

OBJECTIFICATION OF WOMEN IN MEDIA: A FEMINIST-LEGAL PERSPECTIVE

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ABSTRACT

Media plays a significant role in removing or prolonging gender disparity which is a serious concern of human civilisation. The projection of a woman's body in the media industry determines whether her status in society turns out to be that of an 'object' or that of an 'individual'. Media has, however, miserably failed where a dignified projection of women is concerned. The problem of 'objectification' of women has been a serious concern for decades. It has been a topic of extensive discussions, arguments, and rhetoric in the academic discourse. The international legal framework has considered the issue with great seriousness and India has also tried hard to be on par with the global standards. However, these efforts have failed to produce the desired result. Therefore, the article identifies several flaws at the statutory level and ignorance pervading towards the issue and suggests remedial measures.

Keywords: *Discrimination, Feminism, Gender-inequality, Media, Objectification.*

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I. Introduction

GENDER BIAS is a pervasive and entrenched problem in society. It gets triggered by the stereotypical gender roles as defined in the social context. Gender is a social construct, on the contrary sex is biologically determined. Traditionally defined gender roles eventually pave the way for gender disparity. In the evolving world, technology and communication revolution is the most promising development where technology and media communication are intertwined. In the era of the digital revolution, the same media communication plays a dominant role in the socialisation process. The image of women in media, thus, can be a major precursor in creating, shaping, and structuring gender roles and society's perception towards women as a class. Whether 'she' will be considered an 'individual' or an 'object' can

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be shaped massively by the media industry. Feminists across the world have been concerned about this issue in question and expressed their opinions and suggestions. But the subjectivity of the matter has been a catalyst behind a lethargic attitude towards ‘objectification of women.’ This article aims to delve into the exclusive role of media in structuring society and its attitude towards women. It also aims to study ‘objectification’ as a pervasive and disturbing societal problem and analyse it through the lens of feminism. The paper also assesses the state of the legal framework existing at the international level with a special focus upon the Indian legal framework to analyse whether these legal provisions are serving the purpose. Finally, the article offers suggestions to fill the lacunae in Indian legal provisions in order to curb the objectification of women in media.

II. Feminist Jurisprudence on Women’s Objectification

The study of devaluation of women through depiction in media is a component of a larger feminist theoretical perspective.¹ They are out rightly concerned with the questions of representation and gender. An analysis of varied feminist jurisprudential thoughts gives a belief that they analyse the structure of power that contributes to the devaluation of women in media. It considers media as a key in the discrimination against women.

The women’s liberation movement has always concentrated on ending inequality and discrimination.² However, differences have widened within feminism over certain issues, such as, the reasons behind women’s oppression, their acceptance of subordination, the possible means of resolving this oppression as well as the matter of gender identity, etc.³ It is often seen among the various splinter feminist groups that while their members strive to affirm, support and protect one another, they also demonstrate hostility towards women outside the chosen sphere.⁴ The multiple splinters of feminism are also reflected in the different strings within feminist perspectives towards media. A general belief exists that the characteristic femininity is abundant in those women who are mothers, housewives or conditioned to do the roles of domestic work and bringing up children. It is alleged by feminists that media is one of the social institutions that promote these norms. It is undeniable that the way women are portrayed in media creates corresponding versions in the mind of

¹ Lynn T. Lovdal, “Sex Role Messages in Television Commercials: An Update” 21 *Sex Roles* 723 (1989).

² Dana Basignani, “Feminism’s Second Wave” *The Gender Press*, Jan. 27, 2015.

³ Jane L. Parpart, M. Patricia Connelly, *et.al.* (eds.), *Theoretical Perspectives on gender and Development* (IDRC, Ottawa, 2000).

⁴ Bell Hooks, *Feminist Theory from Margin to Center* 46 (South End Press, Boston, 1984).

thinkers. And the unequal portrayal of women in media along with lesser access of women in the macro level of media industry- are the two reasons considered primarily responsible for this type of biased development of gender and cultural values.⁵

It is considered that a woman is not born but becomes one and the whole civilisation produces the creature known as 'woman.'⁶ It is believed that women are socially constructed as "the other" which accounted for their oppression and media is a medium that constructs a woman as a sex object.⁷ The consciousness working within a female works in a way that regards a female body as an object of others' attention. It is considered that in mass media a woman is defined by the male constructs and desires. She becomes an object for sexual gratification in a patriarchal society. To target that innate libidinous urge of men, patriarchy-infested media objectifies women and put sexual innuendos on their personalities. This leads to sexual gratification through the objectification of women. This whole act of objectification of women in media done by men and women have minimal representation in this macro-level of media. It is the *male gaze* that plays a pivotal role in the whole process. The gaze of men is a place of power and the one who is looked upon is female. This gaze is exclusively used by men, while the patriarchal system makes sure that the male gaze is internalised by women, as explained by *John Berger* in the following words:⁸

Men act and women appear. Men look at women. Women watch themselves being looked at. This determines not only most relations between men and women but also the relation of women to themselves. The surveyor of women in herself is male and the surveyed female. Thus she turns herself into an object-and most particularly, an object of vision: a sight.

Feminist thinkers believe that the consumption of pornography by men reduces women as a class to the status of mere instruments for men's purposes. The obsessive tendency to only focus on the looks of a woman while forming an opinion about her is a gateway to objectification. It is also argued at some corners that objectification should not necessarily be

⁵ Margaret Gallagher, *Unequal Opportunities: The Case of Women and the Media* (UNESCO, Paris, 1981); Betty Freidan, *The Feminine Mystique* (W.W. Norton, New York, 1963).

