Obscenity Laws in India

Why in news?

The Kerala High Court's recent decision in the Rehana Fathima obscenity case draws attention to the definition, or lack thereof, of obscenity in Indian law.

What was the case about?

- In June 2020, activist Rehana Fathima posted a video showing her 14-year-old son painting on her semi-nude torso.
- It triggered widespread outrage on social media for subjecting her children to an obscene and vulgar act.
- She was filed under various provisions of the Protection of Children from Sexual Offences Act of 2012 (POCSO), the Juvenile Justice Act of 2015 and the IT Act of 2000.

What did the Kerala High Court rule?

- On June 5, 2023, the Kerala High Court dismissed all charges against activist Rehana Fathima.
- **Ruling -** It said that the mere sight of the naked upper body of the woman should not be deemed to be sexual by default.
- The depiction of the naked body of a woman cannot per se be termed to be obscene, indecent or sexually explicit.
- Nudity can constitute obscenity but the obscenity under the law must be determined *'only in the context'* of the depiction.
- **Double standards -** The bodily autonomy and agency of women is under constant threat due to the existing patriarchal structure.
- The half-nude body of a man is conceived as normal and not sexualised, but a female body is not treated in the same way.
- **Bodily Autonomy -** The Supreme Court's judgment in *Justice K.S. Puttaswamy (Retd) v. Union of India (2018)* highlighted the bodily autonomy of women.
- The Court underscored that the right of a woman to make autonomous decisions about her body is at the very core of her fundamental right to equality and privacy.

What are the Obscenity Laws in India?

- Under the Indian Penal Code (IPC), Sections 292, 293 and 294 deal with the offence of obscenity.
- **Section 292** of the IPC stipulates that any content is deemed obscene if it is lascivious or appeals to the prurient interest, or if its effect tends to deprave and corrupt persons likely to read, see or hear the content.
- This provision prohibits the sale or publication of any obscene pamphlet, book, paper, painting, and other such materials.

- **Section 293** of the IPC criminalises the sale or distribution of obscene objects to anyone who is under the age of 20, or an attempt to do so.
- **Section 294** of the IPC prohibits obscene acts and songs in public spaces.
- **Section 67 of the IT Act of 2000** says that anyone who publishes or transmits obscene material in electronic form can be punished.

How obscenity is viewed under Indian laws?

- There is no comprehensive definition of obscenity in law.
- What can be considered as 'obscene' as per the Indian courts has changed and evolved over the years.
- Until 2014, the judiciary used the Victorian-era *'Hicklin test'* to determine if something is obscene or not.
- In 2014, the apex court applied the *'community standards test'* instead of the Hicklin Test while hearing the case of *Aveek Sarkar & Anr vs State Of West Bengal and Anr.*
- In 'community standards test' obscenity has to be judged from the point of view of an average person, by applying contemporary community standards.
- A nude picture cannot be called obscene unless it has the tendency to arouse the feeling of an overt sexual desire.

What is the way forward?

- **Define -** Not every instance of nudity constitutes obscenity.
- The forms of obscenity must be more strictly defined in law keeping in mind existing societal realities in order to curb its misuse.

- **Misuse of law -** Obscenity laws are often indiscriminately invoked to stifle free speech and such misuse should be controlled.
- **Exploitation of minors -** The aim of such laws should be to penalise the exploitation of minors, such as child pornography cases, instead of regulating consensual acts of adults.

References

1. The Hindu - Obscenity laws and the policing of female sexuality
2. IE - What are the obscenity laws in India?

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