ABOUT POSTMODERN FEMINISM AND THE LAW: A POSTMODERN FEMINIST CRITIQUE OF THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986

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ABSTRACT

This essay attempts to analyze section 2(c) of the Indecent Representation of Women (Prohibition) Act, 1986 through the lens of postmodern feminism. The theoretical tool of postmodern feminism provides the author with a framework to unearth how the Act contributes to existing legal discourse in producing and legitimizing the cultural construct of women whose sexuality it subsequently seeks to regulate. The essay challenges the unwitting validation of constructed binaries, of culture/nature, mind/body, gender/sex, male/female, masculine/feminine, through the violence of legal rules that have far-reaching implications beyond the parties present before it; law not only governs those whose claims are being adjudicated upon directly, but it also provides tools of sexual negotiation and regulation in molding identities outside the courtroom. In deconstructing the representation of a woman to that of a body, the essay investigates the materiality of the body that the regulatory sexual regime, through the instance of the law, seeks to rigidify. Further, the author attempts to unpack visages of paternalism in the provision and unmask a theorized male gaze that only views women's bodily representation as instrumental to something—paradoxically, ascribing instrumental power to bodies and simultaneously denying female agency. The essay finally addresses a concern that demands for prohibition on a form of representation of women, and proposes an adjustment rooted in a nuanced understanding of consent and privacy rights that shifts the focal lens from that of the allure of a universal Woman to individual representations.

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I. INTRODUCTION

A. About "Postmodern Feminism"

Reality has no intrinsic meaning; such meanings are produced by and only exist within language. Language is situated within historically specific frameworks that organize social power and discursive strategies in different ways. A lens provides the theoretical tools to conduct an analysis within an existing structured framework. The theoretical lens that has informed this essay is that of postmodern feminism. In investigating meanings and power relations as constructed outcomes of discourse itself, postmodernism attempts to dismantle identities by making their existence and content contingent upon and constructed by language and institutions, including law. Postmodern feminism is then concerned with interpretation of legal, cultural and political discursive practices that legitimize categories of power and construct the identities of women. Postmodern feminists, as theoretically diverse as they may be, attempt to debunk hegemonic assumptions of a whole, rigid, unified and coherent subject. This theoretical tool allows for and mandates bringing into question stable categories of sex, gender, body, identity and discourse, in order to embrace a conception of gender that is fluid and contingent upon history and context, and reject essentialist approaches and binary categorizations to and within feminist legal theory.[1]

B. About The "Law"

The Statement of Objects and Reasons for the Indecent Representation of Women (Prohibition) Act, 1986[2] expressly speaks of a need to introduce such a legislation because the existing corpus of anti-obscenity laws contained within the Indian Penal Code is insufficient to deal with the growing body of indecent representation of women notwithstanding a specific intent requisite. The definition of "*indecent representation of women*" is as follows:

> "*indecent representation of women means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to*

[1] Laura A. Rosenbury, "Postmodern Feminist Legal Theory: A Contingent, Contextual Account", in Cynthia Grant Bowman (ed.), Feminist Legal Theory in the United States and Asia (2016).
[2] Statement of Objects and Reasons, Indecent Representation of Women (Prohibition) Act, 1986 [Hereinafter "the Act"].

have the effect of being indecent, or derogatory to, or denigrating, women, or is likely to deprave, corrupt or injure the public morality or morals…"[3]

This essay attempts to analyze section 2(c) of the Indecent Representation of Women (Prohibition) Act, 1986 through the lens of postmodern feminism. The theoretical tool of postmodern feminism provides the author with a framework to unearth how the Act contributes to existing legal discourse in producing and legitimating the cultural construct of women whose sexuality it subsequently seeks to regulate.

