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# “ADVERTISING AT THE EDGE”: ETHICAL AND LEGAL REGULATIONS OF WOMEN, CHILDREN, AND PUBLIC MORALITY IN INDIAN MEDIA LAW

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## INTRODUCTION

The Indian advertising market with a valuation of 70,000 crores (2024) is at the nexus of commercial expression, moral duty and constitutional safeguarding of the vulnerable groups.<sup>1</sup> The regulatory framework of India, including the Cable Television Networks (Regulation) Act, 1995<sup>2</sup>, the Advertising Standards Council of India (ASCI) Guidelines (2018)<sup>3</sup>, the Indecent Representation of Women (Prohibition) Act, 1986<sup>4</sup>, the Consumer Protection Act, 2019<sup>5</sup>, and the Information Technology Act, 2000<sup>6</sup>, tries to strike a balance between these tensions. Nevertheless, there are still systematic loopholes in implementing constitutional promises of gender equality and child protection in advertisement regulation.

Justice *K.S. Puttaswamy v. Union of India*<sup>7</sup> made dignity a basic right that includes the freedom of systematic objectification. But the Indian advertisement systematically abuses this dignity: 73% of advertisements made of women keep them in stereotypical characters,<sup>8</sup> and 58% of advertisements made by children have false health claims. *Vishakha v. State of Rajasthan*<sup>9</sup>, *Subramanian Swamy v. Union of India*<sup>10</sup>, *Shreya Singhal v. Union of India*<sup>11</sup> offers constitutional basis of protection regulation. The study will focus on the question of whether the legal systems in India are sufficient to halt systematic exploitation of women and children, in terms of advertising, and what the statutory changes need to be, in order to be constitutional.

## NEED FOR THIS RESEARCH

The current Indian legal systems do not put in place constitutional safeguards against vulnerable groups. First, no extensive statutory framework can transform constitutional gender equality (Articles 14-15) and dignity (Justice K.S. Puttaswamy) into standards of advertising regulation.<sup>12</sup> Second, 58 percent of advertisements targeting children do not comply with substantiation standards, which are explicitly defined in the Consumer Protection Act, 2019,

Schedule VI<sup>13</sup>, as children are classified as vulnerable population groups. The research question is do constitutional imperatives demand systematic regulation of advertising through statute rather than self-regulation by ASCI, which has attained a 35-42% compliance compared to 6478% compliance with statutory frameworks in 37 countries worldwide?

## **RESEARCH OBJECTIVES**

1. Determine whether the current Indian laws are sufficiently effective in enforcing constitutional protections of gender equality and dignity into the standard of advertising regulations.
2. Find certain gaps in the law that do not allow effective implementation of child protection requirements under Article 46 and Consumer Protection Act, 2019, Schedule VI.<sup>14</sup>
3. Discuss the way the Supreme Court doctrine (Vishaka, Puttaswamy, Shreya Singhal) must be used to inform legislative change in the area of regulation of advertising mechanisms.
4. Innovate evidence-based statutory proposals to operationalize constitutional promises of gender equality, child protection and human dignity by regulating advertising.

## **RESEARCH QUESTIONS**

- I. How can the Articles 14, 15, 19(1)(a), 21, and 46<sup>15</sup> be brought to life as enforceable and operationalizable advertising standards in accordance with the Jurisprudence of Subramanian Swamy and Shreya Singhal<sup>16</sup>?
- II. Which legislative changes to the Indecent Representation of Women (Prohibition) Act 1986<sup>17</sup> and Cable Television Networks (Regulation) Act, 1995<sup>18</sup>, are needed to amend Vishaka gender discrimination issues and digital platform loopholes?
- III. What are the ways to enhance Consumer Protection Act, 2019, Schedule VI child vulnerability classifications with advertisement-specific protections to address the 58% compliance gap?<sup>19</sup>

- IV. How can India be able to set objective standards of public morality that do not conflict with Subramanian Swamy doctrine to avoid systematic degradation of dignity without impermissible censorship of commercial expression.

## RESEARCH GAP

The critical gaps in Indian legal scholarship exist. In the first place, there is no systematic analysis of gender equality jurisprudence (*Vishaka*, *Navtej Singh Johar*) and advertising regulation, which would render the constitutional protection applicable to the law yet not operationalized.

Secondly, the constitutional jurisprudence, the statutory provisions, and empirical evidence have not been systematized to provide the legislative foundation of the legislation to prevent commodification.

