CHAPTER VII

CONCLUSIONS AND SUGGESTIONS

According to Berns\textsuperscript{1012}, 'Since the way of a community depends upon citizens of a certain character, it must be the business of the law to promote that character.'

Obscenity is an important socio—legal problem of the modern times, increasing rapidly due to advancement in technology. The essence of the problem is that while interfering in the least with the freedom of expression, the law of obscenity has to protect the society from the harmful effects of obscene materials, devoid of any artistic, literary, scientific purpose, and to uphold the respect and status of women in society. Today obscenity is not localized or confined. Pornographic material or obscene material was available in the past but never so easily or in such quantity as it is now. Now, obscenity is a serious issue specially when it concerns the status and position of women and morality of the society. The need is to reduce the demand for such material and to send a clear message that it has no place in our society. This researcher would like to conclude the research work by highlighting the following:

Conceptual dilemma of obscenity

Obscenity depends on many variables relating to age, culture, personal preferences, attitudes and notions of taboo. The concept of obscenity becomes extremely difficult to define and to be confined into a strait-jacket because of social disparities and cultural diversity in the country. It is observed that standards of morality and immorality, obscenity and non obscenity differ generally from culture to culture and country to country and in the same country from time to time. In some countries like India, kissing between two adults in public is generally not allowed, being considered as obscene. However, the latest judgements of the Delhi High Court has considered that kissing in public by persons who are married is not obscene. So in the same country, over a period of time the concept of obscenity has changed. It is difficult to explore the exactitudes of obscenity, but it can be identified with concrete realities of life.

From the study, it is revealed that the definitions of obscenity in Indian legislations or even given by the judiciary in India are too narrow. Obscenity is overwhelmingly limited to sexual acts. They do not take into consideration interest in things which are bestial or scatological. The degeneration of explicit sexual stimulation into crude, uncouth, animalistic behaviour, which is degrading, shameful or dehumanizing is obscene. Under any legislation, no definition of obscenity provides adequate notice of what exactly is prohibited. The judiciary has done its part in providing guidelines towards the definition of obscenity. But the term obscenity is not amenable to a precise definition and thus keeps on changing as per the norms and ideologies of the contemporary society. The terms indecency, vulgarity, nudity and obscenity are often used as synonyms. However, legally they are not the same. Only obscenity is punishable and not indecency, vulgarity and nudity.

1013 Judgment of S. Murlidhar, J. of Delhi High Court delivered on 25th May, 2009 in Cr. M. C. NO.283/09
The word obscenity is intriguing to the courts as well as the legislations. Various attempts have been made to precisely define it. But the precise meaning of ‘obscene’ is yet ambiguous and indefinite. It would be difficult to find any definition of the term obscenity in the multi-national environment of the internet. In the absence of a uniform standard of moral culture and ethics there cannot exist any fixed and uniform standard of law. The considerable grey area common in laws controlling obscenity results, not from a lack of competence or effort on the part of drafters or legislators but a conscious effort on their part to do so. India is a conglomeration of urban and rural, rich and poor, educated and illiterate, men and women, different castes and regions of people, whose concept of obscenity differs widely from one another. Historically and geographically, the concept of obscenity is totally fluid. It attaches to different human activity in different places and times.

In the absence of a precise definition of obscenity, the matter is left to the discretion of the judges. The attitude and mental set up of the judges deciding the matters relating to obscenity are important factors in adjudging a material as obscene or not. There is no judicial consistency in giving judgements on obscenity specially between the lower courts and High courts. It means that it is impossible for someone to know, definitively, ahead of time whether something he/she wishes to write, film, create or sell would be against the obscenity law. The innocent transgressor will know that he has transgressed the law only after he is prosecuted for the same.

**Obscenity - National and International perspective**

The two International documents on obscenity are i. Agreement for the Suppression of the Circulation of Obscene Publications and ii. International Convention for the Suppression of the Circulation of and Traffic in Obscene
Publications. However, the Convention has not defined 'obscenity' and it was agreed among the nations that this would differ from country to country. The reason being that description of obscenity is dependent on cultures and habits and it differs as per culture and communities. India is a party to the Convention.

There is no uniformity on the concept of obscenity and the laws governing obscenity amongst nations. Many countries in the world have legalized pornography. Denmark was the first country in the world to legalize pornography. Pornography is legal in Mexico, Sweden, Germany, Israel, Romania, Poland, Spain, Netherlands, Scotland. In Middle East, Iran, Korea, Norway, Papua New Guinea, Russia, Srilanka, Nigeria, South Africa, Singapore, Thailand, Taiwan, Turkey, Saudi Arabia and Malasia, Philippines, Indonesia, Pakistan, Bangladesh, Islamic Republic of Iran, Egypt, Srilanka, and even China the laws dealing with pornography are strict. Generally, the statutes of most countries prohibit the production, sale, lending, renting, giving, publication, exhibition or other dissemination of obscene materials specially when it relates to child pornography. As per Survey V, even in one of the most permissive society in the world viz. the United States of America, overwhelming public opinion is in favour of strict enforcement of legal provisions against obscenity and pornography on television or radio. The laws in most countries are strict with United States of America and Canada taking the lead in enacting strict laws to curb child pornography. However, many of these efforts have been rendered irrelevant by widely available Internet pornography.

It is observed that in ancient times obscenity was more an offence against religious tenets than against moral licentiousness and sexual perversity in most of countries of the world. Pornography was prevalent in some ancient Eastern cultures like India, Japan, and China. In England, all offences relating to the violation of morals and religion were tried by Ecclesiastical courts. After the enactment of the Obscene Publications Act, 1857, obscenity was recognized as a

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1014 Geneva- on 12 September 1923
distinct offence by law, independent of religion and morality. The Hicklin test was laid out by British Chief Justice Cockburn in the year 1868 in the famous case of Regina v. Hicklin,\textsuperscript{1015} which was followed in England, United states of America, India and some other countries in the world. The first legal definition of obscenity in the United States of America was laid down in the year 1957 when Justice Brennan crafted the first Supreme Court legal definition of obscenity in Roth v. United States,\textsuperscript{1016} as the standard of obscenity should be whether, to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest. The famous decision in Miller v. California\textsuperscript{1017} was given in 1972 which established the Miller’s test for obscenity in the United States. This test lays down that a work is considered obscene only if all three of the following conditions are satisfied: (1) \textit{Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest}, (2) \textit{Whether the work depicts/describes, in a patently offensive way, sexual conduct specifically defined by applicable state law}, (3) \textit{Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value}. After the decision in this case of Miller v. California\textsuperscript{1018} in United States of America, obscenity laws in Australia, Canada, United States, North America, Western European countries, Eastern Europe, Czech Republic and Poland were gradually relaxed. However, Islamic countries continue to have very strict laws for controlling and curbing all kinds of obscenity.

Many feminist thinkers, such as Gloria Steinem, Catharine MacKinnon, and Andrea Dworkin consider pornography as the “\textit{sexually explicit subordination of women}” and view it as a form of discrimination against women, not simply a violation of traditional moral norms. The researcher is also of the opinion that pornography degrades and humiliates women. The judgement of the Canadian

\begin{footnotes}
\item[1015] 1868. L.R. 3 QB 360
\item[1016] 354 U.S. 476 (1957)
\item[1017] ibid
\item[1018] 413 U.S. 15
\end{footnotes}
court in the case of Butler v. The Queen\textsuperscript{1019} is the best articulation of how pornography hurts the rights of women. Pornography and obscenity are dependent on the exploitation of women. They suppress the development and growth of women by expressing and perpetuating negative notions, opinions, thoughts and images. Various terms like indecency, nudity, vulgarity and pornography are used loosely as obscenity. But the courts internationally as well as in India have held that the obscenity is punishable and not nudity or indecency or vulgarity per se.

Ancient India had a large number of paintings and wall sculptures on temples having postures of nude or semi-nude women. The erotica in temples did not cause any perversion of morals in the society. The message of Khajuraho is to transcend the pleasures of the body for the eternal bliss of the atman [soul]. The spiritual dimensions in life were very important, so obscenity always took a back seat. According to research by Texas A & M University anthropologist, first references to kissing appeared in the Vedic texts of 1500 B.C.\textsuperscript{1020} There is no evidence of external licentiousness and debauchery in the society in those times. Kamasutra is an example of the positive, open minded attitudes of people towards sex. The underlying message was—sex to super consciousness. Unfortunately, the liberalistic views of Hinduism were regarded as uncultured and barbaric by colonial Europe. The prudish ideas of sexuality gained acceptance in India only after the British rule. The Indian Penal Code was legislated in India during British rule, as a result the British ideas of repressed sexuality have been incorporated therein.

