

Misuse of Media for Indecent Representation of Women

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Abstract: This study has been undertaken to determine how there is misuse of media for indecent representation of women. Media is playing a main role in development of the society, but there are many demerits also, many lawbreakers misuse the technology. In spite of many provisions in India to control crime against women in various field, but these laws are not that effective to curb them. The study has been done regarding many laws, how they are preventing indecent representation of women in India.

Keywords: Media, Indecent, Obscene.

This humanity is male and men defines women not in herself, but as relative to him; she is not regarded as an autonomous being... she is defined and differentiated with reference to man and not he with reference to her; she is the incidental, the inessential as opposed to the essential, he is the Subject, he is the Absolute—she is the other.

Simone de Beauvoir

Introduction:

Every field has two faces merits and demerits, same as media also has. Media is the fourth estate of Indian democracy, which has brought growth rate very high and everyone is totally depend on it. Media had effected to our economic, culture, religion, way of leaving, society ect., it had played a wide role in shaping our society in different ways like education, growth of rural areas, our attitude etc. but many corrupt people use technology to spread negativity in the society. One of the burning issue today in society is indecent representation of women through media.

There is too much of commercialisation and sensationalism involving violence, sex, portrayal of women which is indecent and objectionable. Such type of practice has to be protected by the law protectors. Advertisement plays very important role in everyone's life, women are treated as "goods" to promote sales. One side women have been depicted in the most respectable and aesthetic manner and, on the other, they have been victims of indecent, vulgar and obscene depictions. The test of obscenity is whether the tendency of the matter, charged with obscenity, is to deprave and corrupt those whose minds are open to such immoral influences and into those hands a publication of this sort may fall. If it does, the matter falls within the purview of obscenity. As there is no specific meaning to the term obscenity, as it keep on changing with the changing society.

However, the word 'obscene' is not defined in the IPC. Framers of the Code, plausibly realising that 'obscenity' depends upon the standards of morals of the contemporary society, were desisted from confining it in precise terms. The idea relating to immorality and indecency may change from time to time, and place to place. In the absence of definition of obscenity in the IPC, the task of defining it, thus, has been done by courts in India.

Laws Relating to Indecent Representation of Women

Sections 292 and 293 were added in The Indian Penal Code 1860, in accordance with the resolution passed by the International Convention for the Suppression and Circulation of, and Traffic in, Obscene Publications, signed at Geneva on 12 September 1923. Sections 292 and 293 were amended by the Indian Penal Code (Amendment) Act 1969, with a view to make more clear and definite the existing law, clause 1 of section 292 explains the connotation of the expression 'obscenity'. Section 292 (2) provides for not only enhanced punishment for matters relating to publication of obscene matters or objects but also makes it compulsory for the court to award it.¹

Sale of obscene books, etc. – Section 292 (1) consists of two parts. One part refers to a book, pamphlet, paper, writing, drawing, painting, representation, figure of any other object which is lascivious or appeals to the prurient interest, and the next part discusses that, if the above referred materials comprises of two or more distinct items, the effect of any one of its items, is, if, taken as a whole, tends 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. There must be two things proved under s 292, namely, that: (i) the matter is obscene; and (ii) the accused has sold, distributed, imported, printed or exhibited it, or attempted or offered to do so.

¹ DR. VIBHUTE K I, PSA PILLAI'S CRIMINAL LAW, 700 (LEXISNEXIS BUTTERWORTHS WADHWA, NAGPUR, 10H ED. 2011).

The law of obscenity in India had been borrowed from English Law under sections 292, 292A and 293 of I.P.C., it would be appropriate to examine the test of obscenity given by C.J. Cockburn, of the House of Lords in *R. v Hicklin*, which is perhaps the earliest case on the subject, as follows—

...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 influence and into whose hands a publication of this sort may fall. It is quite certain that it would suggest to the minds of the young of either sex, or even to persons or more advanced year, thoughts of a most impure and lubricious character.²

The Young Person Harmful Publication Act, 1956

This Act has been adopted from English Act of Children and Young Person Harmful Publications Act, 1955. Most of the provisions of this Act are similar to the provisions of Indian Act. This Act covers pornography that depicts sexual violence against children and women portraying rape, sexual assault and like crimes. Comics, Cartoons and other story books in which a story is portrayed with the help of pictures are also dealt with by this Act. This Act also has a very specific feature of making it an offense of advertising any material which is prohibited by this Act.

The Customs Act, 1962

Section 11 of the Act provides that Central Government is empowered to put restriction on the import or export of goods to maintain decency and morality. Under this Act Maximum Punishment of 2 years can be given. Section 11(2) of the Act provides various grounds on which the Government can prohibit importation of goods in India. Ground (b) mentioned in section 11(2) of the Act provides the ground of maintenance of public order and standards of decency and morality. Hence, if Central Government is satisfied that importation of any material may affect the standard of decency and morality in India, then it may prohibit importation of such material either absolutely or subject to some conditions.³

Cable Television Networks (Regulation) Act, 1995: The Cable Television Networks (Regulation) Act, 1995 prohibits the transmission of advertisements on the cable network which are not in conformity with the Advertisement Code. The Cable operator shall ensure that the portrayal of the female form, in programmes carried in his cable service is tasteful and aesthetic and is with well established norms of good taste and decency.”

