

SOCIAL MEDIA AND THE OBSCENITY DEBATE: CONSERVATIST, LIBERAL, AND FEMINIST PERSPECTIVES

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ABSTRACT

A basic fundamental constitutional right of individuals in any society is the right to freedom of speech. Freedom of expression leads to the generation of idea. The right to freedom of speech is however not absolute because with freedom comes responsibility. As a fast, individualistic and interactive channel for sharing ideas, social media is a channel for the easy and effective communication between people from all over the world. This 21st century means of information-sharing poses a problem as all kinds of contents flow through the internet and there is no real means of regulation and control. The practice of posting and sharing obscene materials via social media platforms have sparked up debates the world over. The debate on how obscenity harms individuals and the society is ongoing and different schools of thought have taken varying stands on it. The conservatist, liberal and feminist thinkers have debated on obscenity (particularly pornography) and how its dissemination through the instrumentality of social media affects users negatively. The perspectives of scholars and the law on obscenity are discussed. This paper concludes by taking a stand on arguments for and against the effects of obscenity.

KEYWORDS: *Social Media, Obscenity, Pornography, Conservatist, Liberal, Feminist*

Article History

Received: 12 Mar 2020 | Revised: 31 Mar 2020 | Accepted: 13 Apr 2020

INTRODUCTION

The question of what constitutes as obscenity on the internet and what the law has to say is opaque. Different schools of thought have engaged in discussions on the level of harm obscene materials could have on internet users, and the laws regulating online obscene materials. The internet has changed the way that people communicate and sometimes, it is nearly impossible to trace the author of an online publication because of the employability of pseudo names and huge traffic of users. "Social media in particular has greatly impacted political dynamics on a global scale by enabling users to express themselves publicly in ways previously unavailable to them" (Raza, 2015: 23). The speed with which people send messages and receive feedback is a particular reason why there has been a remarkable shift towards the use of social media for communication. This very shift unfortunately is the reason why there have been debates on the need to restrict and control the use of the platform for the sharing of political, cultural, religious, security and moral matters. Explicit morally objectionable posts such as sexual depictions, horrific and shocking images and vulgarity are among the issues that plague the exposure to social media. The young generation use the social media to share lurid contents by way of 'sexting' (sending sex texts). Instagram, YouTube, Twitter, WhatsApp are sites through which users easily share obscene materials. Texts which "constitute as 'pornography' and 'obscenity' are regulatory concern by the government in both offline and online world. Social media in particular with its fast circulation of obscene and pornographic materials has made regulation

more difficult” (p.24). This could be owing to the fact that the internet is an ocean of ideas (contents are mostly user-generated) and monitoring traffic is regarded as an effort in futility. There are schools of thought that argue about the regulation of materials on the internet and whether or not users’ posts should be regulated and controlled. They are the conservatist, liberal and feminist moralities. The conservatist morality is very censorious, and is of the opinion that pornographic and obscene contents are incontestably injurious and “pose a threat to the organizational structure of the society and its institutions” (Mahoney, 1997: 37). For the conservatist school, obscene publications should be banned, prohibited and proscribed. The liberal morality on the contrary believe that morality is relative and are more concerned about the underlying reason for the posts and/or what banning such materials could lead to. The liberal thinkers argue that banning a material would be an infringement on the rights that individuals have to freely express themselves (1997). Feminist theorists argue that pornography and obscenity definitions are created from the male point of view, that pornography is a means of male domination, and that the harm that pornographic materials cause differs between genders. The purpose of this paper therefore, is to discuss the ongoing debates among conservatist, liberal and feminist thinkers on obscenity propagation and the law on how through the use of social media, potentially harmful contents are disseminated. The purpose of this paper is to highlight the points of view of the discussants on the effects of obscenity on society and to propagate a contemporary position that uses the new media (social media) and the law to bring about a justification on our understanding of what constitutes an obscene material in societies where the term gives relative meanings to different people.