Various legislative enactments are made in India to prevent and punish obscenity. Obscenity is a criminal offence and punishable under sections 292 to 294 of the Penal code. Other legislations are as follows:- Post Office Act, 1898, Information Technology Act, 2000, Indecent Representation of Women

\textsuperscript{1019} R. v. Butler, (1992) 1 S.C.R. 452

\textsuperscript{1020} The Times of India, Mumbai, April 19, 2007, P.15
Internationally, it is found that time and again attempt has been made by the legislature and the judiciary to attempt to define obscenity. Our judiciary has adopted the test of obscenity given by the Court in United Kingdom. The Hicklin test has been and still remains the test to determine obscenity in India. The test laid down "whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences". Chief Justice Cockburn has not defined ‘deprave and corrupt’ in the famous case of Regina v. Hicklin. The ordinary meaning of ‘deprave and corrupt’ is that of creating habits of overt disregard of society’s conventions about sex. In England, the tendency to deprave and corrupt as used in the Hicklin test formed a part of the Obscene Publications Act, 1857. However, the inequity and injustice of ignoring the purpose of the writer or creator was fully realized in England. So the Obscene Publications Act, 1959 provided that the purpose of the author is relevant fact to be considered. The judiciary in America has followed the ‘tendency to excite impure and libidinous thoughts’ and ‘incitement of lustful and lecherous desires’ and ‘prurient interest.’ The Supreme court of America in Roth v. United States has defined prurient interest to be material which has a tendency to excite lustful thoughts and on the other hand as a matter which tends to arouse sexually impure thoughts or desires. So there actually does not seem to be much departure from Hicklin test. In the Indian context the Hicklin

\[\text{1021} 1868 L. R. 3 Q. B. 360\]
\[\text{1022} 354 U.S. 476 (1957)\]
The concept of obscenity is still applied by the courts. The defects and inadequacies of the Indian Law as it is today are mostly the defects and the inadequacies of the Hicklin test. But the recent trend of 'prurient interest' as understood in America is also applied in India, though the Indian Courts have not interpreted prurient interest factor as a shameful or morbid interest in nudity only. The use of the words prurient interest appeal and patent offensiveness of the matter charged as obscene reflect the growing liberal attitude of the our judiciary towards the offence of obscenity.

The guiding spirit of the court in India is of the Hicklin test of 'tendency to deprave and corrupt' as the induction of the word prurient interest in the Penal Code did not denote any change in the attitude of the courts in adjudging obscenity. However, the Calcutta High Court in C.T.Prim's\textsuperscript{1023} case used prurient interest term even before it was incorporated in S. 292 of the Penal Code. After the amendment to Section 292 in the year 1969, obscenity is regarded as something which obtained greater circulation by pandering to lascivious, prurient or sexually precocious mind,\textsuperscript{1024} which depraved the readers by arousing impure and lecherous thoughts in their minds, and which adversely affected the readers by depraving, debasing and encouraging them to lasciviousness.\textsuperscript{1025} Lascivious with prurient intent connote that obscenity is basically conceptualized in terms of sex.

The Hicklin test is the correct test for judging the question about the obscenity of the matter was held in various cases by the Supreme court as well as the High Courts\textsuperscript{1026}. But Justice Lakshmanan J. in \textit{Ajay Goswami v. Union of India}\textsuperscript{1027}

\begin{footnotes}
\item[1023] AIR 1961 Cal. 177
\item[1025] (1985) 4 SCC 289
\item[1027] (2007) 1 SCC 143
\end{footnotes}
setting aside the Hicklin test remarked: ‘Articles and pictures in a newspaper must meet the Miller test’s constitutional standard of obscenity in order for the publisher or the distributor to be prosecuted for obscenity.’

The concept of obscenity and of depravation and corruption is relative. The test of those in to whose hands the materials may fall restricts the standard of cultivation of the taste of a society to that of infants and abnormal people. Several books have been declared to be obscene only because they contained few passages in them which had the tendency to deprave or corrupt. This made the law of obscenity harsh and severe. However, the amendment to section 292 of the Indian Penal Code has recognized that it is the dominant theme test and not the isolated passages test. The present trend in England, America and even India is in not considering a few random passages but the dominant theme to adjudge the obscene potentiality of the matter. The current trend of the Indian Courts in this regard is that publication must be judged as a whole and the impugned passages should also be separately examined so as to judge whether the impugned passages are so grossly obscene and likely to deprave and corrupt.

Moral ideals cannot be absolute and indisputable. The effect produced by the publication on the ordinary member, who is of normal temperament and disposition, has to be ascertained. The standard of the reader is neither one of exceptional vulnerability nor of one who is devoid of defenselessness to obscenity. The courts have not indicated the need of society and the freedom of the individual. They have thought more of the depraved and less of the ordinary moral men. The spirit of tolerance was absent when Udeshi’s¹⁰²⁸ case was decided. The definition under the Penal Act of 1969 refers to the likely reader rather than to the possible reader. The concept of ordinary person, normal person or average person are unsubstantiated. The benchmark of the average person is utterly inappropriate to a complex and heterogeneous society like India. Though

¹⁰²⁸ AIR 1965 SC 881
the Supreme Court has narrowed the focus of obscenity through liberal interpretation of existing statutes, law enforcement officials and lower courts frequently entertain the flimsiest of obscenity petitions.

Applicability of Hicklin test in India

The main principal of criminal law that mens rea is the necessary ingredient of an offence is not taken into consideration while awarding punishment for the offence of obscenity under the test given by Hicklin. The act of obscenity is a part of criminal law which requires that it should be an offence of strict liability. The courts have felt that the only purpose of the publication could not exonerate the accused of his liability for pandering obscenity. In America also, obscenity is an offence of absolute liability and the need to prove the culpable state of mind is not required. In India, Ranjit Udeshi’s case did not make knowledge of obscenity as an ingredient of the offence. This judgement is followed by the courts even till date. In various judgments of the court reference is made to the likely audience, particular class of persons, chief audience test, likely readership etcetera. The Supreme Court of India in Samaresh Bose’s1029 case has also laid down the "likely-reader test" recognized under Section 292(1) of the Indian Penal Code and the 'most-vulnerable-person' standard laid down by Hicklin was thus replaced. The Court did not draw a distinction between the "likely audience" and persons into whose hands the book may accidentally fall into and therefore, the distinction between Section 292 and the Hicklin test was blurred in the decisions of the court. It was established in M. Ramamurthy v. The State of Karnataka1030 case that the real criteria to judge the obscenity in the matter was the effect of the publication on an ordinarily young man. In India, the likely readership test was incorporated but the courts have widely applied the average person test. The decision of the courts indicate that they did not want to continue the Hicklinian dichotomy of the most vulnerable and susceptible person test. The courts in India

1029 (1985) 4 SCC 289
1030 AIR 1954 Mys. 164
do not prohibit all writings about sex. Only those which tend to deprave or corrupt, which incite or arouse impure desires are punished by the courts.

Recent trend of the Indian courts is that they have refrained from providing a restrictive meaning to the Hicklin’s test. It is observed that though the Indian Courts adopted the narrow and strict test of obscenity as laid down in Hicklin’s case, but with time courts are adopting more permissive attitude towards obscenity keeping in view the changed circumstances and liberal attitudes of people.

Various defenses are available to the charge of obscenity like the material alleged to be obscene is of religious, literary, scientific nature or similar books not liable for prosecution or the book is priced high and thereby not easily available to many, opinion of the creator/ writer that the material is not obscene. Ideas having redeeming social or artistic value must also be valued and protected for their growth and development. The Supreme Court of India in the case of K. A. Abbas v. Union of India\textsuperscript{1031} held that the ‘obscenity’ test should be for public good. A sea change has taken place in the attitude of people towards open display of sexuality and obscenity since the time of Hicklin. People have become open, casual and relaxed about sexual relations. Indian judiciary adopted Hicklin test following harm to others principle in several cases to maintain synthesis between law and morality. The defense of literary merit was not available and the test licensed the prosecution of several literary works including Lady Chatterley’s Lover in the early twentieth century. This is contrary to the definition contained in Section 292(1) of the Indian Penal Code which stresses upon the effect the publication had on "persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it" and not just on any person into whose hands the publication may accidentally fall. The defense of religious purposes is recognized only in India. The other defenses like

\footnote{\textsuperscript{1031} (1970) 2 SCC 780}
The difference regarding the contemporary community standard in the laws in America and in India and England is that in the former the standards are recognized while in the later the matter is left to judicial interpretation. The community standard is settled in America from the time of Miller's case. The Indian judiciary has decided obscenity cases in the light of the prevailing social conditions at the time. In Sukanta Halder's case\textsuperscript{1032} it was held that the meaning of the word obscenity varies from age to age and from region to region depending upon particular social conditions. Even in the case of K.A. Abbas,\textsuperscript{1033} Hidayatullah C.J. remarked: 'In judging as to whether a particular work is obscene, regard must be had to contemporary mores and national standards'. The test of the interests of contemporary society is lacking in precision. The Supreme Court in Chandrakant v. State of Maharashtra\textsuperscript{1034} observed that whether a publication is obscene is to be determined by the Court in each case, having regard to the contemporary moral standard of the community and the tendency or potentially of the publication to deprave and corrupt those whose prurient minds take delight in secret sexual desire from erotic writings, pictures, etc. It is much more difficult to determine contemporary standards in the complex social structure of a heterogeneous society like India than it would be in a simple and homogeneous society.

