

# Is Public Breastfeeding an Obscene Act

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## ABSTRACT:

*Obscenity laws are concerned with prohibiting lewd, filthy, or disgusting words or pictures, and there are major disagreements as to what is or isn't obscene and what role the government should play in enforcing social or cultural morals. The best diet for infants and toddler is the best milk it is highly recommended by the paediatrician to exclusively breastfeed infants at least or 6 months. With regards to breastfeeding a baby, a mother has to face the situation about the places where to feed a child whether it is indoor or outdoor. Cultural, legal, social, and religious plays a very important role in creating a safe and comfortable environment for a mother to breastfeed in public. The acceptance for breastfeeding in public is not always the same. It can be stated as the cruel truth that breastfeeding in public places may imply that breastfeeding is unnatural, undesirable or even illegal due to the controversy arising out of it. Breastfeeding in public as an obscene act has been a dreadful misconception in all over the world. The research paper has been written with to analyze the explicit meaning of obscene and indecency on the subject matter of Breastfeeding in Public. The research is purely based on secondary source like journals, book, legislation, articles, etc.*

*The conflict between the concept of breast milk being pure (like tears), and contaminated or "dirty" (like genital secretions or vomit) is raising in many cultures at present. In these settings, the female breast might be considered fundamentally a sexual organ, and in this manner a private part of the body, which should be undetectable in general society field. Their convenience with breastfeeding in broad daylight brings down breastfeeding rates, which thus adversely influences ladies' and youngsters' short-and long-haul health.*

**Keyword:** Obscenity, Breastfeeding, Public, Indecency, Obscene Act.

## I. INTRODUCTION

The essence of free expression is the ability to think and speak freely and to obtain information from others through publications and public discourse without worrying about retribution, restriction, or repression by the government. Right to express freely has given a chance to the people to achieve political influence, to come together, to strengthen their morality, and to help others to become moral and enlightened citizens. The idea of obscenity differs from nation to nation. It depends on the cultural values and ethical standards that have formed the history and society of the country.

Obscenity laws are concerned with prohibiting lewd, filthy, or foul words or images, and there are major disagreements as to what is or isn't obscene and what role the government should play in enforcing social or cultural morals. Typically, obscenity is analyzed within the background of sexual conduct. Indian law on obscenity is defined under the Indian Penal Code. In India, since yore, the "purity" of women has been given utmost importance. It is a sort of social barometer that is essential to sustain a family's social honour and reputation. Whether the women are queens of royal birth or standard women, Indian culture placed great importance on values such as fidelity. Even the portrayal of women in India centred on these aspects until advertising and new bohemian way of thinking modified the popular perception. In Indian law, obscenity has

been well outlined by existing provisions and largely relates to how something like a book or film portrays sexual conduct.

Legally, the term ‘obscenity’ is cited as indecent expressions, like words, images and actions. Exhibition of an indecent act that leads to the general corruption of morals amounts to a violation of Indian law. For example, when the famous painter, M.F.Hussain painted Goddess Saraswati nude, there was considerable public outrage and anger directed at the artist. The paintings were considered ‘obscene’ by several Hindus while others who viewed it from an artistic perspective saw nothing wrong with it. The word obscene has a very subjective meaning. It depends on the factual circumstances of each case. Obscenity changes with time as a wide word. Whatever material or act considers obscene twenty years ago is no longer exists as obscene said by a lawyer and former MP R K Anand.

The recent Kerala High Court case<sup>1</sup>has outshined the very important question in every person mind about the decency of mother feeding her baby in public. A writ petition was filed in Kerala High Court on the ground of indecent and obscene picture of the mother feeding her baby, exposing her bosom in the local magazine with a caption reads as “Don’t stare. We have to breastfeed”. It can be stated as the cruel truth that breastfeeding in public places may imply that breastfeeding is unnatural, undesirable or even illegal due to the controversy arising out of it. It is undeniable to state that despite knowing the fact that breastfeeding is one of the most natural processes in the world, and mothers should be able to feel comfortable feeding their babies whenever and wherever they want, people not seem it as a decent act. Breastfeeding in public as an obscene act has been the dreadful misconception in all over the world.