⁶ Simone De Beauvoir, *The Second Sex* 273 (Lowe and Brydone, London, 1956).

⁷ Teresa de Lauretis, "Eccentric Subjects: Feminist Theory and Historical Consciousness" 16 *Feminist Studies* 116 (1990).

⁸ Theresa Carilli and Jane Campbell (eds.), *Women and the Media: Diverse Perspectives* 5 (Lanham, Maryland, 2005).

negative and voices have been raised in favour of positive objectification.⁹ It has been argued by *Martha C. Nussbaum* that there are seven notions associated with the concept of objectification.¹⁰ However, we have to understand that this concept has no fixed meaning and two opposing notions of sexual objectification can be differentiated. As per the notion of instrumentalisation, objectification is fundamentally a type of instrumentalisation or use- “to the conversion of subjects into instruments or tools.”¹¹ At the same time, the notion of imposition meant “to be sexually objectified means having a social meaning imposed on your being that defines you as to be sexually used.”¹² Activists like *Catharine Mackinnon* who combat objectification specifically ‘sexual objectification’ conceived it to be an imposition on women a status of sex object. Questions have however been raised against such specification of marks and features of the term ‘objectification’. Critics explain this sexual object issue as “the role of object bestows upon young women an intoxicating sense of their sexual power even if they don’t exercise that power that they continue to participate.”¹³

Feminists and scholars have projected light on various gender difference catalysts mostly with varying power and social status held by men and women in society. Women have always been considered part of men’s wealth and this practice is part of primitive capitalism and a natural outcome of women’s subordinate status in society.¹⁴ The social order around the world reflects this patriarchal domination and status of women as merchandise ‘commodities.’ She is used to sell products and she is a product at the end. She is reduced into a mere body, which is for the consumption of male buyers in this patriarchal system.

⁹ Academic discourse on objectification can be traced back to Kant, while his work got most attention through the works of Catherine A. Mackinnon and Andrea Dworkin. Feminists like Sandra Bartky and Susan Bordo had argued that women are objectified through the idea of excessive preoccupation on their looks. Recently thinkers like Martha C. Nussbaum have challenged the idea that objectification is a necessarily negative phenomenon, arguing for the possibility of positive objectification.

¹⁰ These seven notions are “instrumentality-the treatment of a person as a tool for the objectifier’s purposes ; denial of autonomy-the treatment of a person as lacking in autonomy and self-determination ; inertness-the treatment of a person as lacking in agency, and perhaps also in activity ; fungibility-the treatment of a person as interchangeable with other objects ; violability-the treatment of a person as lacking in boundary-integrity ; ownership-the treatment of a person as something that is owned by another(can be bought and sold) ; and denial of subjectivity-the treatment of a person as something whose experiences and feelings(if any) need not be taken into account.” See, Martha C. Nussbaum, “Objectification” 24 *Philosophy & Public Affairs* 257 (1995); Evangelia Papadki, “Sexual objectification: From Kant to contemporary feminism” 6 *Contemporary Political Theory* 340 (2007).

¹¹ Timo Jutten, “Sexual Objectification” 127 *Ethics* 27 (2016); M. Plaxton, “Nussbaum on Sexual Objectification” 10 *Criminal Law Philosophy* 1 (2016).

¹² Catharine MacKinnon, *Toward a Feminist Theory of the State* 140 (Harvard University Press, Cambridge, 1989); Catherine MacKinnon, *Feminism Unmodified* 173 (Harvard University Press, Cambridge, 1987).

¹³ Nancy Bauer, *How to do things with Pornography* 36 (Harvard, Cambridge, 2015).

¹⁴ Barbara L. Fredrickson and Tomi-Ann Roberts, “Objectification Theory Toward Understanding Women’s Lived Experiences and Mental Health Risks” 21 *Psychology of Women Quarterly* 174 (1997).

III. After effects of Women's Objectification in Media

A question arises whether the objectification of women started from the advent of media and communication technology. The moment a woman is treated as nothing more than a depersonalised object, she is reduced to parts of her body, and this is exactly where objectification begins. This process started in every culture where men started dictating to women what to wear, what to do, how to look, and so on. The male domination of her image, her expected role in a systematised society ultimately seeds the objectification. But it is more a cultural problem and finds its way in the mainstream media. To understand the history of objectification, it is very important to consider that every community has made contribution to objectification. Objectification in media is just a part of the larger presence of patriarchy, but it is pertinent since 2500 BC when veils were used as a means of identifying which women were respectable and which were promiscuous and easily available to men.¹⁵ Later on, with time every culture has seen one or the other way of objectification of women. Since focus of this research is on media therefore aftereffects of it is discussed.

Mass media can be termed as the means of public communication which reaches a large, dispersed, and heterogeneous audience, who can be anonymous too. The communication gets delivered through channels or mechanisms which may be mediated or unmediated.¹⁶ The contents of these communications may vary from words, images, sounds, symbols, or a combination of two or more, and infrastructures involved can include networks, corporations, institutions, power, laws, and regulations.

Media is the medium that creates an impact on the transformation of the world to a greater extent. It is indeed a factor that influences the thought process of society at large.¹⁷ According to the Social Responsibility theory of media, it has to share the responsibility for the social upliftment of society. The central characteristic of the said theory emphasises the responsibility of media to use its dominant situation to ensure apt delivery of information to

¹⁵ Corinne Redfern, "A Comprehensive Timeline of Men Telling Women What To Wear" *Marie Claire*, Sept. 20, 2016.