The essay challenges the unwitting validation of constructed binaries, of culture/nature, mind/body, gender/sex, male/female, masculine/feminine, through the violence of legal rules that have far-reaching implications beyond the parties present before it; law not only governs those whose claims are being adjudicated upon directly, but it also provides tools of sexual negotiation and regulation in molding identities outside the courtroom. In deconstructing the representation of a woman to that of a body, the essay investigates the materiality of the body that the regulatory sexual regime, through the instance of the law in the present case, seeks to rigidify. Then, the author attempts to peel visages of paternalism in the statutory provision and unmask a theorized male gaze that views women's bodily representation as instrumental to something—paradoxically, ascribing instrumental power to bodies and simultaneously denying female agency. The essay finally addresses a concern that demands for a prohibition on a form of representation of women, and proposes an adjustment rooted in a nuanced understanding of consent and privacy rights that shifts the focal lens from that of the allure of a universal Woman to individual representations.

II. THE PROBLEM OF INDECENT REPRESENTATION OF WOMEN

The Act is titled, "Indecent Representation of Women (Prohibition) Act, 1986." A commonsensical question that arises is that in not sanctioning indecent representation of men (or genders other than those identified by and as women), does the legal regime premise itself on failure and/or neglect to identify and accept a certain representation of men as fathomably indecent (as interpretatively problematic the term may be)? Intuitively, one would answer in the negative, and justify the same by referring to general criminal law that would implicate obscene representations of men.

[3] Section 2(c), Indecent Representation of Women (Prohibition) Act, 1986.

Simone de Beauvoir argues that the feminine gender is marked as irredeemably "*particular*," the Other, and that the masculine encompasses the epistemological subject of universal personhood; the Other is necessarily outside of and exclusive to that abstract universality of personhood embodied by the man.[4] Monique Wittig contends that the category of gender is a singular linguistic index and necessarily feminine in a heterosexual regime that preponderates the universality and/or generality of the unmarked masculine subject.[5] The act of particularly regulating indecent depictions of women despite the presence of a general code of criminal law that sanctions universal representations would then seemingly feed into the legal parallel that controls the particular feminine and leaves the universal man (or person) unmarked.

There are, however, admittedly semiotic flaws in such a structural parallel; for instance, the particular (feminine) gender is not restrained from being implicated under the (masculine) universal subject, i.e. a representation deemed indecent under the Act may also be obscene under section 292 of the Indian Penal Code, 1860 (IPC).[6] Further, the standards of obscenity and indecency may linguistically and structurally differ, which would then imply that an indecent, yet not obscene, representation of a man (or genders other than those identified by and as women) may not fall within the domain of criminal law. The larger argument that views the particularity of this legislation feeding into the narrative that recognizes the particularity of the feminine gender would arguably still stand, and reiterate the gendered matrix of relations that both Beauvoir and Wittig attempt to resist and annihilate.

Returning to the definition, one finds that the Act targets a certain representation of the figure, form or body (or part thereof) of the woman, which leaves ample room to inquire into the nature of such figure, form and body. Feminist attempts to distinguish between sex, as biologically ordained, and gender, as a free-floating cultural construct independent of sex, would lead to the logical consequence of the body as a passive site that is encoded with cultural meanings ascribed to it by gender, which allows for the signification of a female or male body equally by that of a man or woman.[7] However, Judith Butler treats sex and the sexed body as culturally constructed and produced within and as the matrix of gender

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[4] Simone de Beauvoir, The Second Sex (1952) 16; *See also*, Judith Butler, *Sex and Gender in Simone de Beauvoir's Second Sex*, 72 Yale French Studies 35, 39 (1986).
[5] Monique Wittig, *The Point of View: Universal or Particular?*, 3(2) Feminist issues 59, 64 (1983).
[6] Section 292, Indian Penal Code, 1860.
[7] Judith Butler, Bodies That Matter: On the discursive limits of "sex", 20 (1993).

relations itself.[8] Butler's heterosexual matrix is a "*hegemonic discursive/epistemic model of gender intelligibility*" which requires coherence between the materiality of bodies, stability of sex and a correspondingly aligned stable gender, which is situated within a compulsory practice of heterosexuality.[9]

