 1. Indira Sadanandan through Press Information Bureau Ministry of Information and Broadcasting New Delhi complaint against Malayalanadu<sup>1</sup>

*Facts* : It was alleged by the complainant that a serialised obscene story being published in *Malayalanadu*, a weekly of Quilon, under the name "Madners" was objectionable as it was a dirty story that exhibited vulgarity stretching beyond imagination and was below the norms of journalistic ethics as well as in very bad taste.

The editor denied violation of journalistic ethics on two grounds, namely, (i) the story's author was a renowned novelist in Malayalam and serialisation of his novel could serve only as a medium between the novelist and the reader ; (ii) responsible bodies, like cultural or literary associations, had not offered any criticism over its publication. *Inter alia*, the editor argued, the fact of the complaint being brought to the Council's notice after completion of its serialisation, spoke for its popularity. The complaint, he contended, was "full of ill will and malice towards him" made to harass him and lower his weekly's reputation.

*Decision* : The Council was faced with the question as to whether the impugned writing was obscene and consequently failed "to conform to the standards of public taste".

In the course of determining the question, the Council examined at length the legal position as to obscenity. Reference was made to its definition suggested by Havelock Ellis,<sup>1a</sup> and the decision of the Supreme Court in *Ranjit D. Udeshi v. State of Maharashtra*<sup>2</sup> (involving *Lady Chatterley's Lover*) where the test laid down in *Hicklin*<sup>3</sup> was substantially accepted. The test states that the matter must tend "to deprave and corrupt those whose minds are open to such immoral influences and into those hands the publication of this sort may fall". The Supreme Court made it clear that "simply treating with sex and nudity in art and literature could not be recorded as evidence of obscenity without something more".

The Council referred to the opinion of the British Press Council,<sup>4</sup> as also the decisions rendered by the erstwhile Indian Press Council in some

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1. 1980 Ann. Rep. 125.

1<sup>a</sup>. Norman St. John Stevas, *Obscenity and the Law*.

2. A.I.R. 1965 S.C. 881.

3. *Queen v. Hicklin*, 1868 L.R. 3 Q.B. 360.

4. *British Press Council Report* 102-103 (1966).

cases, namely, that of the *Indian Observer*,<sup>5</sup> *Confidential Advisor*,<sup>6</sup> *Blitz*, *Statesman*, *Amrita Bazar Patrika*, *Vishwamitra*, *Dharamyug*, *Cine Advance International*.<sup>7</sup> In the *Indian Observer* case, the view had been expressed that "obscenity" as well as "taste" cannot be strictly defined and are to be judged in relation to "the totality of the impression, left on the reader". If a matter has a tendency to stimulate sex-feeling, it is undesirable to publish it in a journal intended for the lay public—young or old. The 1972 cases had laid down the principle<sup>8</sup> that "in judging whether a picture or an article fell below the standards of public taste, the environment, the milieu, the notions of taste prevailing in contemporary society were all factors to be taken into account".

On the facts of the present case the Council held that there was no tendency "to deprave and corrupt" which is the basic test. The scene depicted and the language used could not be considered "filthy" "repulsive", "dirty" or "lewd" which obscene normally means in accordance with the dictionary definition.

The Council expressed the view that "(t)oday our national and regional languages are strengthening themselves by new literary standards under the impact of Western civilisation and culture....But free discussion of sex is not an anathema in our society. This should not be misconstrued and extended to the point of depicting what is potently obscene".<sup>9</sup>

The Council held that the editor had neither transgressed the limits of journalistic ethics, in exercising his discretion to publish the impugned writing, nor in any way offended against public decency and morality. The complaint was, therefore, rejected.

## **2. D.D. Agarwal, Hony. Gen. Secy. Cine Film Reform Association of India Calcutta complaint against Eve's Weekly<sup>10</sup>**

*Facts* : *Eve's Weekly* published certain pictures in its issue dated December 1, 1973 which were objected to by the complainant on the ground that they were indecent, as some women were allegedly depicted in a "nude" or "semi-nude" condition.

The editor justified the impugned publication on merits, and referred to several other magazines where similar pictures had been published. Copies of these were filed so as "to throw light on the standard of journalistic ethics and professional conduct...amongst the editors and journalists of repute".

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5. 1969 Ann. Rep. 33-34.

6. 1970 Ann. Rep. 21.

7. 1972 Ann. Rep. 69-90.

8. *Id.* at 77.

9. *Supra* note 1 at 131.

10. 1974 Ann. Rep. 118.

*Decision* : The question before the Council was whether the pictures were “indecent and obscene” and contrary to public taste.