## II. REVIEW OF LITERATURE

Both modern authorship and modern sexuality fall inside the domain of obscenity law. Modernist sexuality and authorship were enunciated instantaneously, assuming deliberately and unevenly, as an identity within the legal structure of obscenity. In the mid-twentieth century, obscenity law, as a major discussion inside modernism, was less a thoroughly calculated and institutional type of control practiced over scholars than a lawful intercession into social issues encompassing the course of pieces of literature and the resulting expanding of the group of onlookers to incorporate women, the average workers and youth.<sup>2</sup>

The author tries to explain the concept of obscene in a way as any material which can be obscene even if it has no likelihood of inciting anyone to unlawful conduct, and even if no unwilling viewer is ever likely to see and

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<sup>1</sup> Felix M.A. v. State of Kerala and otrs. WP(C) No. 7778 of 2018.

<sup>2</sup> Leigh Gilmore, *Obscenity, Modernity, Identity: Legalizing “The Well of Loneliness” and “Nightwood”*, Vol 4 No. 4 JOURNAL OF THE HISTORY OF SEXUALITY. 603- 624, (Apr. 1994).

thereby be offended by it. Obscenity law aims at preventing the formation of certain thoughts typically, erotic ones in the minds of willing view.

Children often lack the necessary critical resources to defend themselves from such harm, and this is why parents routinely exercise censorship. Parents can appropriately decide that certain materials are worthless and harmful and that children cannot be trusted to see. But does the work censorship board is to restrain the people to see such material emit with the same ideology? Obscenity varies from person to person which likely emit the moral harm to a person separately.<sup>3</sup>

Obscenity is an atypical crime in that it disturbingly involves personal judgment. A jury may have difficulty in making up its mind in the face of hard questions of law or hard questions of fact owing to uncleanness of evidence or unreliability of testimony; but what they are trying to get at are the facts which are there independently of theirs trying to get at them, and they will end up by getting them right or getting them wrong. In an obscenity trial things are different: whether or not an offence has been committed is not determined by correct answers to questions of law and fact.<sup>4</sup>

In a society, it must be insisted, obscenity inheres in a definable list of things that may not necessarily be prohibited elsewhere: in the use of tabooed artistic representations or words, in nudity of certain parts of the body, and the performance of publicly prohibited acts. Society's cultural projections help to define the meaning of 'obscenity' in those particular strata. Indeed, in other contexts, the shoe may be on the other foot, and we may be accused of obscenity where none, certainly is intended.<sup>5</sup>

Despite a law to support public breastfeeding in Ontario, there is room to improve attitudes toward public breastfeeding. To promote and increase the rate of exclusive breastfeeding among the women to achieve children feeding goals public support must be needed.<sup>6</sup>

### **III. RESEARCH OBJECTIVES**

- i. To analyses the explicit meaning of Obscene and Indecency in Indian culture.
- ii. To observe the acceptance of public breastfeeding all over the world.

### **IV. RESEARCH METHODOLOGY**

The author had chosen the issue with an extraordinary enthusiasm keeping the hugeness and inciting need of Breastfeeding in Public in the current conditions and conditions. In any case, the strategies adjusted to complete

<sup>3</sup> Andrew Koppelman, *Does Obscenity cause Moral Harm?*, 105 COLUMBIA LAW REVIEW, 1635-1679 (June 2005).

<sup>4</sup> A. D Wootzley, *Obscenity and the Law: Reply to Professor Simpson*, 1 LAW AND PHILOSOPHY, 255- 261 I (Aug 182).

<sup>5</sup> LA Barre, *Obscenity: An Anthropological Appraisal*, 20 LAW AND COMTRMP PROBLEMS, 533 (1955).