In such a regulatory sexual regime produced and legitimated by the normative law, feminine ought to express *female* and desire masculine which ought to express *male*. The reference to the (sexed) body of the woman, then, is a mere correlational reference to the female (and necessarily feminine) body of the woman in the Act. The violence of language excludes from its purview the conceivability of a male body of a (trans)woman, and thereby obfuscates their plural experiences of representation as being fathomable in the public realm. Michel Foucault understands juridical systems of power to produce the subjects they come to represent, limit, prohibit, regulate, control and protect.[10] The law first produces the subject before the law and then subsequently conceals its productive power in order to "*engender, naturalize and immobilize*"[11] the subjective premise that is invocative of the law's hegemony. However, in producing the subject, in all its forms and constructs, who falls within the protection or target of the law, the law inevitably produces an exclusionary corollary of the unintelligible who falls outside the definitional ambit of the subject itself. That exclusion is not only naturalized and legitimated by contemporary juridical structures; it is materially manifested in a statutory provision that conflates the feminine, female and woman, thereby erasing bodies and identities that are deemed legally illegible.

An inquiry into the materiality of the body whose public representation is sought to be constrained would require a postmodern analysis of the body itself. Section 2(c) produces a set of prohibitions that lay down normative "*criteria of intelligibility*"[12] whereby indecency, denigration, derogation, or the likelihood of injury to public morality serve as qualifiers that produce the qualitatively signified body and oust that from the realm of legible and acceptable publication that fails to reiteratively constitute itself within such criteria of intelligibility. Lacan questions the reality of bodily contours themselves by using the instance of identifiability of an infant's own morphology when placed before a mirror.[13] The

[8] *Id.* at xvi.
[9] Judith Butler, Gender Trouble: Feminism and the Subversion of Identity, 194 (1990).
[10] Michel Foucault, The History of Sexuality, Volume One, 82-83 (1978).
[11] Butler, *supra* note 9, at 8.
[12] Butler, *supra* note 7, at 27.
[13] Jacques Lacan, "The Mirror Stage", in Alan Sheridan (trans.), Merits: A Sdccrion (1977) 4.

imaginary psychic formation of the body, which allows for the "*idealization of the body as a spatially bounded totality*" is then contested by Butler to the extent that the mirror does not merely represent the already existent body, but produces that body and naturalizes and reiterates the privileged signification of certain bodily organs through discursive performatives.[14]

The law then serves as one of many opportunities for institutional reiteration of such performatives that not only naturalize the referent of a "*phantasmatic moment in which a part suddenly stands for and produces a sense of the whole*";[15] in particularly prohibiting the representation of certain bodily parts as indecent, which in itself contributes to the constant constructive referencing and equating of certain (and case law reaffirms, sexual) parts with the whole, the Act actively legitimates such signification. Furthermore, an attempt that regulates the body of women and not men (operating in the binary gender matrix for the purposes of this argument) is in and of itself an institutional endorsement of the mind/body binary. The gendered categories of mind and body have been tainted with certain attributes ascribed to both: "*the [masculine] mind not only subjugates the [feminine] body, but entertains the fantasy of fleeing its embodiment*."[16] The passive site of the feminine body awaiting the agency of the reasoned masculine mind to signify and encode the pre-discursive surface is drawn as an analogical parallel to the absorption and displacement of the body by the mind, which then becomes a mere prelinguistic site which can be accessed only through the markers of the mind.

III. LAW AND THE "SEXY, TERRIFIED, MATERNAL" FEMALE BODY

Till now, the essay has attempted to establish the process of signification ascribed to the female body. What is then the contribution of the impugned legal rule in such signification? The forcible materialization of the body through a regulatory sexual regime has been interpreted by Mary Joe Frug to impute the role of the law in terrorizing, sexualizing and maternalizing the female body. Frug illustrates the gendered nature of law as an instrumental framework that molds the female body with meanings attached thereto, otherwise non-existent outside the domain of discourse.[17] In so doing, she is consistent with Butler's analysis of citationality which produces that which it seeks to control. This

[14] Butler, *supra* note 7, at 57.
[15] *Id.* at 55.
[16] Butler, *supra* note 9, at 17.
[17] Mary Joe Frug, Postmodern Legal Feminism, 18 (1992).

productive power of juridical structures does not confine itself to the claimant and respondent, but extends to constructing the female (and feminine) identity it subsequently seeks to regulate.