In arriving at a decision the Council referred to several complaints<sup>11</sup> by the same complainants where certain tests had been laid down to determine if a picture is indecent. These tests were applied by the Council in the present case. It emphasized that the question of public taste is to be viewed “in the context of the nature of the paper and the purpose for which the pictures are published”. For instance, what appears in the medical journal or in a publication containing pictures of paintings or sculptor cannot be equated with publications which are expected to be circulated to particular groups of people who might be titillated by their sight.

The Council examined the impugned pictures in the light of the above and arrived at the conclusion that the pictures could not be considered as indecent or obscene. In one of the pictures both the upper and middle portions of the girl's body were covered, and no objection could be taken to such a picture. The second picture was an advertisement. All the girls shown in the picture had their upper and lower parts covered—only the thighs were bare and the navel was seen. The Council did not see any objection to this also, particularly in view of the fact that it was an advertisement. In the third picture, however, the upper part of the girl's body was bare, but this was not found to be obscene in view of the tests which the Council had laid down in its earlier adjudication of 28 July, 1972. Hence, the complaint was rejected.

### **3. Vijay Kumar, Hony. Secretary Cine Film Reform Association of India Calcutta complaint against Current<sup>12</sup>**

*Facts* : The complainant alleged that *Current*, an English weekly of Bombay, in its issues dated 17 March and 21 April, 1973 had published pictures of two women which were stated to be indecent and obscene.

*Decision* : On careful consideration of the two pictures, the Council concluded that the decision of July 1972<sup>13</sup> was applicable to these impugned pictures and, hence, rejected the complaint.

### **4. D.D. Agarwal, Hony. Gen. Sec. Cine Film Reform Association of India Calcutta complaint against Blitz and Illustrated Weekly of India<sup>14</sup>**

*Facts* : *Blitz* and *Illustrated Weekly of India*, the complainant alleged, had published “obscene, lascivious and prurient pictures that deprave young men and women”.

According to the complainant *Blitz* had published six pictures in its

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11. *Supra* note 7.

12. *Supra* note 10.

13. Case of *Blitz*, *Statesman*, etc., *supra* note 7.

14. 1973 Ann. Rep. 71-74.

weekly issues dated October 23, and 30 and November 13, 1971 “with a view to making money at the cost of decency”.

Against *Illustrated Weekly* the complaint stated that a picture was published in its issue of April 9, 1972 with the caption “Hot Stuff in Cold Climate”. It portrayed a girl modelling a new style bikini.

*Decision* : The Council had to determine the question whether in the light of tests laid down, in 1972,<sup>15</sup> the pictures violated standards of journalistic propriety.

In respect of pictures in *Blitz*, the Council felt that no exception could be taken as these were not likely to excite sex feelings in normal individuals. In the four pictures the girls wore bra and bikini. In one picture the girl was shown nude but it was her back that was seen. In the sixth picture a man and a woman were shown as if they were about to kiss each other. This was published to show how the censors were acting. The Council concluded that there was nothing wrong in these pictures and no journalistic impropriety was involved.

As regards *Illustrated Weekly* the Council was of the view that in the picture the girl was possibly wearing some see-through type of bodice as undoubtedly the upper part of the body was bare. However, apart from this, it could be considered “at worst a borderline case” where the publication was on the right side of the line. Hence, the Council concluded that the picture was neither indecent nor it excited sex feelings in normal minds.

As regards the editor’s discretion to publish the matter in the paper, the Council stated that undoubtedly such a discretion was there. But if the complaint alleged violation of journalistic propriety and the charge was that the discretion had not been properly exercised, it was the function of the Council to decide the matter.

**5-13. Gen. Secy. and Secy., Cine Film Reform Association of India Calcutta complaint against *Blitz*, *Statesman*, *Amrita Bazar Patrika*, *Vishwamitra*, *Dharmayug* and *Cine Advance International*<sup>15</sup>**

*Facts*: Since their subject matter was almost identical, the Council heard nine complaints together.

Three complaints against *Blitz* pertained to several pictures of women which were alleged to be “indecent and obscene”.

Eight pictures of women published as part of advertisements in *Statesman* were the subject matter of two complaints filed by the General Secretary.

Against *Cine Advance International*, an English weekly of Calcutta, devoted to cinema films, the objection was in respect of 15 pictures.

The complaint against *Amrita Bazar Patrika* was in respect of the picture of a woman in an advertisement of “glycerine soap” which was

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15. Case of *Blitz*, *Statesman* etc., *supra* note 7.

alleged to be “indecent” besides having “no relevance to the article advertised”.