Obscenity laws vis-a-vis Indian Constitution

Human dignity depends on the freedom of the mind, which is an instrument of democracy. Our Constitution has attempted to strike a balance between the two social interests. It allows the imposition of reasonable restrictions on the freedom of speech and expression in the interest of public order. In a civilized and
democratic nation it is most important that people get freedom of thought and expression to develop. But a person cannot in the name of freedom of expression debase and corrupt the society. The Supreme court had time and again observed that article [19] guarantees freedom of speech and expression but it also makes an exception in favour of existing laws which impose restrictions in teralia on the exercise of the right in the interests of public decency or morality. Dr. A.R. Lakshmanan J. has held, ‘The catchword here is 'reasonable restriction' which corresponds to the societal norms of decency.'

A fundamental right to freedom of expression requires that women be entitled to have the independence to earn their livelihood in a manner that they choose, the right to use their bodies the way they like. But at the same time, as one lives in society, the norms of society regarding public decency have to be observed by those who are a part of the society.

It must be noted that there is a significant distinction between the Constitution of the United States of America and the Constitution of India, in that the freedom granted under the former is absolute in its terms, whereas in the latter, the freedom is subject to the reasonable restrictions set out in Art 19(2) of the Constitution. The courts in United States have used every possible argument to uphold the freedom of speech guaranteed to its citizens, and to uphold it without exception. However, recognizing the danger in permitting the unregulated use of freedom of speech, the Supreme Court of United States of America developed tests and guidelines to govern the use of First Amendment protection to the extent of actually reading into the terms of the Constitution. On the other hand the Constitution of India clearly spells out the restrictions on the freedom granted to its citizens. The Indian courts therefore do not need to create exceptions to the

1036 Director General of Doordarshan v. A. Patwardhan, 2006 AIR SCW 5026
freedom of speech, in order to curb its use as did the courts of United States of America but merely apply the restrictions already constitutionally granted.

**Child pornography**

Child pornography has become a highly organized, multimillion dollar industry that operates on a global scale. United States and Canada have set a trend by enacting tough laws to deal with child pornography and prescribed heavy penalties. Children are growing up with more exposure to sophisticated sexual and other kinds of imagery which was not available to any generation before them. Advertisements for safe sex, use of condoms with pictures of young girls and boys are rampant. There is almost universal agreement that obscenity provisions designed to protect children from harm pursue a legitimate objective. Parents are deprived of the right to bring up their children in a pure and healthy environment. The psychologist all over the world caution that exposure to violence and sex have damaging impact on children and minors.

**Obscenity legislations in India— a critical evaluation and reflections on role of law viz-a-viz obscenity**

India takes the fourth place among the countries with highest number of Internet users in the world. Cyber crime and exploitation of women is on the increase. The provisions\(^ {1037}\) of Information Technology Act, 2000 are wide enough to cover all perpetrators of cyber pornography, be it the Internet service providers, web hosting entities or the persons behind the actual website. However, it does not mention any crime specifically against women and children.

In India a person can be charged for simply possessing alleged obscene content due to the wide scope of the Information Technology Act, 2000. Harassment caused or not to the recipient is of no consequences. Obscenity via ‘mms’ [ multi

\(^ {1037}\) section 67 of the Information Technology Act, 2000
media messaging service and through the internet is a new concept for the police to tackle in many parts of India. The Internet has made the law of obscenity much more convoluted. The elementary problems, which are associated with Cyber-Crimes are jurisdiction, loss of evidence, and lack of cyber savvy judges. The true magnitudes of cyber crime, as well as demographic statistics on perpetrators and victims, are unknown because most incidents of cyber crime go unreported.

The laws covering obscenity in the Indian Penal Code are remnants of the colonial period. They look at the technology of current times with the legislative system of 19th century to create a conservative sexual morality. They are too ambiguous to meet the criteria of a penal provision. The present law is so obscure that even a morally innocent transgressor can know that he has committed a crime only after he has committed it. The provisions of the Indian Penal Code has not and does not reflect the Indian spirit, ethos and culture of the Indian people. The British used to consider sex to be dirty word and a sinful activity, which attitude of the British people is manifested in the Penal Code. The variable obscenity concept is not incorporated in the legislations dealing with obscenity. No definition of obscenity under any of the legislations provides adequate notice of what exactly is prohibited.

The punishment under sections 292, 293 and 294 of Indian Penal Code is much milder than under the Information Technology Act, 2000 for probably the same or same kind of offence. The only difference is that one is in physical form and the other electronic. There is no minimum punishment prescribed under s. 292 of Indian Penal Code. A thorough appraisal of sections 292, 293 and 294 of Indian Penal Code is necessary. The provisions at present are too vague and therefore becomes difficult to apply. The concept of obscenity is too broad and inclusive and in other respect too narrow. It is too broad in the sense that it does not precisely lay down exactly what is obscene and offensive and therefore forbidden. It is concerned only with sexual impurity and sexual pleasure. It is narrow as it excludes from the definition all matters which are not predominantly sexual in
The phrase ‘tendency to deprave or corrupt’ in the Indian Penal Code is an undefined word which offers no guidelines whatsoever as to its parameters. The main principal of criminal law that mens rea is the necessary ingredient of an offence is not taken into consideration while awarding punishment for the offence of obscenity. So even an innocent person neither knowing nor having intended to deprave or corrupt the minds of others may become liable to punishment. It is against the principles of natural justice to imprison a person for the commitment of offence which he did not intend to do or was not aware that it would result in an offence. Unless a specific definition is laid down as a statute, there is a danger that strict interpretation of the above sections could lead to a direct conflict with the constitutional guarantee of freedom of expression. The definition of ‘indecent representation’ under Indecent Representation of Women (Prohibition) Act, 1987 is too narrow. The provisions of the Post Office Act, 1898, are simply preventive in nature and inadequate and after hundred years of enactment are not in line with the changing times. It is submitted that there are hardly any open mails – postcards used for sending obscene matter and a considerable lot of mails are sent through the courier services and now the trend is to use soft copies by e-mails. The Drugs Magic Remedies (Objectionable Advertisements) Act, 1954 cover indecent advertisements of drugs and remedies connected with sexual disorders. The aim as such is not indecency or obscenity. The provisions of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 are rarely invoked for raising the status of women and their upliftment.

The guidelines under the Cinematograph Act, 1952 are fairly broad and include specific provisions against representation of women in any manner which is degrading or denigrating or scenes depicting sexual violence. But confusion is created in the application of the these provisions along with the provisions under
the sections 292 to 294 of Indian Penal Code. The Supreme Court in the case of *Raj Kapoor v. Delhi Administration* laid down that in a trial for the offences under section 292 and 293 of the Indian Penal Code, a certificate granted under section 6 of the Cinematographic Act by the Board of Censors was not an irrebuttable defense. Thus an obscene film cannot escape prosecution under the Penal Code even if it was cleared by the Board of Censors under the Cinematographic Act of 1952. In *Ramesh Pimple v. Centre Board of Film* the court granted a certificate to the documentary film ‘aakrosh’ for its public exhibition under the Cinematograph Act, 1952 against the order of Appellate Tribunal which had not granted the certificate for the film.

Law has to arrive at a balance between individual freedom and societal interests, keeping in mind the morals of society. Laws can be made to protect individual liberty but individual liberty will sometimes have to be sacrificed to other beneficial community interests. Laws against obscenity are made to uphold public morality. The function of law is not only social control but to bring about a social change by influencing behaviour, beliefs and values. It is directed at the avoidance of harm which Government has reasonably concluded will be directly or indirectly caused to individuals and groups such as women and children and society as a whole by the circulation of obscene materials. As custodians of “morality” for the future generation, a debased, immoral and perverse society as the heritage can not be afford to be given to them. The proper balancing of the physical and sensual side of life with the morality of society is a crucial social problem.

A radical legal system can act as an instrument of reforming people’s ideas, thoughts and in turn, moral perceptions. Laws against obscene publication have a subtle and profound effect. It helps a community in drawing a line between the decent and indecent, obscene and non-obscene and permissible and non –

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1038 *AIR* 1980 SC 258
1039 *AIR* 1980 SC 258
1040 2004 (5) BCR 214, 2004 (3) Mh..L.J. 746
permissible. The community draws a line between the civilized, honourable and virtuous and the decadent and corrupt. This awareness over a period of time helps in forming a habit, a pattern of behaviour which leads to building character. Since the way of the community depends upon citizens of a certain character, it is the role of law to inculcate and develop those qualities of character in every man and woman.

Though an individual can sometimes over-step the boundary line laid down by the law, an awareness is created in the minds of the people of the existence of such a boundary line. Over the period of some time, this consciousness or awareness has an effect upon the moral attitudes, treasured values and belief systems of most people. An average person will not take the risk or exert himself to get obscene material at the cost of prosecution. Undoubtedly, some rebellious people are tempted to break the law merely for experiencing the thrill of doing so. But these are exceptional cases and not majority. Law cannot force one to be good but it can prevent some of the worst evils. It can also direct the way leading to moral improvement by developing a higher taste and thinking.

