



PARLIAMENT OF INDIA
RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON HUMAN RESOURCE DEVELOPMENT

TWO HUNDRED FIFTY EIGHTH REPORT
The Indecent Representation of Women (Prohibition)
Amendment Bill, 2012

(Presented to Hon'ble Chairman, Rajya Sabha on 24th September, 2013)
(Presented to Hon'ble Speaker, Lok Sabha on 24th September, 2013)

(Presented to the Rajya Sabha on -----, 2013)
(Laid on the Table of Lok Sabha on -----, 2013)



Rajya Sabha Secretariat, New Delhi
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DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE ON
HUMAN RESOURCE DEVELOPMENT
(Constituted w.e.f. 31st August, 2013)

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ABBREVIATION

1.	CBFC	Central Board for Film Certification
2.	PTI	Press Trust of India
3.	IPC	Indian Penal Code
4.	NCW	National Commission for Women
5.	AWAG	Ahmadabad Women's Action Group
6.	CII	Confederation of Indian Industry
7.	IRWP	Indecent Representation of Women (Prohibition) Act
8.	UT	Union Territory
9.	NBA	News Broadcasters Association
10.	BCCC	Broadcasting Content Complaints Council
11.	NCRB	Nation Crime Records Bureau
12.	IRWA	Indecent Representation of Women Act
13.	IAMAI	Internet and Mobile Association of India

P R E F A C E

I, the Chairman of the Department-related Parliamentary Standing Committee on Human Resource Development, having been authorized by the Committee, present this Two Hundred and Fifty Eighth Report of the Committee on the Indecent Representation of Women (Prohibition) Amendment Bill, 2012*

2. The Indecent Representation of Women (Prohibition) Amendment Bill, 2012 was introduced in the Rajya Sabha on the 13th December, 2012. In pursuance of Rule 270 relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha referred ** the Bill to the Committee on 21st December, 2012 for examination and report.

3. The Bill sought to enlarge the scope of the Indent Representation Act, 1986 and intended to bring new forms of communication like internet, mobile etc within the ambit of the Act so as to regulate indecent representation of women in the country. The Committee issued a Press Release on 7 January, 2013 for eliciting public opinion on the Bill. The Committee received a considerable number of memoranda in response to the Press Release. The Committee held extensive deliberations with both Government and private sector stakeholders which included Secretary, Ministry of Women & Child Development, representatives of various organizations like Breakthrough, Internet and Mobile Association of India, Confederation of Indian Industry, National Commission for Women, Conference for Human Rights (India), Lawyers Collective, Women's Rights Initiative, Indian Society of Advertisers, Advertising Agencies Association of India, Rakshak Foundation and Vakul Seema and Associates. Views of the stakeholders and comments of the Department were taken note of while formulating the observations and recommendations of the Committee.

4. The Committee, while drafting the Report, relied on the following:

- (i) Background Note on the Bill received from the Ministry of WCD;
- (ii) Note on the clauses of the Bill received from the Ministry of WCD;
- (iii) Verbatim record of the oral evidence taken on the Bill;
- (iv) Presentation made and clarification given by the Secretary Ministry of WCD
- (v) Memoranda received from organizations/individuals;
- (vi) Replies to questionnaire received from the Ministry of WCD; and
- (vii) Replies to questionnaire received from the stakeholders.

4. The Committee considered the Bill in four sittings held on 7th February, 13th March, 9th May and 7th June and 17th September, 2013.

5. The Committee considered the Draft Report on the Bill and adopted the same in its meeting held on 17th September, 2013.

6. For facility of the reference, observations and recommendations of Committee have been printed in bold letters at end of Report.

NEW DELHI
September, 17, 2013
Bhadrapada 26, 1935 (Saka)

BIRENDER SINGH
Chairman

*Department-related Parliamentary
Standing Committee on Human Resource Development*

*Published in Gazette of India Extraordinary Part-II Section 2 dated the 13 December, 2012

**Rajya Sabha Secretariat Parliamentary Bulletin Part II No. 50451 dated the 21 December, 2012

REPORT

I. INTRODUCTION

1.1 The Indecent Representation of Women (Prohibition) Amendment Bill, 2012 was introduced in the Rajya Sabha on the 13th December, 2012 and referred to the Department-related Parliamentary Standing Committee on Human Resource Development on the 21st December, 2012 for examination and report thereon.

1.2 The Indecent Representation of Women (Prohibition) Act, 1986 was enacted to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner. The Act, however, in its present form, relates primarily to the print media. Since the enactment of the Act, technological revolution has resulted in development of new forms of communication, such as, internet and satellite based communication, multi-media messaging, cable television etc. It has, thus, become imperative to widen the scope of the law so as to cover such forms of media on the one hand and to strengthen the existing safeguards to prevent indecent representation of women through any media on the other.

1.3 The Indecent Representation of Women (Prohibition) Amendment Bill, 2012 seeks to broaden the scope of the law to cover the audio-visual media and content in electronic form, prescribing stringent penalties which would act as deterrent to violation of the law. The Bill also proposes to strengthen the enforcement mechanism under the law by specifically authorizing police officers not below the rank of Inspector to enter any premises and carry out search and seizure of any material, if there was reason to believe that an offence under the Act has been or is being committed.

1.4 The Secretary, Ministry of Women and Child Development during his presentation before the Committee on the 7th February, 2013 stated that the Indecent Representation of Women (Prohibition) Act, 1986 was basically related to the print media because at that time the electronic media, internet and other channels were not common. However, it was being observed that the indecent representation was not just happening in the print media

like newspapers and magazines but was more prevalent in advertisements and serials shown on television channels or on internet which was within the reach of children. It was strongly felt that in the light of the technological advancement in the form of internet, satellite based communication, cable television etc, such instances or cases of indecent representation of women must be brought within the ambit of the Act so that action could be taken against the offenders. It was further submitted that the existing legislations such as the Information Technology Act, 2000, Cinematograph Act, 1952 and Sections 292, 293 and 294 of the Indian Penal Code had provisions to address the issue of obscenity but had limitations as none of them referred specifically to indecent representation of women. Also, provision relating to indecent representation of women being scattered under different laws lacked the focus necessary to protect women who tend to be more vulnerable to exploitation.

1.5 The Secretary highlighted the fact that the practical difficulty generally faced in the implementation of the parent Act was that the people did not come forward to register a complaint for these matters and even the police did not have power to enter and search and was taken casually. However, it was emphasized that the rate of success in respect of completion of the process of trial and conviction was quite high when compared with other criminal cases. The problem was mainly that complaints were not registered since there was no specialized agency for registering complaints regarding indecent representation of women and anyone could register a complaint with whatever evidence the person possessed. He further submitted that the Ministry was unable to take any action directly regarding any offences relating to indecent representation of women. It was informed that the Ministry had received representations regarding certain advertisements which were sent to the Ministry of Information and Broadcasting to see that these channels were restricted. However, as these channels were not under the purview of the Act so far, no direct action could be taken against them. Hence, the amendment to the parent Act became necessary.

1.6 To a specific query about the pendency of cases filed under the Indecent Representation of Women (Prohibition) Act, 1986, the Committee was informed by the Ministry that the total number of cases registered under the Act were 845, 895 and 453 in the years 2009, 2010 and 2011 respectively as per the NCRB data. During the same period, the number of cases disposed under the Act were 860, 837 and 429 respectively. It was further submitted by the Ministry that there were no specific guidelines for handling of cases under the IRWA and as it was a criminal legislation, any complaint under it would be dealt with as per the judicial process. The Ministry was also not aware of any monitoring mechanism for expeditious and judicious disposal of such cases. Since IRWA was a criminal legislation, the police were the right authority to take cognizance of such offences. Anybody could file a complaint/FIR for implementation of its legislation in any particular case, as any offence would be taken ahead to its logical conclusion by the Court. Further, the penalties of its various provisions were expected to have a deterrent effect.