¹⁶ TV, film, radio, face-to-face, internet, books, art, music, newspapers, magazines, podcasts, blogs etc are examples of such channels or mechanisms.

¹⁷ G.P. Pandey, *Press and Social Change* 14 (Manak, New Delhi, 1999).

consumers. If the media fails in conforming to this accountability, it may be pertinent to implement it through a regulatory body.¹⁸

Besides other agencies of socialisation for instance the family, education setup, and so on, the media performs a pivotal function in supplying the ‘symbolic materials’ like narratives, values, role models, and images which individuals are prone to adopt in the course of creating their personality. Thus, it can be said that trends of media development lead to integration into all socialisation process of individuals like social adaptation, internalisation, and exteriorisation.¹⁹ The media functions as a social constructivist tool. It constructs meanings and offers them to the individuals, who agree and integrate them within their personal meaning structures. Receivers’ social context plays a major role in the entire process.²⁰

The listeners or spectators have the freedom to accept or reject media contents and their meanings. However, media influences to determine which gender role models shall be dominant and in what manner.²¹ The classic agenda-setting theory underlines the idea that it is media that determines what is important to be viewed by audiences and what to be ignored. If an issue is given less importance by the media, it gradually sets the nature of the public towards the issue concerned accordingly. And all of these set a powerful source of information about gender that might challenge and reinforce people’s ideas about gender.²²

The stereotypical aspect about women put before audiences by the media creates a deep impact upon the mindset of people. There occurs a reinforcement of stereotypes that portray women as sexual objects and this happens due to the consumption of stories specifically through broadcasts that put exterior and physical allurements as the quintessential value of women. This is a matter of concern because stereotypes lead to violence against women in

¹⁸ Fred S. Siebert, Theodore Peterson, *et.al.*, *Four Theories of Press: The Authoritarian, Libertarian, Social Responsibility and Soviet Communist Concepts of What the Press Should be and Do* (University of Illinois, Chicago, 1963).

¹⁹ Rosita Uzniene, “Media-Agents of Socialization” 8 *Regional Formation and Development Studies* 238 (2012).

²⁰ Dennis McQuail, *McQuail’s Mass Communication Theory* 386 (Sage, London, 2010).

²¹ The freedom of expression available to media has to be used reasonably and it cannot claim to use its freedom in an unbridled manner. As stated in *A.K. Gopalan v The State of Madras*, “man as a rational being desired to do many things, but in a civil society his desires will have to be controlled with the exercise of similar desires by other individuals” (AIR 1950 SC 27). Any expression which causes harm to others especially the vulnerable section of the society has to be restricted. And if any restriction does not itself cause greater harm then it definitely can be imposed for the larger welfare of society. See, Melina Constatine Bell, “John Stuart Mill’s Harm Principle and Free Speech: Expanding the Notion of Harm” 33 *Utilitas* (2021).

²² Mark Lee Hunter, Luk N. Wassenhove, *et.al.*, *The Agenda-Setting Power of Stakeholder Media* (INSEAD Social Innovation Center, Working Paper No. 62, 2009).

everyday life and violation of their human rights.²³ The degrading portrayal of women as mere sexual objects or subhuman remains a concern of noted feminists.²⁴ They point out the harmless origins of objectification which are easily ignored by a careless society. The thought echoed is that what starts as a harmless admiration of physical beauty ends up becoming a harmful case of objectification.²⁵

Along with films and daily soaps, advertisements are also very prominent form of visual media. It can be one of the most powerful sources of influence in our society as it is an industry worth 560 billion US dollars in 2019.²⁶ People are generally exposed to 4000-10000 advertisements each day.²⁷ With communication and technological development exposure to media has increased many folds. There were about 59.5 percent active internet users of the global population and nearly 92.7 percent accessed the internet via mobile devices.²⁸ On the other hand, social media, a byproduct of the internet has also grown over the years. In the year 2021, there were nearly forty-eight billion people actively using social media in the world.²⁹ With such a large-scale increase of the internet and far more technological development, another addition that has happened in the electronic media is the Over the Top (OTT) platform. The digitalisation of technology has also increased business of OTT to a great extent. It has become one of the most preferred choices for most of the consumers of the media and entertainment industry. According to KPMG Media and Entertainment reports, the OTT viewership will increase by 45 percent by 2023.³⁰

It is undeniable that the information and communication technology-induced media world is exposing and dismantling several orthodox societal shackles. But it has also increased the objectification of women. Both men and women are not only getting influenced with regard to social interactions but also internalising 'objectification' in life practices. It may seem that women are using their autonomy to express themselves in whatever way that want it to be but in a country like India, sexual autonomy and acceptance of her agency is still a new concept.

²³ Council of Europe, *Media and the Image of Women*, Report of the First Conference of the Council of Europe Network of National Focal Points on Gender Equality 3 (Council of Europe, Amsterdam, 2013).

²⁴ Stanford Encyclopaedia of Philosophy, *Feminist Perspectives on Objectification*, available at: <https://plato.stanford.edu/entries/feminism-objectification/> (last visited on January 19, 2021); Few of the noted feminists are Catherine Mackinnon, Andrea Dworkin etc.

²⁵ Martha C. Nussbaum, "Objectification" 24 *Philosophy & Public Affairs* 249 (1995).

²⁶ A. Guttman, "Global advertising spending from 2010 to 2019" *Statista*, Jan.8, 2020.

²⁷ Jon Simpson, "Finding Brand Success in the Digital World" *Forbes*, Aug. 25, 2017.