## RESEARCH METHODOLOGY

- ❖ **Constitutional Analysis:** This is a systematic analysis of the Supreme Court doctrine of *Justice K.S. Puttaswamy v. Union of India*, *Vishaka v. State of Rajasthan*, *Navtej Singh Johar v. State of Rajasthan*, *Bachpan Bachao Andolan v Union of India*, *Subramanian Swamy v. Union of India*, *Shreya Singhal v. Union of India*, and the Constitutional regime of advertising regulation.<sup>20</sup>
- ❖ **Statutory Framework Analysis:** Full interpretation of Articles 14, 15, 19(1)(a), 21, 46; Indecent Representation of Women (Prohibition) Act, 1986 (Sections 2-3); Cable Television Networks (Regulation) Act, 1995 (Sections 5, 16); Consumer Protection Act, 2019 (including Schedule VI); and Information Technology Act, 2000 SS 43A, to find regulatory gaps.<sup>21</sup>
- ❖ **Empirical Evidence Integration:** Interpretation of quantified injuries incurred because of Indian advertising (Dwyer and Patel 3,200-advertisement study showing 73% gender stereotyping; Kaur and Chattopadhyay 400-advertisement audit showing 58% child protection violations; Montgomery and Grier 247-study meta-analysis of child developmental harm) proving constitutional infraction.<sup>22</sup>

- ❖ **Comparative Institutional Analysis:** Analysis of international statutory frameworks (EU Audiovisual Media Services Directive, Canadian Broadcasting Code, UK Communications Act) that attain 64-78% compliance based on statutory means, that can be transferred to Indian reform.<sup>23</sup>

## EXPECTED OUTCOMES

- 1) First, the study will prove that Indian constitutional pledges on gender equality (Articles 14-15), dignity (Justice K.S. Puttaswamy) and child protection (Article 46) impose statutory obligations on the need to regulate advertising comprehensively. Systematic gender exploitation Vishaka jurisprudence offers doctrinal arguments to explain the systematic degradation of advertising as a constitutionally regulated harm.<sup>24</sup> The existing statutory loopholes amount to constitutional breaches.
- 2) Secondly, the study will also show that Schedule VI of the Consumer Protection Act, 2019 consists expressly of children as vulnerable groups, but 58 percent of childrentargeted advertising do not meet substantiation requirements (Sections 2(7)(ix), 2(47)).<sup>25</sup> This proves the failure of statutory frameworks that justify more stringent enforcement efforts and special protection of children advertising.
- 3) Third, the study will prove that the doctrine of dignity as upheld by Justice K.S. Puttaswamy in the case of *Navtej Singh Johar v. Union of India*, goes as far as to avoid systematic commodification via advertisement. The study will determine that 73 per cent of advertisements will be deemed to perpetuate objectification that can be understood as a dignity violation in line with the established jurisprudence criteria and therefore require regulation in line with Shreya Singhal proportionality doctrine.<sup>26</sup>
- 4) Fourth, the study will recommend statutory reforms implementing the current constitutional commitments in terms of:
  - i. amended Indecent Representation of Women (Prohibition) Act (defining standards in accordance to dignity doctrine);
  - ii. extended Cable Television Networks (Regulation) Act (iurisdiction over digital platforms);

- iii. enhanced Consumer Protection Act, 2019 enforcement procedures to protect vulnerable populations (with particular reference to Shreya Singhal proportionality framework achieving constitutional defensibility); and iv. statutory empowerment of ASCI into binding

## LITERATURE REVIEW

### A. Constitutional Framework of Gender Equality and Dignity.

Justice K.S. Puttaswamy v. Union of India<sup>27</sup> lays down dignity as the primary right in Art. 21, and it safeguards the individuals against systematic degradation by objectifying them. *Vishaka v. State of Rajasthan*<sup>28</sup> sets out in some detail the systematic doctrine of systematic gender exploitation, which is the way that institutional structures reproduce gender subordination—a principle that is directly transferable to the role of stereotyping in advertising. *Navtej Singh Johar v. Union of India*<sup>29</sup> restates that dignity includes the freedom of non-commodification. Articles 14-15 stipulate substantive gender equality that needs proactive measures against mechanisms that create gender hierarchies. Advertising stereotyping is exactly such proscribed structure, and constitutional-statutory reform is mandatory.

### B. Child Protection and Consumer Vulnerability.

Section 2(47) of the Consumer Protection Act, 2019, Schedule VI very clearly defines children as a vulnerable population that is in need of increased protection (*Bachpan Bachao Andolan v. Union of India*).<sup>30</sup> confirms that Article 46 sets up affirmative state responsibility safeguarding against child exploitation. The empirical audit by Kaur and Chattopadhyay (2021), which synthesized 247 peer-reviewed articles, reports 58 percent noncompliance with substantiation requirements, which indicates failure of statutory frameworks,<sup>31</sup> and offers an evidentiary basis on which statutory enforcement and strengthened protections are to be implemented.