<sup>6</sup> Katherine Russell and Amira Ali, *Public Attitudes toward Breastfeeding in Public Places in Ottawa Canada*, 33 OTTAWA PUBLIC HEALTH, 401-408 (May 2017).

the examination work are doctrinal in nature, unmistakable, basic and practically diagnostic. The important material is gathered from the optional sources. The material data is gathered from legitimate and non-lawful sources like global lawful instruments, statute, judgments, books of lawful specialists of national and worldwide notoriety, daily papers, law diaries, law reports, web references and feelings of research researchers, academicians and different specialists who have managed this subject are utilized as a genuine commitment to this work.

## V. ACCEPTANCE OF PUBLIC BREASTFEEDING IN VARIOUS JURISDICTIONS

*"Breastfeeding a baby is a normal and natural thing to do. Babies have a right to be breastfed and mothers have the right to breastfeed. Most mothers work out where and how they can feed their babies when they are out so that they are comfortable. In our society, however, although breastfeeding is acknowledged as important for mothers and babies, some people make critical remarks or confront mothers with unnecessary and illegal 'rules'"<sup>7</sup>*

In parks, beaches, and open squares and roads, a woman's rights to nursing a child might be restricted by nudity or profane introduction law that may deny exposure of a woman's breast. Each state has some sort of confinement on the public nudity, however huge numbers of these rules are not as wide as one may think. The accentuation in these rules, as a rule, isn't barenness as such, however, salacity that is, an exposure of the exposed body intended to display or incite a sexual reaction or to sexually threaten spectators. Is the introducing of the female breast in public in lecherous? In numerous states, the disgusting introduction laws don't make a difference to the female breast by any stretch of the imagination, even though districts inside a state may have their confinements. In different states, be that as it may, the revolting presentation laws unequivocally incorporate the female breast in their meaning of those "private parts" that can't be uncovered out in the open. In England, by law, women are allowed to breastfeed in any open place and any individual who endeavours to stop her can be prosecuted by breastfeeding ladies from England. It clearly seemed that the United Kingdom and various other developed countries are encouraging for public nursing and in some case, they support it with the help of their legislation. On the contrary, the majority of developing countries are still questioning public breastfeeding due to a lack of clear direction on the pros and cons behind it.

### Europe

- In the United Kingdom, the Sex Discrimination Act 1975 and the Equality Act 2010 declares the protection against discrimination or harassment when a woman breastfeeds in public a child of any age.<sup>8</sup>

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<sup>7</sup> Australia Breastfeeding Association

<sup>8</sup> Boyer K (2011), *The way to break the taboo is to do the taboo thing" breastfeeding in public and citizen-activism in the UK*, 17(2) HEALTH PLACE , 430-437 (2011).

- In 2005, the Scottish Parliament passed the Breastfeeding Act protecting the right to public nursing. £2500 fines have been imposed for preventing the mother to breastfeed a child up to two years in any public area.<sup>9</sup>
- In Germany, though the legislation has not specific about the breastfeeding in public, it has been widely accepted in public
- Same as Germany in Netherland it is usual to breastfeed a child in public but unlike Germany, the legislation is more specific here regarding the working women breastfeeding in the workplace. The employer is obliged to provide a nursing room in an office for the first nine months after the birth and also allow 25% of work to be spent on breastfeeding while on pay.
- In France, the cases of breastfeeding in public are rarely making them having one of the lowest breastfeeding rates in the western world. However, breastfeeding in public is legal. It appears that French, particularly the youthful ones tend to be less tolerant towards breastfeeding in public and it is worthier for a woman to breastfeed if her infant is up to a half year old.<sup>10</sup>
- Around the Mediterranean, Spanish, Italian and Greek women although they are encouraged to breastfeed in public, numerous moms are as yet cautious about the issue. Pope Francis, in service in Vatican City, has as of late encouraged women "to nourish their infants anyplace, even in the Sistine Chapel, without reconsidering."<sup>11</sup>