²⁸ Joseph Johnson, "Global Digital Population as of 2021" *Statista*, Sept.10, 2021.

²⁹ Brian Dean, "Social Network Usage & Growth Statistics: How Many People Use Social Media in 2022?" *Statista*, Oct. 10, 2021.

³⁰ Hindustan Times School, "OTT: Modern and Online media platforms" *HT School*, Sept. 21, 2021.

Thus, in the end, this autonomy gets manipulated through the male gaze. Any expression of a woman gets exposed to men's idea of a perfect 'woman.' Similarly, shows in OTT platform is another avenue wherein freedom of expression is being used to the widest possible form. But it is also leading to the use of market strategies to sell those media shows and therein use of women as 'objects' or 'sex objects' is getting prominence. In a market-driven setup, anything that sells better is produced more. Indian content producers for some OTT platforms have focused predominantly on a few specific genres. To cater to the adrenaline rush of the consumers, especially the youth, video contents of the OTT platform are crowded with graphic scenes and themes which are centered around the objectification of women. Some instances of these type of Indian shows include *Sacred Games*, *Mirzapur*, *Patal Lok*, etc.

Here, a notable fact has to be mentioned that visual memories have a long-term effect and visual cues trigger emotions too.³¹ There are few women employed in the media and very few in positions of power and influence. Women's issues are drastically ignored in the media and when they are included, they get trivialised. Women are being portrayed as sex objects and this has resulted in what has been referred to as the 'symbolic annihilation of women in the media.'³² It has to be taken into consideration that these projections of women as mere objects or the 'other' or a spectacle in the media are mostly brought by males who are at the helm of the media industry. Thus, it cannot be denied that everything is determined by the male and for the male audience.³³

IV. International Regulatory Measures

Freedom of speech and expression has been one of the guiding factors behind media content. This right is enshrined in various international instruments.³⁴ And information disseminated through the internet can also be protected under the prescribed freedom given through these

³¹Jean Kilbourne, "Beauty and the Beast of Advertising", *Centre for Media Literacy* (1990). available at: <http://www.medialit.org/reading-room/beautyand-beast-advertising> (last visited on January 19, 2021).

³²Rachael Morton, "How has feminist media theory discussed media representations of women? Which of these theoretical observations do you find most convincing" *Rachael*, Feb. 16, 2009; *See generally*, Gaye Tuchman, "The Symbolic Annihilation of Women by the Mass Media" in Lane Crothers, Charles Lockhart (eds.), *Culture and Politics A Reader* (Palgrave Macmillan, London, 2000).

³³ Gina Miller, "The Consequence of the 'Male Gaze' and Sexual Objectification" *The Gender Press*, Jan. 27, 2015.

³⁴ The Universal Declaration of Human Rights, 1948, art.19; The International Covenant on Civil and Political Rights, 1996, art.19;The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1996, Principle 1, Principle 1.1, Principle 1.2, Principle 1.3; The International Convention on the Elimination of All Forms of Racial Discrimination, 1969, art.5; The Convention on the Rights of the Child, 1989, art.13; The Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, art.10; The American Convention on Human Rights, 1969, art.13;The African Charter on Human and People's Rights, 1981, art.19.

instruments. Thus, human rights protection which generally applies to all freedom of speech and expression also applies to any sort of communication made online. Besides, on the aspect of the projection of women in media, social scientists have attributed significance to the study of images and stereotypes of women. In feminist media studies, media images created of women have been a subject of criticism. Various studies demonstrated the discriminatory nature of women's images in films and advertisements which run mostly for commercial interests.³⁵ The worrying findings of these studies were the backdrop of the United Nations Educational, Scientific and Cultural Organisation's (UNESCO's) statement on Mass Media in 1979.³⁶

Taking into consideration that TV programs give information and reflect on gender roles in real life, it must be stated that women's images are distorted and unrealistic in these programs. All kinds of entertainment programs portray women in a dual image. On one hand, they are decorative objects. Yet, at the same time, they are passive individuals in the household and marriage who are dependent on men for financial, emotional, and physical support.

The report considered women's portrayal to be unrealistic, demeaning, and damaging. It remarkably asserted that until women constitute a 'critical mass' within the media, their ability to work against accepted cultural and professional values would be negligible. It also indicated that at the international level organisations like UNESCO and United Nations Population Fund played a significant role in the positive image formation of women. However, the cumulative effect of these efforts was tough to be evaluated. Therefore, very little could be said about the real impact of the service provided by these institutions. In a nutshell, this report made a multi-faceted effort though quite fragmented to draw a picture of this entire problematic scenario.³⁷

While focusing on media and human rights, the United Nations Human Rights Office of the High Commissioner, asserted certain key concepts of human rights of women and areas which included *gender stereotyping*. In the key concepts area, the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) was discussed, which could be called the Magna Carta of Women's Rights. General Recommendation No.19

³⁵ Anna Dasvtyan-Gevorgyan, "Women and Mass Media", *Feminism and Gender Democracy*, April 8, 2016.

³⁶ Margaret Gallagher, *The portrayal and participation of women in the media*, CC.79/WS/130 (UNESCO, Paris 1979). available at: <https://unesdoc.unesco.org/ark:/48223/pf0000037267> (last visited on January 17, 2021).

