



Research Article

Constituting a 'Moral' Public: Society, Law and Literature in Colonial India

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Abstract

The issue of obscenity in colonial India is a multifaceted and complex subject that intertwines notions of morality, culture, law, and power dynamics. Obscenity, defined as material that is offensive or morally repugnant, was a contested terrain during the colonial period as it is now, reflecting the clash between what was claimed as indigenous traditions and the values imposed by British colonial authorities. Notions of Victorian morality played a huge role in conditioning a section of Indian society to apply similar standards in India. This paper explores the nuances of obscenity in colonial India, examining its manifestations, the responses it elicited, its implications for society, and mainly its contestations in the legal arena. By looking at the obscenity trials of Sadat Hasan Manto and Ismat Chughtai, this paper will also try to highlight the complexities of the artistic process, which was often at loggerheads with forces that tried to regulate and reshape what was socially and culturally permissible.

Keywords: Obscenity, Sexuality, Moral Public, Law, Literature, Artistic Intentions

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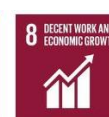
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Introduction

The word 'obscene' has a powerful emotive connotation: people may not agree on what is obscene, but whatever is obscene to them is also usually considered by them to be disgusting, foul, and worthy of repression. Since the concept of obscenity is part of a cultural code, any discussion of obscenity acquires the same dimension. A precise and exact definition of obscenity is not possible. It is essentially a relative and subjective term. It is subjective because it describes the human mind's reaction to a certain kind of experience. The same object may not have the same kind of effect on all persons. As D. H. Lawrence observed, 'What is pornography to one man is the laughter of genius to another.' The concept of obscenity varies not only from individual to individual but also from community to community and in the same community from one period to another. This difference is defined by what comes to be accepted by a specific 'public' as morally acceptable, socially permissible and aesthetically pleasurable. What is morally acceptable, however, changes over time. The moral public is re-figured through social processes, debates and dialogues, conflicts and confrontations, legal battles, and government legislation. The state often reflects the dominant social narrative and value constructs at a given time. The erotic sculptures at the temples of Khajuraho and Konark were acceptable as public art in the given period and were constructed at the behest of the rulers of the time, thus having state approval. Still, as the nature of society has changed over centuries and new definitions of morality have come to be defined and accepted, such sculptures cannot be thought to be adorning any public structure in India today. It would probably be considered extremely 'obscene' and outrightly unthinkable. So, whatever a society approved or repressed in a given time and space determined whether it was 'appropriate' or 'inappropriate'. This is the 'moral' public, which is constantly being shaped by the moral codes of the times it is being constituted. Another dimension of this complexity is the separation between something practised and the act of talking, writing, or depicting the practice. What is unacceptable to the moral public must be regulated and controlled. To practice something thus becomes separated from openly talking about it, and someone who does talk about it becomes a symbol of perverse expression. D. H. Lawrence puts it brilliantly while describing how he was getting *The Lady Chatterley's Lover* ready for publishing in Florence:

A white moustached little man who has just married a second wife, wastold: Now the book contains such-and-such words, in English and it describes certain things. Don't you print it if you think it will get you into trouble! "What does it describe?" he asked. And when told, he said, with the short indifference of a Florentine: "O *ma!* but we do it everyday!" (Lawrence, 1968).

The statement points to the difference between private practice and public discourse, what can be done in everyday life and what can be discussed. Sexuality in every society is regulated by a set of moral codes, and the attitudes to sexuality are defined by these codes. It would be interesting to see how these come to be and how they are constituted, accepted, and legalized. The need is to explore the norms that come to regulate the sphere of the sexual and the articulation of the sexual. This would inevitably require exploring the categories through which this articulation is made possible, the terms that can be uttered and not uttered, and the way they can be uttered. What is clear is that the regulation of sexuality and the talk about sexuality become important in shaping the 'moral' public in any society. Morality becomes a contested category because different forces seek to define it in dissimilar ways. The courts of law often become a stage for such battles, the public sphere becomes a space of debate, and print culture allows the circulation of ideas in the debate.