1.7 The Committee welcomes the proposed amendments to the Indecent Representation of Women (Prohibition) Act, 1986 to incorporate new forms of communication which are being used in indecent representation of women so as to curb the same by widening its scope and also to make it more effective. The Committee feels that it is the need of the hour, especially in the backdrop of the present day Indian society and also due to the rapid technological advancements, indirectly leading to opening of more avenues for cases of indecent portrayal of women. The Committee also takes note of NCRB data about status of complaints filed under the Act. It is also a fact that along with addition of new mediums, number of such cases will indicate an increasing trend. In such a scenario, need for evolving a strict monitoring mechanism with respect to the implementation of the Act assumes great importance.

II. CONSULTATION PROCESS

2.1 The Committee has been given to understand that the Ministry of Women and Child Development had consulted the Ministry of Home Affairs, Ministry of Information and

Broadcasting, Ministry of Communications and Information Technology and Ministry of Social Justice and Empowerment on the proposed amendments. While the Ministry of Information and Broadcasting supported the proposed Amendment Bill, suggestion of the Ministry of Home Affairs was agreed to by the Ministry and the draft legislation amended accordingly. It was pointed out by the Ministry of Communications and Information Technology that some of the clauses dealing with penalties under the Bill were similar to those included under the IT Act. It was, accordingly, suggested that the penalty proposed under the Bill needed to be aligned with the relevant provision of the IT Act. It was clarified by the Ministry of Women and Child Development that higher penalties had been proposed in the Bill keeping in view the need for more effective deterrence. A very pertinent suggestion which came from the Ministry of Social Justice and Empowerment was for incorporating a suitable provision in the Bill giving the National and State Commissions for Women an appropriate role in the enforcement of the Act. Contention of the Ministry was that the provisions of the Bill, being criminal in nature, envisaged enforcement by the police or designated Government officers. Therefore, it was not feasible to have a specific role for the National and State Commissions for Women.

2.2 The Committee observes that the proposal for amending the law was placed before the Cabinet in the past, once in 2001 and again in 2007. In 2007, the Cabinet directed that the proposal be brought before it after carrying out wider consultations. Accordingly, the National Commission for Women organised three Workshops at Mumbai, Kolkata and Hyderabad, having stakeholders from regional and national level, including the media and film industry as participants.

2.3 The Committee was informed that one of the major suggestions that came out of these consultations was the need for a regulatory body which would regulate the media and would also examine the complaints filed under the law. Accordingly, the draft Bill proposed by the Commission had a provision for setting up a Central Authority with regulatory powers. However, the Inter-Ministerial Group which examined the proposal was not in favour of the same. Argument put forth was that there were already bodies and mechanisms in the fields of advertising, broadcasting, film certification and information technology with the specific mandate of regulation of content.

2.4 The Committee had the opportunity to go through the minutes of the meetings of the Inter-Ministerial Group. One line of thinking which was raised in these meetings was that there was a need to strengthen not only the provisions of the existing law but also to ensure that it was effectively implemented. Although having a regulatory mechanism under the Act as suggested by the National Commission for Women was not found acceptable, there was a general consensus for assigning some role to the Commission. Another major issue raised was that in case of violations of the law for commercial gains, there was a need for taking measures to make the law more effective.

2.5 The Committee observes that the process of amendments to the Parent Act started in 2001, when it was placed before the Cabinet. The matter again came up before the Cabinet in 2007. It was on a direction from the Cabinet for having wider consultation that the National Commission for Women held three Workshops involving all the stakeholders. Based on these wide-ranging consultations, a revised Bill having a regulatory mechanism was proposed which was not found acceptable by the Inter-Ministerial Group. The Committee views with serious concern the unduly long process of carrying out amendments in a law concerned with the protection of the interests of the most vulnerable section of our society. The process which was initiated in 2001 came to an end in September, 2011. The four meetings of the Inter-Ministerial Group were spread over a period of more than one year with first meeting taking place on the 6th May, 2010 and the last meeting being held on the 2nd September, 2011. It took more than one year to bring the revised Bill before the House. The Committee is quite disturbed to note that not only unduly long time was taken in deliberating on bringing out the proposed amendments in the law but the modifications suggested by the nodal body mandated for the welfare of women which were based on very wide consultations were simply sidelined.

2.6 The Committee observes that the consultation process undertaken by the Ministry has failed to yield the desired results. Very valid suggestions coming up as a result of workshops held by the National Commission for Women with various stakeholders have not led to logical results. Understanding the implications of the proposed amendment Bill, the Committee feels that a wide process of consultations involving the concerned stakeholders like those in the fields of advertising, broadcasting, film certification, information technology etc was called for and that exercise was duly undertaken by it. The Committee also made an

attempt in this direction by issuing a Press Release on the proposed amendment Bill to elicit public opinion from stakeholders as well as the general public. The Committee received many memoranda, notable amongst them were from organisations like the Indian Society of Advertisers, the Advertising Agencies Association of India, Confederation of Indian Industry, Internet & Mobile Association of India, Conference for Human Rights, Rakshak Foundation, Vakul Seema & Associates etc.

2.7 The Committee started its deliberations on the Bill by hearing the views of the Secretary, Ministry of Women and Child Development. Thereafter, the Committee heard the views of various stakeholders like Breakthrough, Internet and Mobile Association of India, Confederation of Indian Industry, National Commission for Women, Conference for Human Rights, Lawyer's Collective, Indian Society of Advertisers, Advertising Agencies Association of India, Vakul Seema & Associates and Rakshak Foundation. The Committee also forwarded a questionnaire to Central Board for Film Certification for their written comments on the Bill.

2.8 Expressing her views on the proposed Amendment Bill, the Vice-President of Breakthrough submitted that it was essential to differentiate between 'indecent representation' and 'exploitation' because these were two different concepts but often looked together. Exploitation through any form of media etc needed to be looked distinctly and could have criminal colour whereas representation of women needed to be looked in the cultural and social context. It was very important for not assuming a moralistic stand and at the same time being conscious about the fact that women's position in the society was not denigrated. Attempt should be made to avoid even regressive representation of women which did not necessarily have indecent representation. Indecent representation of women was subjective but there needed to be certain standards which should not objectify woman or reduce her to a physical object. She was also of the view that the proposed Bill had in itself the seeds of creating an environment that would lead towards an openness and contextualizing the creation of cultural artefacts which were very representative of today's time and age.

2.9 Representing the Internet and Mobile Association of India, its President submitted before the Committee that it was unclear as to how the Act was going to be read against several other existing provisions which granted certain limited responsibility to the intermediaries. This included uncertainty as to how it would affect regulatory provisions in legal statutes regarding

online content and publication but also specific protections provided by Parliament towards online and mobile platforms which acted as intermediaries for user generated content. Attention of the Committee was also drawn to provisions such as Section 79 of the IT Act and Sections 52(i)(b) and 52(i)(c) of the Copyright Act which recognized that online platforms should be provided a limited safe harbour immunity against legal claims for content posted by third parties over which they had no control.

2.10 Representatives of CII presented their views on the amendment Bill and submitted that one of the main reasons for increase in number of cases of indecent representation of women was due to ineffective implementation of existing penal provisions. Before considering any amendment to some of the sections of the Act, attempt should be made to look at new forms of communication and effective steps to be taken to dispose of pending cases. It was also pointed out there were various standards and cultural practices in a country like India and a particular depiction or projection which was considered normal in one part of the country may be considered differently in another part of the country. It was, therefore, necessary that some kind of a central body for expert determination, most equipped to take cognizance of those kind of things be there. The absence of such a body and implementation of stringent provisions might lead to unnecessary harassment of genuine business activity. Hence, the existing self-governing bodies like the Advertising Standards Council of India could be empowered to deal with such a situation. Moreover, a reasoned and expert view on the subject was considered essential as the concept of obscenity was highly subjective depending on a variety of factors, including context, circumstance, place, time and was subject to changing standards as held by the Supreme Court in Chandrakant Kakodkar vs. State of Maharashtra in 1970.

2.11 The Committee heard the views of the Member of National Commission for Women on the proposed amendment Bill. The Member informed that while most of the suggestions of the Commission were incorporated in the amendment Bill, two points had been left out. First was the need for the formation of a Central Authority under the Act. There was no particular body that represented the feeling of the women of this country. Emphasizing on the role of NCW, she submitted that NCW, being a constitutional body needed to be strengthened as it did not have adequate infrastructure. She also highlighted the fact that NCW did not have adequate powers to

carry out its functions. NCW did not have powers of seizure, penalty etc because these were magisterial powers.