Social Media and Freedom of Expression

Social media is an internet-enabled virtual space that brings individuals together to share information. Social media platforms functions as online community of users who are often defined by common interests like hobbies, profession or school but mostly, social media platforms are used to socialize (Baran, 2014). According to Tiwari and Ghosh (2018: 2), social media “blends technology, telecommunications, and social interaction and provides a platform to communicate through words, pictures, films and music”. Social media platforms are channels through which information dissemination speedily spreads to internet users irrespective of location. Social media turns communication into dialogues. Social media is termed a “doubled-edged sword” (Graciyal and Viswam, 2018: 110) because of which how people respond to the messages that they receive via the platforms. Interactions are not controlled and people are at liberty to express their thoughts, feelings and ideas. Social media can be classified into Social networking, Blogs, Micro Blogs, Vlogs, Video-sharing sites, Wikis, and Media Sharing. Unlike the restrictions and limitations that individuals face on offline publications, people feel a greater sense of freedom to express themselves with online networks. Freedom of expression as stated in Malemi (2009) is the liberty to say what one wishes to say subject to consequences under the law as the case may be... freedom from prior restraint as to what or what not to publish” (p: 10, 11). Freedom of expression is the notion that everyone has the right to freely express themselves through any communication channel, without any form of outside interference. In reality, freedom of expression is not absolute and with this freedom comes responsibility. However on social media, censorship is hardly an issue because users experience restrictions. Even though some social media sites like Twitter, Facebook, Instagram, and even YouTube have the capacity to retract and remove posts that some people might label ‘inappropriate’ and ‘offensive’, users of social media still largely enjoy freedom to express their thoughts because not all posts can be policed. The freedom to share information on social media sites has led to an explosion of contents that has become a cause for concern among right-thinking individuals in the society. The internet is open to misuse and as some claim, is being misused. On social media platforms, information spreads like wildfire through users application of ‘likes’,

'tags', 'retweets', 'reposts', 'shares', etc. Some contents go 'viral' when it has gained popularity and when this happens, it is usually nearly impossible to contain, retract, or take down.

Obscenity

The word 'obscenity' is derived from the Latin word 'obscaena' meaning offstage. The word can be used to refer to something that is morally repugnant. According to Webster's New International Dictionary, obscene is perceived as "offensive to chastity or modesty, expressing or presenting to the mind or view something that decency forbids to be exposed, impure, as in obscene language, obscene picture, indecent, unchaste, lewd". Obscene materials are calculated attempt to excite impure emotion and desires. In describing its effects on the society, Malemi (2009) opines that obscenity leads to a breakdown of morality which would result in high crime rate and social decadence to any society that embraces it. He explains that anything ranging from display of sex, indecent exposures and sensuous conduct, celebration and pleasure in horror, to the display of violence is obscene. Obscenity is arguably better recognized than described. According to Cohen (2004: 2) obscenity is "a type of unprotected speech". Obscenity includes not only words, but also photographs and pictures that depict or describe patently offensive hardcore sexual conduct". Additionally Unini (2017) defined obscenity as "anything that is either: immodest to the extent of showing too much of the body, indecent to the extent of being morally offensive, especially in a sexual way, offensive, rude or shocking, because it is for instance, too obviously related to or showing sex; or immoral to the extent of not being within society's standard of acceptable, honest and moral behaviour i.e. morally wrong" (p.5). Obscene materials are harmful materials that deal with sex in an offensive manner that would stimulate prurient interests, is shockingly pornographic, and immoral. It is important to note that the reaction of the test of obscenity is only relevant on reasonable persons in the society. A material is arguably obscene if inappropriate and inapt responses are stirred up in sensible individuals. In other words, the test of obscenity is morally relative. Types of obscenity include: pornography, nudity, vulgar language, extreme violent materials, horrifying and disturbing materials, etc.

Though there are laws on obscene and harmful publications in Nigeria, there is little or no enforcement or judicial activity in this regard.

Laws on Obscene and Harmful Publications in Nigeria

The laws on obscene and harmful publications according to Malemi (2009: 163) includes:

- The Obscene Publications Act. This Act has been repealed.
- The Criminal Code Act
- The Penal Code Law
- The Children and Young Persons (Harmful Publications) Act, now Law of Lagos State.
- The Cinematograph Act
- The National Broadcasting Commission Act; and
- The National Film and Video Censors Board Act

The Statutory Test of Obscenity

For a publication to be labelled obscene, Section 233 (C) (1) of the Criminal Code Act provides:

An article shall be deemed obscene for the purposes of the Act, if its effect taken as a whole is such as to tend to deprave and corrupt persons who are likely having regard to all relevant circumstances to read, see or hear the matter contained or embodied in it.