³⁷ Margaret Gallagher, *Id.* at 47-48.

of the CEDAW made general comments on discrimination against women and explained the periphery of discrimination with respect to gender-based violence. It envisaged that to ensure the enjoyment of fundamental freedoms by women, states must take comprehensive measures to eliminate traditional attitudes towards women as the subordinate sex.³⁸ In light of the comments made in the report, the committee on the elimination of discrimination against women made certain recommendations which include ‘effective measure to ensure that the media respect and promote respect for women.’³⁹

The General Recommendation No.35 on gender-based violence against women, updating General Recommendation 19, gave recommendations to the state parties to strengthen the execution of their obligations with regard to gender-based violence against women. It recommended developing and implementing effective measures, with the active participation of all relevant stakeholders which was in tune with article 5 of the convention which condones gender-based violence against women and underpins structural inequality of women with men. And it included adopting and implementing effective measures to encourage all media, including advertising and information and communications technologies to eliminate discrimination against women in their activity, including a detrimental and stereotypical portrayal of women or particular groups of women, such as women human rights defenders.

Another human rights treaty requiring state parties to address harmful stereotyping practices is the Convention on the Rights of Persons with Disabilities (CRPD). Article 8(1)(b) of the convention obligates states to combat stereotyping including compounded stereotyping based on sex, age or disability.⁴⁰ Some examples of stereotypes that can adversely affect women’s enjoyment of human rights include “stereotypical imaging of women and their objectification in the media, especially in advertising, reinforce notions that women are subordinate to men, and this leads to violations of women’s rights in many areas of life.” While monitoring women's human rights, which include recognising and examining gender stereotypes as it influences the enjoyment of their rights, major areas that seek monitoring of their effect on

³⁸ UN Committee on the Elimination of Discrimination against Women (CEDAW), “CEDAW General Recommendation No. 19: Violence against Women” (1992), *available at*: <https://www.refworld.org/docid/52d920c54.html> (last visited on January 19, 2021); Comments on art. 2(f), 5 and 10 (c) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

³⁹*Ibid.*

⁴⁰ UN Human Rights Office of the High Commissioner, “Monitoring and protecting the human rights of women” *Manual on Human Rights Monitoring* 18 (2011), *available at*: https://www.ohchr.org/Documents/Publications/Chapter28_MonitoringAndProtecting.pdf (last visited on January 19, 2021).

the amplification of gender stereotypes includes the media, *i.e.*, television, entertainment, and advertisement.⁴¹ While speaking of stereotyping, a less privileged woman on the marginal periphery of society looks towards the objectifying gaze as determined by the privileged patriarchy.⁴²

A significant breakthrough of the last century has been the globalisation for feminist agenda. In this relation Fourth World Conference on Women held in Beijing, 1995, has established a study “international consensus to promote women and girls’ rights as the key to development everywhere.” The “Beijing Platform for Action” noted the continuous projection of “negative and degrading images of women in media—electronic, print, visual and audio—and called for action so that the media would be an element of the scenario of change.”⁴³ The UN Beijing Platform and its subsequent Beijing+5 and Beijing+10 conferences brought attention to changes required and set targets dealing with women’s representation and leadership positions in the media, their access to and use of media technologies, and women’s literacy.⁴⁴ The United Nations Economic and Social Council (UNECOSOC) had recognised the substantial role of media in contributing to empowerment of women.⁴⁵

In the outcome document of its 23rd special session, UN General Assembly also called for action and initiatives to promote equal access for women and men as users and producers and to encourage the media industry to be consistent with freedom of speech and expression and to develop codes of conduct, professional guidelines and other self-regulatory guidelines to remove gender stereotypes. Even in the 47th session held in 2003, the commission on the status of women adopted and agreed on conclusions on women’s participation in and access

⁴¹*Id.*at19; In addition to monitoring and reporting on existing gender stereotypes, field presences can also monitor the implementation of measures aimed at eliminating them. Amongst it include – (1) Awareness raising measures taken in cooperation with civil society and women’s organizations, the media, online platforms, traditional and religious leaders, law enforcement agencies, law enforcement agencies, police, parents. Prohibiting sexist advertisements and introducing mechanisms for monitoring them. (2) Eliminating stereotypical images of women and their objectification in the media, particularly in advertising, including codes of conduct, protocols and peer reviews within the media and advertising professions.

⁴²Asma Mansoor, “Marginalization” in *Third World Feminism: Its Problematics and Theoretical Reconfiguration*, *Palgrave Communications* 3 (2016), available at: <https://www.nature.com/articles/palcomms201626.pdf> (last visited on January 30, 2021).

⁴³ United Nations, “Beijing +5 Political Declaration and Outcome” 149 (UN, New York, 1995).

⁴⁴ Prof. Katharine Sarikakis, “Media and the Image of Women”, Report of the 1st Conference of the Council of Europe Network of National Focal Points on Gender Equality 16 (2013), available at: <https://rm.coe.int/1680590587> (last visited on January 19, 2021).

⁴⁵ UNECOSOC, *Review of the implementation of the Beijing Declaration and Platform for Action, the outcomes of the twenty-third special session of the General assembly and its contribution to shaping a gender perspective towards the full realization of the Millennium Development goals* (strategic objective J- Women and Media), UNECOSOC E/2010/4*- E/CN.6/2010/2*, 63 (February 8, 2010), available at: <https://undocs.org/en/E/2010/4> (last visited on January 19, 2021).

to media, its impact and use as an instrument for the advancement and the empowerment of women.⁴⁶ These commitments were further consolidated through the two phases of the World Summit on the Information Society, in Geneva and Tunis.⁴⁷

Similarly, the General Assembly in its resolution 63/155 urged states on the intensification of efforts to eliminate all forms of violence against women, to include in their national plans information campaigns to get rid of gender stereotypes in the media that pave the path to violence against women.⁴⁸ During the 47th session of the UN Commission on the status of women (CSW) held in March 2003, the importance of recognising the gender dimension of information communication technology was reaffirmed.⁴⁹ During the session, recognition was also given to the rising numbers of sexual exploitation of women through new technologies and traditional media, and it observed that much research was required to be conducted on the impact of the media and the information communication technologies on women and girls.⁵⁰

To support the CSW, the Division for the Advancement of Women (DAW) organised a meeting of experts in Lebanon (November 12-15, 2002) on “participation and access of women to the media, and their impact on and use as an instrument for the advancement and empowerment of women,” and another one in Korea (November 11-14, 2002) on “Information and communication technologies and their impact on and use as an instrument for the advancement and empowerment of women.”⁵¹ The materials and documents prepared for these meetings served as inputs for the WSIS-Geneva (2003) as mentioned above.