2.12 Another aspect highlighted by the Member, NCW was the role of Central Board for Film Certification (CBFC). Instances of films violating sections 292,293, 294 of the IPC and Indecent Representation Act cleared by the CBFC had been seen many a times. The justification of CBFC was that it was not a Censor Board but only a Certification Board. It was, therefore, required to completely revamp CBFC as it had many lacunae in its functioning. Not only this, there was a need to properly monitor the role of CBFC and PTI in the context of regulating indecent representation of women.

2.13 The Committee also heard the views of Secretary-General, Conference for Human Rights India on the Bill. She submitted before the Committee that the proposed amendment Bill by exempting films from its ambit would result in making the amendment redundant. Elaborating on the impact of films on the society, she highlighted how it adversely affected the minds of people, especially children and youngsters. Considering this, she suggested that films as under the Cinematograph Act must be included in clause 4 of the amendment bill. Further, she submitted that the Censor Board was not properly carrying out its functions in view of films cleared by it displaying vulgarity and obscenity. Also, accessibility to certain sites having objectionable content needed to be limited so as to curb the rising incidents of indecent representation and exploitation of women.

2.14 The President, Advertising Agencies Association of India, deposing before the Committee, was of the view that the proposed amendment Bill dealt with two parts, one with advertising and the other with media content, be it print, television, radio, internet etc. He emphasized upon the fact that decent representation of women in advertising was extremely important as indecent representation was offensive. He added that if society was exposed to lot of indecent representation of women, some members might be influenced by it and might treat women in an inappropriate manner. He expressed reservations about the definition of what would constitute indecent representation of women which was appropriate but the same continued to be highly subjective and could vary from place to place. It seemed relevant in the context of advertising where a particular advertisement could be termed as indecently representing women by the police leading to search and seizure, thereby becoming a tool of harassment. The freedom of commerce

would then be taken away. He quoted that even the Supreme Court had held that obscenity was highly subjective and was dependent upon a variety of factors, including context, circumstances, place and time and subject to changing standards. He, therefore, suggested that judgement on indecent representation of women should lie with a central body which would be eminent, qualified and experienced. One such body which was presently existing was the Advertising Standards Council of India which could be made a central expert body for the field of advertising for determination on whether something was indecent representation or not. This Council was a self-regulating body which screened new television commercials and new print Ads that appeared in various languages across the country. He suggested that this Council should be given a similar status as of the Central Board for Film Certification so far as advertising was concerned. Further, he suggested that punishment provision for advertising should be in line with or similar to the provisions made in the Legal Metrology Act, 2009.

2.15 The representatives of Vakul Seema and Associates submitted before the Committee that merely substituting and redefining certain definitions under the Act would not change much until and unless the Bill introduced a separate chapter on the Regulator. There could be the appointment of a regulator under the Act who should be a quasi-judicial person and who could *suo moto* take action or do so after a complaint. He should be able to hold inquiry, penalize and even impose monetary liabilities against such electronic form. Every State could have such a regulator working as an adjudicating officer. There could be a provision of an appeal against the order of the adjudicating officer before an appellate authority constituted under this Act itself. Very relevant suggestions for amendment in the Act were made by the witnesses which have been duly taken note of by the Committee in the ensuing paragraphs of the Report.

2.16 The representatives of Rakshak Foundation, appearing before the Committee, were of the view that the term 'sexual object' in the Bill was derogatory to womanhood. The Bill was emphasising more on the physical form and not on general things encountered in society which were derogatory to the womanhood. Emphasis on effective implementation of law was also made.

2.17 The Committee also heard the views of Executive Director, Lawyer's Collective on the Bill. It was submitted by her that the fundamental rights and duties in the Constitution of India specifically mentioned that the exercise of right was subject to decency or morality. It was also the duty of every citizen to renounce practices derogatory to the dignity of women or which led to

objectification of women. There were various laws with regard to indecent representation of women like the IPC, Cinematograph Act 1952, Press Council Act, 1978, Cinematograph Certification Rules, 1983, Cable Television Network Rules, 1994, Information Technology Act, 2000 and Indecent Representation of Women (Prohibition) Act, 1986. It was suggested that there needed to be a synergy in the process of amending the law.

2.18 Another important point highlighted by the representative of Lawyer's Collective was that the provisions of IRW Act did not apply to films. Therefore, it was considered necessary to have the same level of scrutiny for deterring indecent representation of women. Provisions of the Cinematograph Act, 1952 must incorporate provisions of IRW Act. Further, the concept of obscenity was considered to differ from country to country depending on the standards of morals of contemporary society. Highlighting the case of S.Khushboo vs. Kanniammal and Anr (AIR 2010.SC 3196,) it was pointed out that 23 criminal complaints were filed against her under sections 4 and 6 of the IRW Act, 1986 and sections 499, 500 & 505 of IPC when she expressed her opinion for societal acceptance of pre-marital sex in India Today Magazine. It was held by Supreme Court that it would defy logic to invoke offences against the appellant who could not be described as an advertiser or publisher portraying women in bad light. Further, obscenity should be gauged with respect to contemporary community standards that reflected the sensibilities as well as the tolerance levels of an average reasonable person.

III. The Committee makes recommendations/observations on the following provisions of the Bill:

Clause 2(a)

3.1 Clause 2(a) of the Bill deals with amendment of the definition of the term 'advertisement'. In the light of the fact that advertising has moved beyond the traditional print media to the use of newer forms of communication and aggressive targeting technologies, the existing definition of the term 'advertisement' is proposed to be amended. It is proposed to add audio-video representations made by means of any lights, laser light, sound, smoke, gas or electric form or through any other media for the purpose of promotion of any goods, service, place, person, event or organization. The amended definition of the term 'advertisement' would then read as the following:

“advertisement” includes any notice, circular, label, wrapper or other document or any audio or visual representation made by means of any light, laser light, sound, smoke, gas

or electric form or through any other media, for the purpose of promotion of any goods, service, place, person, event or organisation;”

The Ministry of Women and Child Development, justifying the addition to the term ‘advertisement’ submitted that in light of the fact that advertising had moved beyond the traditional print media to the use of newer forms of communication and aggressive targeting techniques, its definition was proposed to be amended. The proposed definition would include the depiction of women in an indecent or derogatory manner in electronic form or through any other media for the purpose of promotion of any goods, services, places, persons, events or organizations.

3.2 The Confederation of Indian Industries, Indian Society of Advertisers and Advertising Association of India highlighted the fact that the amended definition of the term ‘advertisement’ pointed towards a niche commercial area and before initiating any stringent penal action, a preliminary determination about the offence needed to be taken by an expert body. It was also relevant because due to varying cultural standards in a country like India, a particular depiction or projection might be considered as normal in one part of the country and obscene in another part of the country. In cases like this, unless there was a central body for expert determination, the implementation of these stringent provisions might lead to unnecessary harassment to genuine business and a fodder to unscrupulous elements. It was, therefore, suggested that before initiating any action under this Act in relation to ‘advertisements’, it should be sanctioned by an expert body like Advertising Standards Council of India or the Censor Board.

3.3 Vakul Seema and Associates pointed out that the proposed definition of advertisement in Section 2(a) did not cover advertisements in electronic or digital form which were visible on Internet in the form of banner ads, sponsor ads, audio-video combinations, interactive ads or communication links. Further, the word ‘promotion’ should be used along with ‘or sale’ for wider reach and regulation. A seller or a purchaser could always take a plea that he was not promoting the product but merely selling the said product or service. Selling was not promoting. Hence, the Vakul Seema and Associates proposed the following revised definition of the term advertisement:-

“advertisement includes any notice, circular, label, wrapper or other document or any audio or visual representation or combination thereof made by means of any light, laser light, sound, smoke, gas or electric form or through any other media or in electronic form, for the purpose of promotion, or sale of any goods, service, place, person, event or organization”

3.4 Ahmedabad Women's Action Group (AWAG) had submitted in its written memorandum that the definition of the word 'advertisement' needed to be broadened further to include other forms of visual representation like hoardings, bill boards, posters as well as short messaging service (SMS), multimedia messaging service (MMS) and various applications for mobile devices as these had lately emerged as inexpensive means of advertisements by public and private entities. It was also suggested that there was a need to include 'electronic' after 'electric' as a means of making advertisement. This would read in consonance with the next insertion namely, clause 'aa' which would provide an explanation to the term 'electronic'. It was believed that it might be useful to provide the definition of the term 'electronic' in the footnote.

