

Historical analysis of obscenity using the case of rosen v. u.s 1896 research pap...

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The trial court, in the Southern District of New York, defined obscenity as overt act of the defendant, which is committed intentionally, knowingly and unlawfully which contained a certain obscene, lascivious and lewd contents.

The use of these three words was fundamental. In fact the crux of the judgment was based on these words. The court held that the text, picture and drawings in the paper posted by the defendants were offensive and would not be spread in court records. They held this view because they believed that its contents were indecent, lewd and obscene.

The judges seem to have been influenced heavily in their jurisprudence by doctrines of molarity than questions of fact and evidence. As a consequence this definition has received its share of criticism and praise in equal measure. Critics have vehemently argued that it contravenes the constitution as stipulated by the First Amendment. The fundamental question that arises from this contention is whether this definition seeks to censor freedom of speech or not. It is vital to realize that the ruling was instrumental in the establishment of the Federal Obscenity statute. Therefore, the argument that follows in that this fundamental violates the constitution and especially the Ninth and Tenth amendments. This case also influenced the prosecution and the sentencing in the Alberts Case in the Municipal court in Beverly Hills. This was despite that the defendant had waived his rights to have a jury trial. The presiding trial judges relied on the Rosen case ruling. They delivered a ruling against the defendant for circulating obscene, lewd and indecent materials. Moreover, the case also set a precedent on who between the judge and the

jury is supposed to decide whether the posted materials are obscene. Rosen letter had been titled "Broadway" and had indecent photos of women. The judge gave the directed the jury to decide whether they were indecent or not. The defendant sought to argue on the appellant court that as a point of law, the judge ought to have decided on the matter. The appellant court upheld the conviction and expanded the definition to include contents that "deprave and corrupt morals". The judges concurred with the definition of the trial court that the contents should suggest "lewd and lascivious actions and thoughts to the inexperienced and the young". It is vital to realize that when the Supreme Court adopted this definition it made it binding to all lower courts. This was reflected in cases that were decided later involving the same subject matter. Some of those that adopted and ruled on the basis of this definition include *People v. Garadin* (1991), where the court held that posted pictures must be obscene and lascivious in order to hold the defendant guilty.

The definition in the Rosen case has thus had severe implication on the protected area of protected freedom of press and speech. It has also infuriated debate on whether the definition seeks to enhance responsible exercise of these fundamental rights or serves to limit their exercise. The courts in the following cases have had an underlying assumption that the First and Fourth Amendment does not protect obscenity. These include *Roberts v. Baldwin*, *United States v. Chase*, *Ex parte Jackson* case and the *Hoke v. United States* case among others. In this case, the courts have held that even though freedom of speech and press is a fundamental and essential part of a democratic society the constitution does not protect

against obscene. In fact, the definition of obscenity in the Rosen case has led to courts treating it as a different area of law, which is under a governed and controlled by its own jurisprudence developed by the courts.

It is also crucial to mention that ruling also introduced a morality dimensioned in the interpretation of obscene contents. This is because the court held that the words “ lewd, obscene and lascivious” imply acts of immorality that relate to sexual impurity. The court held that such content should also be able to excite lustful thoughts. Following this ruling, it has become unlawfully in the United States to circulate, publish, post or supply materials that expressively demonstrate or imply unchastity in social life, indecency and impurity. However, the contents of such materials must be interpreted by a court of competent jurisdiction to be obscene, lewd and lascivious. The three words, therefore, are critical in determining the guilty of the defendant.

However, the development of this jurisprudence has seen the emergence of a standard of obscenity. This has seen court order that alleged obscene materials, which imply sexual impurity, judged on isolated effects they cause on susceptible persons. This is because morality is a subjective matter and is fundamentally informed by a person’s background, integrity and religious views among others. Therefore, it is vital that new standards are applied in contemporary courts. This is because the contemporary society has a totally different perspective and understanding of morality from the times when the ruling was delivered. Nevertheless, it is still prosecutable to post obscene, lewd and lascivious materials.

References

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