Those who regularly indulge in lascivious or obscene and vulgar literature are encouraged to find satisfaction in lewd, morbid or prurient satisfaction in real life experiences. Obscenity has effects upon the conduct, emotions, attitudes, opinions and moral character. Human existence, family life, community welfare, and the development of human personality can be debased and distorted by crass commercial exploitation of sexual activity. Sometimes, the impact of obscenity on the minds or psyche of a person becomes so pervasive that lascivious thoughts are aroused in a normal, decent minded person, which could manifest in behaviour of non-conformity. One ultimately tends to do what one thinks about constantly. The development of moral principles involves inculcation of those qualities of character, so that he can discipline his passions and behave in a manner directed by reason.
Law tries to define and make vocal the precincts of obscenity. The laws on obscenity impose punishments on the perpetrators of obscenity because of the danger to the stability and harmony of the community. Law transforms indefinite and personal moral feelings into public standards and thus sets the norms of public behaviour, morality, values and principles. It can try to raise the standards of morality higher than what it otherwise would be in the community.

There are views which favour that there is no need for laws to govern obscenity in the community. Some of the reasons are as under:

1. Laws alone cannot obliterate obscenity as long as people have interest in it. People cannot become righteous and honorable only by an act of the legislature. True righteousness and uprightness is thoughtful, conscious and voluntary imposed self discipline. It is one’s inner consciousness. It takes place by itself and not due to any fear of reprimand or punishment. People have moral attitudes and values which are inborn and intrinsic in them. People who are moral even if they are not aware of the laws governing morality. Public standards and socially imposed restraints are unnecessary because genuine virtue is voluntary self discipline and not fear of punishment.

2. Sometimes laws against obscenity only serve to arouse the desire of obscenity and stimulate efforts to obtain it. History has shown that attempts to suppress publications on grounds such as indecency or immorality have often yielded a counterproductive effect. The ban on films, books, magazines or other forms of publication in the interest of decency or morality have only generated more publicity, curiosity and interest than they ordinarily would have.

3. Exposure to obscene materials is not only relatively harmless, it may well have positive therapeutic value, facilitating a release of emotions which could otherwise manifest itself in undesired action. According to the study by Todd Kendall, an economist, Professor at Clemson University, the arrival of the internet was
associated with a reduction in rape cases. The rate of rape in the past 15 years has declined 30% in the United States.  

4. Moral values and training can most adequately be provided by social institutions and family, so there is no need for legal policing.

However, the researcher is of the view that people generally like to be on the right side of the law. Effective laws make obscene material difficult to obtain. The education and training at home may not endure the power of the contiguous immoral, debased environment, nor can the family avoid such environment. They are bound to be influenced by the outside indecency, vulgarity and obscenity. Restrain is required on the indulgence of passions. Laws cannot force people to be good but it can control perverse or extreme obscene behaviour. Men learn to be virtuous through the process of long training and habitual behaviour. The justification for obscenity laws is to prevent the community from being depraved and corrupted by perverse, obscene, sexually oriented materials.

Human nature is such that the grass is always greener on the other side, the forbidden fruit is always tastier, the neighbour’s wife an epitome of beauty and virtue. If obscene and pornographic materials are easily available, an overwhelming majority of the seemingly staid populace will be eager and willing to take out time to stand and stare. The researcher’s view is that obscene and pornographic materials will lead to unreasonable and unattainable demands of physical attributes and sexual prowess. This is turn will cause feelings of inadequacy, low self esteem and frustration. Happiness is not dependent on success. Success is dependent on happiness. Happy people will be successful. People frustrated with their own bodies will only spread cynicism and negativity in society. And thus like the fable of a kingdom being lost for want of a horse shoe nail, an entire country’s future will be jeopardized for want of effective and timely action against obscenity.
One cannot respect the other sex while viewing the other as pornography or as mere objects and opportunities for self gratification. Pornography treats women with animalistic sexual cravings and abuses, degrades and humiliates them. When a reader is transfixed by pornography, he looses all interests in relationship with actual people. It is a common notion that explicit sexuality has a powerful tendency to distort powers of perception and discrimination between good and bad. In a new study, Princeton University scientists have found that some men really do see scantily clad women as ‘objects.’\textsuperscript{1042} For the study, researchers scanned the brains of certain men as they looked at a picture of a woman in a bikini and found that sections of the brain that usually reacted to things or objects lit up. Obscenity can contribute to the debasement of moral standards and ultimately of character. Survey IV indicates that the average human being, male or female is aroused by audio-visual images of explicit sex, pornography and obscenity. If in any publications or display the sexual or excretory functions are portrayed in a perverted manner, it can incite its readers or viewers to indulge in behaviour of non conformity or depraved kind of behaviour. Thus, the morality and ethos of the people are adversely affected due to obscenity. Obscenity, with its exaggerated and morbid emphasis on sex, particularly abnormal and perverted practices, and its unrealistic presentation of sexual behavior and attitudes, may induce antisocial conduct even by the normal, decent minded person. The researcher feels that pornography is a form of sex discrimination because it reinforces an inferior image of women and thus lowers the status of women. Legal reform has to continue to be an important part of women’s struggle and be used to mobilize women and provide them with a language that challenges discriminatory laws and practices. In giving a good, morally conducive atmosphere in the society, law plays a vital role. In recent times there is increasing reliance on the efficacy of law and legal reforms to initiate changes in the social order towards a gender just and egalitarian society. Law can perform the function of delegitimising certain negative values prevalent in the society and at the same

\textsuperscript{1042} The Times of India, Mumbai, February 17, 2009, P.19
time legitimize new social values and roles. Examples are the law against sati which delegitimised and to a great extent discontinued the practice of burning of widows.

The aim of obscenity legislation is of fundamental importance in a free and democratic society, it is directed at the avoidance of harm which could reasonably be directly or indirectly affect individuals and groups such as women and children and society as a whole by the distribution of obscene materials. The primary function of law is development of moral culture, the ethical advancement of citizens and protection of women and children. This is an inherent and ultimate aim of all polity. Survey III reveals the strong sentiment even of the people of America to have the laws against obscenity vigorously enforced. The need for enforcement is particularly strong in the females. It is in the best interests of a morally upright society to rigorously and vigorously ban public access to obscene materials.

**Status of Women and Obscenity: an alluring nexus**

The dilemma of free expression, obscenity, status of women and the law is a pervasive and probably a permanent problem of a civilized community. The status of women in any country is a dependable pointer of the social and economic advancement made by the country. It is the benchmark of social, economic and cultural development that the society has made. It is observed that during the times when women enjoyed high status in the society, obscenity was almost unknown. Obscenity is inversely related to the status of women.

The history of womankind bears testimony to the omnipresent subordination of women in all spheres of life. The subjugation and oppression of women has been a global phenomenon. Almost universally, men have treated women as ‘objects’ of sense gratification. Even men of God have found women to be children of a lesser God. History has attested that women’s sex appeal attracts men which
resulted in women becoming the subjects of poetry, painting and sculpture to be viewed by men for satisfying their lust.

Women in most parts of the world suffer discrimination, subordination, poverty, lack of independence and consequently lack of status. All history attests that man has subjugated woman to his will, used her as a means to promote his self gratification, to minister to his sensual pleasures, to be instrumental in promoting his comfort, but never has he desired to elevate her to the rank she was created to fill. The latest technology of the World Wide Web portrays the female form in the most debasing, shameful, undignified and demeaning manner. It is a common phenomenon to view semi nude pictures of women in advertisements, films, music videos and magazines and even newspapers. As per Survey 1, it is evident that the animalistic instincts are aroused in Indian men on seeing women in bold or revealing dresses. Though women have the choice to wear a dress of their liking of course within the contemporary international standards of decency and not be teased or in the worst case raped for doing so, it is observed that Indian men are not prepared to view women expose their bodies. They are affected by such exposure and it manifests in their behaviour by which women could be sexually assaulted or harassed.

The fast advancement of communication technology involved complex issues like sexually explicit multi-media message service clips, obscene digital viewing discs, sex scandals, cyber pornography, morphed obscene pictures etc. There is rampant, easy and free proliferation of pornography on the Internet. The Internet also makes it possible to discuss sex, see live sex acts, and arrange sexual activities from computer screens. Images in the media specially in films of violence against women, in particular those depicting rape or sexual slavery as well as use of women and girls as sex objects including pornography are factors

contributing to the continued prevalence of violence against women. 1044 This is a major setback to the dignity of women.