3.5 With a view to widen the scope of the Act and its applicability, NCW in its redrafted Act suggested to include laser light, fibre optic, electronic or any other media in the definition of the term 'advertisement' which seemed to have been incorporated in the definition.

3.6 The Committee is of the considered view that broadening the scope of the definition of the term 'advertisement' to include newer forms of communication and media is a welcome step. However, the Committee also agrees with the suggestions of the stakeholders to include advertisements in digital form or electronic form or hoardings, SMS, MMS etc. within the definition of 'advertisement' to bring all forms of advertisement within the ambit of the Act.

3.7 The Committee would like to emphasize that in the era of globalization and increasing commercialization and competition, the world of advertisement has witnessed instances of indecent representation of women to grab the attention of prospective consumers. Not just this, the Committee also notes that advertisements promoted the patriarchal set-up by assigning traditional roles to women, thereby being regressive. The Committee, therefore, firmly believes that all forms of advertisements through any medium must be regulated to curb indecent representation of women.

3.8 At the same time, attention of the Committee has been drawn to the apprehension of some stakeholders that what constituted as obscenity was highly subjective and interpretation of it may lead to unnecessary harassment at the hands of the police. The Committee agrees with this point and is of the view that obscenity and indecent representation of women would vary in different places or different cultural contexts. However, a broad consensus on what is overtly obscene or depicts women indecently or in

bad light needs to be generated or agreed upon so that genuine commercial activity is not hindered due to unnecessary harassment.

Clause 2(b)

3.9 Clause 2 (b) deals with the definition of the term 'distribution'. This definition is proposed to be broadened to include within its ambit broadcast, transmission or uploading on websites or in any other printed or electronic form. It also clarifies that, for the purpose of the Act, such distribution should be for public access. The amended definition of the term 'distribution' would read as following:

“distribution” includes all methods of distribution, either by way of samples or making available for public access through broadcast, transmission or uploading on website or in any other printed or electronic form, whether for profit or otherwise;”

3.10 Representatives of Vakul Seema and Associates submitted that the definition of the term 'distribution' needed to be broadened as there were multiple ways and means to distribute material or content through different media. It was suggested by them to include terms like publication, license or uploading using computer resource or communication device (same meaning as assigned to it in clause (ha) of Section 2 of the IT Act, 2000 or in any other printed or electronic form, whether for profit or otherwise. Hence, the modified definition of the term would read as follows:-

“Distribution includes all method of distribution either by way of samples or display or making available for public access through broadcast, transmission, publication, license, or uploading using computer resource, or communication device or in any other printed or electronic form, whether for profit or otherwise,”

3.11 The Committee is in agreement with the suggestion of the stakeholder and believes that all possible ways of distributing any material or context through any medium needs to be covered and brought within the ambit of the legislation. This would certainly help in bringing to book all offences relating to distribution of any material which indecently represents women.

Clause 2(c)

3.12 Clause 2(c) of the amendment Bill deals with the definition of the term 'indecent representation of women'. Elaborating on redefining the term 'indecent representation of women',

the Ministry had submitted that recognizing that women were more vulnerable to sexual objectification, particularly in view of the easy accessibility and reach of new technology, the scope of the existing definition of this term was proposed to be broadened. The proposed definition would also include depiction of women as a sexual object or which is lascivious or appeals to the prurient interests. It would read as follows after being amended;

“indecent representation of women” means—

(i) publication or distribution in any manner, of any material depicting women as a sexual object or which is lascivious or appeals to the prurient interests; or

(ii) depiction, publication or distribution in any manner, of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent or derogatory to or denigrating women or which is likely to deprave, corrupt or injure the public morality or morals;”

3.13 Through the memoranda received and interaction with stakeholders, the Committee was presented with many aspects regarding the definition of the term ‘indecent representation of women’. One of the points highlighted was that the use of terms ‘lascivious’ and ‘prurient’ as defining terms for determining decency of representation of women was too vague and inconsistent. In the world of advertisements, use of sexually suggestive and ‘lustful’ words was widely held as an acceptable practice. To completely set aside all lascivious and prurient ads and representations as indecent was absolutely unnecessary. It was not considered suitable to define decency of a representation based on its ‘lasciviousness’ or ‘prurient-less’. A different determining scale needed to be conjured. It was suggested that an objective and pre-determined scale for estimating the decency of a representation be devised. Clear and explicitly mentioned forms of representations needed to be tabulated in the proposed amendment Bill and, accordingly, the intensity of the punitive action be clearly mentioned.

3.14 The Indian Society of Advertisers and the Advertising Agencies Association of India pointed out that the amendment sought to be made to section 2(c) by inserting sub-clause(i) made the definition too wide without any guidelines as parameters for determining what all depictions would come within the said sub-clause. There seemed a good possibility that with the amended definition, many of the advertisements depicting parts of body to show the functionality of the product, in health, beauty and fashion magazines would be more vulnerable. In particular, the demonstration of the functional experience of a product, including applications on the skin and various parts of the body for which the product was intended was a critical aspect of the promotion of such products and should not attract penal consequences as provided by the amendment.

3.15 Confederation of Indian Industries submitted to the Committee that prima facie, the proposed amendments to the definition of ‘advertisement’ and ‘indecent representation of women’ appeared to be acceptable. However, given the penal provisions under the IRWP Act, the proposed amendments to the said definition could have significant adverse consequences on the advertising industry which in turn would impact the entire economy at large. Thus, the proposed amendments to the definitions of ‘advertisements’ and ‘indecent representation of women’ should not be analysed in isolation.

3.16 Representatives of the Rakshak Foundation were of the view that the words ‘indecent’, ‘deprave’ and ‘public morality’ were not defined in the amendment Bill. The words ‘public morality’ and ‘deprave’ were based on abstract concept of morality and ethics which did not generally focus on violent and degrading images of women falling outside the sexually explicit representations. In the absence of any yardstick to define what exactly was indecent, the term was left open to subjective interpretation and the power to prosecute would rest on a particular police inspector who would at his own behest make a judgement to decide what could be considered ‘indecent’. Therefore, the proposed amendment was vague, which may create ample scope for variance in the implementation of law. Further, it was also pointed out that the amendment in all likelihood would significantly increase corruption and blatant misuse of the proposed legislation. Since the judgement would rest with a particular individual with little or no transparency, it may lead to more instances of police officers demanding bribes in order to acquit the real culprits. The representatives of Rakshak Foundation made an attempt to define the term ‘indecent’ which is as follows:-

“Dominant impact of which is only horror, cruelty, violence or sexual desire without any serious literary, artistic, moral, political or scientific value”.

3.17 The Ahmedabad Women’s Action Group(AWAG) suggested the inclusion of a provision that would also help the authorities to restrain the use of women’s body in a manner that propagated stereotypes of women. It was considered important to include this as the reinforcement of stereotypes of women and girls was one of the crucial factors for the continued perpetration of violence against women and girls right from the time a female foetus was conceived to the time the woman breathed her last. The prevalent stereotypes of women also denigrated the dignity of women. It was, therefore, proposed to rewrite this definition as:-

“depiction, publication or distribution in any manner, of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent or derogatory or to denigrating women or to perpetuate discriminatory and biased attitudes

and behaviours towards girls and women or which is likely to deprave corrupt or injure the public morality or morals.”