Drugs and Magic Remedies Act

Section 3 of the Act prohibits any person from taking part into publication of any advertisement referring to any drug in terms that suggest or is calculated to lead the use of the drug for the maintenance or improvement of the capacity of human being for sexual pleasure.-Hence, this Act prohibits publication of indecent display of material that refers to sexual activities and has the capacity of offending people and capable of depraving and corrupting the minds of people who are likely to see, read and hear the matter in question.⁴

Information Technology Act, 2000

The Information Technology Act has covered all aspects related to cyber obscenity. It provides punishment for (i) violation of privacy, (ii) publishing or transmitting obscene material in electronic form, (iii) publishing or transmitting of material containing sexually explicit act, etc., in electronic form, and (iv) child pornography. The Act, thus provides a comprehensive cyber obscenity penal code.⁵

Section 66 E of the Information Technology Act, 2000, has made violation of ‘bodily privacy’ as an offence. The essential ingredients are:

1. Whoever,
 2. intentionally or knowingly,
 3. captures, publishes or transmits the image of a private area of any person,
 4. without his or her consent,
- violates the privacy of that person.

Under the section, the offenders shall be punished with imprisonment which may extent to three years or with fine not exceeding two lakh rupees, or with both.

Section 67 of the IT Act, says that whoever, do publication or transmission in the electronic form, any material lascivious or appeals to the prurient interest, tendency to deprave and corrupt persons, likely- audience, to read, see or hear the matter contained or embodied in electronic form. The word ‘publishes’ and ‘transmit’ have been defined in the Explanation clause of section 66E. The section advocates that the ‘obscene material in electronic form’ must be considered by itself and separately to find out whether it is so gross and its obscenity so decided that it is likely to deprave and corrupt those whose minds are open to influences

² (1868) 3 QB 360; Roth v. U.S.A., (1957) 354 US 476.

³ <http://www.cbec.gov.in/customs/cs-act/custom-act-1962.pdf>

⁴ http://www.accmumbai.gov.in/aircargo/pdf/drug_objectional_advertisement_act.pdf

⁵ SHARMA VAKUL, INFORMATION TECHNOLOGY LAW AND PRACTICE, 193 (Universal Law Publishing Co. New Delhi, 3d ed. 2011).

of this sort and into whose hands the 'obscene material in electronic form' is likely to fall. The term "sexually explicit act or conduct" has been qualified by the word "explicit", meaning thereby that mere 'obscene act or conduct' may not fall under this section. For punishment under this section—"publication or transmission of sexually explicit act or conduct"—is an essential ingredient. Hence the difference between section 67 and 67A depends on the nature of obscene content.

Indecent Representation of Women (Prohibition) Act, 1986

To prevent indecent representation of women in numerous forms, Parliament passed the Indecent Representation of Women (Prohibition) Act, 1986.

The society is rushing forward by leaps and bounds to exhibit obscenity by unfair and ugly representation of women by many means, which encourages illicit corruption and immorality in the society. This Act was brought to check the increasing immoral reproduction of women as a means of advertisement, film productions, publications and other means of spreading business or trade by unfair allurements. The aim of this act was to check the indecent representation of women and punish them who commit such crime.

Striking a Balance between Individual Liberty and Social Need

Absolute and unrestricted rights do not, and cannot exist in any modern State. Unrestricted liberty becomes a license and jeopardizes the liberty of others. "Civil liberties as guaranteed by the Constitution imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excess of unrestrained abuses. If people were given completed and absolute liberty without any social control the result would be ruin. Law is a scheme of social control, so that when we are concerned with, we are concerned only with the question of how many liberty is best.. it is obvious that, if individuals are allowed to have absolute freedom of speech and action the result would be chaos, ruin and an anarchy. On other hand, if the State has absolute power to determine the extent of personal liberty the result would be tyranny. Hence, the question arises as to how to make a balance between the conflicting interest of individuals and of the society and particularly in a welfare state like India.⁶

The Indian Constitution attempts to do it by enumerating what are fundamental rights and by setting limits within which they can be curtailed. The Constitution permits 'reasonable' restrictions to be imposed on individual's liberties in the interest of society. In this connection following observations of Mukherjee, J., in *A.K. Gopalan v. State of Madras*⁷, said that:

"There cannot be any such thing as absolute and uncontrolled liberty wholly freed from restraint, for that would lead to anarchy and disorder. The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, general order and morals of the community. In some cases, restrictions have to be placed upon free exercise of individual rights to safeguard the interest of society, on the other hand, social control which exists for public good has got to be restrained, lest it should be misused to the detriment of individual rights and liberties. Ordinarily, every man has the liberty to render his life as he pleases, to say what he will, to go where he will, to go where he will, to follow any trade and occupation or calling at his pleasure and to do any other thing which he can lawfully do without any hindrance by any other person. On the other hand, for the very protection of these liberties the society must arm itself with certain powers. What the Constitution, therefore, attempts to do by declaring the rights of the people is to strike a balance between individual liberty and social control."