Sexualization of the female body is manifested through individual women's experiences wherein the subconscious interrogates the sexuality, sexual practices and representations of every female body. This reiterative and citational sexual interrogation is a product of performativity, theorized by Butler to mean produced and (often violently) compelled by regulatory regimes of gender coherence within a matrix of compulsory heterosexuality; the identity that routine enactments purport to express are phantasmatic constructs, manufactured and preserved through social institutions and discursive means backed by sanction.[18] "…*In directly or indirectly penalizing conduct which does not conform to a particular set of sexual behaviors, legal rules promote a model of female sexuality*…"[19] The normative in the present case is signified and acquires legible meaning within the subjective framework of decency and morality. An analysis of case law interwoven into the argument of legal rules validating regulation of female sexuality reflects a by and large uniform condemnation of what the author terms as 'Nudity +':

> "*A brazenly nude body may evoke a feeling of disgust and revolution. If nudity is properly covered, human body whether of male or female cannot be regarded as objects of obscenity without something more. That something more is to be found in the facial expression or pose in which it is photographed*…"[20]

Courtroom narratives not only clinically scrutinize the objective degree of nudity in a representation, but also subject such scrutiny to a consequentialist test that renders the (in)decency of such representation contingent upon its effect to "*arouse sexual feelings in an ordinary human being.*"[21] In so doing, the Indian judiciary has firstly conceded to nudity, being intrinsically connected with bodily representations, as a necessary though not sufficient condition for a valid conviction under the Act. The absence of any exposure of a woman's breasts or genitalia has been treated as decent,[22] while the conscience of the judiciary has

[18] Butler, *supra* note 9, at 186.
[19] Frug, *supra* note 17, at 141.
[20] P.K. Somanath v. State of Kerala and Ors., 1990 Cri LJ 542.
[21] *Id.*
[22] Babban Prasad Mishra v. P.S. Diwan, 2006 Cri LJ 3263.

been shocked at the indecent sight of a low-cut blouse and see-through gown that visibilizes the contours of the breast.[23]

Secondly, the invocation of a standard of "*an ordinary man of common sense and prudence*,"[24] "*ordinary decent man or woman [who] would find [such representation] to be shocking, disgusting and revolting*,"[25] a "*reasonable and prudent reader*,"[26] or an "*average moral citizen*"[27] is in itself a construction and forcible reiteration of the heterosexual hegemonic matrix that compels conformity with hegemonic sexual regimes, and produces a normative standard of a universal person that it then assesses sexual deviation from. There is in fact, nothing ordinary about such decency, but for the cultural constructivism that reiterates and cites the authority and sustenance of such. In foundationally grounding bodily decency beyond the bodily contours of concealment to include within its ambit sexual expressions and sexual postures, the operation of the law has effectively created a gendered category of indecent sexual expressions and indecent sexual postures. Sexualization of the female body, even in attempting to condemn and in extension purportedly obfuscate such expressions and postures, has had the inevitable implication of sexualizing the normative asexual. The sexualized terrain of the female body, loaded with sexual messages created and reproduced as naturalized by the law, coercively monitors and regulates each movement of the female body.[28]

Frug's second line of reasoning percolates into the institutional maternalization of the female body.[29] While section 2(c) in itself may not ascribe maternal attributes to the female body, case law under the Act have opportunistically uncovered the legal justification for this law and premised it upon prevention of "*depravity and demoralization of women*," who constitute the "*womb of the whole human race*."[30] The inherent personality of womanhood is inextricably related to the "*great born virtue called modesty, to mean 'womanly propriety of behavior, scrupulous chastity of thought, speech and conduct, reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions'*."[31] Legal mechanisms of pervasive control, regulation and condemnation of variation is an effect of the product of