Section 233 (2) of the Criminal Code Act further provides:

The provision of this section shall extend to any article of two or more distinct items, the effect of which is to tend to deprave and corrupt.

The basic problem with obscene materials is its intention to corrupt its readers or viewers “by inciting lascivious thoughts or arousing lustful desires” (Malemi, 2009: 169). Obscene publications in general lack serious literary, artistic, moral, political or scientific value. The extent to which a publication or a post is termed obscene and the moral implications of obscene materials on individuals in the society have been severely debated.

The Hicklin Test

As early as the 1660s, there have been recorded cases of obscenity, trials held and punishments passed. In 1663, a common law held the case of obscene conduct of Sir Charles Sedley in exhibiting himself stark-naked on a balcony and throwing down a bottle of what was termed “an offensive liquor” among the people of Convent Garden. This offense was punishable by fine, and up until the early 1700s, the punishment for obscenity was almost exclusively the concern of the Church of England (Smith, 1967). In 1727, in *Rex v. Curl*, the common law took up the trial because at this time, obscene practices and publications were perceived as a bane of the society and the court believed that obscenity was “against the peace in tending to weaken the bonds of civil society, virtue and morality” (p. 291). Whether the case is tried in the courts of the Church or the courts of Law, obscenity was indictable because it was seen as a corruptive agent for children and the inexperienced. The English legislation was passed in 1857. A case tried in 1868 by the Court of the Queen’s Bench, which has casted a shadow on the law of obscenity even till today was by *Queen v. Hicklin* and which arose out of the political and religious fighting in England at the time. The defendant, Henry Scott sold a pamphlet, *the Confessional Unmasked, showing the depravity of the Romish priesthood, the iniquity of the confessional and the questions put to females in confession*. Since it was the court’s ruling that obscene publication be confiscated and publishers punished, a test was needed to tell if Hicklin’s pamphlet was in fact obscene. According to Smith (1967: 293), Lord Cockburn laid down the guideline:

I think the test of obscenity is this, whether the tendency of the matter charged as obscenity 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.

The Hicklin Case is still cited till date and has continued to influence obscenity definitions convictions. Wait Whitman in 1870 was dismissed from his government position for writing his famous book *Leaves of Grass*. The United States Congress in 1873 passed a bill banning possession, distribution, printing and selling of literature and posting them by mail. A bill was passed prosecuting defaulters by jailing them for not more than 10 years or a fine of \$5000 or both. The bill was named after Comstock who was also appointed a special anti-obscenity agent of the State (Mahoney, 1997).

The Obscenity Debate

Defining what constitutes as obscenity and in what capacity it can become harmful to the society is not an easy task. Scholars have debated the foundation on which obscenity is laid and who could be affected by what and through what means. According to Raza (2015: 6), “obscenity is very much a figment of the imagination, an indefinable something in the minds of some and not in the minds of others, and it is not the same in the minds of the people of every clime and country nor the same today that it was yesterday and will be tomorrow”. To illustrate, a dress worn by a woman and recognized as a decent way of dressing in one part of the world may be seen as ‘obscene’ by people in some other part of the world. Obscenity may even vary from person to person. What a person finds obscene may not be the same with the next person of same age, gender and social background. The import of this is that obscenity is dynamic and relative. Depending on one’s religious, cultural and moral perspectives, obscenity is regarded differently. Some individuals are sensitive and tend to be easily affected or depraved by media contents. Critics however have argued that for a text to be generally accepted as obscene, it must reflect the views of majority of the society and not a few overly sensitive people. Some videos, images or literary writings may be explicitly imaginative, incorporating in them detailed sex images, but have literary, political, and artistic value. Are those texts obscene? Scholars assert that in scenarios like this, society in general should be the judge. “One needs to look into the bigger picture, the message being conveyed through the otherwise obscene material. The message should be helpful and beneficial to the society. It is important to see the full picture instead of squinting eyes at certain explicit scenes” (p. 27). Malemi (2009) posits that the acceptability of a text as obscene is measured by the viewpoint of the general society and not that of a section of the society.

