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## Media, women, and law: Judicial Trend

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*Media is considered a “mirror of modern society”. An individual outlook is highly influenced by the media. Press and media significance in building up a gender-neutral society cannot be overlooked. This article aims at exploring distinct facets including the media's responsibility toward the decent representation of a woman, focusing on the expression 'indecenty' and 'obscenity', and the legislative enactments towards control of indecenty. Furthermore, it discusses freedom of speech in contrast with obscenity, women's rights in contrast with media with the recommendations for working of media persons.*

**Keywords:** *women empowerment, participation, scrutiny, ethics, code of conduct.*

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### INTRODUCTION

Manu the lawgiver stated, "during childhood, the woman is under the control of her father; during her youth, she is under the control of her husband; in old age, she is under the control of her son; a woman is never fit for independence".<sup>1</sup> Later during the 20th century, the poets and writers projected women as a second self. The first fifty years of the present century provide a large number of instances in literature of renowned poets describing the pathetic and unredeemed condition of Indian women. After independence Amrita Preetam in Punjabi,

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<sup>1</sup> AS Altekar, *The position of women in Hindu Civilization* (7th Edition, Motilal Banarsidas 1956) 147

Kamla Das in English, and IslatChughtai in Urdu were a few examples that began to speak for women.<sup>2</sup>In a traditional society like India since ages phase like "weaker sex" is addressed to women. Unless radical and reformative changes by collaborative determinant efforts of social organisations, government, and male dominant society are made in the course of acknowledgement of an equal share of women towards the headway of the nation and society, enormous voices in support of women will stay tentative and vulnerable.

### **FREEDOM OF THE PRESS AND FREEDOM OF SPEECH AND EXPRESSION**

In *Romesh Thappar v State of Madras*<sup>3</sup> Justice PatanjaliSastri observed that "Freedom of Speech and Expression and Freedom of Press lay the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular government is possible ". In the case of the Secretary Ministry of I& B v Cricket Association of Bengal,<sup>4</sup> Supreme Court has widened the scope and extent of the right to freedom of speech and expression and held that the right includes the right to communicate effectively, there are no geographical barriers to communication. The State monopoly on electronic media is not mentioned in clause (2) of Article 19<sup>5</sup>. The government can impose restrictions such as right only on grounds specified in clause (2) of Article 19 and not on any other ground.

### **RELATION BETWEEN FREEDOM OF EXPRESSION AND FREEDOM OF THE PRESS**

Freedom of expression means the right to express one's convictions and opinions and also to seek, receive and impart information and ideas, either orally or by written matter, or by legally operated virtual auditory devices. Freedom of the press means the right of an individual to print and publish through printing, subject to the right of society to restrict publication which is not conducive to collective interests"<sup>6</sup>. This shows that there is no material difference

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<sup>2</sup> Anil Kumar Dixit, *Mass Media* (1st Edition, Rajiv Jain for Aman Publications 2012) 70

<sup>3</sup> *Romesh Thappar v State of Madras* (1950), AIR 124

<sup>4</sup> *Secretary Ministry of I&B v Cricket Association of Bengal* (1995), AIR 1236

<sup>5</sup> Constitution of India, 1950, art.19(2)

<sup>6</sup> BR Sharma, *Freedom of Press* (Deep and Deep Publication 1994)

between the freedom of speech and the press as both are subject to the same restriction outlined in Article 19(2) of the constitution.<sup>7</sup>

### **WIDTH OF EXPRESSION DECENCY, OBSCENITY, AND MORALITY**

In *Samaresh Bose and others v Anam Mitra and others*<sup>8</sup> the court said that "in judging the question of obscenity, the judge should try to place himself in the position of the author and thereafter apply his judicial mind dispassionately to decide whether the book in question be said to be obscene".

### **THE DISTINCTION BETWEEN INDECENCY AND OBSCENITY**

So far as 'obscenity' is concerned it is covered by the expression 'public morals' and Section 292, IPC uses the term 'obscene'. 'Decency', however, includes anything which an ordinary decent man or woman would find to be shocking, disgusting and revolting.<sup>9</sup> The distinction between indecency and obscenity has been explained by Justice LC Parker in the case of *Stanley*<sup>10</sup> as under "the words indecent and obscene convey one idea, namely, offending scale and obscene at the upper end of the scale - an indecent article is not necessarily against the recognized standards of propriety, indecent being at the lower end of the obscene, whereas an obscene article almost certainly must be indecent". In *Bobby Art International v Om Pal Singh Hoon*<sup>11</sup> the court explained that nakedness does not always arouse the baser instinct. The scenes of nudity and rape and the use of expletives were in aid of the theme and intended not to arouse prurient or lascivious thoughts but revulsion against the perpetrators and pity for the victim.