A similar complaint was lodged against *Vishwamitra*, a Hindi daily of Calcutta, as regards an advertisement of “sulphur soap” and against *Dharamyug*, a Hindi weekly of Bombay, which carried advertisements of Aruna Mills and Cinthella Cold Cream.

*Decision* : The preliminary objections raised by the editors were rejected by the Council. It laid down :

1. As a complaint could be initiated *suo moto* by the Council, the credentials of the Association or of its secretaries were not relevant in considering a complaint.
2. As regards the question of motivated complaints, there were two aspects, namely (i) if the complaint was frivolous in that want of taste was clearly not involved, it would be rejected without going into its motive; (ii) if, however, some justification existed for enquiry, the complaint would be entertained, irrespective of it having been induced by some improper motive. Hence, the motive of a complainant, whether good or bad, may not be very relevant.
3. The argument, that the procedure prescribed by regulation 3 (1) (c) was not followed and as such the complaint should be rejected *in limine*, ignored the fact that the same regulation vested authority in the Chairman to waive that requirement.

With reference to some Supreme Court decisions,<sup>16</sup> for formulating tests to deal with such cases, the Council pointed out its earlier adjudication in *Indian Observer*<sup>17</sup> *Confidential Advisor*<sup>18</sup> and *Jawani Diwani*<sup>19</sup> where it had stated “the tests laid down by the court as to what constituted ‘obscenity’ in a prosecution under section 292 of the I.P.C. did not in terms apply when the matter was before the Council on a complaint that a particular picture or passage...was vulgar and fell below the standards of public taste”. The question whether a publication was vulgar or offended against good taste was very different from the question whether it was obscene within the meaning of section 292, Indian Penal Code. The editors contended that the Council should judge about the public taste by reference to the run of common standards obtaining in newspapers and magazines published in the country. The Council’s view was that in judging whether a picture fell below the standards of public taste, the environment, the milieu, the notions of taste prevailing in the

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16. *Chandrakant v. State of Maharashtra*, A.I.R. 1970 S.C. 1390; *Udeshi v. State of Maharashtra*, A.I.R. 1965 S.C. 881.

17. *Supra* note 5.

18. *Supra* note 6.

19. *Infra* notes 22 and 24.

contemporary society were all the factors to be taken into account. However, the fact that similar pictures had appeared in other magazines was not a good defence.

The Council was not ready to accept the view that the same standards should apply whether the picture is published in an art magazine or some other magazine. The relevancy of a picture to the subject matter of a magazine or paper had a bearing on the question of the published matter meeting the standards of public taste. In this connection it referred to its views earlier expressed in *Jawani Diwani*.<sup>20</sup> Apart from this, the Council felt, that relevance has a bearing on the question of motivation—“is it dirt for money’s sake or is it intended to serve some purpose”.<sup>21</sup>

In judging the impugned pictures, the Council applied the tests laid down in its earlier adjudications, viz.,

- (a) Were the pictures vulgar and indecent ?
- (b) Could they be described as a piece of mere pornography ?
- (c) Was their publication motivated with the idea of making money by titillating the sex feelings of adolescents and adults among whom the circulation was intended ? In other words, could it be considered “an unwholesome exploitation of sex” so as to make money ?

The impugned pictures on the above basis were classified under three heads :

(1) *Advertisement of goods having pictures of women appearing therein* : In this case, the Council felt, since the pictures were clearly designed to draw the reader’s attention to the advertised goods, they were intended to serve some purpose and could not be intended for exploitation of sex. Limits, however, were there, which if crossed could be regarded as falling below the standards of public taste. For this the test adopted by the Council was the same as laid down by the Societies of Advertisers in India and abroad as constituting ethical guidelines for advertisements. Two complaints against *Statesman*, one each against *Vishwamitra*, *Amrita Bazar Patrika* and *Dharmayug*,<sup>21</sup> fell in this category.

(2) *Pictures that appeared in Cine Advance International*, a weekly. The editor had contended that the magazine was exclusively devoted to matters relating to the film world. Some of the pictures against which the complaint was made were stills from pictures which had been censored in India and some were pictures of stars acting in films shot in foreign countries. According to the Council, what is shown in a film is not necessarily justified when published in still, as the film has a sequence in which the picture appeared. It might produce a different impression on the mind when published

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20. *Ibid.*

21. *Supra* note 7 at 78.

without reference to the sequence. Each picture has to be examined at its own after taking into account that they were published in a magazine devoted to the film industry.

(3) *Pictures which seemingly serve no purpose, their publication being for no apparent reason*: In this category fell some of the pictures appearing in *Blitz*.