3.18 Representatives of Internet and Mobile Association of India had submitted that redefining the term ‘indecent representation of women’ appeared to be in conflict with the substantive legal provision meant to be covered by Section 4 of the Principal Act which might lead to legal confusion. This also appeared to call for expansion of the mandate of section 4 of the Principal Act beyond its original intention. Section 4 of the Principal Act in its present form mandated only penalties regarding cases of indecent representation of women. The NCW Report on ‘Review of Laws and Legislative Measures affecting Women’ looked at the subject of updating the Act but only recommended that the definition of advertising for the purposes of section 3 be updated. NCW in its report did not recommend any changes to section 4 regarding electronic modes of publication.

3.19 The Committee agrees with the views of the stakeholders that the definition of the term ‘indecent representation’ was vague and may leave scope for subjective interpretations. The meaning of the term could very well be interpreted differently in different regions of the country and in different cultural settings. The purpose of redefining the term ‘indecent representation’ is to identify such content/material wherein a woman is seen as a sexual object or which is lascivious or appeals to the prurient interest or is derogatory to women. Not defining the terms ‘deprave’, ‘public morality’ and ‘morals’ could also pose a problem. It may leave scope for unnecessary harassment and nuisance by certain groups who imagine themselves to be the custodians of public morality and engage in moral policing, thereby causing trouble. The Committee agrees with the suggestion of the stakeholders that an expert body should decide on the contentious issue of whether any content/material is objectionable or not. It would then leave no scope for subjective interpretations by the police authorities or by certain groups upholding public morality.

Clause 2(g)

3.20 Clause 2(g) deals with the definition of the term ‘publish’. The existing law prohibited publishing of material with indecent representation of women but does not define the expression ‘publish’. In order to remove this ambiguity, the proposed Bill sought to define the term ‘publish’ to cover the entire range of activities associated with preparing and making content available to the public, through print and electronic media. The definition of the term ‘publish’ would read as follows:

“publish” includes—

- (i) to prepare or print in any book, newspaper, magazine, poster, graffiti, periodicals or any form of printed matter, digital or in any other format; or*
- (ii) to distribute or broadcast through audio-visual media including cable, computer, broadband satellite transmission or any other form, to any person so as to communicate or make it available to the public;”*

3.21 Attention of the Committee has been drawn to the point highlighted by Vakul Seema and Associates that section 2(g) (ii) provided use of modern means of communication and information technology tools for the purpose of publication. The proposed definition did not effectively cover all such tools, especially mobile communication. An amendment to the definition of the term ‘publish’ was suggested which reads as follow:-

“publish includes-

- (i) To prepare or print in any book, newspaper, magazine, poster, graffiti, periodicals or any form of printed matter, electronic or in any other format; or*
- (ii) To distribute or broadcast through audio-visual media by the use of satellite, microwave, terrestrial line, wire, wireless or any other form, to any person so as to communicate or make it available to the public”*

3.22 The Committee finds the suggestion of Vakul Seema and Associates quite appropriate as it further widens the scope of the definition of the term ‘publish’ and covers all forms of format through which any material/content could be published and made available to the public. This would certainly help in bringing within the ambit of the law all mediums of publishing relating to indecent representation of women in any form, be it a book, newspaper, magazine, poster, graffiti, electronic medium through cable, computer, satellite, wire, wireless or any other form.

3.23 Another viewpoint highlighted was that there could be a possibility of a confrontation between ‘adult entertainment’ and ‘cultural vigilantes’. Pornography was one such aspect which was believed by some to allow for venting of pent up sexual frustrations in a healthy and culturally acceptable form but only within the confines of individual privacy. However, it was believed that guidelines for pornography industry should first be brought out before the proposed addition to the said Bill.

3.24 The Committee observes that a debate on adult entertainment versus indecent representation of women in our cultural context is going on. While the society is witnessing sea change in the perception and attitude of its members, increasing instances of indecent representation of women is also a reality. The Committee is of the view that a line has to be

drawn which is neither moralistic nor interferes with the personal freedom and privacy of individual adults. There is a need to regulate the publishing of content/material through various mediums. The access to pornographic material needs to be restricted in a stringent matter so that it does not land in the hands of children who can be adversely influenced by it. Such material should not be viewed in any public place and be used only for private viewing/use. The Committee strongly feels that there is an urgent need for evolving a mechanism for curbing such practices.

IV Clause 4

4.1 Section 4 of the Parent Act deals with prohibition of indecent representation of women. Under this clause, minor consequential amendments have been proposed where “any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure” has been replaced with the expression “material” which has now been defined in the Bill. Further, it is also proposed to delete the use of expression “produce” as it would now be covered under the definition of the word ‘publish’. Hence, the revised clause would now read as :

“No person shall publish or distribute or cause to be published or cause to be distributed by any means any material which contains indecent representation of women in any form:

Provided that nothing in this section shall apply to—

(a) any material,—

(i) the publication of which is proved to be justified as being for the public good on the ground that such material is in the interest of science, literature, art or learning or other objects of general concern; or

(ii) which is kept or used for bona fide religious purposes; or

(b) any representation sculptured, engraved, painted or otherwise represented on or in—

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958; or

(ii) any temple, or any car used for the conveyance of idols, or kept or used for any religious purpose; or

(c) any film in respect of which the provisions of Part II of the Cinematograph Act, 1952 will be applicable.”

4.2 The Ahmedabad Women’s Action Group (AWAG) in their written submission requested for inclusion of sub-clause (d) to apply to representation of women in television channels and serials or an amendment to the Cinematograph Act to ensure monitoring and evaluation of the content shown on television. They believed that there was an urgency to review, evaluate and

regulate the content of serials and shows on the television due to its reach and penetration in Indian homes.

4.3 A similar view had been highlighted by Secretary General, Confederation for Human Rights (India) that the very purpose of the proposed amendment to clause 4 was being defeated by keeping sub-clause (c) intact in this provision. Films would be excluded from the ambit of this provision. This would only create confusion and complications because the film world was included in the electronic media and should not be made an exception to the main clause. Hence, the proviso sub-clause (c) of clause 4 needed to be deleted to include films within this Bill. Further, if sub-clause (c) remained, then the object and purpose of the proposed amendment to clause 4 which was included in the definition of 'distribution' would be defeated.

4.4 The Committee is inclined to agree with the contention of the stakeholders for suggesting inclusion of films within the ambit of the proposed Bill which seems to be somewhat justified given the quality and content of films/serials being made and viewed by the public. Nobody can deny the fact that many of the films of contemporary times are depicting women in an indecent way and many of the TV serials are portraying women in a regressive manner. However, it is also equally true that the mandate of certification of films has been given to the Central Board for Film Certification. Bringing films within the ambit of this Bill would mean encroaching upon the jurisdiction of the Board, necessitating dilution of the role of the Board as envisaged under the Cinematograph Act. The Committee feels that there is a need to review the role of the Central Board of Film Certification, especially in the context of increasing trend of indecent representation of women in the present day films.

4.5 When this issue was taken up with the Central Board of Film Certification, it was clarified that the Cinematograph Act had its origins in Article 19(2) of the Constitution, which was more or less a regulator whereas the Indecent Representation of Women (Prohibition) Act, 1986 was punitive in nature. Hence, the Cinematograph Act could not be brought under the ambit of the Indecent Representation of Women (Prohibition) Act. It was, however, pointed out that some of the provisions could be brought into the Cinematograph Act for effective regulation. There was no ambiguity in bringing the film maker, the director and trade bodies under the ambit of the Indecent Representation of Women (Prohibition) Act. However, actors, script writers, song writers etc. should be left out. It was also suggested that for reducing the instances of violation under the

Cinematograph Act, a mechanism could be put in place which would deliver speedy and effective deterrence like seizure of prints throughout the states/country once a violation was noticed.

4.6 The Committee observes that the above suggestions made by the Central Board of Film Certification are very relevant and will go a long way so far as the issue of prohibition of indecent representation of women in films is concerned. The Committee would appreciate if the Ministry takes up this issue on priority basis with the Board and the Ministry of Information and Broadcasting. There does not seem to be any problem in carrying out these modifications when the nodal body is willing to do so.

4.7 Attention of the Committee has been drawn to the guidelines of the Central Board of Film Certification wherein it is specifically mentioned that the Cinematograph Act provides that the Board shall ensure that in a film certified by it:

- human sensibilities are not offended by vulgarity, obscenity or depravity;
- such dual meaning words as obviously cater to baser instincts are not allowed;
- scenes degrading or denigrating women in any manner are not presented;
- scenes involving sexual violence against women like attempt to rape, rape or any form of molestation or scenes of similar nature are avoided;
- scenes showing sexual perversions shall be avoided.