Obscenity has been defined and measured from three perspectives: the conservatist, the liberal and the feminist perspectives. The conservatist and liberal being the first two dominant perspectives took on the debate at first. Feminists, after consideration of how obscenity affects the female gender in ways that males may not comprehend, came up with the feminist perspective.

The Conservatist Perspective of Morality

The conservatist morality judge obscenity from the point of view of the inherent, vivid and explicit pictures that the material possesses and intends to paint in the minds of the audience. The conservatist ascribes obscenity to wickedness and morally irredeemable whether or not the said material poses a threat to the general society (Mahoney, 1997). If there is even an element of a threat posed by the material, then it should be banned. To illustrate, a post on Facebook with erotic dancing should be taken down because such post would spread immorality which would be harmful to the society. For the conservatist thinkers, sex is purely for procreation and should not be thought about or spoken of if the intention was not for a married couple to reproduce. This includes sex education, erotic realism and other erotica (Malemi, 2009). The conservatist argue that there is nothing to gain from erotic materials and that the internet, its users and contents must be censored. The conservatist see sexual morality as the ‘glue’ that holds the rest of the structure of the society together.

The Liberal Perspective of Morality

A contrasting point of view from that of the conservatist is the liberal perspective. The liberals argue that the test for obscenity should be ‘the clear and present danger test’ (Mahoney, 1997). This involves evaluating a particular material to see the level of compelling and overwhelming harm that material could cause on the society. In order to prove ‘the clear and danger test’, the tangible and immediate harm that a text could cause must be identified and shown. According to the liberals, it is not enough to say that a video trending on Instagram is obscene for example, the detriments of the text, which

can only be avoided with the retraction of the video, must be given. A second point is that a text cannot be assessed and then judged to be obscene in parts. The entire text should be taken as a whole and appraised as a whole (Mahoney, 1997). In other words a sex scene in a skit on Twitter should not be labelled as obscene as long as there are parts of the video that tell a story. A third argument is that the ‘theory of obscenity’ is absolute and no longer applicable. The John Stuart Mill’s “market place of truth” theory applies to obscenity. The liberals affirm that restriction of publication and access to that publication would inhibit artistic and literary growth. Riding on Stuart Mill’s theory, liberals are of the opinion that every idea should be posted without restraint and control because one never knows which idea would be beneficial to whom. The Liberals claim that if the ideas are good, society would be better for it and if they are bad, society will reject it and they will wither away. Social media thrives on peoples’ reactions and opinions of a text. If a user posts a pornographic video on Twitter, it would only go viral when people ‘like’ and ‘retweet’ it. Conversely, it is silenced and becomes redundant when the public does not react to it. People should be free to express themselves as creatively as they can and anyone who is interested should be allowed access to learn from it. For children, the liberals argue, parents have the responsibility to decide what contents they would like to expose their children to and it is entirely up to them (Mahoney, 1997). For instance, social media offers some forms of parental control and some platforms like Twitter and Instagram requires that a person be 18 years of age before they can be authorized to own an account.

The Feminist Perspective of Morality

Feminists’ perspectives are neither in agreement with the conservatist nor the liberal perspectives. In fact, feminists’ points of view arose to debunk earlier perspectives. Feminists claim that neither the conservatist nor the liberal thinkers took into consideration how obscenity affects the females. “The predominant purpose of publications which deal with erotic reality is to present a truthful description of human sexual behaviour. What it means to a woman” (Malemi, 2009: 169). In the issue of harm, feminists believe that pornography does hurt women in ways that men are oblivious about (Mahoney, 1997). For feminists, when men become ‘corrupt and depraved’ because of their exposure to explicit sex contents, they turn on the women and this sometimes results in rape, sex slavery, incest, wife battery, etc. In addition, pornographic images usually depict the domination of the female gender. These images foster the oppression of women in general. It sends a perverse message of the place of women (as objects for men’s sexual desires) in the society. This degradation of women as a class, causes a general harm to females. The harm that ensues from pornography extends to their public goals where according to feminists, the assault on women’s credibility hinders their participation in public life, the achievement of their fight for equal pay and equal opportunities, equal value, and so forth (Mahoney, 1997). Feminists also challenge the view of the liberals on the harmful effects of obscenity to children. They argue that the curiosity of the minds of children is the exact reason why their exposure to media contents should be controlled. Children are more likely to act on what they see rather than what they are told therefore, explicit sex contents would easily corrupt their minds. Another perception of the liberals that feminists challenge is the notion that a media content has to be taken in whole for it to be judged as obscene. Feminists argue that obscenity comes in various forms and merely thinking of inappropriate and offensive things could corrupt the mind on an intrapersonal level and then progressively go on to corrupt others.