[23] Vinay Mohan Sharma v. Delhi Administration, 2008CriLJ1672.
[24] Ajay Goswami v. Union of India and Ors., 2007 (1) SCC 143.
[25] Dr. Ramesh Prabhu v. Prabhakar Kashinath Kunte & Ors. AIR 1996 SC 1113.
[26] S. Khushboo v. Kanniammal and Anr., AIR 2010 SC 3196.
[27] R. Basu v. National Capital Territory of Delhi and Anr., 2007CriLJ4254.
[28] Frigga Haug, Female Sexualization: A Collective Work of Memory, 48 (1987).
[29] Frug, *supra* note 17, at 138.
[30] Chandra Rajakumari and Anr. v. Commissioner of Police, Hyderabad and Ors., AIR 1998 AP 302.
[31] *Id.*

the law in itself; legal rules create the sexualized and maternalized Woman subject whose sexual presentation and conduct they seek to regulate and reiteratively sanction through the lure of standards of universal personhood subscribing to the law's self-created virtues. These in effect reaffirm the law's continued hegemony.

Thirdly, terrorization of the female body operates in the form of paternalistic State intervention in order to construct a body signified by subjection to terror, "*a body that has learned to scurry, to cringe and to submit*," "*to seek refuge against insecurity*."[32] The theoretical tool of the male gaze situated within asymmetrical power configurations perceives all representations from the perspective of a male (and man) who necessarily conforms to Butler's stable heterosexual matrix. The ostensible agenda for sanctioning indecent representation of women, as described in section 2(c), was to curtail and eventually obliterate objectification of female bodies and women. However, the male gaze in itself is not erased; it is merely deprived of its sexualized fodder by virtue of the legal sanction imposed under the Act.

Laura Mulvey would rationalize the institution of complaints by men and women by virtue of the internalization and unquestioning naturalization of constructed ideological assumptions appropriated by the male gaze that dictate sexual conduct of marked female bodies.[33] The materiality of the male gaze, notwithstanding who institutes criminal proceedings, operates at the level and behest of (mostly male) police officers and (all male) judges. The legal appropriation of the female voice by the male gaze is then complicit in protecting female sexual passivity and condemning sexual indecency of the female from the standards of the universal (and necessarily Male, according to Wittig and Beauvoir) mind. Interestingly, the representation of a woman (and legally, her female body) is construed to be instrumental and not an end in and of itself.

While conceding to the impressing power of female bodily representations in molding minds[34] and increasing crimes against women,[35] courts have effectively shifted the burden of culpability for sexual, and often power-based interpersonal, violence onto a contributory role of representations deemed indecent by a male gaze. The instrumental means of such representation is not intrinsically problematized as violative of a right (if any), but is

[32] Frug, *supra* note 17, at 129.
[33] Laura Mulvey, *Visual pleasure and narrative cinema*, 16(3) Screen 6, 6–18 (1975).
[34] Anonymous letter-un-signed v. Commissioner of Police and Ors., 1997(2)ALD125.
[35] Dharmendra Dhirajlal Soneji v. State of Gujarat, 1996GLH(2)727.

expunged to accommodate causes of gender-based violence. In so doing, the law mandates a certain terrorization of the female body to shield its own inability to adequately protect women against physical abuse.[36]

IV. ABOUT CONSENT?

Let us return to the definitional provision one last time: the representation of women is deemed to be indecent for and guided by its effect, be it derogatory to or denigrating women or likely to injure, deprave or corrupt public morality or morals. The representation of women is legally deemed to be indecent regardless of consent of the woman so represented. Publication of such representation is prohibited under section 3 of the Act.[37] The Act is seemingly unable to fathom the possibility of agency being ascribed to a woman, who may of her own volition, represent herself in a manner that the law deems indecent, purportedly for the protection of her (who is subsumed within the universal Woman, which will be discussed in the next section).