The influence of westernization has impacted the youth of our country to a large extent. They accept anything which is western whether it is the way of dressing, behaviour, attitudes or use of language. The intermixing of the boys and girls clad in jeans and T-shirts is a common sight. Depiction of frequent kissing and embracing in the films is copied by the youth, and the city youth have found this to be the new way of greeting each other. The experiment with pre-marital and extra marital sex and swapping of marriage partners is a new craze amongst the youth. The youth consider virginity to be an unnecessary big issue about a small tissue. Obscenity is at the heart of mainstream culture. Temptations and enticement towards sexual activities are manifested in too many areas. The fulfillment of life seems to be enjoyment of sexual activities, more and better. An average person is exposed to a lot of obscenity. Advertisements and other persuasive communication invades his life with doses of aphrodisiac images. The shows on television are inundated with episodes of sex, vulgarity and indecency, denigrating women's status. The painting exhibitions have a lot of obscene pictures and paintings. They are focused at earning profits by making the viewers feel sexually excited. Even children are not left alone. They indulge in obscene culture of taking nude photographs of their class-mates and circulate to others through the mms[Multi media messaging system], or if they dislike their teacher, they morph her photo on some nude body and upload on the internet for the world to view. For the unrequited lovers, internet has become a cheap mode of retribution. The photo of the girl is morphed on the nude body with some vulgar wordings and uploaded on the internet. Verbal sexual abuse of women on streets is a daily abrasive. Because of the shifts in our culture and development of technology, obscenity has become ubiquitous in our society. As per survey II, the researcher is of the opinion that easy availability of obscenity and or pornographic materials could lead to higher percentage of promiscuity. Sex, which has

traditionally been considered a serious and ideally even a divine act in India, will be reduced to the level of mating by dogs and hogs- a pure, physical play devoid of any mental or emotional sensibilities.

Obscenity regarding women is on the rise day by day. Airlines are catering to male fantasy by portraying air hostess as sex objects. The Barbie doll image implies little intelligence but lots of sex appeal. India's first porn site savitabhabhi.com became a runway hit with over 2,00,000 hits a day before it was banned by Tele Communications. Savitabhabhi was depicted as a typical middle class woman with bindi and mangalsutra whose liaisons with men number more than her cups of tea. Obscenity lowers the dignity of women. She is reduced to body parts, an object for sexual access. It infringes on the human rights of women. It is an insult to womanhood. The unending struggle with negative self images undermines advancement and awareness of their real potential. The depiction of women in positions of subordination to men in advertisements, in pornographic materials becomes instrumental in undermining the status of women in the social condition within which they live. Indecent and obscene advertisement are derogatory to the honour of women.

Women are the chosen favorites for portrayal as objects of domination, degradation and mutilation. Pornography and obscenity suppresses the progress of women by expressing and perpetuating negative notions, opinions, thoughts and images about them. Pornographers are adversaries of women. Portrayal and representation of subordination tend to perpetuate subordination. It is a risk to their real potentiality to accomplish, to progress, to evolve, to advance irrespective of the absence of a conclusive nexus between violent crimes against women and obscenity. It is a travesty of all principles of social justice and equity. This is the power which obscenity has over women.

In modern society, violent and sexually explicit speech and material is easily accessible and even unavoidable. Even in public garden, it is a common sight to
see couples indulging in explicit sexual behaviour in full public view. Obscenity occurs through any kind of media — printed literature, photos, sculpture, drawing, painting, animation, sound recording, film, video, or video game.

The position of women in most countries was and continues to be highly derogatory. One of the primary reasons for this is the patriarchal and chauvinistic mind set of the society in the not so distant past. They were used as objects of sexual desire for the satisfaction of male lust. In annual fairs in Arabia, before the advent of Islam, women were made to dance naked and the poets used to compose poems on different parts of their body. Though this trend with some variation continues today in many parts of the world, in the sense that women dance semi-nude in shows and even on television programmes, the difference is that women today choose to do so, probably due to economic necessity or possibility of instant entry to fame and glamour world and roles in films and television or just to show their independence.

It is against the historical backdrop of oscillation between the high and low that the question of women's status is traced in India. Presently, a small percentage of Indian women have achieved excellence in their fields by becoming chief ministers and even a lady prime-minister, lady president, judges, cardiac surgeons, pilots, engine drivers, space astronauts, advocates, chairpersons of multinational companies, chief executive officer of financial institutions and banks. But female infanticide, female foeticide, or the use of In-Vitro Fertilization which assures that a girl child is not even born, dowry deaths and dowry related harassment, poverty, deprivation, and sexual harassment are a reality which cannot be overlooked. India is multi-cultured, multi-ethnic and highly inequalitarian society.

In India, during the Vedic period, a rich tradition and legal framework to support a just and equitable order conducive to all round growth and development of women raised the status of women. In the Vedic culture, a man regarded every
woman other than his wife as his mother and addressed her as such, and a girl as his daughter. So in the minds of the people, obscenity regarding women always took a backseat because of the high spiritual atmosphere in the society where every action of a person had a spiritual dimension. Vedic culture had regards for the qualities of women. Vedic history has many women who have risen to great heights in spirituality, literature, and even warriors on the battlefield. Here the Mother Goddess has been venerated since pre-Vedic times and sophisticated spiritual and philosophical insights and advanced rituals and cultic forms have been developed by Devi-worshippers over the centuries. When God is worshipped in a female form, and considered all powerful, all mighty, this itself reflects that in ancient times women enjoyed a very honorable position. No religion in the world except Hinduism conceives of woman as Goddess. Women can be worshipped as divine because people admire their qualities, their greatness. Sometimes, a Goddess imparts the name to the whole region for example Mumbai is named after Mumba Devi, Mangalore is named after Mangla Devi.

The reason that is recorded for the happening of the two most known epics namely the Mahabharata and the Ramayana was the honour of women. Women were respected for the role they played and not for their sex appeal. Chastity and honour for woman was more precious than anything, even their lives. Sex was a highly elevating activity for the purpose of having progeny. Obscenity as understood now simply did not exist in the minds of people. Women were actively involved and associated with men in every socio-religious ritual and ceremony. Obscenity regarding women could not have existed when the philosophy of life was so pervasive and clearly defined to rule every action of a human being.

The position of women deteriorated in the post Vedic era. At various places, it is found that Smritikars like Manu, Narada, Brihaspati, Parasar and others were actually insensitive to women. Only when women did not transgress the confines of the injunctions of the Smritikars, they were protected and treated with a certain
measure of respect and care. During the *Smriti* period description of women is limited to her physical attributes. They talk of women only by way of describing her breasts, hips, waist, naval, lips, hair.

Ancient India had no issues with nudity or sex as sculptures on many temples depicted sex and nudity openly. Konark and Khajuraho are well known for their explicit depictions of sexuality. *Kamasutra* is an example of the positive, open minded attitude of people towards sex. The female power has been given expression in a multitude of female figures, both in sculpture and in painting in which the emphasized forms of breasts, belly, hips, *yoni* and things seem an incarnation of the themes of the universe. The thinkers and leaders of the Vedic–Aryan society formulated a rite for the first sexual approach of a man to his wife. India played a significant role in the history of sex, by writing the first literature *Kamasutra* by Vatsayana that treated sexual intercourse as a science. *Gita Govinda* of Jayadeva a lyric written in 12th century which describes the erotic love of Krishna and Radha and is a highly revered piece of mythological literature. Sex is the highest expression of divine love is the religious belief of some sects.

The rapid decline of the status of women in India started because of foreign invaders. As a result of the Moghul invasion sex became a dirty word. Obscenity and backwardness took on a more serious connotation with notions of decadence and lascivious lifestyles of medieval Muslim rulers. They looked upon women as objects of sexual enjoyment and exploitation. Women began to be viewed more as objects of gratification or as property to be possessed and controlled. The modest standard of dress for women developed sometimes after the 15th Century due to the conservative demands of Muslim rulers. Consequent upon the terror of the Turks, many practices like *sati* and *jauhar* came into existence.

With the advent of British rule, the position of Indian women reached its lowest point from the point of view of literacy, individuality, health, social status,
freedom of movement and economic independence, position and respect in the family. Early marriages for girls, female infanticide and sati became common practice during this period. The British with their prudish ideas, considered all open talk or display of sexual activity to be obscene in reversion of Indian tradition. Any sex other than for procreation was considered as sin.


In India as in many other countries women are passing through the phase of subjugation and emancipation. The situation of women in post independent India begun to improve. The Government of India made various plans and policies for betterment of their status. The Constitution of India has its ideal of establishing an egalitarian social order to accord socio- economic and political justice for all sections of the society and ensure dignity of persons. Positive discrimination in favour of women is allowed under Article 15[3]. It will thus be seen that during the last few decades or so, conscious and concerted efforts have been undertaken by the Governments to improve the status of women. The Court recognized the right to privacy of women as an important aspect of personal liberty in the case of Neera Mathur v. Life Insurance Corporation of India.\(^{1045}\) The High Court of Punjab and Haryana held in Surjit Singh v. Kanwaljit Kaur\(^{1046}\) that allowing a

\(^{1045}\) (1992)1 SCC 286
\(^{1046}\) AIR 2003 P&H 353
medical examination to test her virginity would certainly violate her right of privacy and personal liberty enshrined under Article 21 of the Constitution. This judgement indicates the judicial will to give women their due respect and restore the lost dignity. Indecent Representation of Women [Prohibition Act], 1986 is enacted under Article 51[e] of the Constitution. However with changing social and economic conditions various new problems relating to the advancement of women have come up which were not visualized by the Constitution like the sexual harassment of women at the work place, indecent representation of women, and obscenity regarding women.

Despite the enactment of an egalitarian Constitution which contains comprehensive provision for empowering women, they have not achieved full equality, nor has there been an end to discrimination in the laws. The Constitution gave equality and equal protection under Article 14 and Article 15, but it retained the personal laws of various religions which is antithetical to gender equality.