Sexuality, Obscenity and Censorship: A Survey of Historiography

The ancient civilizations of Greece and Rome were not as sensitive to obscenity as modern civilizations are known to be. The preeminent concern in ancient and early medieval societies has mainly revolved around heresy. Obscene riddles were not unknown in early Anglo-Saxon literature. One explanation of this dichotomy, as suggested by historians (Colligan, 2006), seems to emerge from the fact that drama and literature were the monopolies of the elites. Therefore, the problem of obscenity did not present itself in its modern form in these societies. Colligan has shown in her research that even after book production increased many folds since the invention of the printing press, censorship was not aimed at obscene books (Colligan, 2006, p.10). Christopher Hillard, in his fascinating study of the history of censorship in Britain, has noted that 'daring' French novels were produced in expensive editions to show that the publishers were not catering to the working classes and the poor (Hillard, 2021, p.1). This clearly points to the fact that the preoccupation with obscene and the vigorous attempts to control it, which systematically began in Victorian England from the mid-nineteenth century onwards, is motivated by the intention to regulate public morality. In other words, control and repression acquire legal status when the masses are brought into question. Victorian intellectuals were obsessed with the implications of mass literacy and how responsible the working class would be with materials/texts/books that could sensationalize or titillate. Notable was the promulgation of Hicklin's Test in 1868 in the famous case Regina vs Hicklin. 'The Confessional Unmasked', a pamphlet published by the Militant Protestant Society, was the subject of the trial. In this case, Sir Alexander Cockburn formulated the test of obscenity, which 'charged anything as obscene if the tendency of the matter charged is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.' This test became the yardstick for all obscenity trials in the British Empire. Obscenity law took the individual's economic status as a marker of responsible behaviour of the reader to shield oneself from sexually 'frank' books (Hillard, 2021, p.2). David Bradshaw and Rachel Potter show how the nineteenth and twentieth-century English intellectuals used imagery-filled language to describe the impact that obscene literature can have on gullible readers (Bradshaw & Potter, 2013). The frantic claims that certain words have the tendency to deprave readers unleashed censorship from both government agencies and social puritans. The above-cited works clearly show how the anxieties of the state and moral groups coalesced when the question of safeguarding mass morality became more and more vehement. The same anxiety was reflected and articulated in the laws of the times.

Since India was a British colony, these anxieties were almost mirrored in British India from the mid-nineteenth century onwards. Anjali Arondekar's interesting study, *For the Record: On Sexuality and Colonial Archive in India*, shows how the colonial state was at work in regulating sexuality and controlling the obscene in the colony (Arondekar, 2013). Proceedings of the Legislative Council in mid-nineteenth century show the alarm of the state at the knowledge that obscene literature was very commonly sold on the streets of Calcutta at very cheap prices. This knowledge had a very important outcome. The first obscenity statute in the British Empire was passed in India. In its mission to safeguard the morality of its colonial subjects, the state was joined by missionaries, Indian reformers, and later even nationalists to regulate the morals of the Indian society. Another historical inquiry on the subject is Jessica Hinchy's *Governing Gender and Sexuality in Colonial India* (Hinchy, 2022). Hinchy is the first in-depth study of the transgender community in colonial India. However, while discussing its main subject, she also highlights how sexuality was regulated in the colonial period. The groundbreaking work in this