After examining the impugned pictures on the basis of these categories, the Council rejected the complaints against *Statesman*, *Amrita Bazar Patrika*, *Vishwamitra*, *Dharmayug* and *Cine Advance International*. The pictures which appeared in the different advertisements showed as follows: (a) exposure of a little top portion of the bust; (b) picture of a lady sitting, possibly nude, with a soap in her hand, but showing her back to the viewers; (c) body shown up to the hip but no exposure of any erotic part; (d) a girl almost falling into the arms of a young man; (e) exposure of the full breasts of a woman, but the woman was a statue of "Venus de Milo" one of the classical Greek sculptures of the second century B.C.; (f) a full clad woman whose skirts reached up to her thighs; a well clad man and woman holding each other's hands; (g) a man and a woman in bed covered up to the neck by a blanket; (h) a woman shown with her upper part of the back bare. As there was nothing in these pictures to excite sexual feelings, except to a neurotic, the Council held that these advertisement pictures did not fall below the standards of public taste.

As regards pictures in *Cine Advance*, the Council found that a few of the pictures showed female forms with their busts somewhat prominently, but none of them showed a female form completely nude or even totally topless. This also did not violate public taste.

However, in respect of two specific pictures appearing in *Blitz*, namely, one of a waitress in a Sydney bar showing her bare breasts and another titled "Home Comforts" showing a woman sitting on a divan with the upper part of her body completely bare, the Council ruled that these served no purpose and *Blitz* being a serious paper could have avoided it.

#### 14. Press Officer, Delhi Administration complaint against *Jawani Diwani*<sup>22</sup>

*Facts*: The March and April 1970 issues of *Jawani Diwani*, an Urdu monthly of Delhi, according to the complainant, carried pictures of nude and semi-nude women, which he alleged, "offended against public taste". This formed the subject matter of two complaints lodged with the Council.

In his defence, the editor put forth the contention that "his magazine was a journal on sex 'aiming at research and reform', its purpose being to guide human beings on sex in the right direction".

*Decision*: In the course of its deliberations, the Council referred to the magazine's circulation, which was found to be about 2,000, of which 25 per

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22. 1971 Ann. Rep. 55.

cent was distributed free to students of Aligarh and other universities. This, the Council felt, indicated a pornographic purpose in publication and not research. The question before the Council, was not whether the pictures were obscene under section 292 of the I.P.C. but whether the newspaper fell below the norms of public taste. In this connection, it referred to its earlier adjudication in *Confidential Advisor*<sup>23</sup> and, applying the test laid down therein, held that the impugned matter “intended to exploit sex-feelings for money” fell below the norms of public taste. Art journals, which met the needs of artists, were a class apart and there is no comparison between them and the particular monthly in question. Hence, the complaint was upheld and the editor warned against such publications in future.

#### **15. Press Officer, Delhi Administration complaint against Jawani Diwani<sup>24</sup>**

*Facts* : The complaint alleged that the July, 1970 issue of *Jawani Diwani* had in 20 pages carried certain pictures which could be described as “grossly vulgar and erotic” and the editor in publishing them had violated the norms of journalistic ethics.

As in the previous case, the editor contended that the magazine “aims at research and reform of sex”.

*Decision* : On examining the impugned pictures, the Council found them to depict nude or semi-nude forms—all of them topless and several of them bottomless, which it regarded as not being in good taste. As in the earlier decision against the same newspaper, the Council found these pictures served no purpose except to titillate and arouse prurient curiosity among adolescents. No aesthetic or art purpose was served by this display of nudity. The Council concluded that publishing such pictures showed a “deplorable lack of taste” and as such violated the norms of journalistic ethics. Hence, the Council upheld the claim and censured the editor.

#### **16. Delhi Administration complaint against Confidential Advisor<sup>25</sup>**

*Facts* : *Confidential Advisor*, an English monthly of Delhi, in its issue of March, 1969 had published a cartoon with the caption “The Office Doll”. This was objected to by the complainant on the ground that it suggested “every woman employee of an industrial or commercial organisation was immoral and could be easily seduced by the co-employees as well as by the bosses in such establishments”.

The editor, on the other hand, contended that the cartoon was published with the intention of warning women against “what was happening in commercial establishments, so that they might be careful about preserving their chastity”. He also took the plea that public taste had undergone a

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23. 1969 Ann. Rep. 50-52.

24. 1971 Ann. Rep. 57.

25. *Supra* note 6.



change all over the world.

*Decision* : The Council did not accept the contentions of the editor. It felt that the pictures, with the letter press explaining them, were in the worst of taste and "calculated and possibly intended to titillate unhealthy sexual feelings among the young and adolescents into whose hands the *Confidential Advisor* fell". The Council held that the impugned matter offended against journalistic ethics and public taste and taking into account his persistence in continuing such publications, it censured the editor.