4.8 The Committee finds that inspite of such categorical guidelines, many of the films certified by the Board do not adhere to the same, depicting scenes which are regressive in nature, portray women in bad light and indecently represent them. Nobody can deny the fact that the increasing number of cases of women exploitation in the country in recent times is to an extent influenced by the uncalled for projection of women in films which has an adverse impact on the young minds. The content, lyrics, songs, story etc of films influence the behaviour and attitudes of youngsters who tend to imitate and learn from them. It is, therefore, considered necessary to adopt some remedial or preventive measures, especially by the Central Board for Film Certification regarding the quality of films. The Committee is of the view that the Board needs to review its guidelines with respect to indecent representation of women with an objective outlook. Not just this, all the films must adhere to these guidelines which can be enforced by the Board by certifying only those films which do not in any way represent women indecently.

4.9 Committee's attention was persistently drawn to the fact that some of the songs included in the duly certified films violated the guidelines prohibiting indecent representation of women.

Such songs were being regularly shown through other mediums. When asked to specify the preventive as well as remedial measures, if any, initiated by the Board in this regard, the Committee was informed that majority of the songs objected by the audience were either lifted from 'A' rated films or they themselves had been granted 'A' rating. It was the non-implementation of provisions of the Cinematograph Act by audio-visual media, especially TV and radio channels as the Cable TV Network Act should be strictly implemented and 'A' rated songs should not be telecast on TV. The Committee was further informed that the Committee of Experts constituted by the Ministry to look into film certification issues had already taken up for discussion the issue of indecent song lyrics and how can such songs be prevented to be played in a wider public space. It was admitted that in the pretext of audio launch and cinema news, lots of objectionable and sometime, uncertified version of songs got to reach the public. Suggestion of the Board for curbing this practice was to hold the producer and the lab from which uncertified film content like song got leaked as responsible and initiate penal action against the errant producers, lab owner, TV channels, Radio Stations etc. **The Committee notes that remedies for curbing indecent representation of women through film songs being aired through other mediums are already there. The only thing lacking is initiative or intention to do so. The Committee impresses upon the Ministry to approach the Ministry of Information and Broadcasting and other concerned agencies without any further delay and come forward with concrete action plan and monitoring mechanism for curbing such practices.**

V Clause 5

5.1 Clause 5 of the Bill deals with the power to enter and search. The proposed amendment seeks to substitute the following words "subject to such rules as may be prescribed, any Gazetted Officer authorized by the State Government may within the local limits of the area for which he is so authorized" with the following words:

"Notwithstanding anything in the Code of Criminal Procedure, 1973, any police officer not below the rank of Inspector, or any other officer of the Central Government or a State Government authorised by the Central Government or the State Government may"

5.2 The Committee has been given to understand by stakeholders like the Indian Society of Advertisers and CII that the search and seizure provision was too broad and could be a tool for harassment and also result in business rivalry. Also, the power to search and seizure given to a Police Officer not below the rank of Inspector instead of a Gazetted Officer was not found to be acceptable. It was apprehended that it could result in the powers relating to search and seizure

being vested in a person who might be inexperienced, ill-trained and who might not have the requisite expertise or exposure to decide as to on whether there was any contravention of the provisions of the IRWP Act. Reference was made to the recent spate of instances evidencing the abuse of power under the controversial section 66A of the IT Act. The Ministry of information Technology on the 9th January, 2013 had issued an “Advisory on Implementation of Section 66A of the IT Act, 2000” to the Chief Secretaries and DGPs of all States and UTs advising that the ‘concerned police officer or police station may not register any complaints under Section 66A of the IT Act, unless he has obtained prior approval at the level of an officer not below the Deputy Commissioner of Police rank in urban and rural areas and Inspector General level in metropolitan regions’. It was, therefore, submitted that the amendments to the search and seizure provisions were too broad and did not lay down any guidelines in relation to their invocation. It was also suggested that search and seizure could be undertaken only with the specific approval of the Central Body like Advertising Standards Council of India or the Censor Board.

5.3 Rakshak Foundation, in its written submission, highlighted the fact that the amendment Bill not only widened the scope of the Bill by bringing electronic media within the ambit of law but also at the same time conferred wider powers on the police for the implementation of law. Such unfettered powers to a Police Officer was believed to be prone to misuse. It was also feared that general ignorance of people about law made them vulnerable to becoming victims of corruption as a corrupt official would use the power for his own personal gains. Secondly, since the amendment Bill failed to clearly define the term ‘indecenty’, subjective interpretations were bound to happen leading to unnecessary harassment.

5.4 Representatives of Vakul Seema and Associates suggested to include the words ‘or any other content in printed, audio, visual or electronic form’ in clause 5(1)(b) as it was needed to harmonize with the definition of material under clause 2(1)(da). Clause 5(1) (b) would then read as follows:-

“seize any advertisement or material or any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure or any other content in printed, audio, visual or electronic form”.

5.5 The Ministry of Women and Child Development submitted that in view of the larger geographical spread and infrastructure the police officers possessed, it would be more practical if police officers, not below the rank of an Inspector, were statutorily authorized to carry out the search. Further, authorizing an officer from uniformed service also ensured certainty in

enforcement of law. In addition, the State or Central Government might, wherever deemed necessary, authorize any other officer of the State or Central Government, as the case may be, to carry out search and seizure under the Act.

5.6 The Committee understands the apprehensions of the stakeholders regarding different and faulty interpretations of the term ‘indecent’ by police officers and even misuse of powers vested in them. It might lead to unnecessary harassment and also open a scope for corruption. On the other hand, the justification given by the Ministry regarding practical difficulties faced in the implementation of law and therefore authorizing a police officer not below the rank of an Inspector for the enforcement of law seems to be right too. . However, the fact remains that the content or material of any form may be searched and seized, if the need be, for the regulation of indecent representation of women. At the same time, the Committee also feels that the scope for misuse of the provision needs to be plugged. Further, police officers need to be trained properly for dealing with cases of indecent representation of women so that there is no room for subjective and personal interpretations of the term ‘indecent’. The most unacceptable and obvious offences relating to indecent representation of women could be easily identified and the process of search and seizure could be undertaken. In case of any doubt, the Committee feels that opinion/orders of senior police officers must be taken and action taken accordingly. Provision for such an eventuality must be provided in the Bill itself for a better and effective enforcement of the Act.

VI. Clause 6

6.1 Section 6 of the Parent Act deals with penalty. The proposed amendment seeks to make penalties more stringent by increasing the term of imprisonment and fine for the first and consecutive convictions. The amended clause would read as follows:

“Any person who contravenes the provisions of section 3 or section 4 shall be punishable on first conviction with imprisonment of either description for a term which may extend to three years and also with fine not less than fifty thousand rupees but which may extend to one lakh rupees; and in the event of a second or subsequent conviction with imprisonment for a term of not less than two years but which may extend to seven years and also with a fine not less than one lakh rupees but which may extend to five lakh rupees.”

6.2 Many stakeholders were of the view that the punishment provisions were disproportionately stringent. It was suggested that since a similar provision existed in IPC, it may be stipulated that for ‘advertisements’ under this Act, staggered punishments as provided under the Legal Metrology Act, 2009 may be stipulated. On the other hand, few stakeholders believed that

the penalty provided for violation of the Act was very light in comparison to the impact of the offence on the status of girls and women in the country. The undesired impact of advertisements on women and profits amassed by the person or company by making such representation of women and girls were very high and the penalty charged should serve as a deterrent. It was, therefore, proposed that the penalty be increased to 10 per cent of annual income of the accused, whether person or company, for the first conviction. The same might be increased by 25 per cent of the annual income of the accused, whether person or company, for the second or subsequent conviction.

6.3 Rakshak Foundation in its written representation submitted that the amendment Bill proposed increase in penalty to deter people from committing offences under the Act. The possibility of penalty acting as a catalyst in increasing the misuse of the law had been overlooked. For example, in case of cyber technology, defaming someone on moral ground was not so tough.