area in the context of India has undoubtedly been Charu Gupta's *Sexuality, Obscenity, Community: Women, Muslims, and the Hindu Public in Colonial India* (Gupta, 2001). She traces a nexus of concerns around obscenity, sexuality and the 'other', showing how 'the escalation of sexually repressive practices mingled with heightened communal mobilization.' The first half of her work, the half that concerns us more, explores the conflicting consequences of the spread of Victorian morals and the rise of social reformation and nationalism. It examines how, in the specific colonial contexts, publicists defined and reworked ideas of sexuality, particularly female sexuality. They set out to create new images of a 'masculine' nation and a new identity. However, this also led to the emergence of a parallel phenomenon that turned the repression and restriction on its head and gave a boost to a dynamic 'pulp' industry. This produced a supposed dichotomy between 'high' literature and 'low'. What came to be known as 'low' very often focused on themes of sexual nature. There were, on the one hand, treatises on sex and kamashastra; on the other hand, there were popular performative and oral traditions that got translated into print. Scholars like Sumanta Bannerjee (Bannerjee, 1987; 1989; 2010) and Anindita Ghosh (Ghosh, 1998; 2002) have explored this tussle between 'high' and 'low' culture in the context of Bengal. They show how, while enjoying the new economic status, Hindu society was sharply divided into the conservative Hindus and the Brahmos (Bannerjee, 1987; Ghosh, 1998). The Bengali elite was splintered into *dals* or groups of leading babus. In asserting their symbolic power in opposition to the colonial masters, the Bengali 'respectable' classes sought to devise as common standards of behaviour and cultural norms which were to mark them as '*bhadraloks*'. The other culture of nineteenth-century Calcutta was that of the rural folk – a culture that was reworked in new urban contexts. This popular culture was mainly composed of oral productions like poems, songs, and experiments in the visual arts. Its exponents showed ingenuity in the application of these traditional forms that catered to the needs of the new urban culture. This was strongly contrasted with the Sanskritised Bengali culture of the educated class. It offered a different kind of language, with its distinct speech patterns and words, earthy expressions and muscular gestures. It had a linguistic elasticity as opposed to the Sanskritised, ornate, artificial style of the *bhadraloks*. The upper class, along with the Christian missionaries, came down heavily on it. Such literature was considered 'obscene', and following some recommendations, an act was promulgated forbidding the publication of such works on the grounds of 'obscenity'. It was directed against popular culture and the cheap books of *Battala* were the main target (Bannerjee, 1989). We notice, on the one hand, an anxious colonial state preoccupied with its own ideas of morality, unsure of defining its relation to popular culture and local religious practices that were saturated with eroticism.

Another interesting dimension that emerges from the debates on the issue of obscenity and censorship is the legal one. As noted earlier, the legal domain became active in Victorian England in safeguarding the moral fabric of British society. Obscenity trials from the times show how law became an instrument to enforce dominant moral values. Colligan and Hillard both show this through close scrutiny of legal cases in nineteenth and twentieth-century Britain (Colligan, 2006; Hillard, 2021). Devika Sethi, in both her works, *War over Words: Censorship in India 1930-1960* and *Banned and Censored: What the British Raj did not want us to Read*, closely combs through legal cases and brings out the interesting story of censorship through law (Sethi, 2019; 2023). Her focus is mostly on texts that were considered seditious in the context of the Indian freedom movement, but still, it drives home the point of how law became the most potent tool of control. The same holds true when the central issue was regulating artists and their art, mostly literature. Like the state, puritanical groups also tried to use the legal sphere to enforce their idea of what was permissible and what had

to be repressed. However, unlike the cases of sedition, where the state had a pre-meditated agenda, cases of artistic license and creative expression were not black and white. Law often deliberated deeply on issues of freedom of expression and limits of censorship. The major focus of this article is on the obscenity trials of Sadat Hasan Manto and Ismat Chughtai. These court cases show how enormously difficult it was to label something 'obscene' without having taken into account the context. It was also noticed how the arguments revolve around the usage and meaning of certain words. It almost seemed that the 'obscene' was being catalogued. Each statement made in the courts of law brought out the anxiety of the upholders of the moral standards to enforce their own ideas of 'appropriate' and 'inappropriate' and of the authors' attempt to resist such interpretations. The legal sphere thus became the site for a contest between the 'norm' and the 'non-norm': the language of the law envisioning one kind of morality and the authors trying to counter that representation.