Numerous laws have been enacted relating to prohibition of female infanticide, dowry, exposure of women in advertisements and films, female child marriage, atrocities and molestation, abduction and rape, maternity benefits, medical termination of pregnancy, prohibition of prostitution and trafficking in women and protection in employment. For the purpose of upliftment and emancipation of women and for providing them protection, various Acts such as the Immoral Traffic (Prevention) Act, 1956, Equal Remuneration Act, 1976, Hindu Succession Act 1956, Hindu Marriage Act 1955, followed by The Maternity Benefit Act 1961, Dowry Prohibition Act 1961, as also Muslim Women (Protection of Rights on Divorce) Act, 1986, Indecent Representation of Women (Prohibition) Act 1986, Commission of Sati (Prevention) Act, 1987 and the Protection from Domestic Violence Act, 2006 have been enacted. Women discovered that getting laws passed was only the first step towards achieving sexual equality. In many cases, legislative victories required judicial implementation for effective enforcement.
The Indian judiciary has played a vital role in revising the law relating to woman’s employment. It has taken a very realistic view of the problems relating to dowry. There are many judgments which have ensured that justice will be done to the women who complains of dowry related cruelty, or whose who face dowry demands from her in-laws. Though there is no shortage of legislations enacted for the benefit to women and women friendly laws, a lot needs to be done to uplift the socio-economic status of women in different walks of life. From agricultural to global society, the role of women has changed significantly in the present times. The Supreme Court in Vishakha v. State of Rajasthan\textsuperscript{1047} formulated effective measures for curbing sexual harassment of working women at the place of work. In a democratic way, the Indian Constitution also has guaranteed international recognized human rights and has established the accountability of the state for creating opportunities for full exercise of these rights. The Government declared the year 2001 as the year of women’s empowerment. Amendments were made in various Acts, and new Acts are enacted keeping pace with changed circumstances.

Women require protection from physical violence as well as from attack on their dignity and freedom. The Indian Penal Code provides some special provisions for protection of Indian Women. It was held in Chandra Raja Kumari v. Commissioner of Police, Hyderabad,\textsuperscript{1048} that the right to live includes the right to live with dignity and decency and right to live happily. If beauty contests tend to offend the dignity of a woman and tend to deal with her indecently in the circumstances amounting to indecent representation in any form, they are bound to offend article 21 of the Constitution. The expression 'life' in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure. Quality

\textsuperscript{1047} (197)6 SCC 241
\textsuperscript{1048} AIR 1989 AP 549
of life covered by Article 21 is something more than the literal meaning attached to life and liberty. Right to live with human dignity enshrined in Article 21 derives its life-breath from the directive principles of State policy. It was ruled in *Maneka Gandhi v. Union of India*¹⁰⁴⁹, that right to life is not merely confined to physical existence but also includes within its ambit the right to live with human dignity. In *Francis Coralie v. Union Territory of Delhi*¹⁰⁵⁰ it was held that right to life means something more than just physical survival and is not confined to protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world, but includes the right to live with human dignity. Women are human beings. So every right pertaining to human beings is not alien to women. Treating women as objects of sense gratification by males is definitely against the spirit of Article 21 of the Constitution. The Government is authorized to enact laws for prohibiting and punishing obscenity in the society. Various laws have been made to that effect in India.

The National Commission for Women in India has the power to initiate actions against the indecent representation of Women. The National Commission for Women's Vision, Strategies and Programmes for the year 2005-2006 had among other goals the goal to curb indecent representation of women by the media. The National Commission for Women has vast powers and has the duty to safeguard the dignity of women portrayed in an adverse light in the media, especially advertisements. The National Human Rights Commission and the State Human Rights Commission can look into violations of dignity of women, even in advertisements

The conception of women's status has evolved from the mere consideration of women's problems to women's issues, and finally to women's perspectives on development. The Supreme Court aptly observed in the case of

¹⁰⁴⁹ AIR 1978 SC 597
¹⁰⁵⁰ (1981) 1 SCC 603; 1981 SCC (Cri) 212

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Chairman, Railway Board v. Mrs. Chandrima Das,¹⁰⁵¹ 'The International Covenants and Declaration as adopted by the United Nation have to be excepted by all signatory States and the meaning given to the words in those Declaration and Covenants have to be such as would help in effective implementation of those rights.'

International treaties and conferences have played a vital role in according rights and status to women. The 1st International instrument was the convention on political rights of women, where it was declared that women shall be entitled to vote in all elections on equal terms with man, without any discrimination and that women shall be eligible to hold public office and to exercise all public functions established by national law on equal terms with men. The United Nations declaration of the Decade for Women: 1976-85, along with five sessions of the United Nations sponsored 'Conference on Women' and the preparations that went into them gave further impetus to bringing women across the globe into the mainstream of life. There are many Conventions specifically for women, the most significant being CEDAW [Convention of Elimination of Discrimination Against Women.] CEDAW enumerates the legal status of women with a focus on a number of particular rights, including political participation, representation, education, employment and civil and business matters among others. Issues of reproductive rights of women and maternity rights are mentioned throughout the treaty.

During the first stage, specific legal rights of particular concern to women were promoted through conventions relating to employment, maternity, trafficking in persons, nationality, civil and political rights, marriage, education, and violence against women to which states at the local level contributed by acceding to them. During the second stage, states succeeded in including sex as prohibited grounds of discrimination in such agreements as the Universal Declaration of Human Rights and its two implementing Covenants, the Covenants on Civil and Political

¹⁰⁵¹ AIR 2000 SC 988, 997
Rights and the Covenant on Economic, Social and Cultural Rights, collectively called the Bill of Rights as well as in Regional Human Rights Covenants. The third stage of development addressed the pervasive and structural stature of violations of women’s rights through the Conventions on the Eliminations of all Forms of Discrimination against Women. In the last two decades in particular, many other global initiatives had been taken to promote the cause of women, four world conferences on women, the adoption by consensus of the Nairobi Forward Looking Strategies (1985) and the Beijing Declaration and Platform for Action (1995). Other world conferences, particularly the Vienna Conference on Human Rights and the International Conference on Population and Development have advanced the understanding and global commitment to women’s rights.

Convention on Elimination of All Forms of Discrimination Against Women, 1979 focuses on the protection of women at the workplace. The Beijing Declaration on Women states: ‘Women have the right to enjoyment of the highest standard of physical and mental health. It was concluded that future well being of the women of the world would depend on the adjustment of the status of women.

Presently, women’s struggle for their rights is not merely a national concern but an international humanist movement. If feminism is viewed as a protest against women’s oppression, there is no confining it within the narrow boundaries of country, culture, or tie. Feminism has been seeking for women the same opportunities and privileges that society gives to men; it asserts the distinctive value of womanhood in the face of patriarchal denigration. Women’s subjugation to men is pervasive in the political, civil, social, cultural, and economic spheres of many countries. Ratification of convention by itself will not automatically confer rights on women. Women can achieve their true position in the society only if granted more rights, better status, opportunities and respect from members of the society.
Suggestions

After a deep study of laws dealing with obscenity in India as well as globally and the rights accorded to women and the position of women in our country, the following suggestions are made:

Since the two conventions namely i. Agreement for the Suppression of the Circulation of Obscene Publications and ii. International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications are many decades old, when the new means of proliferation of obscenity were not available, they are needed to be redrafted taking into consideration the attack of women from the various media like television, internet, and other advanced communication technology. The Convention should advice the countries to ban all materials wherein women are depicted as mere objects to be used for the sensual satisfaction.

The internet has connected people on the globe. But due to internet the world has become a global village close and the culture of one nation is influenced by the other. Therefore, a common standard should be agreed by all the nations regarding obscenity. The international bodies should arrive at a definition of obscenity which should be precise and capable of implementation. The countries in their turn will have to adopt that definition in their states.

While drafting the definition of obscenity, the culture, history and lifestyles of the people of different countries should be considered. Some concession can be made for the societies which are very permissive. However, nothing which denigrates or lowers the status of women or uses them as objects of sense gratification should be allowed. Child pornography of any kind whatsoever should be banned. The convention should spell out precisely certain acts and behaviour to be prohibited if those acts have the effect of denigrating or dehumanizing women.
Definitions of obscenity in India should be arrived at by an objective rational process. The statutory definition of obscenity must be drafted precisely. The following points may be included in the definition of obscenity:

An object is obscene if:

i] the dominant theme of the material/behaviour if considered as a whole is an appeal or incitement towards prurient interest i.e. a shameful or morbid interest in sex, or the undue exploitation of sex and not materials that provoked only normal sexual reactions, or

ii] it is the sexually explicit oppression of women, whether in pictures, films or in words, wherein women are presented as sexual commodities, or they are presented in scenes of sexual violence, degradation, injury, torture, and shown as filthy or inferior, any conduct of men or women which has the effect of derogating the status of womanhood as such, which makes a women appear like a tool of subordination in the hands of men, or

iii] child pornography of any kind.