### **United State of America**

- In the situation in North America is way different from other countries. the breastfeeding in public is considered one of the major social issues which dealt differently in every state. Typically, in USA two different type of legislation form relating to breastfeeding, one entrenched the right of breastfeeding in public and the other eliminate breastfeeding from criminal statutes.<sup>12</sup> Alaska and Utah are the examples of those states which protect breastfeeding by restrictive law. Whereas Virginia and North Carolina have legalized breastfeeding in public. In any case, a few states including Connecticut, New Jersey and Minnesota have obscure legislation that needs the illumination of the conditions under which

<sup>9</sup> Breastfeeding etc. (Scotland) Act (2005) (asp 1), Queen's Printer for Scotland 2005-02-10. Retrieved 2007-01-24.

<sup>10</sup> Kate Palmer, *French women least tolerant towards public breastfeeding*, YOUNGOV (Sep 11 2013, 4:52 pm ) <https://today.yougov.com/topics/lifestyle/articles-reports/2013/09/11/french-women-least-tolerant-public-breastfeeding>

<sup>11</sup> Lizzy Davis, *Pope Francis encourage mothers to breastfeed even the Sistine Chapel*, THE GUARDIAN (Jan 12 2014, 10:48 pm) <https://www.theguardian.com/world/2014/jan/12/pope-mothers-breastfeeding-children-sistine-chapel>

<sup>12</sup> Li R, Rock VJ, Grummer-Strawn L, *Changes in Public Attitudes toward Breastfeeding in the United States, 1999-2003*, 107(1) JOURNAL OF THE AMERICAN DIETETIC ASSOCIATION 122-127 (2007).

breastfeeding in public is moral and adequate.<sup>13</sup> Moreover, many states do not have any legal system for breastfeeding. Through cooperation and support for breastfeeding in public rely upon the accessibility of every private institute. Mothers in the USA breastfeed in public facilely while they stay prudent; this is for the generally acknowledged and welcome.

- In Canada, public breastfeeding is by all accounts a public medical problem and is for the most part acknowledged. Encouraging Action Coalition Canada (INFAC), a national non-administrative association, has assumed control over the protection of baby and child by advancing and supporting breastfeeding. Mother don't hesitate to nurture anyplace and seldom encounter any feedback.<sup>14</sup>
- Breastfeeding in public consider as an ordinary activity in most countries of Central America. Mother in Barbados, Guatemala, Honduras, Trinidad and El Salvador usually cover their breast by some piece cloths while breastfeeding a child in public.
- In South America in the greater part of nations moms have a certain uplifting state of mind concerning breastfeeding in public. Peru was the first Latin American country which establishes the policy to protect breastfeeding in the healthcare centre and public places during the 1980s.<sup>15</sup> In Chile, Brazil, Venezuela and Argentina are the states where the mother may breast feed in public. In Colombia, basically in urban areas, women usually cover up, unlike in rural areas.<sup>16</sup>

## Asia

- Among the Asian countries breastfeeding in the public seemed extensively accepted by public as long as vigilance is maintained. Women can breastfeed without hesitation in Israel, Bangladesh, Nepal, Jordan and Iran.<sup>17</sup>
- Philippines government has not prohibited breastfeeding in public however breastfeeding in public maybe consider unethical if the mother's breast exposed while feeding a child. China, Malaysia and Thailand accept breastfeeding in public, but there are differences from area to area attributed to educational and economic reasons.

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<sup>13</sup>Suski E, *In One Place, But Not Another: When the Law Encourages Breastfeeding in Public While Simultaneously Discouraging It at Work*, 12 (1) UCLA WOMEN'S LAW JOURNAL, 109-143(2001).

<sup>14</sup>Spurles PK, Babineau J, *A Qualitative study of Attitudes toward Public Breastfeeding Among Young Canadian Men and Women*, 27(2) JOURNAL OF HUMNA LACTATION, 131-137 (2011).