It also shows how texts seen as 'obscene' at one time are celebrated in another. The concept of obscenity varies not only from individual to individual but from community to community and from one period to another. The measure of obscenity is culturally defined in a given society at a given period. What has been condemned as obscene by one community has been hailed as a masterpiece of literary work by the same community in a later period or by others at the same time. Manto, who was incarcerated and isolated for writing 'obscene' stories, has now been rediscovered and celebrated as this radical truth-teller who defied societal injunctions.

Judging Obscenity: Law and Literature

Sadat Hasan Manto is one writer who was tried six times for obscenity in his writings, three times in British India and three times in independent Pakistan. His stories reflect the times he was living in, and he crafted them with the same violent ruthlessness as in those times.⁴⁴ But he managed to offend many by stating the naked truth. He was first tried in British India for his story *Bu* (odor), which generated a lot of negative criticism.⁴⁵ *Bu* is a celebration of 'earthly' sexuality by Manto. In the story, an upper-class rich man, in his boredom, sleeps with a 'dirty' working girl and becomes overwhelmed by the natural smell her body exudes, so much so that it becomes a search for him. Even on his wedding night, lying next to his beautiful and educated wife, he remembers the girl with the strange odour as if it was the sole thing that keeps him alive

A weekly from Lahore stated:

Lahore ke ek rusway aalam risale mein, jo fahashi aur behoodgi ki isha'at ko apna paidaishi haq samajhta hai, ek afsana shaya hua hai, jiska unwan hai 'Bu' aur iske musannif hain Mr. Saadat Hasan Manto. Is afsane mein fauji isai ladkiyon ka character is darja ganda bataya gaya hai ki koi sharif aadmi bardaasht nahi kar sakta. Afsananigar ne izhare matlab ke liye jo uslub ikhtiyar kiya hai aur jo alfaaz muntkhab kiye hain, unke liye tahzeebo-sharafat ke daman mein koi jagah nahi ho sakti, lekin hukumat ab tak khamosh hai. Yahi hukumat 'Lazzatunnisa' aur 'Kokashastra' jaisi fanni kitabon ko bhi qabile-muakhaza samajhti hai lekin aise afsanon ki taraf mutwajeh nahi hoti jo adbe-e-jadid ke naam se sifli jazbaat mein hal chal dalne ka mujib hai aur isi hukumat ne fahashatnigar adeebon ko khuli chhooti de rakhi hai-wo qanun ki giraft se beniyaz hokar gandagi bikherte rehte hain. (Khayyam, 1944).

(Translation: In a journal from Lahore that considers its right to publish obscene material, a story called *Bu* by Sadat Hasan Manto is published. This story portrays the character of Christian girls working in the army in such a way that it cannot be tolerated by any upright man. The style of writing and the words used in this story have no place in a civilized society but the government is still silent. The same government which considers books like *Lazzatunnissa* and *Kokashastra* to be banned does nothing in this case, which emboldens such writers to write obscene stories on the pretext of writing progressive literature)

This tirade against Manto resulted in his implication on the obscenity charge in March 1945. The same weekly celebrated thus:

Ek maqami maahnam ne Saadat Hasan Manto ka ek fahash afsana 'Bu' shaya kiya tha. Khaiyyam mein us akhlaq soz harqat ke khilak awaaz uthai thi jo hukumate Punjab ke kaanon tak pahunchne begair na rah saki, chunanche maloom hua hai ki jis parche mein 'Boo' shaya hua tha, wo zabtkar liya gaya hai. Yah zabti dafa 292 ke tahat amal mein ayi hai. Hum is faisle par hukumate Punjab ko musthiq-e-tabrik samajhte hain aur ummeed kart hain ki wo is qism ki fahashi ko mustqil taur par rokne ke liye koi muassar qadam uthayegi. (Khayyam, 1945).