### **EFFECT ON READERS**

- It is not the intention of the writer but the effect on the readers which constitutes the test of obscenity viz. whether the matter in question tends to deprave and corrupt those

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<sup>7</sup> DD Basu, *Law of the Press in India* (3rd Edition, Prentice-Hall of India 1996)

<sup>8</sup> *Samaresh Bose and others v Amal Mitra and others* (1986), AIR 967

<sup>9</sup> *CF knuller v D.P.P.*, (1972) 2 ALL ER 898 (905) HL

<sup>10</sup> *Stanley v Georgia* [1965] 49 Cr App R 1975 [Eng CA] 180-181

<sup>11</sup> *Bobby Art International v Om Pal Singh Hoon* (1996), AIR 1846

whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.<sup>12</sup>

- In determining the effect of the offending publication, the court is not to consider the effect on an isolated reader but the 'class' of readers into whose hands the book is likely to fall.<sup>13</sup>
- The State should have wide powers to suppress child pornography and the court should not apply to it the same standard as it would apply in the case of adult literature.<sup>14</sup>
- It is suggested that the opinion of men of literature or others would not be relevant in deeming the obscenity of an offending publication.<sup>15</sup>

#### **On the other hand -**

The context of a publication becomes important from this standpoint;

- Intimate illustrations in photographs, and descriptions of the sex organs though in a sense immodest are not considered obscene if included in books on medical science.<sup>16</sup>
- The foregoing tests of obscenity apply to books, other publications, and films alike.<sup>17</sup>

#### **On the other hand -**

- A passage from a religious book may become obscene if it finds a place in a journal intended for the general public.<sup>18</sup>

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<sup>12</sup> *Ranjit D. Udeshi v State of Maharashtra* (1965), AIR 881; *KA Abbas v Union of India* (1971), AIR 481

<sup>13</sup> *Chandrakant v State of Maharashtra* (1970), AIR 1390

<sup>14</sup> *Miller v California* [1973] 413 US 15.

<sup>15</sup> *KA Abbas* (n 12)

<sup>16</sup> *State of UP v Kunji Lal* AIR 1979 ALL 614(

<sup>17</sup> *Ranjit* (n 12)

<sup>18</sup> *R v Ghulam Hussain* AIR 1917 Lah 219

## THE DISTINCTION BETWEEN PORNOGRAPHY AND OBSCENITY

Pornography denotes writings, pictures, etc it tenders to arouse sexual desire, while obscenity includes writing, etc not intended to do so but which has the tendency. Both offend public decency and morals.<sup>19</sup>

## INDECENT REPRESENTATION OF WOMEN IN ADVERTISEMENTS

The Indecent Representation of Women Prohibition Act, 1986 aims to prohibit indecent portrayal of women through advertisements. The liability of the Press for criminal content rests on the proposition that any communication is likely to interfere with the administration of justice under any of the sub-clauses of Section 2(c) of our Contempt of court act 1971.<sup>20</sup> The act also prohibits the production, selling, hiring, distributing, circulating, and sending, of photographs, representations, or figures which contain an indecent representation of women.<sup>21</sup>

## INDECENCY AND NUILITY: PRINCIPLE OF TOLERANCE

The Supreme Court in *Ranjit D. Udeshi v State of Maharashtra*<sup>22</sup> laid down the test of obscenity is whether the matter charged as obscene tends to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall. Community Standard of Tolerance: The Community Standard Test was replaced by the Community Standard of Tolerance.<sup>23</sup> It was observed that material can be obscene if it is harmful, or if it exceeds the community standard of tolerance if it portrays persons in a degrading manner as objects of violence, cruelty, or other forms of dehumanising treatment.<sup>24</sup>

The Division Bench observed that the display of scantily clad, female models for products like car batteries, tobacco, etc should be stopped and posters and hoarding of films (A certificate) would now have to be displayed in a healthier and less revealing manner in public places. It

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<sup>19</sup> *PK Samanth v State of Kerala* (1990) CriLJ 542