#### 17. Ministry of Home Affairs complaint against *Mother India*<sup>26</sup>

*Facts*: A cartoon appearing in the November 1968 issue of *Mother India*, an English monthly of Bombay, was the subject matter of a complaint by the Ministry of Home Affairs. It showed a dog committing nuisance on the Gandhi Samadhi in Rajghat and Gandhiji's spirit saying "At least someone gets relief by remembering me ; God bless him". This, it was alleged, was in very bad taste and the editor had deliberately intended to ridicule Gandhiji. In support of this contention, reference was made to matter published in earlier issues of December, 1968 and January, 1969.

*Decision* : Taking into account the respondent's own admission as to the lack of taste in the impugned matter, the regret expressed, and undertaking given by him, the Council held that it would suffice to express its displeasure at the publication.

#### 18. Delhi Administration complaint against *Indian Observer*<sup>27</sup>

*Facts* : The complaint alleged that *Indian Observer* had published a story entitled "Tragedy of the Chastity Belt" which was grossly obscene and likely to arouse justful desires and sexually deprave the readers' thoughts.

*Decision* : The Council found the impugned article, dealing with the husband and wife in the privacy of their bed chamber, to be extremely vulgar and in the worst of taste with no qualities to relieve its coarseness. As such, the complaint was upheld. The Council stated that it was not possible to lay down guidelines in the matter of obscenity and good taste. In its opinion, obscenity was "defined by the tests laid down by the Courts interpreting section 292 I.P.C or other relevant legislation". Good taste and the contrary has "to be judged with reference to a concrete case" and depended on the total impression left on the reader. The Council warned the editor against repetition of such writings.

#### 19. Delhi Administration complaint against *Confidential Advisor*<sup>28</sup>

*Facts* : The Delhi Administration complained that four articles, appear-

26. 1969 Ann. Rep. 18.

27. *Supra* note 5.

28. *Supra* note 23.

ing in *Confidential Advisor*, an English monthly of Delhi, entitled "Vice Boys on Hire", "Are you Impotent"? "Dangers of sex with same blood" and a "Question with its Answer" published in the monthly "were lewd and vulgar". As such, they violated the norms of journalistic ethics and public taste.

The editor's defence was that these were merely warning to the reader against certain vices, or were medically of educative value.

*Decision* : The Council held that all the articles fell "far below the standards of public taste" and warned the editor against repetition of such publications. In this connection it considered the definition of "good taste". In its view taste was not easy to define and varied in meaning with the context. For the journalist, it means that which he should not publish on grounds of decency or propriety. Where the matter tends to stimulate sex feeling, its publication in a journal for the lay public, young and old, is undesirable. The Council laid down the principle that "exploitation of sex falls short of good taste and whether this is the effect of a publication or not can be judged only in the light of the matter published".

#### 20. S.S. Kohli complaint against *Nawan Zamana*<sup>29</sup>

*Facts* : In its issue of May 19, 1967, the *Nawan Zamana*, a Punjabi daily of Jullundur, published a cartoon which was alleged to be "obscene, immoral and ignominious". The cartoon showed the Finance Minister of India, with one of his hands extended in the posture of making a present, by the side of a partially disrobed woman, which the letter-press indicated as India, in the presence of the President of the World Bank. The idea suggested was that the Minister was handing over the woman to the President of the Bank.

The editor contended that the cartoon was merely a reproduction of one that had earlier appeared in *Blitz*. Hence, a notice was issued to *Blitz* also on the same charges. Though somewhat crude, the cartoon in *Nawan Zamana* was nearly identical with that in *Blitz* as regards the idea conveyed.

*Decision* : In view of the regret expressed and assurance given by the editor of *Blitz*, the Council felt it would suffice to record its opinion that the cartoon was not in the best of taste. However, the Council upheld the complaint against *Nawan Zamana* since in addition to the figures the letter-press explicitly stated that Mother India was being handed over to Mr. Woods. As such, it offended against good taste and its publication contravened journalistic ethics.

#### 21. Central Government complaint against Editor of a Delhi journal<sup>30</sup>

*Facts* : A complaint by the government against the editor of a Delhi

29. 1968 Ann. Rep. 10.

30. 1968 Ann. Rep. 34.

journal, alleged that a particular issue had carried certain illustrations and reading material which were obscene and offended against public taste.

*Decision* : Since the government had initiated proceedings against the editor under section 292, I.P.C., the Council was unable to consider the complaint. The provisions of section 13(2), Press Council Act, prevented it from "holding any enquiry into any matter in respect of which any proceeding is pending in a court of law".