(Translation: A famous monthly had published Sadat Hasan Manto's story '*Bu*'. We had raised our voice against the obscenity and filth it carried, prompting the Punjab government to ban the magazine published under section 292 of the penal code. We would like to congratulate the Punjab government on its action and hope that it will take concrete steps to curb such obscenity permanently)

At the same time, Ismat Chughtai was also served a summons for her story *Lihaaf* (Quilt), and coincidentally, they were tried by the same bench in a lower Lahore court (Chughtai, 2003). Chughtai has given an interesting account of the proceedings:

We appeared in court on the appointed day. Witnesses were presented. They were to prove that Manto's "*Bu*" (odor) and my "*Lihaaf*" were both obscene. My lawyer explained carefully that until I was questioned directly, I was not to open my mouth. He would say whatever he deemed proper. "*Bu*" was taken up first. "Is this story obscene?" asked Manto's lawyer. "Yes sir," the witness said. "What word indicates that it is obscene?" Witness: "Bosom." Lawyer: "My Lord, the word 'bosom' is not obscene."

Judge: "Correct." Lawyer: "The word 'bosom' is not obscene then?" Witness: "No, but the author has used it for a woman's breasts." Suddenly Manto rose to his feet. "What else did you expect me to call a woman's breasts—peanuts?" A loud laughter swept across the courtroom. Manto too started laughing.

"If the accused indulges in this type of tawdry humor again, he will be thrown out for contempt of court or be fined." Manto's lawyer whispered in his ear reminding him to behave and he listened. The discussion then continued and the witnesses kept returning again and again to the single word "*bosom*," but it was proving increasingly difficult to establish that it was obscene. "If the word 'bosom' is obscene, then why aren't the words knee or elbow obscene too?" I asked Manto. "Rubbish!" Manto became incensed again. Arguments continued. There was a big crowd in the court. Several people had advised us to offer our apologies to the judge, even offering to pay the fines on our behalf. The proceedings had lost some of their nerve, the witnesses

who were called in to prove that "Lihaaf" was obscene were beginning to lose their nerve in the face of our lawyer's cross-examination. No word capable of inviting condemnation could be found. After a great deal of searching a gentleman said, "The sentence 'she was collecting ashiqs' (lovers) is obscene." "Which word is obscene?" the lawyer asked. "'Collecting,' or 'ashiqs'?" "The word 'ashiqs,'" the witness replied, somewhat hesitantly. "My Lord, the word 'ashiq' has been used by the greatest poets and has also been used in *na'ts* (religious couplets). This word has been given a sacred place by the devout." "But it is highly improper for girls to collect 'ashiqs'" the witness proclaimed. "Why?" "Because ... because ... this is improper for respectable girls." "But not improper for girls who are not respectable?" "Uh...uh...no." "My client has mentioned girls who are perhaps not respectable. And as you say, sir, non-respectable girls may collect ashiqs." "Yes. It's not obscene to mention them, but for an educated woman from a respectable family to write about these girls merits condemnation!" The witness thundered. "So go right ahead and condemn as much as you like, but does it merit legal action?" The case crumbled. (Chughtai, 2001).

The basis of both cases was that the prosecution tended to catalogue the 'obscene' by centring their arguments around certain words. Dis-embedded from their contexts, words do not connote one single meaning. The strategy of the defence lawyer, therefore, was to force the witnesses into a position where the discussion inevitably revolved around isolated words. And it was impossible for witnesses to show that any of these words could connote nothing but the obscene.