<sup>20</sup> Indecent Representation of Women Prohibition Act, 1986, s 2

<sup>21</sup> *Ibid*

<sup>22</sup> *Ranjit D. Udeshi* (n 12)

<sup>23</sup> *Towne Cinema Theatres Ltd. v The Queen* [1985] 18 CCC 3rd 193

<sup>24</sup> *Ibid*

was observed that the concept of obscenity would differ from country to country depending on the standard of morals and contemporary society.<sup>25</sup>

### **FREEDOM OF SPEECH AND EXPRESSION IN CONTRAST WITH OBSCENITY**

Exception of Section 292<sup>26</sup> of the Indian Penal Code: this section does not extend to any book, pamphlet, writing, drawing or painting kept or used bonafide for religious purposes.<sup>27</sup>

- Article 19(1)<sup>28</sup> reads: All citizens shall have the right - (a) to freedom of speech and expression.
- Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the state from making any law, insofar as such law imposes reasonable restrictions in the interest of public order, decency, or morality.

The principles may differ starting with one society and then onto the next, it might change now and again. For example, the Hon'ble Supreme Court condemned the novel 'Lady Chatterley's Lover' as obscene.<sup>29</sup> The norm of ethics in India is quickly evolving. Multitudinous books, stories, and literature containing intercourse and romance are promptly accessible to adults and teenagers. Teens are revealed to be a sexual substance by print media and electronic media. In the field of media outlets particularly the Indian women actresses displayed in abbreviated blouses and skirts, uncovering the body parts which would have been marked as contemptuous to public morality a very long time back are being taken for granted without defiling the brain. The viewpoint espoused by the Hon'ble Supreme Court<sup>30</sup> regarding the publication of indecent matters in a daily newspaper - when the traditional legal framework falls short in addressing the complexity of contemporary needs, it may be necessary to redefine and interpret the statutes if there is certain vagueness to yield intelligible standards. Anything that may hinder the interest of large, have immoral or unethical

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<sup>25</sup> Bobby Art International and others (n 11)

<sup>26</sup> Indian Penal Code, 1860, s 290

<sup>27</sup> KA Abbas (n 12)

<sup>28</sup> Constitution of India, 1950, art.19(1)

<sup>29</sup> Ranjit D. Udeshi (n 12)

<sup>30</sup> *Ajay Goswami v Union of India* (2006) Writ Petition (Civil) No. 384/2005

influences on young minds, any such kind of material is considered to be unsafe to society. Depiction of any object that devalues or it intends to corrupt persons or material ill-suited for printing i.e lewd, filthy, and so on subject to reasonable restrictions and freedom to produce or circulate obscene material that does not fall under the ambit of a 'decent society' are subject to legitimate limitations. Welfare or well-being of the vulnerable sections is the paramount duty of the judiciary and thus it was observed that the legal definition<sup>31</sup> of "undue" must also encompass publications harmful to members of society and therefore to society as a whole. Our civil and political rights are not subject to legitimate limitations is the highest mistake of a citizen because there is an inherent duty with every corresponding right to conform to the rule of law<sup>32</sup>. In the era of scientific advancement and technological explosion, special laws are needed to curb all the unsocial activities that may endanger peace and tranquillity.

#### **DEVLIN - HART DEBATE**

The concept of 'legal moralism' is the central theme of debate. Devlin argues in favour of legal moralism - positive morality is to be enforced, regardless of the undue suffering that it may cause to some individuals. On the contrary, Hart believes that the purpose of the law is to protect an individual.

#### **ADMISSION AND REPORTING OF MATRIMONIAL PROCEEDINGS<sup>33</sup>**

- Indian Divorce Act Section 50<sup>34</sup> - pressmen may be directed by the court to withdraw, at any stage of such proceedings.
- Special Marriage Act 1954 Section 33<sup>35</sup> - a proceeding under this act shall be conducted in camera if either party desires or if the court thinks so.
- Hindu Marriage Act 1955 Section 22<sup>36</sup> - prohibits and penalizes the printing or publication of any report of such in-camera proceedings.