6.4 Representatives of Vakul Seema and Associates suggested that the punishment on first conviction should be imprisonment of three years and also a fine upto ₹5 lakh and in the event of second or subsequent conviction, imprisonment for a term of 5 years and fine of ₹10 lakh. The reason given for such a modification suggested was that for similar nature of offence, the IT Act, 2000 under section 67 provided punishment on first conviction with imprisonment of either description for a term which might extend to three years and with fine which might extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which might extend to five years and also with fine which might extend to ten lakh rupees. Further, it was important to note that under section 67 of the IT Act, an offence could be personal against an individual whereas under this Bill, indecent representation could be against the entire community of women. Hence, it would be logical if the proposed Bill provided for at least similar imprisonment terms as given under Section 67 of IT Act.

6.5 Agreeing with the contention of the stakeholders that the proposed amendment Bill had wide implications for the entire women community, the Committee is of the view that the penalties should be very high and stringent so that they act as a deterrent for all and results in regulating cases of indecent representation of women. The Committee, understanding the sentiments of the women community, is of the view that women should be represented with utmost dignity and grace and any attempt to indecently depict or objectify them needs to be thwarted or dealt with severely. The Committee is, accordingly, in full

agreement with the Ministry of Women and Child Development for modifying the penalty provision by making it more stringent so as to act as an effective deterrent for indecent portrayal of women. The Committee also takes note of the fact that the penalties proposed in the amendment Bill and the IT Act, 2000 would differ and may create confusion. It would also provide a way to the accused to be convicted under the law prescribing lesser penalty with respect to imprisonment and fine. The Committee, accordingly, recommends that penalties proposed under the amendment Bill and the IT Act, 2000 should be similar to avoid any legal and practical difficulties or create any confusion.

VII. GENERAL ISSUES/CONCERNS

7.1 During its deliberations with different stakeholders, some very pertinent issues raising concerns about areas remaining unaddressed and need for having some regulatory mechanism were persistently raised. The Committee strongly feels that since these issues are of immense importance in the proper enforcement of the Act, the same are required to be elaborated and reflected in the proposed amendment Bill.

NEED FOR A CENTRAL AUTHORITY TO REGULATE INDECENT REPRESENTATION OF WOMEN

7.2 During its deliberations on the proposed amendment Bill, the Committee had time and again come across the need for having a central regulatory authority in the Bill for a better enforcement of the legislation. Many stakeholders were of the view that since the term ‘indecent representation’ was not defined, it was subject to numerous interpretations changing from one cultural context to another. Hence, the need for having an objective and expert body was emphasized upon for taking necessary action in matters of indecent representation of women.

7.3 The Committee has been given to understand that the National Commission for Women had held wide ranging consultations at regional as well as national level with various stakeholders and re-drafted the present Act as ‘Prohibition of Indecent Representation of Women and Children Act, 2009’.The Commission believed that the existing Act lacked teeth and there was no institutional mechanism to hear complaints and provide decisions. The legislation was not being implemented properly by the implementing authorities. The existing mechanisms for regulating indecent representation of women both under IPC and other self-regulatory mechanisms vested with the various autonomous agencies had failed. The provisions in IPC dealing with obscenity were detrimental to the interests of women and let the perpetrator completely free of any liability.

This was a wrong premise of the Act and the relevant provisions in the Penal code. Also, despite the regulatory and legislative instruments that were available, public debate continued to rage about commodification of women and there were deep concerns about depiction of women in the electronic and print media. In this backdrop, the Commission proposed the creation of a nodal authority to oversee the proper implementation of the Act. Besides that, the Commission also suggested that there should be fast track courts for speedy disposal of such cases. There was also a need for sensitization of police, judiciary which would result in reducing acquittal and increase in conviction ratio in these cases. Further, it was suggested that prohibition of pornography which was easily available through internet may be brought within the purview of the Act.

7.4 Elaborating on the proposed central authority, the NCW submitted that it would be appointed by the Central Government and would govern and regulate the manner in which women were represented in any document published/broadcast/telecast. It would be headed by a Member Secretary of NCW and would have representatives from Advertising Standards Council of India, Press Council of India, Ministry of Information and Broadcasting and one member experienced in working on women's issue to be nominated by the NCW. The central authority would have the powers/functions to receive appeals/complaints or grievances regarding a programme or an advertisement broadcast or publication, to investigate or take *suo moto* notice and examining matters relating to complaints under Sections 292-294 of the IPC, to consider such complaints and facilitate their settlements within sixty days etc. This authority could then issue orders to the defaulter advertiser and the publisher to stop its telecast or advertisement or publishing of the objectionable programme, direct suitable edition to the advertisement or the programme etc. This authority would also authorize any Gazetted Officer to enter, search and seize any objectionable content or material.

7.5 Another stakeholder, Vakul Seema & Associates suggested that until the Bill introduced a separate chapter on Regulator, as merely by modifying certain definitions, the desired change would not be there. A Regulator needs to be appointed under the Act, who as a quasi-judicial person should be able to hold inquiry, penalize and impose monetary liabilities against such 'gross' indecent visual or audio or electronic form material. The Regulator would work as an adjudicating officer. Every State could have one such Adjudicating Officer having jurisdiction over such issues. An appeal could be addressed against the order of the Adjudicating Officer before the appellate authority/bench constituted under this Act.

7.6 The Committee has been given to understand that the suggestion of NCW regarding appointment of Central Authority was not accepted by the Ministry. Reason being that the same was not found acceptable by the Inter-Ministerial Group. The Committee observes that one argument given against the proposal was that creating a body under the law to regulate and govern representation of women in media is contradiction in itself, as the express purpose of the Act was to prohibit indecent representation of women. The Committee also finds that this issue was raised again and again in the meetings of the IMG. The Ministry of Information and Broadcasting drew the attention of the members to the existing self-regulatory mechanisms such as the News Broadcasters Association (NBA) and the Indian Broadcasting Foundation with its newly constituted Broadcasting Content Complaints Council (BCCC) as also the Programme and Advertising Codes under the Cable Television Network Rules of 1994. Also there were other autonomous mechanisms such as the Censor Board and the Press Council of India to regulate and redress the issue of content in films and print media.

7.7 The Committee finds no merit in the justification of the Ministry regarding not accepting the suggestion of the National Commission for Women for having a central regulatory authority. The Ministry is mandated to give due consideration to very valid observations and recommendations made by the statutory body-based on its interactions with the real stakeholders working for the welfare of women at the grassroots level. When the national body representing women was emphatically highlighting the necessity of such a body, the Ministry has to look at the issue from the perspective of women and their interests keeping into consideration the realities of our society and the increasing number of instances/cases of indecent representation of women.

7.8 The Committee, while taking note of the amendment Bill proposed by the National Commission for Women having a provision of regulatory mechanism, raised this issue with all the stakeholders appearing before it. The need for having such a mechanism was emphasised by all of them. The Committee also made an attempt to make an assessment of the status of complaints filed under the Act. The Committee finds that the disposal rate of such complaints is quite discouraging as is evident from the ICRB data details indicated below:

Year	Total No. of cases pending including pending from the previous year	Trials completed		Pending trial at the end of the year
		Convicted	Acquitted	

2009	1809	786	74	949
2010	1830	779	58	993
2011	1435	372	57	1006

7.9 The Committee also finds that safeguards against indecent representation of women are provided under various provisions of IPC, IT Act and the Cinematograph Act. However, as admitted by the Ministry, there are certain limitations in the existing legal and regulatory framework. Besides lacking specific provision relating to indecent representation of women, focus is missing in these laws, which is necessary to protect women who tend to be more vulnerable to exploitation, particularly in the face of increasing use of advanced technology and media and communication devices in our everyday life. Thus, it is very clear that the objective behind the Act is to address adequately the twin issues of indecent representation and derogatory reference to women, both in print and electronic medium.