The postmodern project does not expressly concern itself with agency (or a nuanced problematic thereof).[38] The agenda of postmodern feminism has typically been to provide tools of analysis that explicate the performativity of constructs to constitute the identity that they purport to be, become and effectively control. The process of construction however has been a subject of critique, for the agent, according to Butler, does not exist prior to the language of construction, but is produced within and as a result of the matrix (or matrices) of gender relations. The agency to "*initiate a transformation of relations of dominance*" is accounted for within the crevices of the possibility of a variation to repetitions that otherwise signify constitutive subjects:[39]

> "*The reconceptualisation of identity as an effect that is as produced or generated, opens up possibilities of agency that are insidiously foreclosed by positions that take identity categories as foundational and fixed. Construction is not opposed to agency; it is the necessary scene of agency, the very terms in which agency is articulated and becomes culturally intelligible*…"

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[36] Frug, *supra* note 17, at 129.
[37] Section 3, Indecent Representation of Women (Prohibition) Act, 1986.
[38] See generally Rosenbury, supra note 1; Sue Clegg, The problem of agency in feminism: a critical realist approach 18(3) Gender and Education 309, 315 (2006).
[39] Butler, *supra* note 9, at 185.

In failing to account for sexual agency of a woman to voluntarily represent herself, albeit as a variation to the performative reiterations, the Act grounds itself in an ostensibly feminist theory which presumes the incapacity or illegibility of female consent.

V. TOWARDS A NEW PARADIGM?

A pertinent question that arises, and concerns the seeming justification for the enactment, is whether certain representation ought to be prohibited or not, and if so, on the basis of what qualifier or criteria would such representation justify a prohibition on expression. Here, the author returns to the conception of the Woman in the Act; the reference to "women" in the title is arguably of no relevant significance to the postmodern task, for notwithstanding its semantic plurality, the law constructs the category of Woman as a coherent, stable unity relying upon routine phallocentric orthodoxy.[40] The essentialized notion of a Woman, which has been central to the feminist project, ought to be challenged for reifying forcible materialization of gender relations.[41] The solidarity of the identity of a Woman is seemingly premised upon a common identity of sorts, however in so doing, the cause of representational politics excludes and erases politics of plural identities from the stable and abiding Woman.[42]

The postmodern subject is meant to be "*fluid rather than stable, constructed rather than fixed, contested rather than secure*."[43] The presupposition of a commonality, of shared oppression or otherwise, needs to be displaced by the feminist project and be subjected to the critique of exclusionary politics that erases the concrete existence and experience of intersectionality.[44] The author suggests abandoning this universal category of subjecthood of the Woman, and sanctioning representations through a nuanced understanding of individualistic consent and privacy. The essay condemns the criteria of legal legibility located in decency and public morality, for the subjectivity of such constructs are not only reflective of a legal institutionalization of the compulsory heterosexual matrix that regulates female sexuality and stabilizes the woman, the female and her heterosexual desire for a male (who is necessarily a man); the construct further disembodies the individual woman and sanctions her variation from roles of gender performativity (such as female sexual passivity and chastity)

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[40] Carol Smart, Feminism and the Power of Law, 41 (2002).
[41] Butler, *supra* note 9, at 9.
[42] *Id.* at 4.
[43] Stephanie Genz and Benjamin A. Brabon, Postfeminism: Cultural Texts and Theories, 107 (2009).
[44] Butler, *supra* note 9, at 7.

through the male gaze that appropriates the hegemonic construct of what is deemed as (in)decent and (im)moral.

Instead, in situating consent at the core of the representation, this essay proposes a model that transgresses previous theoretical premises of false consciousness, and attempts at acknowledging and strengthening agency, sexual and otherwise, of women in legal discourse and socio-political engagements. A failing of often elitist academia has been to couch the universal Woman as devoid of her social reality through a perpetuation of de-subjected structuralism.[45] Fortunately, the structuralist overemphasis on denial of sexual agency has been countered by a growing acknowledgment of social, legal, cultural, political and economic forces that constantly shape and restrain decision-making and exercise of agency in patriarchal structures.[46] "Free" consent ought not to be accepted unquestioningly; however, that is not to say that the existence of only women's consent be dismissed under the garb of false consciousness. So, for instance, in a case wherein a woman has posed voluntarily in a magazine,[47] such representation ought not to be prohibited.

