



KAMARAJ IAS ACADEMY
Only IAS Academy by Grandson of "Perunthalsivam Kamarajar"

Crude Language, Obscenity and Freedom of Speech: Judicial Interpretation of Criminal Liability under the Bharatiya Nyaya Sanhita

Published On: 04-08-2026

Recent Developments:

- **Noida Police** registered a **Zero FIR** against **Ruchika Singh** over allegedly objectionable remarks made against the Prime Minister during a protest at **Jantar Mantar, Delhi**.
- The complaint invoked **Sections 352, 353(1) and 356(1) of the Bharatiya Nyaya Sanhita (BNS), 2023**, relating to **intentional insult, public mischief and defamation**.
- As the alleged incident occurred in **Delhi**, the **Zero FIR** was transferred to the **Delhi Police** for investigation in accordance with jurisdictional procedure.
- The case has revived debate on the constitutional limits of **free speech**, the distinction between **obscenity and profanity**, and the threshold for criminal liability in India.

Constitutional and Legal Framework:

Constitutional Provisions:

- **Article 19(1)(a)** guarantees the **Fundamental Right to freedom of speech and expression**.
- **Article 19(2)** permits the State to impose **reasonable restrictions** in the interests of **public order, decency, morality, defamation, contempt of court, sovereignty and integrity of India, security of the State, incitement to an offence, and friendly relations with foreign States**.
- **Freedom of expression** is therefore **not absolute**, and criminal liability arises only when statutory conditions are satisfied.

Relevant Provisions under the Bharatiya Nyaya Sanhita (BNS):

- **Section 296**, corresponding to **Section 294 of the Indian Penal Code (IPC)**, penalises **obscene acts or words in or near a public place causing annoyance to others**.
- **Section 352** requires proof that the accused **intentionally insulted another person with knowledge that such insult was likely to provoke a breach of public peace**.
- **Section 353(1)** addresses **public mischief**, requiring conduct capable of **inciting offences, disturbing public order or creating public disorder**.
- **Section 356(1)** deals with **criminal defamation**, while preserving recognised exceptions such as **good-faith comments on the public conduct of public servants and public figures**.
- **Section 296** was **not invoked** in the present case, indicating that the investigation is centred on allegations beyond obscenity.

Evolution of the Judicial Test for Obscenity:

Hicklin Test, 1868 (English Law):

Kamaraj IAS Academy

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477 / Whatsapp : 09710729833**

- The **Hicklin Test** assessed whether isolated portions of a publication had the tendency to **deprave or corrupt vulnerable minds**.
- The approach focused on **selected passages** rather than evaluating the work in its entirety.

Ranjit D. Udeshi v. State of Maharashtra (1965):

- The **Supreme Court** adopted the **Hicklin Test** while upholding restrictions on the publication of **Lady Chatterley's Lover**.
- The judgment reflected a conservative approach to obscenity based on the prevailing standards of the period.

Director General, Doordarshan v. Anand Patwardhan (2006):

- The Court ruled that a work must be **evaluated as a whole** rather than through isolated extracts.
- The judgment shifted judicial emphasis towards the perspective of an **ordinary, reasonable viewer** rather than exceptionally sensitive individuals.

Aveek Sarkar v. State of West Bengal (2014):

- The **Supreme Court** abandoned the **Hicklin Test** and adopted the **Community Standards Test**.
- The Court held that material becomes obscene only when, judged by **contemporary community standards**, it is **lascivious**, appeals to **prurient interests**, or tends to **deprave and corrupt** persons exposed to it.
- The judgment strengthened constitutional protection for **artistic, journalistic and expressive freedom**.

Judicial Distinction Between Obscenity and Profanity:

Principle Established by the Supreme Court:

- **Profanity, abusive language or vulgar expressions** do not automatically amount to **legal obscenity**.
- Criminal obscenity requires a **clear sexual element**, including **lasciviousness, prurient appeal**, or a tendency to **corrupt moral standards**.
- Language that merely causes **anger, disgust or offence** does not satisfy the statutory test of obscenity.

Important Judicial Decisions:

- **College Romance Case (2024):** The Court quashed criminal proceedings by holding that **swear words reflecting frustration or anger are not inherently obscene**.
- **Sivakumar v. State (2026):** The Court held that insulting language used during a quarrel did not constitute obscenity because it lacked any **sexual or lascivious character**.
- **Mani v. State (2026):** The Supreme Court reaffirmed that **obscenity is distinct from vulgarity, abuse or profanity**, and emphasised that criminal liability arises only where statutory ingredients are fully established.

Legal Significance of the Present Case:

Threshold under Section 352, BNS:

- Mere hurt sentiments are insufficient for conviction.
- The prosecution must establish **intent or knowledge that the insult was likely to provoke a breach of public peace**.

Threshold under Section 353(1), BNS:

- Liability depends upon evidence that the speech **incited public disorder, offences against the State or communal hostility**.
- Mere criticism of political leaders, without incitement, ordinarily falls below this threshold.

Threshold under Section 356(1), BNS:

- Criminal defamation requires satisfaction of statutory ingredients and remains subject to recognised legal exceptions.
- **Good-faith comments concerning the public conduct of public officials** continue to receive statutory protection.

Importance of Zero FIR:

- A **Zero FIR** enables immediate registration of a cognisable offence **without regard to territorial jurisdiction**.
- The case is subsequently transferred to the police station having **territorial jurisdiction** for investigation.

Constitutional Issues for Governance:

Balancing Competing Constitutional Values:

- **Freedom of speech** must coexist with **public order, dignity and reputation**.
- Criminal law should be invoked only where statutory thresholds are demonstrably met.
- Excessive criminalisation of political speech may produce a **chilling effect** on democratic participation.
- Judicial interpretation seeks to maintain equilibrium between **individual liberty** and **legitimate State interests**.

Challenges:

Legal and Institutional Concerns:

- **Community standards** remain dynamic and may vary across regions and social groups.
- Broad or subjective interpretation of penal provisions may increase the scope for misuse.
- Distinguishing **political dissent, offensive expression and criminal conduct** often requires careful judicial scrutiny.
- Investigating agencies must avoid treating **mere offensive language** as automatically constituting a criminal offence.

Way Forward:

Strengthening Constitutional Governance:

- Police authorities should apply statutory provisions strictly in accordance with judicial precedents.
- Investigations should focus on **intent, actual consequences and statutory ingredients**, rather than public outrage alone.
- Greater public awareness regarding **constitutional free speech and reasonable restrictions** should be promoted.
- Periodic legislative review can improve clarity in defining offences involving speech and expression.

Value Addition for UPSC:

Important Constitutional Articles:

- **Article 19(1)(a):** Freedom of speech and expression.
- **Article 19(2):** Reasonable restrictions on free speech.
- **Article 21:** Protection of life and personal liberty, including the right to reputation as recognised through judicial interpretation.

Key Supreme Court Cases:

- **Ranjit D. Udeshi v. State of Maharashtra (1965)** — Adoption of the **Hicklin Test**.
- **Director General, Doordarshan v. Anand Patwardhan (2006)** — Work must be judged as a whole.
- **Aveek Sarkar v. State of West Bengal (2014)** — Adoption of the **Community Standards Test**.
- **Apoorva Arora v. State (2024) (*College Romance*)** — **Profanity is not per se obscenity**.
- **Sivakumar v. State (2026)** — Vulgar abuse without sexual content is not obscenity.
- **Mani v. State (2026)** — **Obscenity is not synonymous with vulgarity or profanity**, and obscenity requires a lascivious or prurient element