7.10 The Committee would like to highlight the fact that inspite of the Ministry's claim that existing bodies and mechanisms in the fields of advertising, film certification etc have the mandate of regulating objectionable content in their respective areas, the desired result of regulation of indecent representation of women has not been effective as evident from quite a few advertisements, films, songs, publications etc. appearing from time to time. Nobody can deny the fact that this increasing trend of indecent representation of women is adversely affecting the young minds. The Committee strongly believes that a legislation for regulating and prohibiting the increasing incidence of indecent representation of women needs to be effectively implemented and must have solid institutional mechanism to deal with complaints in this regard. The Committee is well aware of the fact that the express purpose of both the parent Act and the draft Bill is to prohibit indecent representation of women. The Committee is, however, not inclined to agree with the contention of the Ministry that creation of a body to regulate and govern representation of women through various mediums would be contradictory in itself. The fact remains that the objective as envisaged in the Act has virtually remained on paper. Also, the so-called self regulation mechanisms are having mainly members having business interests leading to subjectivity in their approach.

7.11 The Committee is of the considered view that creation of a central authority to regulate the cases of indecent representation of women and empowering them to receive or take complaints and decide upon them would be the most effective way to enforce the legislation. The creation and composition of such an authority as suggested by the National Commission for Women would be quite appropriate in effectively tackling such cases. The Committee feels that having a central authority for the regulation of indecent representation of women would ensure utmost seriousness in such matters. The need of the hour is to regulate the increasing instances of indecent representation of women and uphold the dignity of women. Moreover, the increasing cases of exploitation of women in recent times make it more crucial to avoid portrayal of women in negative and regressive ways and also altogether stop commodification of women. Hence, the Committee is of the view that the Ministry should consider including a provision creating a central authority with adequate powers and functions as proposed by the Commission.

7.12 The Committee would also like to point out that having a central authority would also allay the apprehensions expressed by various stakeholders regarding subjective interpretations of ‘indecent representation’ by police officers leading to unnecessary harassment. The central authority would have members from all important bodies like the Advertising Standards Council of India, the Press Council of India, Ministry of Information and Broadcasting headed by Member-Secretary, NCW. This would eliminate any lop-sided or faulty interpretations of ‘indecent representation’ and would not become a tool for misuse by any public authority. The Committee, therefore, feels that the Ministry should contemplate about the very valid proposition made by the nodal body for the welfare of women and include the mechanism of having a central authority in the Bill itself.

7.13 The Committee can visualize another alternative if the proposed regulatory authority under the Act is not found feasible. The National Commission for Women is the nodal body for protecting the interests of women in the country. It was impressed upon the Committee by majority of the stakeholders that the National Commission for Women should be assigned a role in such matters. One argument given against this suggestion was that the Commission is by, by nature, a recommendatory body and while it has the power to *suo moto* take up cases of violation of women’s rights, it will not have the mandate to try a complaint under the law as an offence. The Committee strongly feels that it is high time that the role and

mandate of the National Commission for Women is reviewed and strengthened adequately, particularly in view of rising cases of exploitation of women. One example of the National Commission for Protection of Child Rights is already there. Nobody can deny the fact that the National Commission with its presence in the states through State Commissions would be better equipped to address such cases.

OVERLAPPING BETWEEN ACTS/LEGISLATIONS

7.14 The Committee notes that there are a number of laws with regard to the indecent representation of women like the Indian Penal Code, Cinematograph Act, 1952, Press Council Act, 1978, Cable Television Network Rules, 1994, Information Technology Act, 2000 and Indecent Representation of Women (Prohibition) Act, 1986. Section 292, 293 and 294 of IPC, guidelines of the Central Board for Film Certification, Section 13 and 14 of the Press Council Act, 1978, Rule 6 of the Cable Television Network Rules, 1994, Section 67 of the IT Act, 2000, all specifically deal with regulation of indecent representation of women and entail that no content/material should contain anything obscene, vulgar, derogatory to women, sexually explicit and be insensitive to the value and standards of society.

7.15 Representative of Lawyer's Collective submitted to the Committee that all such Acts must have the same level of scrutiny on the question of what was obscene. There should be a synergy in the process of amending the law.

7.16 The Committee is in agreement with the suggestion that common terms in all the Acts concerning indecent representation of women should be defined in a similar fashion. Hence, there should be synergy among all the concerned legislations when amendments are made in the Parent Act relating to indecent representation of women. Further, penalties as specified under the IT Act and in the proposed amendment Bill should not differ but remain the same. This would avoid all kinds of confusion and complications when an offender is booked under both the Acts. The Committee, therefore, recommends to the Ministry that steps should be taken to amend the related Acts also so that an eventuality of contradiction and confusion does not arise.

AWARENESS GENERATION

7.17 The Committee is of the view that society in general and women specifically need to be made aware about the adverse indecent representation of women which has become so rampant in our everyday life that instances of indecent representation of women are being accepted although with reluctance. The Committee feels that women themselves sometimes fall prey to such wrong and indecent portrayal due to their lack of awareness. Film makers or advertisers also tend to portray women in such a way so as to grab the attention of the public with the sole motive of earning profits.

7.18 The Committee is of the firm view that women cannot be viewed as a commodity and portrayed indecently for commercial interests. Commercial industry needs to realize and stop depiction of women in an indecent manner. The self-regulating agencies like Advertising Standards Council of India, Press Council of India, Central Board for Film Certification etc need to strictly adhere to their guidelines in respect of indecent representation of women. They need to have awareness generation programmes to spread awareness amongst common people, writers, publishers, internet and mobile service providers, film makers, lyricists, advertisers etc about such representations and also about the penalties which could be imposed on them in case of violation of the legislation.

7.19 The Committee believes that the National Commission of Women has an important role to play in creating and generating awareness amongst people about indecent representation of women. The Commission needs to organize awareness generation camps/programmes in this regard for the film fraternity, advertisers, writers, publishers, internet and mobile service providers etc so that depiction of women in an obscene or objectionable way is stopped and regulated. Further, the Commission can also make efforts for spreading awareness amongst the general public about the legislation and the mechanism of filing a complaint and getting redressal.

INDECENT REPRESENTATION OF CHILDREN

7.20 Attention of the Committee has been drawn to the indecent representation of children including child pornography. The Committee views it as an issue of serious concern wherein children are portrayed indecently or made to do certain acts which are unbecoming for their age, thereby corrupting innocent minds. Such offensive depiction of children would have an adverse impact on the minds of children themselves and also on the minds of pervert adults who may take advantage of vulnerable children and sexually exploit them. Also,

indecently representing children would influence the attitude and behaviour of children who may imitate such acts and enter an adult realm too early in their lives. This would definitely lead to many psychological, physiological and emotional problems in the child and he/she may not turn out to be a normal adult.

7.21 The Committee notes that the Protection of Children from Sexual Offences Bill, 2011 deals with sexual offences against children and having a child-friendly procedure for investigation and handling of child abuse cases. However, the arena of indecent representation of children is not dealt with in this legislation. It is, therefore, important to have a law on such depiction of children. Even though child pornography is banned in the country, objectionable content/material is often viewed/circulated. The Committee believes that the Ministry could focus on this area of concern and have suitable mechanisms under the relevant law to deal with cases of indecent representation of children.

LIVE PERFORMANCE EXCLUDED FROM THE BILL

7.22 Attention of the Committee has been drawn to the fact that live performances of songs, dance or any other kind of shows are not included within the purview of this amendment Bill. The songs of live performances were also available to the public via You Tube.

7.23 The Committee is of the firm view that live shows indecently representing women in any manner whether through song, dance, comedy etc. where large number of public gather together to enjoy the show need to be curbed. The Committee understands that at present such violations are dealt with under section 294 of IPC which provides lesser punishment when compared with that provided for indecent representation of women under the present Act. The Committee strongly feels that such live programmes lead to more adverse impact on the young minds. The quantum of penalty has to be at par in both the situations. The Committee, accordingly, recommends that relevant provisions of IPC vis-a-vis provision of the present Act may be reviewed and modification brought out accordingly.

8. The enacting formula and the title are adopted with consequential changes.

9. The Committee recommends that the Bill may be passed after incorporating the amendments/additions suggested by it.

10. The Committee would like the Ministry to submit a note with reasons on the recommendations/suggestions which could be incorporated in the Bill.