In the case of Manto, the objection was raised about the word *chhatiyān* being used for female breasts. In the story, the protagonist Randhir describes the breasts of the working girl and also of his wife. Each part of the girl's body exuded a peculiar odour that enchanted Randhir, something he could not forget for the rest of his life. Here Manto was exploring the culture, experience and the erotics of odour. What disturbed the 'public' is the way Manto's text was saturated with the idea of body odour, and how he celebrated odour as the signifier of the erotic. What was even more disturbing was the way culture and class were treated in the text, deliberately subverting the socially accepted norms of sexual association. An upper-class man is haunted by the body odours of a 'poor girl' soaked in dirt and rain, and the memories of these odours define the way he can possibly see his own wife. The charge of obscenity on *Bu* was interesting because, on the one hand, the case revolved around the use of certain words, but on the other hand, the story also unsettled the puritanical mind when it made the memories of the 'low' class girl overpower the status of the wife.

The objection to Chughtai's *Lihaaf* also centred around the use of certain words and notions of class. The arguments made in the court once again show how what could be said and not said was linked, once again, with issues of class and status. It appears as if the description of the sensuous and the erotic is acceptable when it refers to the non-elite, the plebian, and the lower classes of people, hence the 'non-respectable'. It indicates that sensuousness is part of their being and their morality, and to talk of that cannot be immoral. So, if Chughtai is writing about 'non-respectable' girls, the phrase 'collecting *ashiqs*' is seen as appropriate. The body of the lower classes can be the object of the male gaze, particularly of the elites, and to write about it is to present that body for appropriation: a permissible non-obscene act, morally acceptable.

The point that emerges from the statements is that objections to the representation of the sexual are linked up with issues of honour and class. Upper-class males have to preserve the

honour of upper-class women; the latter have to be protected from public gaze and from visual appropriation. They had to be veiled. The descriptions of Chughtai and Manto were acts of unveiling, allowing the outsider's gaze to enter private spaces and intimate spheres. Reading such stories could become an act of symbolic possession and sexual enjoyment, but only if the norms of inter-class morality were not violated. Once it was established that the descriptions in Chughtai often related to the 'non-respectable', the case against Chughtai lost its edge. It could not be seen as essential to regulate public morality. When the anxieties of class and status were put to rest, the accused was found 'not guilty'.

Law and the "Leanings" of the Writer

Although Chughtai was never again charged with obscene writings again, Manto was not spared. After the partition of India, he went to Pakistan, where his real trial began. This time, it was his story, *Thanda Ghosht* (Menon, 2003). It was the first story that he wrote in Pakistan and he was the first writer who was tried for obscenity in Pakistan. Prior to this, his story, *Khool Do* (Menon, 2003), had led to a six-month suspension of the magazine *Naqoosh* by the Punjab government. The government saw it as a threat to public peace and law and order (Manto, 1950, pp.3-6). *Thanda Ghosht*, after several rejections, was published in the monthly *Javed* in its special edition of March 1949. The story is set amidst the violence of Partition. The protagonist, Eshar Singh, is meeting his lover, Kalwant Kaur, after a few days of absence. During the course of the story, the reader gets to know that Eshar Singh is involved in rioting and looting. Kalwant notices that he looks different; in fact, he has been acting differently for the past week. They both engage in an intense and passionate foreplay. But Eshar Singh is not able to go beyond it. This provokes Kalwant, who fears that Eshar has been with another woman. It maddens her, and she rages at Eshar, asking him to come clean with her, and, in a fit of jealousy, stabs him with his own *kirpaan*. The dying Eshar Singh finally divulges the truth. In the riots, Eshar Singh killed six members of a family, sparing only a beautiful girl. He carries off the girl with the intention to rape her. He takes her to a secluded area and, after a while, realises that he was raping a corpse. The girl was dead. The shock of this knowledge makes him go cold, just like the girl's cold corpse and just like his own dying body, which was growing cold. *Thanda Gosht* does the phenomenal work of laying bare the hypocrisy of patriarchy. Eshar Singh would not have been affected by raping and killing the girl as much as he was by the realization that he was raping her corpse. The girl probably died of the shock from seeing her relatives killed in front of her eyes and then being abducted by the killer. Eshar Singh changes after this discovery, and his relationship with Kalwant also becomes different. He is haunted by the memory of it, but his regret is located somewhere else. It doesn't lead him to question his very act of abducting the girl and then taking her off to rape her. Manto places the violence directed against women at the heart of his narratives, thereby indicating that it is in these acts of deliberate and conscious brutality that violence in its entirety becomes visible. He explores how Partition is inscribed and enacted upon female bodies.