Explanation: The appeal or incitement towards prurient interest is to be considered from the view of normal, decent-minded person applying overall community standards. Any picture, photograph, figure, article, write up, film etc. or a public act which appeals to the prurient interests or is lascivious or which transgress the generally accepted bounds of decency or is against the acceptable social moral standards should be called obscene.

The only exceptions will be when the material taken as a whole have serious literary, artistic, religious, educational or scientific value. The definition should be amenable to modification from time to time as per the needs of the changing norms of the society and the development of communication technology. To the greatest possible extent, obscenity should be defined precisely and censorship conducted in such a way that real moral evils are attacked, genuine literature or any work is protected and community convictions are respected. A precise
definition will enable the police and the lower courts in dealing with the various alleged offensive materials more efficiently.

It is suggested that obscenity control boards should be established, under the nomenclature Anti–Obscenity Boards. The Anti–Obscenity Board could consist of young as well as old members, so that the mean age of all members should be around 40 years of age. The members should consist of equal number of men and women. The anti-obscenity board shall consist of supervisors, support staff and the field members. Members should be persons having the expertise in various fields like art, literature, films, science, technology, law and information technology. All members should be sensitized to the women’s issues. Few members should be retired judges of High Courts and even of the Supreme Court. These boards should be constituted in all metropolitan cities. They will have jurisdiction in all states of India (except Jammu and Kashmir).

The board should have the authority to give certification that the material in question is or is not obscene. Materials which are denied a certification from the Board cannot be allowed to be circulated and distributed. The opinion of the Board should be binding. Any person who has knowledge about an obscene publication, film or video, television show, hoarding can make a complain to the Anti-Obscenity Board. The Board should investigate and impose fine/penalty against the perpetrator of obscenity. The Board could file for an injunction by which the obscene material is not circulated. The Board should have the power to impose fine on the perpetrator of obscenity when there is irrefutable evidence of obscenity. The amount of fine collected may go to the board for its expenses. Any person aggrieved an order of the Board should have a right to appeal in court.

The courts will exercise jurisdiction in the matter only if the accused is liable to be imprisoned. The alleged obscene matter will be taken up by anti–obscenity
board which will have advocates appointed for taking up alleged obscene matter on behalf of the board.

An exhaustive list of acts amounting to obscenity should be maintained by the Board which can be widely publicized through different media. The list can be created taking into consideration the definition of obscenity, recent past judicial decisions on obscenity and the contemporary notions of obscenity. The list is to be made available to the public on demand. It should be hosted on the Anti-obscenity boards website. If a new case arises which is not mentioned in the list of the Board to be obscene, then a meeting will be held of all its members who will decide whether the act can be constituted as obscene or not. If it is constituted as obscene, it may be included in the list of obscene acts. The list should be reviewed annually. The list should incorporate the provisions in the new definition of obscenity. As far as possible, members of the public should be informed of the prohibited obscene acts so that the requirement of *mens rea* is met with.

The Anti-Obscenity Board should have the power to initiate action for obscenity either on a specific complain filed by any member of the public or even *suo motu*. The board members will have the task to view and scrutinise posters, hoardings, films, cable-television, television, newspapers and magazine. Apart from advertising agencies, the manufacturer of the product being advertised and the person hiring the advertising agency may be made accountable for any use of unfair means which tantamount to indecent representation of women or is obscene.

A person should be fined only upto two times for a same or similar offence. But on repetition for the third time, he/ she will be liable for imprisonment which matter will be decided by the court on the initiative taken by the Anti-Obscenity Board. But when obscenity is in connection with the denigrating status of women, and which is used for commercial gains, the offence should be liable for
imprisonment even on the first time. Wide publicity should be given to the Board by the media. People should know about the functions of the Board.

There are too many legislations dealing with obscenity. It is submitted that there should be one central act applicable to all the states in India for dealing with all aspects of obscenity. The provisions of Indecent Representation of Women (Prevention) Act should be combined with the provisions under sections 292 to 294 of the Indian Penal Code. The provisions under sections 292 to 294 of Indian Penal Code should be same in all states of India as part of the Central Legislations. Even the provisions of the Information Technology Act, 2000 and Amendment of 2008 dealing with obscenity should be merged in this Central anti-obscenity Act. The provisions of the Post Office Act, 1898 and Young Persons (Harmful Publications) Act, 1955 dealing with obscenity, with modifications as per the needs of the present times should be incorporated in the new Central Act. The Prasar Bharati Act, 1990 and Cable Act, 1995, (Cable Television Networks [Regulation]) Act 1995 does not serve the purpose of effectively curbing obscenity. The provisions of Cable Act, 1995 should be redrafted and should become part of the central obscenity Act. Also, under the Dramatic Performances Act, 1876, the provisions which can prohibit and punish obscenity in connection with dramatic performance, a play, pantomime etc. in a public place is not in tune with the present times and could be amended and could form part of the central legislation. The Customs Act provisions relating to import and export of obscene goods are to be covered totally under section 292 of Indian Penal Code. The Government should be authorized to confiscate and destroy all obscene materials. The place where they are manufactured and the machinery employed in the process of manufacture should be liable to be confiscated by the Government agencies.

The Guidelines under the “Norms of Journalistic Conduct” lays down guidelines for newspapers/journalists to maintain standards with regard to obscenity and vulgarity. These guidelines should be made a part of the central obscenity
legislation and the guidelines should be followed, and if not followed the person violating it should be liable for punishment. The provision that no person shall willfully and indecently expose his person in any street or public place should be part of the Central Obscenity Act and should be removed from the Bombay Police Act, 1951. The code for advertisements over radio, television and publications in newspapers and magazines, pamphlets or leaflets should also be under the umbrella of the central Act. A new code regarding advertisements should be made applicable in all states of India. It is felt that the programme and advertising code need drastic redrafting because of its failure to take into account the spirit of gender equality and gender sensitivity. Anything which deems to portray women as sex objects or reinforces gender stereotypes should be banned. Gender stereotypes in advertisements restrict to predetermined roles that are degrading and humiliating. All hoardings, which carry any obscene picture or message should be liable for punishment and can be part of the Central anti obscenity Act.

It is suggested that even the provisions under the Cinematography Act, should be clubbed with the Central Act, in order to avoid duplicity and confusion in the implementation of the provisions of this Act along with the provisions under Indian Penal Code. The law should be drafted in such manner that it is not amenable to multiple interpretations. To make the law of obscenity effective and socially applicable the anomalies in the laws should be done away with. The legislations should be in tune with the new emerging concepts of obscenity and the new technology available for spreading obscenity.

The terms tendency to depravity and corruption are vague terms were used at the time when currents of moral tone were very rigid. These terms should be repealed for they do not reflect the liberal attitude and dynamism of the modern age. Some time limit should be fixed for initiating prosecution against obscene publications.

The provisions of the central Act on obscenity can cover all mediums and channels of communications like dramatic performances in a public place, play,
pantomime, film, publications of books, magazines, newspapers, pamphlets or advertisements, cable televisions shows, television programmes, all kinds of mailable articles or letter by posts or courier services, the import and export of obscene articles or goods, hoarding and sign boards. All matters otherwise mailable by law, upon the envelope or outside cover or wrapper of which, and all postal cards upon which, any delineations, epithets, terms, or language of an indecent, lewd, lascivious, or obscene characters are written or printed or otherwise impressed or apparent should be treated as non- mailable matter, and shall not be conveyed in the mail nor delivered from any post office nor by any letter carrier, and to be withdrawn there from.

In section 292 of the Indian Penal Code, which will form part of the central obscenity act, the following words should be added:

a] *Who ever having the knowledge and without lawful justification or excuse* sells, let to hire, distributes, publicly exhibits or in any manner puts into circulation or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatever :or

b] *Who ever having the knowledge and without lawful justification or excuse* imports or exports or conveys any obscene object for any of the aforesaid purposes or knowingly or having reason to believe that such object will be sold , let to hire, distributed or publicly exhibited or in any manner put into circulation;

( the word in the italics should be incorporated in section 292 of Indian Penal Code).

The punishment under sections 292 to 294 should be increased, in terms of fine as well as in terms of imprisonment. It should be an offence for a person to have an indecent photograph or psedo photograph of a child under the age of 18 years in their possession. The object of the legislation is to protect children from exploitation and degradation. Proceeding should be held in camera. Publicity will arouse curiosity in the minds of people which could deprave them. The
commercialization of obscenity for the purpose of earning profits should be prohibited and punished with heavy penalties and imprisonments. The central anti-obscenity Act should have a provision for sternly dealing with obscene public hoardings which have the effect of lowering the status of women. This will prevent the exploitation of the image of women in the advertising media.

The power to decide the literary importance or obscenity of the books which are imported should be given to the Anti-obscenity board instead of the custom authorities. Whoever utters any obscene, indecent, or profane language which has the effect of degrading the status of women, by means of radio communication or television should be fined on the first conviction and with double the amount of fine on subsequent conviction along with imprisonment. When a person is convicted of an offense involving obscene material, he shall forfeit to the Government such person’s interest in —

(1) any obscene material produced, transported, mailed, shipped, or received in violation of section 292, 293 and 294 of IPC; (2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and (3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense, if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property in the offense.