⁴⁶ UNECOSOC, *Agreed conclusions of the Commission on the status of women on participation in and access of women to the media and information and communication technologies and their impact on and use as an instrument for the advancement and empowerment of women*, ECOSOC resolution 2003/44 (July 22, 2003), available at: <https://www.un.org/en/ecosoc/docs/2003/resolution%202003-44.pdf> (last visited on January 19, 2021).

⁴⁷The UN General Assembly Resolution 56/183 (21 December 2001).

⁴⁸ UN General Assembly, *Intensification of efforts to eliminate all forms of violence against women*, A/RES/63/155, para 16(a), (December 18, 2008), available at: <https://undocs.org/en/A/RES/63/155> (last visited on January 19, 2021).

⁴⁹ UNECOSOC, *Participation in and access of women to the media, and information and communication technologies and their impact on and use as an instrument for the advancement and empowerment of women*, Document No. E/CN.6/2003/6 (March 2003), available at: <https://undocs.org/pdf?symbol=en/E/CN.6/2003/6> (last visited on January 19, 2021).

⁵⁰ INSTRAW, “Women and the Media New Challenges”, *Beijing at 10: Putting Policy into Practice*, 2 (2004), available at: http://www.un-instraw.org/en/images/stories/Beijing/women_andthemedi.pdf (last visited on January 19, 2021).

⁵¹ Expert Group Meeting, *Participation and access of women to the media, and their impact and use as an instrument for the advancement and empowerment of women*, November 2002, Beirut, Lebanon, available at: <http://www.un.org/womenwatch/daw/egm/media2002/documents.html> (last visited on January 19, 2021); See generally, Expert Group Meeting, *Information and communication technologies and their impact on and use as*

Many organisations are working to make women's voices audible and sensitise on the matter of women and media, using one of the strategic objectives of the Beijing Platform for Action for women and the media. Numerous organisations are working on cross-sections of women.⁵² Their efforts have brought the voices of women to the forefront. In addition to facilitating advocacy work on sensitising mass media journalists, several advances have been made in the establishment of codes of conduct and self-regulation of the representation of women in the media. However, it is quite challenging to define specific codes and limitations in this area without infringing on the freedom of expression—the supreme merit of journalism that tends to take precedence over the regulation of sexist imagery.

The problem which persists is that Information and Communication Technology rarely includes gender considerations. References to images of women in the media are usually made from a moralistic perspective denouncing the use of “obscene” or “provocative” images, which is of little benefit to women's struggle for the vindication of their bodies and the right to enjoy free sexuality. Self-regulation codes do exist for some software, interactive, and videogame companies, though in general they are not respected. One of the most negative aspects of the information communication revolution is the growing use of the internet for the sexual exploitation of women and children.⁵³ Legislation at domestic level, to curb the menace, either do not exist or is at nascent stage.⁵⁴

V. National Regulatory Measures

On the other hand with respect to India, media content comes under freedom of speech and expression which has been envisaged as a fundamental right under article 19(1)(a) of the Indian Constitution. However, article 19(2) places certain restrictions on this freedom, for example, decency and morality. The Supreme Court in *Bobby Art International v. Om Pal Singh Hoon*,⁵⁵ held that “the censorship guidelines under section 5B of the Cinematography

an instrument for the advancement and empowerment of women, November 2002, Republic of Korea, available at: <http://www.un.org/womenwatch/daw/egm/ict2002/index.html> (last visited on January 19, 2021).

⁵² For example the Latin American International Information agency (Agencia Latinoamericana e informacion Internacional), women's communication and information (comunicacion e informacion de la mujer-CIMAC) Mexico, Centroamerica y el caribe (Network of Journalists from Mexico, central America and Carribean), the association for women journalists in the USA, the African women's media centre.

⁵³ Hughes, “The use of new communications and information technologies for sexual exploitation of women and children” 13 *Hastings Women's Law Journal* 129 (2002).

⁵⁴ At national level, The Children's Internet Protection Act, 2000 (Public Law 106-554) of the USA regulates internet in order to protect children to have access to visual depictions that are obscene, pornographic and harmful to minors. Although with regard to women no law as such is traced which makes effort to regulate the content of internet.

⁵⁵ AIR 1996 SC1846.

Act, 1952 which echo the constitutional restrictions on the guarantee of freedom of expression are broad standards that cannot be read as one would read a statute.” The court further observed that the “film certification authorities are required to be responsive to the values and contemporary standards of society while ensuring that artistic expression and creative freedom are not unduly curbed. The film must be judged in its entirety from the point of view of its overall impact.” While deciding the dispute, similar disputes on the matter were decided by the Supreme Court like *K. A. Abbas v. Union of India*,⁵⁶ *Raj Kapoor v. State*,⁵⁷ *Samaresh Bose v. Amal Mitra*,⁵⁸ and *State of Bihar v. Shailabala Devi*⁵⁹ were also taken into consideration. Besides article 19, the Constitution of India also guarantees an inherent right to dignity enshrined under article 21 of the Constitution.⁶⁰ Right to life goes beyond mere physical survival and also includes “human dignity.”⁶¹ Women are very much entitled to a dignified life and thus should be spared of all kinds of undignified projection.