What then would be the legal consequence in cases of depictions other than self-representations? When the consent of the subject (as critically problematic the term may be, given its connotation of a hierarchy situated in juridical structures of power) is absent, the situation would then fall within the ambit of whether the right to privacy of the subject has been violated or not. This requires a theorization and perhaps reformulation of privacy in itself; in so doing, the author assumes that interests purport to further wellbeing, and only rights grounded in underlying interests justify imposition of duties on others to protect these interests.[48] A privacy right can then be grounded in the interest that secures the ability of individuals to exercise a reasonable measure of control over what aspects of themselves they choose to reveal and to whom.[49] This interest can be secured in a reasonably predictable environment that shapes normal information flows, wherein individuals can reasonably anticipate causal links between their conduct and others' ability to access information

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[45] Elisa Glick, *Positive Feminism, Queer Theory and the Politics of Transgression*, 64 Feminist Review 19, 36 (2000).
[46] Sharon Cowan, "Choosing freely: theoretically reframing the concept of consent", in Rosemary Hunter and Sharon Cowan (eds.), Choice and Consent: Feminist Engagements with Law and Subjectivity (2007) 95-104; Sharon Cowan, "Freedom and capacity to make a choice: a feminist analysis of consent in the criminal law", in Vanessa Munro and Carl Stychin (eds.), Sexuality and the Law: Feminist Engagements (2007) 51-71.
[47] P.K. Somanath v. State of Kerala and Ors., 1990CriLJ542.
[48] Andrei Marmor, *What is the Right to Privacy?*, 43 Philosophy and Public Affairs, 1, 4 (2015).
[49] *Id.* at 7. One of the first to suggest this to be the underlying interest protected by the right to privacy was James Rachels (*See* James Rachels, *Why Privacy Is Important*, 4 Philosophy and Public Affairs, 323 (1975)).

regarding their conduct.[50] A manipulation of the relevant environment without adequate justification that diminishes one's ability to control how they choose to present themselves to others would constitute a violation of the right to privacy.[51] The harm accruing in cases of such violation would then not be rooted in a male conception of standards, but on the basis of the female complainant's ascertainment of concrete harm measured in terms of the manipulation of the relevant environment that disables or substantially hampers her ability to control what aspects of herself she chooses to reveal to others. So, for instance, a case wherein the absence of a woman's consent to a painting representing her was supplemented with a real manipulation of her environment that molds normal information flows between her and her servants to the extent that she was unable to control what aspects of herself she chose to reveal to them,[52] would be implicated as a prohibited representation within such a model.

VI. CONCLUSION

Section 2(c) of the Indecent Representation of Women (Prohibition) Act, 1986 is a legitimation of binaries, man/woman, mind/body, culture/nature, gender/sex; it is a validation of the heavily encoded gendered body that is ascribed culturally constructed meanings to be reiterated and cited within the legal hegemonic framework that encourages, and at times mandates, conformity to a heterosexual matrix. It actively regulates female sexuality in ascertaining female bodily representations judged according to standards prescribed by and subscribing to the male gaze. The particularity of the female is problematically maternalized and terrorized through the corpus of case law, and representations thereof are considered merely instrumental through the adoption of a 'Nudity +' threshold, and not permissible or impermissible intrinsically in and of themselves.

Furthermore, the Act considers sexual agency and consent inconceivable and thereby is a blatant disservice to the feminist legal project. Reformulating the law of affirmative consent, even while rethinking the degree of freedom in consent, is essential to abandon the protectionist regulatory sexual regime that refuses to engage with the female "subject" and its decisions without adorning its situatedness in a structure of power configurations tainted by unquestioning gender hierarchies. Reconceptualizing harm in terms of individual harm to

[50] *Id.* at 12.
[51] *Id.* at 14.
[52] Chintan Upadhyay v. Hema Upadhyay and Anr., 2013(4)ABR337.

individual complainants based on a privacy violation and not through standards of community mores that impose a gendered universal (and necessarily male) notion of decency and morality, is integral to acknowledging the plural subject of *women*.