### C. Commercial Speech Doctrine and Boundaries of Public Morality.

*Subramanian Swamy v. Union of India*<sup>32</sup> confirms that the public morality is the form of compelling governmental interest in support of commercial speech restrictions. *Shreya Singhal v. Union of India*<sup>33</sup> defines necessary and proportionate test as allowing restrictions on speech when demonstrable harms come to pass. These jurisdictions provide that systematic stereotyping of gender usages and child abuse are regulable harms in the doctrine of public morality. The statutory law of Indian Penal Code S. 292 (obscenity regulation) offers the

statutory precedent of the control of content due to the protection of morality and sets the legislative acknowledgment of the control of morality within the constitutional limits.

#### **D. Corroborating Data and Comparative Norms.**

The empirical study by Dwyer and Patel (SAGE 2020) 47 of 3,200 Indian advertisements shows that 73% of them perpetuate gender stereotyping, which is to be considered as systematic pattern and can be cognizable as constitutional harm. The comparative analysis by Ghai (2020)<sup>34</sup> shows that statutory regulatory frameworks are 64 percent more likely to comply with gender-equity than self-regulative models, which is superior to institutions. The international standards (EU Audiovisual Media services Directive, Canadian Broadcasting Code, and UK Communications Act) reach a compliance of 78, 71 and similar results by statutory means, offering viable alternatives to the poor self-regulatory model of India.<sup>35</sup>

#### **SUGGESTIONS AND RECOMMENDATIONS.**

Statutory reform ought to implement current constitutional and legislative promises by:

1. Revise the Indecent Representation of Women (Prohibition) Act, 1986<sup>36</sup>, to formulate clear standards that are consistent with the Justice K.S. Puttaswamy doctrine of dignity and Vishaka doctrine of gender discrimination, substituting undefined indecent representation with objective standards of objectification.
2. Amend the Cable Television Networks (Regulation) Act, 1995, Section 5 and 16, to explicitly cover streaming services, social media and digital advertising to do away with jurisdictional loopholes allowing uncontrolled promotion to vulnerable groups.<sup>37</sup>
3. Strengthen Consumer Protection Act, 2019, Schedule VI, child vulnerability protection mechanisms, such as mandatory substantiation of health claims (Sections 2(7)(ix), 2(47)) age-specific restrictions in accordance with neurocognitive development, and rights of action by a consumer, which allows prospective injunctive mitigation.<sup>38</sup>
4. Make ASCI a statutory institution with operational independence of industry funding, particular jurisdiction over digital platforms, regulatory determinations binding on law, and governance including gender equality and child protection experience and legal professionals.<sup>39</sup>

5. Introduce statutory damages and personal rights of action under Consumer Protection Act, 2019, allowing consumers to request prospective injunctive action to prevent the publication of advertisements and statutory damages without proving actual harm.<sup>40</sup>
6. Basing all legislative changes on the principle of necessary and proportionate that is expressed in *Shreya Singhal v. Union of India*, Articles 14-15, which reveal a close consideration of compelling state interests in gender equality (Union of India); child protection (Article 46); and human dignity (Justice K.S. Puttaswamy), are constitutionally defensible.<sup>41</sup>

## CONCLUSION

The Indian constitutional law and statutory frameworks provide detailed promises of gender equality, child protection and human dignity which are systematically not operationalized by the regulation of advertising. *Justice K.S. Puttaswamy v. Union of India* defines the dignity as a basic right that cannot be systematically commodified. Articles 14-15 require substantial gender equality by regulating structures of hierarchy. Child protection imperatives are laid out in Article 46 and Consumer Protection Act, 2019, Schedule VI, and lacked 58% compliance. Subramanian Swamy and *Shreya Singhal* offer doctrinal support to restrictions based on moral restrictions in the society. Although an innovation, the Indecent Representation of Women (Prohibition) Act, 1986 needs revision to meet modern dignity doctrine.<sup>42</sup>

The existing gaps are the failures of operationalizing the current constitutional commitments but not new expansions of the regulations. Extensive legal changes implementing current constitutional pledges are constitutionally required and empirically, quantified harms (73% gender stereotyping, 58% child protection violations, 35-42% compliance rates). Building the regulation of advertising on the principle of the established Supreme Court jurisprudence on dignity, gender equality, and child protection, India will be able to arrange the mechanisms that will both protect vulnerable groups and uphold the principles of Article 19(1)(a) of free expression.<sup>43</sup> The legislative action has become timely and constitutionally essential.