Some legislations are found in the Indian legal regime which prohibits the projection of women in an obscene, indecent manner against the constitutional guarantee of rights. A noteworthy statute in this regard is the Indecent Representation of Women (Prohibition) Act, 1986 (IRWP Act). It was passed to combat the evil of “indecent representation of women through advertisements or in publications, writings, figures or in any other manner and for matters connected therewith or incidental thereto.”⁶² It is pertinent to mention that the court has determined ‘indecent’ the way ‘obscenity’ has been defined. But the ‘obscenity’ also does not have any universal connotation.⁶³ The extent, permissiveness of the exposure of the human body in public gaze has been differing from time to time, culture to culture.⁶⁴

⁵⁶ (1970) 2 SCC 780.

⁵⁷ AIR 1980 SC 258.

⁵⁸ AIR 1986 SC 967.

⁵⁹ (1952) SCR 654.

⁶⁰ *Maneka Gandhi v. Union of India*, AIR 1978 597.

⁶¹ *Francis Coralie v. Union of territory of Delhi*, (1981) 1 SCC 608.

⁶² The Indecent Representation of Women (Prohibition) Act, 1986, sec.2 (c) reads as: “*indecent representation of women*” means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or is likely to deprave, corrupt or injure the public morality or morals.”

⁶³ Indecency seems to have same meaning as obscenity. Though English statutes and sections of Indian Penal Code dealing with ‘obscenity’ have tried to define it but it has not been easy. As Professors Lockhart and McClure had said “no one seems to know what obscenity is. Many writers have discussed the obscene, but few can agree upon even its essential nature”; William B. Lockhart and Robert C. McClure, “Literature, the Law of Obscenity, and the Constitution” 38 *Minnesota Law Review* 320 (1954).

⁶⁴ K. Kumar and Punam Rani, *Offence Against Women* 353 (Regency, New Delhi, 1995).

The most recent legal dispute that triggered the controversy again was related to the cover page of a magazine named *Grihalakshmi* depicting a model staring straight into the camera and breastfeeding a baby exposing her bosom. The court once again opined that morals are an elusive, amorphous and protean concept and not free from subjectivity.⁶⁵

The Cable Television Networks (Regulation) Act, 1995 (CTNR Act), one among the various media regulations in India, “prohibits the transmission of advertisements on the cable network which are not in conformity with the Advertisement Code.” Rule 7(2)(vi) of it states that “no advertisement shall be permitted which in its depiction of women violates Constitutional guarantee to citizens.”⁶⁶ This Act also prohibits transmission or retransmission of any program which offends good taste or decency, obscene, or denigrates women.⁶⁷ There are some other legislations which prohibits the projection of women in obscene or indecent manner.⁶⁸

Section 292 of the Indian Penal Code, 1860 puts a legal control on obscenity as it prohibits sale of, *inter alia*, book, pamphlet, representation which “shall be deemed to be obscene if it is lascivious or appeals to the prurient interest.”⁶⁹ Section 292 has been tested by the Supreme Court in various cases. Supreme Court established the test of obscenity in *Ranjit Udeshi v. State of Maharashtra*.⁷⁰ The court emphasised on taking the material content in isolation and checking it in isolation.⁷¹ Supreme Court in *Ajay Goswami v. Union of India*, emphasised on balancing to “protect the society against potential harm that may flow from obscene materials and the need to ensure respect for freedom of expression and to preserve a free flow of

⁶⁵ *Felix MA v. State of Kerala*, writ petition (C) No 7778 of 2018 (Kerala HC).

⁶⁶ The Cable Television Networks Rules, 1994, rule 7 reads as: “(1) -Advertising Code-Advertising carried in the cable service shall be so designed as to conform to the laws of the country and should not offend morality, decency and religious susceptibilities of the subscribers.

(2) No advertisement shall be permitted which-(i) ... (vi) in its depiction of women violates the constitutional guarantees to all its citizens. In particular, no advertisement shall be permitted which projects a derogatory image of women. Women must not be portrayed in a manner that emphasizes passive, submissive qualities and encourages them to play a subordinate, secondary role in the family and society. The cable operator shall ensure that the portrayal of the female form, in the programs carried in his cable service, is tasteful and aesthetic, and is within the well-established norms of good taste and decency.”

⁶⁷ The Cable Television Network Rules, 1994, rule 6.

⁶⁸ The Dramatic Performances Act, 1876, s. 3 (c); The Indian Post Office Act, 1898, s. 20; The Information Technology Act, 2000, s. 67; The Code of Criminal Procedure, 1973, s. 95.

⁶⁹ The Indian Penal Code, 1860 (Act 45 of 1860), s. 292.

⁷⁰ AIR 1965 SC 881.

⁷¹ *Ibid.*

information and ideas.”⁷² In *Chandrakant Kalyan Das Kakodkar v. State of Maharashtra*, it was held that there was no fixed rule to determine obscenity.⁷³

With respect to the OTT platform, being a new norm there is no such legislation or body to regulate it. The Information Technology Act, 2000 governs the technological aspect of OTT as it qualifies as intermediaries. In *Mehul Choksi v. UOI*, it was clarified that rules of the Information Technology Act on publication or transmission of obscene/sexual material in any electronic form would apply to OTT platforms.⁷⁴ Most recently, in February 2021, government issued Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The rules provide three-tier regulatory mechanism for digital news media and OTT platforms. However, objectification does not find any mention in the rules.