If any obscene material is imported or exported or used for transportation or sent by mail through posts shall be allowed to be confiscated by the Government agencies, and destroyed. Sexual exploitation of women for commercial purposes should not be allowed. Just like the criminal code of 1959 of Canada, we should have a provision where the undue exploitation of sex or the sex and one of the subjects like crime, horror, cruelty or violence are also deemed to be obscene. Advertisements must avoid irrelevant association of women’s body or segmentation of body parts in order to sell a particular product.
The National Commission of Women has made recommendations to include fibre optic, electronic and other media to broaden the ambit of Indecent Representation of Women Act. The researcher is of the opinion that it should be done without any delay, as part of the Central Anti-Obscenity Act. The penalty should be increased for violators under section 6 of Indecent Representation of Women Act from Rs.10,000/- to Rs.2 lacs which will act as deterrent.

It also proposed to add provisions that no woman shall allow herself to be photographed nude or semi-nude for the purpose of any book, periodicals, etc. and should be punished with heavy penalties if found guilty. Also, any woman convicted for allowing or posing in an obscene way for any film, advertisement or music video, she should be banned from modeling or acting for a period of at least two years.

Pornography which depicts women in subordination, humiliation or degradation should be completely banned. The censor Board should work in co-ordination with the Anti-Obscenity Board. Censor Board should be cautious in allowing movies which could have deleterious effect of lowering the standards of those who view these movies, specially in regard to the status and images of women. Advertisements that use sex to sell or promote gender stereotypes could be banned. Any persons who purveys obscenity regarding women in films, books, television or radio or internet, telephone or any other similar means of communication should be punished with heavy penalty and imprisonment.

As per recommendations of Air Broadcasting Code, for every 10 minutes of commercial advertisements, there has to be one minute of social message, which should be strictly implemented. The programmes must avoid representing women as victims or objects of uncontrolled lust or desire. Any kind of sexual harassment even in the name of fun should be avoided. Advertisements and publicity materials must undergo pre-screening test before they can be telecast. Articles on
how to have sex or better sex should not be allowed to be published in newspapers or magazines which are likely to be read by the youth and children.

Disposal of cases on the issue of obscenity should be done expeditiously, otherwise the matter looses its seriousness. Gender sensitization of the judiciary must be increased. Public interest litigation should be encouraged in the name of honour and respect to women and morality in society. The judiciary should try to totally prevent anti-woman interpretations of law, rigid procedures and technicalities, and make the court room atmosphere more friendly.

Some of the Metro cities in India where cyber crime cells exist, there is potential for improvement. There is an immense need for training persons in cyber technology and cyber-laws and more cities need to have such cells. The Government should ensure the following :- All new computers should have a built-in software filter which can block all obscene or pornographic sites. There are four points at which access is be blocked for any obscene material: clients' computers, servers, search engines and the physical network. All commercial online service providers must compulsorily offer additional, specialized parental control options for their members.

The Government should commit of additional resources for women in sectors relating to education, vocational training, employment and income generation small scale industries, health support services, widespread dissemination of information on legal rights and human rights of women. The Government has to ensure an environment, an ambience, a mood, a surrounding which is conducive to cultivation of virtues. A special wing of women police should be created only for dealing with crimes against women.

Books dealing comprehensively with relevant laws relating to crimes against women should be published in various regional languages, using reader friendly language at affordable price. The books should contain the procedure to be
followed when a particular crime is committed. Businessmen and advertising agencies should be made aware of their social responsibility.

Women's knowledge raises their status in society. It brings about reduction of inequalities in society. Gender sensitization of the public can be done through media programmes, school textbooks, public awareness and police campaigns. Most educated women are unaware of their legal rights and hesitate to knock the legal redressal system for wrongs committed against them.

Conferences, seminars and workshops dealing with the legal rights of women and awareness regarding the current obscenity laws should be frequently organized for all and they should be free for women. In the rural areas and for uneducated women, the ideas of gender equality and respect for women should be put forth through street plays. Men should be taught not to think of woman's body as a means of satisfaction of lust.

Wide positive publicity should be given by the media to create awareness about women's status. The various audio/audio-visual sources like television, radio, cinema should spread knowledge about the laws enacted for protecting women. Community education programmes, paralegal support, legal aid clinics and personal counseling are other effective means to create legal awareness about the laws relating to women. Women should be taught to avail of the rights accorded to them under different legislations. Solving disputes through alternative dispute resolution process like mediation and conciliation should be used encouraged.

When emphasis is on globalisation, when knowledge is power and economic value is attached to it, education for women can change the status of women. There should be opportunities for women to get education, health support services and employment. Women's realization of her own capacities and her own power should be encouraged. There is need to reform the images of women that have been created over centuries by history, mythology and social customs. The need
of the hour is to change the collective consciousness/ mindset towards the status of woman as an equal being with rights accorded to live her life and realize her potential to the fullest extent possible. Women should be counseled against exposing their bodies for money.

Child pornography needs a multi pronged attack. There should be coordination and cooperation between Government agencies, law enforcing agencies, international organizations, internet service providers, voluntary organizations etc. for tackling child pornography. Criminalisation of child pornography is important. A clear message has to be sent that it has no place in our country. It is proposed that not just downloading or the possession of child porn should be a crime, but surfing for child porn should also constitute an offence. As far as possible all computers should be ordered to be sold with an inbuilt filter which will not allow child pornography to be accessed at all.

The law should impose heavy penalties on a person who entice or coerce a minor to engage in sexually explicit conduct, knowingly receives child pornography, advertises for child pornography, makes any depiction of obscene matter when it appears that a child is involved even though no child may actually be involved. If any one uses child pornography for commercial purpose, he should be given imprisonment as well as a fine and a right to confiscate the entire business by the Government. The Government should also destroy the business.

Educational institution can be instrumental in laying the edifice for the change in the attitude of society towards women’s status. Respect for women should be inculcated from an early age in children, so that they grow up with values and respect for women. Human Rights Groups and Committees at schools, colleges and universities levels are required to be formulated to educate the student community and public about the maintenance of human rights, specially of women. There is a need to include a “separate curriculum” concerning women’s
rights in our education. Laws regarding the misuse of internet and obscenity should be taught from the school level itself.

Obscenity is a social evil. It cannot be eradicated only by law. The ill effects of obscenity must be made aware to the masses. To translate the plethora of laws which legislation has brought out for women into reality requires multidimensional approach. Laws alone cannot bring about positive social change, unless and until society is prepared to accept change. Women's organizations, police, politicians, ministers, social workers, legal activists—all have to join hands to fight those indulging in indecent representation of women and obscenity regarding women in different media.

Media is accountable to the people. Media itself can play an important role in protesting against the indecent representation of women in the media. Journalists have to make people aware of the laws dealing with obscenity through their writings. Advertisements portraying women in a vulgar way, whether it be in hoardings or in other media are tolerated and over looked by people. But if people become aware of the laws, they can initiate actions against such advertisements. If anti-obscenity board is established, complaints can be made to the board. There must be issues like organizing regular gender sensitization courses for the entertainment industry. Women models must be persuaded not to indulge in vulgar display of their bodies for monetary gain. They should be warned about the legal consequence of their indecent acts.

Women's image in the media is sexist and negative. Efforts should be made to improve the image and status of women through the media. A mass awakening only can make a change in the depiction of women in advertisements. The public can play an important role in curbing the indecent representations of women in advertisements, by objecting to it and by boycotting the product advertised. People should reject specific, legal, cultural, or religious practices by which women are systematically discriminated against, dehumanized and marginalized.
Moral values and training should be provided by social and religious institutions and family. Moral and spiritual, non-dogmatic education should be imparted in schools and colleges. Youth should be taught the importance of the culture and heritage of India. The youth should be taught to take pride in the Indian lifestyle and philosophy, so that they are not lured by westernization. They should be taught to respect women as an equal.

Spiritual values can not be ignored. From a very young age, spiritual training should be imparted so that they develop a higher taste and purpose of human life. Spiritual institutions should play a pro-active role in educating people to develop a higher taste and overcome the lower instincts of seeking sexual enjoyment in a perverted, debasing and obnoxious manner. Even sex education should be given with the right perspective and in the right manner so that children and youth do not get a perverted opinion of sex through different mediums.

Serious all round efforts on war footing are required to save the youth from the pervading corruption of moral values, to keep the morality of the society in general and to uplift the status of women. No attempt should be left untapped which could eliminate the menace of obscenity from society and give women their due status and respect. With more education and a good clean society with strict laws, gradually people will develop higher interests and learn to respect women. Indecent representation of women and obscenity regarding women should be fought from all fronts.

Law can alleviate the status of women and can bring about gender just society. Law is a path provider, meant to be one step ahead of society and is designed to set new norms for society and perform the function of de-legitimizing certain negative values prevalent in society. But along with law, a healthy public attitude and mass consciousness against obscenity is the need of the day.
Swami Vivekananda has said: There is no chance for welfare of the world unless the condition of women is improved. It is not possible for a bird to fly only on one wing.\textsuperscript{1052}

\textsuperscript{1052} Thus Spake, Vivekananda, Sri Ramakrishna Math, Madras, 1987