Anchoring the Obscenity Debates

Proponents of social media contents regulation and control of obscene materials and literature claim that they have the society’s interest at heart and that social media platforms are speedy vehicles for spreading harmful and immoral contents. Obscenity, they insist is constitutionally unprotected because it does not convey any significant ideas yet, pornography has

been widely known to be a multi-million dollar business venture worldwide and social media platforms are channels for obscene content distribution (Boyce, 2008). These claims have been refuted by the liberals stating that the fuss about obscenity is premised on prejudice against sexual speech. Social media, for the liberals is a colourful virtual community that give people the chance to share their lives irrespective of race, religion, ethnicity, gender and class. The liberals argue that the basic problem is the idea that society's standard is universal whereas in reality, social media is about diversity. The relativity of morality is a major impediment to deciding where the line should be drawn and finally, enforcing a standard of communication on adult users on social media is a violation of the right to free speech and for the liberals, that is what is truly harmful. Feminists anchor their theory on the fact that obscene texts on social media is just another way that women are subjugated. They insist that if sex materials or pornography is shared on the internet and actually stimulate prurient interests in men, it is mostly because of women are represented as objectified and oppressed. Feminists such as Catherine MacKinnon and Andrea Dworkin argue that pornography and rape are cut from the same cloth, that pornography is a graphic subordination of women, and that if obscene messages, images, picture and videos are protected as adults' rights to free speech on social media, then the subordination and objectification of women should also be constitutionally protected (Boyce 2008).

From the review of the works of the conservatists, the liberals and those of the feminist, it is the position of this paper that obscenity of any kind is harmful and should not be constitutionally protected. What affects an individual or some individuals in a society might go on to have a ripple effect on the entire society. Pornography conveys no idea worth protecting and it is detrimental to the mental growth of children and young adults. Granted, it is the responsibility of parents to decide on what their children should be exposed to, but with the influence of peer pressure and the ease of content sharing on Instant Messaging Applications, the curious minds do not need to go looking. Obscenity is indecent, impure, offensive and immoral. Morality may be relative but the general idea of how harmful addiction to explicit sexual materials and other erotica is, is universal. If the publication is without any redeeming, social, political, literary or artistic value, then the debate is hardly necessary. Obscene materials hurt the female gender in ways that men are unaware of. Pornography is just another way that women go through oppression and domination in the society. Women are the victims of pornography as they are objectified, subjugated and dehumanized.

CONCLUSIONS

The rate at which social media is changing the way that people communicate is the reason why there are debates on what kind of contents should be permissive. "The problems created by social media are mostly individualistic per se except... pornography which affects society at large" (Raza, 2015: 69) Freedom of expression is a fundamental constitutional right and all adults should be free to express themselves and share ideas on social media. This 'freedom' however, is not absolute and it comes with responsibility (Malemi, 2009). There exist a restriction on free speech if it could hurt another individual or the society and obscenity is known to be harmful. The concept of obscenity undeniably varies from culture to culture and from time to time but the law on gauging obscenity is clear, and that is the fact that it is obscene if it "lacks serious literary, artistic, political or scientific value" (p. 169). Obscenity corrupts morals and even the conservatists and liberals who are at opposite ends of the debate agree that there is a harm that is caused by pornography. Feminists grapple for the abolishment of obscenity on social media because pornography and the propagation of it harms women and children mentally and physically. It is important then to carefully define what constitutes obscenity and take the larger artistic and creative picture into consideration. Society must be taken into account in the decision of what should be banned. This is

because there simply cannot be a single standard for judging humans of different socio-cultural and religious backgrounds. Sometimes, “the hub of the message is embedded in the picture that seems to make people squint their eyes” (Raza, 2015: 28). The enforcement of the law on obscenity must begin with the mainstream media before it can be effectively applied on social media because on social media, it is a lot more difficult to monitor and control all materials that circulate the platforms on a daily basis therefore, there must be a straightforward standard for determining what should be acceptable and what should not.

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