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<sup>31</sup> *Cinema Theatre Ltd. v The Queen* (1985) 1 SCR 494

<sup>32</sup> *Uniform forum for civil liberties v Union of India* (1984)

<sup>33</sup> Anil Kumar Dixit (n 2)

<sup>34</sup> Indian Divorce Act, 1869, s 50

<sup>35</sup> Special Marriage Act, 1954, 33

## LEGISLATIVE ENACTMENTS TO CONTROL INDECENCY AND OBSCENITY

- Indian Penal Code Section 228(A)<sup>37</sup> - this section punishes any false statement or published by any person including a journalist.<sup>38</sup>

### *Judicial view on obscenity*

The court cannot act as a censor or authority of public morality or decency.<sup>39</sup> Obscene means "offensive to chastity or modesty, expressing to the mind or view something that delicacy, purity, and decency forbid to be expressed, impure as an obscene picture, anything expressing in haste and lustful idea, impure, indecent".<sup>40</sup>

- Press (Objectionable Matters) Act (53 of 1951) and Section 292, 293 IPC<sup>41</sup> - Press (Objectionable Matters) Act (53 of 1951) does not repeal Sections 292 and 293 IPC. Section 292 may be read along with Section 67<sup>42</sup> of the Information Technology Act 2000.
- Indian Post Office Act 1898 - prohibition of transmission by post of anything indecent.
- The Young Persons (Harmful Publication) Act, 1956.
- The Indecent Representation of Women (Prohibited) Act 1986 - the main feature of the act is to check indecent representation of women in any way tending to derogate or to degrade women by their business propaganda as a means of advertisement.<sup>43</sup> The expression "Obscenity" is not defined under Section 3(7) of the Indecent Representation of Women Prohibition Act and Section 292 of IPC. The Supreme Court declared the obscene means "offensive" to modesty or decency, lewd, filthy, and repulsive.<sup>44</sup> Our society has witnessed a racial transformation. The term "Obscenity" is too inescapable

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<sup>36</sup> Hindu Marriage Act, 1955, s 27

<sup>37</sup> Indian Penal Code, 1860, s 228(A)

<sup>38</sup> *V.P. Shanmugam and Anr. v Thangavelu* (1958) M.P. No. 67/1957

<sup>39</sup> *G Jairaj v Karnataka* (1999) ILR 1997 KAR 2227

<sup>40</sup> *D. Pandurangan and Anr. v Unknown* AIR 1953 Mad 418; *State v Thakur Prasad* AIR 1959 All 49

<sup>41</sup> Indian Penal Code, 1860, ss 292, and 293

<sup>42</sup> Information Technology Act, 2000, s 67

<sup>43</sup> Indecent Representation of Women (Prohibition) Act, 1986, s 3(7)

<sup>44</sup> *Virendra v State of Punjab* (1957), AIR 896

by such changes in attitudes and community standards. What might be considered indecent to social mores in the past may not be the same in today's modern-day society. Another question that arises is who is best qualified to decide what exactly comes under the purview of morality? The custodian i.e Supreme Court<sup>45</sup> observed that in judging the question of obscenity the judge should place himself in the position of the author, the reader of every age group, and therefore apply his judicial mind. When we talk about the provision Article 19(1)(a) it is dynamic and cannot be narrowed down. The need for hours is a complete transformation in jurisprudential thought strengthening the role of the censor board and media representatives in civil society.

## WOMEN'S RIGHTS VERSUS THE ROLE OF MEDIA

50% of the world's population is represented by women. Almost performing two-thirds of working hours she is entitled to only one-tenth of income and less than one percent of the world's property.<sup>46</sup> Inequality and injustice on her part are witnessed across the nations, when it comes to her contribution to marginal employment it is overlooked and generally invisible. Gender stereotypes are one of the reasons why women are lacking in position and power regardless of their tremendous efforts. The prevailing social construction of gender largely relegates women to the inside sphere.<sup>47</sup> Responsibilities including chairing, managing a fragile environment, and unpaid labour in traditional sectors created gender stereotypes and deprivation on her part. The question that arises is: What kind of initiatives are the burning need for making women equal partners in the national development process? Firstly, education being one of the effective instruments serves as a safeguard of equality and liberty. Secondly, to equalize her self-worth, women must be equipped to make independent choices. Thirdly, media reporting cases must be controlled by appropriate plans. Fourthly, the disparity on account of regional viewpoints must be analyzed and seriously examined.