Under Article 19 of the Constitution of India provides list of individual liberties and with this liberties there are restriction imposed on them. These restrictions are imposed on them only to maintain the public morality in the society and for public welfare.

The Supreme Court in *Ranjit D. Udeshi v. State of Maharashtra*⁸, observed that the test of obscenity laid down by *Cockburn, C.J.*⁹ should not be discarded. It held that the test of obscenity to adopt in India is that obscenity without a preponderating social purpose or profit cannot have the constitutional protection of free speech and expression and it is obscenity in treating sex in manner appealing to the carnal desire of human nature or having that tendency. The obscene matter in book must be considered by itself and separately to find out whether it is so gross and its obscenity so defined that it is likely to deprave and corrupt those whose minds are open to influence of this sorts and into whose hands the book is likely to fall. In this context the interest of our contemporary society and particularly the influence of the book on it must not be overlooked.

In *A.K. Abbas v. Union of India*,¹⁰ the Supreme Court has held censorship of films under Art. 19 (1)(a) on the ground that films have treated separately from other forms of art and expression because a motion picture is able to stir up emotions more deeply than any other product of art. A film can therefore be censored on the grounds mentioned in Art.19 (2). The Court has emphasized

⁶ DR. PANDEY J.N., THE CONSTITUTIONAL LAW OF INDIA, 54, (Central Law Agency, Allahabad, 48h ed. 2011).

⁷ AIR 1950 SC 27.

⁸ AIR, 1965, SC, 88;: (1965) 1 SCR 65.

⁹ *Flicklin case*, (1868) LR 3 QB 360.

¹⁰ AIR, 1971 SC 481.

that if the film is unobjectionable and cannot constitutionally be restricted under Art. 19(2), freedom of expression cannot be suppressed on account of threat of demonstration or threats of violence. That would tantamount to negation of the rule of law and surrender to blackmail and intimidation. The State cannot plead its inability to handle the hostile audience problem. Freedom of expression which is legitimate and constitutionally protected cannot be held to ransom by an intolerant group of people.

CONCLUSION

Today there is a need to maintain a level of morality and decency in Society. There should be a balance between the rights of individual to freely express his opinion and the obligation of the state to safeguard public morals. Whoever tends to corrupt that fundamental sense of morality and destroy the moral fabric of a society by his act or writings is guilty of the offence of obscenity. When there will be limit or control on indecent literature, advertisement and act in the society, there will be nation's development.

In Dramatic Performance Act, there is prohibition on performance of any drama which is of a scandalous, or defamatory nature or which is likely to excite feeling of disaffection towards government or which is like to deprave and corrupt persons present at the performance. Even in the Post Office Act, there is prohibition the circulation of obscene literature. Young persons harmful publication law, has been enacted to prohibit the publications containing the obscenity matter or which will corrupt the youth.

Under all organs of media, films and newspapers are most potent. Through the films and press lots of interpretative and opinion formations are carried. Instead of giving a negative impact on the society there should be control on advertisement, films or publication. If we say that the film or publication is made for the adults or married person only, then there are many change to fall such matter in the hands of small children too, if that matter is available in the open area or cheap in cost.

Suggestions:

In newspaper there are many advertisements regarding films and medicines, to increase their productivity they use obscene pictures and dialogues, and many times there are advertisement regarding "give a call and forget your loneliness", when such number is dialed that people talk about sex and other obscene acts. Firstly such phone number lines should be blocked by the government, and governments should put more restriction on press authorities to not to allow such advertisements in daily newspaper because newspaper is a cheapest medium of getting the things going around us in the world. And newspaper falls in every ones hands not only in the hands of adults.

Now coming to the television shows, to entertained oneself, everyone watch T.V. as there is no bar on age to watch T.V. the films or programmes which contain obscenity or indecency should not be shown. The programmes showed on television, by them kids learn lots, even in the absents of their parents children may watch such films or shows. To protect children from such evil and to maintain the morality and decency in society, such films or shows should be stopped in promoting.

Pornography Cell:

As there is cyber cell in India, like that there should be pornography cell in India. For this cell specialized police force should be kept to deal with the problem of indecent representation of women, obscenity, privacy of individual and pornography. There is lots of earning from the pornography movies and indecent advertisements, to stop such illegal earning by evils, there should be strong law to keep eye on them. The normal police cannot give their whole effort to solve these problems, as they are already over burden by other crimes, that why in every city such cell should be established.

Regulation on Cyber cafe:

In India, every where we can find cyber cafe, most of the illegal transformation of material is done by these cafes, as there is no restriction on them, anyone can use these computers, and put the indecent pictures or videos or obscene materials on net. There is need of taking strong step on cyber cafe to stop such illegal activates. The owners of the cyber cafe should be active to watch who is coming and serves the net and what activates they are doing. There should be control on servers and record in the cyber cafe register who served what kind of matter on net because a offender can upload the obscene matter and run from there, then the liability come on the cyber cafe owner.