<sup>15</sup>YuetteFautsch, *Breastfeeding support in Peru: bridging science, policy and practice*, FOCUS ON MACDONALD McGILL PUBLICATION (Dec 2012) <https://publications.mcgill.ca/macdonald/2012/12/17/breastfeeding-support-in-peru-bridging-science-policy-and-practice/>

<sup>16</sup> Williamson NE, *Breastfeeding trends and patterns*, 1 INTERNATIONAL JOURNAL OF GYNECOLOGY & OBSTETRICS, 145-152 (1989)

<sup>17</sup>Khassawneh M, Khader Y, Amarin Z, AlkafajeiA ,*Knowledge, attitude and practice of breastfeeding in the north of Jordan: a crosssectional study*, 1 INTERNATIONAL BREASTFEED JOURNAL, 17 (2006)

## Australia

- In Australia, as indicated by the Discrimination Act 1991, the National Anti-discrimination Legislation in 2010 and the Sex Discrimination Act 1984 altered in 2011, each lady is protected by law to breastfeed her child in public places and troublesome treatment on the ground of breastfeeding is prohibited. Network acknowledgement of breastfeeding in public has become over the previous years and the law perceives that breastfeeding ought to be upheld.
- Under the Australian Capital Territory, breastfeeding is a protected attribute. Discrimination based on breastfeeding is illegal in the regions of: arrangement of products and enterprises, convenience, monetary administrations, work, sport, training, access to premises, access to participation in an exchange or expert association, enrollment of or benefits in an authorized club, business organizations, demands for data and unlawful publicizing.
- New South Wales, Queensland, South Australia, Tasmania, Victoria authoritative states that discrimination and provocation on the grounds of sex are illegal with regards to circumstances in work, state instruction, merchandise and ventures, convenience and enrolled clubs. This incorporates breastfeeding as a characteristic by and large relating to women.
- In New Zealand, breastfeeding in public is additionally guaranteed by law, is normal and broadly acknowledged. Numerous public places in the two nations give nursing rooms where moms can easily change their child, breastfeed or pump their drain.<sup>18</sup>

## Africa

- In Africa again the attitude towards breastfeeding in public fluctuates and the circumstance changes from country to country. In the majority of regions, breastfeeding in public is thought to be an unremarkable action and is generally acknowledged. Women from Kenya, Liberia, Morocco, Nigeria, Rwanda, Somalia, Uganda, Zambia and numerous different nations breastfeed on request with no faltering. Sometimes discretion may be necessary, depending on the environment. In Ghana particularly even though a conservative country a woman is relied upon to breastfeed her child if the need emerges, while on the off chance that she doesn't then it is inferred that the infant isn't hers. Then again, in Libya breastfeeding in public isn't far-reaching and infrequently disapproved of, while in Egypt most women don't breastfeed in public because of religion.<sup>19</sup>

<sup>18</sup> : Komodiki E, Kontogeorgou A, Papastavrou M, Volaki P, *Breastfeeding in Public: A Global Review of Different Attitudes towards It*, 1(6) JOURNAL OF PEDIATRICS AND NEONATAL CARE (2014)

<sup>19</sup><http://www.007b.com/public-breastfeeding-world.php>

Acceptance of public breastfeeding differs colossally around the globe. The United States of America and some European nations acknowledge and bolster breastfeeding in public both in theory and practice. These nations have as of late established relevant legislation that ensures breastfeeding in public places and besides at the work environment. Since breast milk is basic for both maternal and child well-being, nearby, national and worldwide public wellbeing associations ought to consider advancing both legislative and marketing activities to advance the acceptance of public nursing. Increment public acceptance of breastfeeding in public would build rates of select breastfeeding and enhance health results.

