

Contours Of Obscenity Vis-A-Vis Nudity In Artwork

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In the international art space, nudity is a medium to navigate socio-cultural issues relating to gender, race and feminism. (Photo by [Cathy Mü](#) on [Unsplash](#))

Nude artwork is a well established artistic genre like still life and portraiture. Masterpieces of legendary artists are often paintings or sculptures of nudes that evoke emotions beyond a first glance. However, independent India was not free from the colonial lens that frowned upon these masterpieces.

A folio of four drawings by FN Souza and three by Akbar Padamsee were confiscated by the Indian customs authorities in 2023, labelling them 'obscene' imports. These artworks were acquired by a Mumbai-based businessman and art collector in 2022 at auctions in London.

In July 2024, the assistant commissioner of customs passed an order seizing the artworks and prohibiting its import into India. The customs authorities relied on a 1964 notification issued under the Customs Act, which prohibits the import of obscene books, drawings, figures, paintings, or articles. The confiscation order was challenged by the importer before the Bombay High Court for its arbitrariness and perversity.

Evolving Indian Scenario

The decision of the Bombay High Court is a beacon of hope and certainty in the Indian art space. The court held that every nude painting cannot be styled as obscene, and the authorities ought to consider the artists' prominence, experts' view and judicial precedents that recognise these works as 'significant artworks' and not 'obscenity'. The court quashed the confiscation order and directed the paintings to be returned to the importer.

The court reprimanded the customs authorities for confiscating the consignments and allegedly ordering the destruction of the paintings. The inclination on the part of the

customs department to categorise nude artworks as obscene and destroy them would have caused a great loss to the art world without the high court's intervention. The high court reiterated that personal preferences and prejudices must not play any role while discharging public adjudicatory functions.

The court followed well-established principles laid down by a five-judge bench of the Supreme Court of India that the concept of obscenity is relative, and the standards of contemporary society are changing rapidly in India. The high court noted that 'obscenity' is not defined in the customs laws or in criminal laws and set aside the commissioner's findings that "completely nude" constitutes 'complete obscenity'.

Opinion

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Nude Artwork From Europe In Early 20th Century

In the international art space, nudity is a medium to navigate socio-cultural issues relating to gender, race and feminism.

The *Red Angel* (1902) by Karl Mediz depicts an enigmatic angelic figure, which invokes intense emotions at the sight of its crimsons and carmines. Marcel Duchamp's *Nude Descending a Staircase* (1912) was initially criticised for deviating from the aesthetics of a nude painting, was later considered as a modernist classic.

Similarly, the *Girlfriends* (1917) by Gustav Klimt is a classic example of a nude portrayal that challenged perceptions of art and morality in the 20th century and was eventually destroyed in 1945 during the Second World War. Disregarding initial reception, it is applauded for its expression of togetherness depicted by the gaze and gestures of its subjects.

Opinion

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Nude Artwork In 21st Century

Like its European counterparts of the early 20th century, contemporary nude artwork challenges gender stereotypes and conventional aesthetic standards.

American visual artist Mickalene Thomas' *A Little Taste Outside of Love* (2007) portrays an African American woman reclining in the same pose as a woman in a nude artwork from the Renaissance period in Europe subverting perceptions of beauty and race.

Opinion

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Nude Artwork In India

Souza, himself, was influenced by the erotic sculptures at the Khajuraho temple in India to freely represent female sexuality in artwork.

Opinion

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Testing Obscenity

The *Miller obscenity test* laid down by the US Supreme Court evaluates if the material as a whole lacks artistic value by contemporary community standards. While nudity in artwork is often censored from public spaces, American law defends non-sexualised nudity as a constitutionally protected expression.

Perceptions about obscenity and nudity in artwork constantly evolve and are linked to prevailing notions of what is acceptable or appropriate conduct in the society. The Western world is open-minded in its approach towards nudity in artwork, it is the Indian Courts which time and again remind us that nudity does not have to necessarily be categorised as obscenity.

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