Notwithstanding Manto's intention to write *Thanda Ghosht*, the government jumped into action, and the magazine's office was raided. Syed Ziauddin, the translator for the Punjab Government who had brought notice to the story considered the story to be overall offensive and the words and expressions used as obscene (Manto, 1950). Manto and the publisher were charged with obscenity. Many prominent personalities of the time took to the witness stand in defence of Manto, including the celebrated poet Faiz Ahmed Faiz, who said in his statement:

In my opinion, the story in question is not obscene. It is meaningless to declare individual words in a story as obscene or otherwise. While criticizing a story, one needs to keep in mind the whole story and the context. Nakedness by itself is not obscenity. The writer of *Thanda Gosht* has not written anything obscene, but the story does not come up to higher standards of literature either, for there is no analysis of the basic problems of life in the story...Under cross-examination, Faiz said: "I would not mind using phrases like '*meri baphian lay rahay thay*' (they were necking), '*Munh bhar bhar kay bosay liye*' (they had a mouthful of a kiss)... Use of such phrases is legitimate, if the story so demands. The words may not sound mannerly, but they are literary necessities. (Menra and Dutt, 2004).

Each of the defense witnesses argued for artistic intention and the motivation behind writing the story. As the case centred around the use of abusive words and a description of intense sexual intercourse, it was extremely necessary to situate them in the context before judging anything. In his testimony, Faiz did not consider the story as representing 'high' literature since it did not concern the 'basic problems of life'; nonetheless, he believed that if the story demands it, it is justified. In his defense Manto said:

Ishar Singh has his own style of talking, just like millions of people who come from his class. The same is true for Kulwant Kaur. How can we expect a rowdy man like Ishar to speak like the genteel...The question is why represent anything if not in its true colours? Though Ishar is a lowly man and speaks dirty and acts wild, the story is not obscene because it does not encourage any sexual titillation in the readers except bringing out the grossness of living and nakedness of humanity...A man of the sexual appetite of Ishar Singh is at the end a weakling who dies with the remorse at the thought that he almost had intercourse with a dead woman which explains his coldness...if a story like this arouses anyone, then the person needs psychological counseling. (Menra and Dutt, 2004).

Manto and his publishers were found guilty. The Sessions Judge, though accepting that each society had different standards of morality, claimed the story was not in principle with the teachings of the Quran that defined life in the state of Pakistan, and the obscenity in the story seemed to be inspired by Satan himself (Menra & Dutt, 2004)! It is interesting to see how even fourteen testimonies from people well qualified to speak on the subject of literature and obscenity and who vehemently argued that the intention of Manto was not sexual arousal but that sex was used as a trope to bring out the larger theme, in the end, it was religion which became the deciding factor. And it all fits together when we note that Pakistan was a newly formed, fragile state created in the name of religion. There was deep anxiety as well as excitement about its status, and what the Sessions judge did was to legitimize the whole logic behind the creation of Pakistan.

But the Additional Sessions Judge quashed the previous verdict on Manto's appeal precisely because he recognized the futility of the Session Judge's logic and found the story not obscene and Manto not guilty. Now, the Pakistani Punjab Government went for appeal. The Judge accepted that though the theme of the story was harmless, the argument again gathered around the language and description of sex. It went back to the testimony of one Dr. I. Lateef, Head of The Psychology Dept. F.C. College Lahore. He stated:

I have just read *Thanda Gosht*. I think, the story should not have been published in a popular magazine. Were it published as a case history in a scientific journal, discussing

impotency or otherwise, it would not be obscene... I would consider the offending words in the story obscene only when used in ordinary conversation and they can affect people who read a popular magazine, but in a case history, they would be considered important. (Menra and Dutt, 2004).