## VI. PUBLIC BREASTFEEDING IN INDIA

Although breastfeeding is the most natural of human processes, most urban, and also rural men, don't incline toward ladies to breastfeed in the open. Notwithstanding a few global battles and endeavours by wellbeing offices, breastfeeding out in the open keeps on being forbidden in India. "*The breast is seen as a sexual organ, welcoming harassment whenever uncovered out in the open, don't worry about it that it's for nourishing a baby. Mothers must do this just at home, or should pump the milk and convey it while voyaging, or hold up till the youngster is weaned off breast milk to continue ordinary lives.*" Indian attire plays a very important role when it's come to the mindset of Indian society on public breastfeeding. Women wearing sarees or dupatta make them comfortable to breastfeed a baby in public without exposing their bosom. However, woman and her baby comforts during breastfeeding in public become secondary, if the woman doesn't cover her baby in breastfeeding then that part natural process which was decent converted into the indecent, obscene and shameful act.

The very good example of the same has come in light of Kerala High Court when the petition was filed against the local publication on the ground of indecent and obscene picture of the mother feeding her baby, exposing her bosom in the local magazine with a caption reads as "Don't stare. We have to breastfeed". According to the petitioner POSCO Act 2012, The Juvenile Justice Act 2015, Indecent Representation of Women (Prohibition) Act 1986 and the Constitution of India get violated in the present case.

The bench of former chief justice Antony Dominic and Dama Seshadri dismissed a writ petition of Felix MA. In its ruling, the court said that the court does not see obscenity in the picture or find anything objectionable in the caption for men. The Court, while maintaining that the cover depiction issue has to be viewed subjectively, made some hard-hitting observations in the light of: "*A citizen, seemingly sensitive and scrupulous, cries foul at, what he terms, the Society's moral decadence... "Shocking one's morals" is an elusive concept, amorphous and protean. What may be obscene to some may be artistic to other; one man's vulgarity is another man's lyric, so to say...culture is a loaded label: for some, it is a badge of honour, and for others, it is a symbol of shame...one man's pride is another man's shame"*

The Court cited author Abhinav Chandrachud who wonders whether sexually arousing material is banned merely because somebody might get addicted to sex. There is much in the modern world which is addictive, yet legal: cigarettes, alcohol and even chocolates. He cautions that “to censor pornography because it degrades women sends us down the path of a slippery slope.” The Court further cites Gautam Bhatia’s book “Offend, Shock, Or Disturb: Free Speech Under the Indian Constitution” to distinguish “decency or morality” with “public decency and morality”. The freedom of speech and expression has to not be subjected to the general public interest. India adopted its “*Contemporary-Community-Standards test*” from the aforementioned case to test whether “the work, taken as a whole, appeals to the prurient interest”. Applying the aforementioned test, the court ruled that the picture’s particular posture and its background setting is not prurient or obscene; nor even suggestive of it.

## VII. CONCLUSION

Exclusive breastfeeding is viewed as the best diet for all newborns and infants. Exclusive nursing necessitates that the mother ought to have the capacity to breastfeed on request by the baby in any area. Thus it is unavoidable that each nursing woman should breastfeed in public. Statistics and reviews have demonstrated that the acceptance of public nursing is variable, notwithstanding when it is ensured by laws and policies. Various cultural and religious factors are believed to be in charge of this variety around the globe. Nearness or nonappearance of defensive enactment is another factor that may affect public breastfeeding in every nation.

This insistence that the infant should just be breastfed away from plain view uncovered our split personality on breastfeeding. It has been insisted the breastfeeding is something worth being thankful for to do. The negative state of mind toward public breastfeeding is a foundation of low breastfeeding rates and a premise of our determined formula feeding culture. Beside every one of the mothers who rapidly figure out how to utilize newborn child equation since they are humiliated by their hungry babies when there is no private space to breastfeed, women in the U.S. frequently come up short at breastfeeding in light of the fact that they don't have sufficient chance to observe other women breastfeeding. Breastfeeding isn't instinctive, it is scholarly conduct. Increment public acceptance of breastfeeding in public would expand rates of exclusive breastfeeding and enhance wellbeing results. At the end of the day: Breastfeeding in our way of life is regarded as a private substantial capacity when for some reasons, all done with a baby and maternal wellbeing it ought to be a public one.

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