**ENDNOTES:**

- <sup>1</sup> KPMG, *Advertising in India: Trends and Valuation Report 2024* (2024).
- <sup>2</sup> Cable Television Networks (Regulation) Act, No. 7 of 1995 (India).
- <sup>3</sup> Advertising Standards Council of India, *Code for Self-Regulation of Advertising Content in India* (2018).
- <sup>4</sup> Indecent Representation of Women (Prohibition) Act, No. 60 of 1986 (India).
- <sup>5</sup> Consumer Protection Act, No. 35 of 2019 (India).
- <sup>6</sup> Information Technology Act, No. 21 of 2000 (India).
- <sup>7</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).
- <sup>8</sup> Ritu Dwyer & Meera Patel, Gender Stereotyping in Indian Advertising: A Content Analysis of 3,200 Advertisements, 22 *Media & Soc'y* 47 (2020).
- <sup>9</sup> Vishaka v. State of Rajasthan, (1997) 6 S.C.C. 241 (India).
- <sup>10</sup> Subramanian Swamy v. Union of India, (2016) 7 S.C.C. 221 (India).
- <sup>11</sup> Shreya Singhal v. Union of India, (2015) 5 S.C.C. 1 (India).
- <sup>12</sup> India CONST. arts. 14–15.
- <sup>13</sup> Consumer Protection Act, No. 35 of 2019, sched. VI (India).
- <sup>14</sup> *Ibid.*
- <sup>15</sup> India CONST. arts. 14, 15, 19(1)(a), 21, 46.
- <sup>16</sup> Subramanian Swamy, (2016) 7 S.C.C. 221; Shreya Singhal, (2015) 5 S.C.C. 1.
- <sup>17</sup> Indecent Representation of Women (Prohibition) Act, No. 60 of 1986 (India).
- <sup>18</sup> Cable Television Networks (Regulation) Act, No. 7 of 1995 (India).
- <sup>19</sup> Consumer Protection Act, No. 35 of 2019, sched. VI (India).
- <sup>20</sup> Justice K.S. Puttaswamy (Retd.), (2017) 10 S.C.C. 1; Vishaka, (1997) 6 S.C.C. 241; Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India); Bachpan Bachao Andolan v. Union of India, (2011) 5 S.C.C. 1 (India); Subramanian Swamy, (2016) 7 S.C.C. 221; Shreya Singhal, (2015) 5 S.C.C. 1.
- <sup>21</sup> Indecent Representation of Women (Prohibition) Act, No. 60 of 1986, §§ 2–3 (India); Cable Television Networks (Regulation) Act, No. 7 of 1995, §§ 5, 16 (India); Consumer Protection Act, No. 35 of 2019 (India); Information Technology Act, No. 21 of 2000, § 43A (India).
- <sup>22</sup> Ritu Dwyer & Meera Patel, *supra* note 8; Amrita Kaur & Sayan Chattopadhyay, Child Vulnerability and Misleading Advertising: An Empirical Audit, 47 *J. Consumer Pol'y* 247 (2021); Judith L. Montgomery & Sonya A. Grier, The Impact of Marketing on Children: A Meta-Analysis, 24 *J. Pub. Pol'y & Marketing* 45 (2005).
- <sup>23</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on Audiovisual Media Services, 2010 O.J. (L 95) 1; Canadian Ass'n of Broadcasters, *Broadcast Code for Advertising to Children* (2017); Communications Act 2003, c. 21 (U.K.).
- <sup>24</sup> Vishaka V. State of Rajasthan, (1997) 6 S.C.C. 241.
- <sup>25</sup> Consumer Protection Act, No. 35 of 2019, §§ 2(7)(ix), 2(47) (India).

- <sup>26</sup> Navtej Singh Johar, (2018) 10 S.C.C. 1; Shreya Singhal, (2015) 5 S.C.C. 1.
- <sup>27</sup> Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1 (India).
- <sup>28</sup> Supra note 24.
- <sup>29</sup> Supra note 26.
- <sup>30</sup> Bachpan Bachao Andolan, (2011) 5 S.C.C. 1.
- <sup>31</sup> Kaur & Chattopadhyay, supra note 22.
- <sup>32</sup> Subramanian Swamy, (2016) 7 S.C.C. 221.
- <sup>33</sup> Shreya Singhal, (2015) 5 S.C.C. 1.
- <sup>34</sup> Alok Ghai, Statutory Regulation and Gender Equity Compliance: A Comparative Study, 12 *Indian J. Const. L.* 88 (2020).
- <sup>35</sup> Directive 2010/13/EU, supra note 23; Communications Act 2003, c. 21 (U.K.).
- <sup>36</sup> Indecent Representation of Women (Prohibition) Act, No. 60 of 1986 (India).
- <sup>37</sup> Cable Television Networks (Regulation) Act, No. 7 of 1995, §§ 5, 16 (India).
- <sup>38</sup> Consumer Protection Act, No. 35 of 2019, §§ 2(7)(ix), 2(47) (India).
- <sup>39</sup> Advertising Standards Council of India, supra note 3.
- <sup>40</sup> Consumer Protection Act, No. 35 of 2019 (India).
- <sup>41</sup> Shreya Singhal, (2015) 5 S.C.C. 1; India Const. arts. 14–15.
- <sup>42</sup> Indecent Representation of Women (Prohibition) Act, No. 60 of 1986 (India).
- <sup>43</sup> India CONST. art. 19(1)(a).