There is an abundance of laws in India that intend to regulate both electronic and print media content. In electronic media, the denigrated position of women or her visualisation as such is not promoted, but the cases or matters which have arrived at the courtrooms have mostly been concerned with obscenity and the denigration of women. In the din of cacophonous voices from varying corners, objectification as a concept gets lost and is hardly taken into consideration. The most direct and needful law with regard to the portrayal of women, IRWP Act also misses this aspect. Similarly, it does not find any mention in any other law which touches upon the issue of the projection of women in any media platform.

As discussed, laws have been framed but its implementation along with loopholes does not draw a positive picture to prevent objectification of women in media. The weakness starts when there is lack of concern for gender stereotypical portrayal which hardly gets voice in laws. Society is also reluctant to the issue which reflects in the work of people behind broadcasting content where there is the pervasiveness of objectified role of females. The media products and their success also depend on the acceptability of the society which is again infested with patriarchal standards.

Market trends are also imperative to sell any product and as the hold of the market is moving towards privatisation, it is quite apparent that what will be sold promptly becomes a matter of concern than what should be given away. Thus, the portrayal of women as an object rarely

⁷² (2007) 2 SCC 298.

⁷³ 1970 CriLJ1273 (SC).

⁷⁴ Writ Petition (Civil) No. 5677 of 2020, Criminal Miscellaneous 20540 of 2020, High Court of Delhi, judgement dated August 28, 2020.

matters to the male conquered media industry.⁷⁵ It has to be taken into consideration that liberal sexual ideology or sexual autonomy exposes itself at the risk of being misunderstood when sexual power is misutilised by patriarchal, chauvinist powers to commodify, deprave and damage people's capacities. It has to be realised that this matter was avoided to date for its subjectivity. But it is high time now to revisit and review this issue.

To resolve and uproot the depiction of objectified versions of women in media and its impact as a whole, the concept of 'objectification' has to be taken seriously and authorities concerned should be objective enough to bring positive gender roles and take a strong stance against objectification through stringent laws as this concept is still nowhere codified.

On a positive note, the concern about the objectification of women got echoed in the case of *Kamlesh Vaswani v. Union of India*, while seeking a ban on pornography. However, the media's role was not a concern in the case but it brought the matter into the limelight.⁷⁶ Pertinently, most of the laws related to media are related to broadcasting and content regulation while the cases which have come in India are mostly related to obscenity, pornography, or indecency. But in all the war of words 'objectification' as a concerning issue finds no place. The most significant statute on the representation of women, that is, the IRWP Act defines 'indecent representation of women' but fails to include 'objectification' of women' in the definition. An unsuccessful attempt to broaden the definition of 'indecent representation of women' with the inclusion of 'objectification' was made in 2012 through an amendment. Again, in 2018, an unsuccessful attempt to amend the definition was made keeping in mind the technological developments in the field of communications and to prevent indecent representation of women through any existing or new media form. With the change of perception towards objectification, much-needed transformation is required in the field of legislative development.

VI. Conclusion

The very purpose of depicting women in a certain way should be larger than mere intention to lure the prurient interest of the viewers or trigger up the viewership. Media have to be reasonable while depicting women. For example, showing a breastfeeding mother is not obscenity. A similar approach can be applied in the case of the objectification of women.

⁷⁵ Marjan de Bruin, "Gender and newsroom cultures" in Aimee Vega Montiel (ed.), *Media and Gender: A Scholarly Agenda for the Global Alliance on Media and Gender* 43 (UNESCO, Paris, 2014).

⁷⁶ (2016) 7 SCC 592.

Another stepping stone will be initiating discussion on the issue concerned that it is not merely a matter of obscenity or indecency rather a deeper, entrenched problem and this has to be disseminated amongst the public through participative talks, discussions, interactions, and widespread communication by academia, intellectuals, feminists, thus increasing awareness.

As discussed, verdicts pronounced by the courts are getting more liberal and progressive with the changing social morals. Nevertheless, courts should be very sensitive while considering a case related to the depiction of a woman *vis-à-vis* the constitutional guarantee of freedom of speech and expression. Many cases of indecent representation and obscenity come before the court and if objectification finds a place in law, then this can be addressed more aptly. In this regard, one may conclude that there is a need to give adequate place to objectification in the concerned laws. Besides, the transmission of any advertisements or programmes depicting women's bodies must be stopped by the authorities under CTNR Act as being violative of the constitutionally guaranteed fundamental right. It may be noted that the effectiveness of the IRWP Act, 1986 is very least as the concern of objectification does not find a place in the Act. Hence, it is submitted that objectification shall be specified in the definition of “indecent representation of women” under the Act.

The definition shall be as “Indecent representation of women means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being objectifying through using her body or body parts to sell products or inanimate object of consumption or mere tool of sexual gratification of men; or indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals.” Further, a proviso shall be inserted, *mutatis mutandis*, in any existing Act, Rules, Regulation, Code, Guidelines that “the term ‘indecent representation of women’ shall have the same meaning as defined under the Indecent Representation of Women Act, 1986.” With respect to intermediary guidelines issued for the OTT platform, the missing aspect of objectification of women must find a prominent place because it is a medium where this problem is far more serious and real sore on the face of technological advancement.