The yardstick became Hicklin's test, and Thanda Ghosht was found to have a tendency to 'deprave and corrupt'. Manto was again found guilty, his testimony notwithstanding. Among other things, the judge Mohammad Munir of Lahore High Court said:

Leanings of the writer had to be taken into account and not his intentions. A story could not escape from being obscene if the details of the story were obscene. A story was not like a book, which could be good in some parts and bad in some. (Menra and Dutt, 2004).

Ironically, one of the most poignant accounts of the violence that Partition unleashed was incarcerated in such a way. The logic of Bu's verdict did not apply here. Judge Munir completely sidelined Manto's intentions, focusing, in this case, on the 'leanings' of the writer. But it does not become clear what kind of leanings he was pointing at. Manto was an alcoholic and made no disclosure of it. He used to frequent prostitutes, and they were the subject of most of his stories. And his association with the film industry may not have been well received by the Puritans in Pakistan. To back all this were his previous obscenity cases, which had given him a reputation. Was this the leaning the Judge was hinting at? That Manto deliberately crafted obscenity? It can be a very logical conjecture as Hicklin's Test provided a perfect garb to reign in the violent dissent of a writer who had said:

If you are not familiar with the age in which we live, read my stories. If you cannot endure my stories, it means that this age is unbearable. (Menra and Dutt, 2004).

The celebrated story is still legally banned in Pakistan.

Conclusion

The above discussion poses a critical question about the uniformity of the public sphere and the attempts to constitute a 'moral' public. According to Habermas, the public sphere is:

... a realm of our social life in which something approaching public opinion can be formed. Access is guaranteed to all citizens. A portion of the public sphere comes into being in every conversation in which private individuals assemble to form a public body. They then behave neither like business or professional people transacting private affairs, nor like members of a constitutional order subject to the legal constraints of a state bureaucracy. Citizens behave as a public body when they confer in an unrestricted fashion—that is, with the guarantee of freedom of assembly and association and the freedom to express and publish their opinions—about matters of general interest. (Orsini, 2002).

For Habermas, then, the public sphere was a space where reason and rationality motivated all its members to come together, and through a reasoned debate, a consensus was reached. His definition of the public sphere stems from his analysis of the development of bourgeois society in seventeenth- and eighteenth-century Europe, in which private citizens came together as a public to discuss matters of common interest. These citizens, in the free and rational exchange of ideas, formed public opinion. It will be extremely problematic to try to apply this Eurocentric

definition of the public sphere in other non-European 'spaces' that have their own peculiarities to contend with and their own uniqueness. In the Indian case, the public sphere was not simply a space for rational debating where private individuals came together as a public for a common purpose. As dynamic as the Indian society was, so was the public sphere. Here it was a site of conflicting logics and contending forces that saw the making of a variety of 'public spheres', existing simultaneously, each carrying its own propaganda. There were 'caste public spheres', 'community public spheres', 'language public spheres', 'nationalist public spheres', and in this particular case, 'legal public sphere', which again comprised many shades.

Through the discussion of the trials, it can be seen that the ideology behind regulating sexuality was constantly fought against, and the dissent was strongly asserted. But even the idea of morality in itself was not uniform, and multiple voices were jostling for space. The law emerges here as the stage to enforce the ideology of the state, but even the legal discourse is not uniform and is fraught with ambiguities. In Ismat's case, the author is acquitted because the women in question were representing the 'non-respectable' class; had they been from the other class, the arguments would have been different and perhaps Ismat would have been found guilty. When Manto's case comes up in Pakistan, we find three different interpretations of the same work and three different logics working and contesting each other – a logic of religion, a logic of intention and a logic of 'depravity'. The categories diverged from each other under the same legal umbrella and voiced different ideas.

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