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<sup>45</sup> Samaresh Bose and Anr. (n 8)

<sup>46</sup> Philip Cohen, 'Women Own 1% of World Property': A Feminist Myth That Won't Die' (*The Atlantic*, 8 March 2022) <<https://www.theatlantic.com/sexes/archive/2013/03/women-own-1-of-world-property-a-feminist-myth-that-wont-die/273840/>> accessed 13 June 2022

<sup>47</sup> Sajjad Jamali, 'Gender Sensitization of Police Officers' (*Academia*)

<[https://www.academia.edu/3751323/Gender\\_Sensitization\\_of\\_Police\\_Officers](https://www.academia.edu/3751323/Gender_Sensitization_of_Police_Officers)> accessed 13 June 2022

## NEED FOR SCRUTINY: CASES REPORTED BY MEDIA

It is well said "the more the power, the greater the responsibility"- Voltaire Black in the 18th century. Press and media being significant and impacting components, the power conveys with it a commitment to act with responsibility. Let's take a couple of examples: Aarushi Talwar, Jessica Kal, and Priyadarshini Mattoo cases are well known wherein intervention of media led to speedious conduct of a trial. It was observed in the kidney racket case (Dr. Amit was arrested in Nepal since he used to operate a kidney-selling business) and in the Nithari case (media traced the bungalow no.5 in Noida) in these cases, media focus led to a quick verdict and justice was achieved. On the contrary, the negativity in the media can't be neglected. In the context of the judiciary, the positive performance is not highlighted but failure, however insignificant it may be, is picked up, blown out of proportion, and published. It was observed that police custody is not to be misused by allowing the media to interview the accused persons when they are in police custody under the orders of the court.<sup>48</sup> It was rightly pointed out by the court that "a trial by press or electronic media under such pressure and the judge is to be guided strictly by rule of law".<sup>49</sup> Alongside the judicial procedures, the contribution of the media has been very beneficial on various occasions yet it should be recalled that the liable organization must essentially play out its obligation thus it is critical for the reporters not to overstep the boundary between 'reporting' and 'judging'.

## PUFFERY ADVERTISEMENTS IN CONTRAST WITH THE CODE OF ETHICS

Critics claimed Puffery forms the main element of most advertisements thus puffery is considered to be an opinion and not factual information and people are free to give their opinions.<sup>50</sup> The 'Indecent Representation of Women' means the depiction in any manner of the figure of a woman, her form of body or any part thereof in such a way as to have the effect of being indecent, or derogatory or denigrating, women or is likely to deprave, corrupt or injure the public morality or morals.<sup>51</sup> There are often instances in visual media related to

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<sup>48</sup> *State v Mohd. Afzal and others* (2003) VIIAD Delhi 1

<sup>49</sup> *State of Maharashtra v Rj Gandhi* (1997) Criminal Appeal No. 840/1997

<sup>50</sup> Chris Newbold, and et al., *The Media Book* (1st Edition, Great Britain by Arnold 2002) 241

<sup>51</sup> Indecent Representation of Women (Prohibition) Act, 1986, s 2(c)

advertisement example: 'Kamsutra', 'deluxe nirodh', 'manforce', 'wild stone deo' (2007), 'jack and jones India' (controversial advertisement promoting sexism) are among few that unnecessarily display the exposed figures of females. Even the promotion and marketing of such products with so much lewd and lascivious display of sex cannot be denied being obscene. Such indecent representation or write-ups not only results in irreparable injury to young minds, but on other hand, but also amounts to the indecent representation of women.

**Code of Ethics:** VirSanghvi suggested that any code of ethics must cover five basic areas - defamation and privacy, acceptance of gift and hospitality, conflict of interest, the willingness of the investigative reporter to accept 'leaks', and the role of the proprietor. The universally accepted tenets are - "the story must be of public interest i.e. it conforms to the universally accepted human rights or right of information"<sup>52</sup> The code of ethics of the All India Newspapers Editors conference asks journalists to serve and guard public interest, to be alive to fundamental human and social rights, to observe restraint in reports dealing with tensions leading to or likely to lead to public disorder and to assume responsibility for all the information published.<sup>53</sup>

## **MEDIA UNDER OBLIGATION IN REPORTING THE MATTERS**

"Freedom of expression and accountability are to be balanced with judicial independence". In matters wherein the rights are yet to be adjudicated or in sub-judice matters it is expected that such legitimate criticism must be made by the media only when the matter is settled down and not during the pendency. Proportionality being the elementary principle is based on the notion of balance. Press and media are under obligation to hold the balance between autonomy of the judiciary and freedom of speech. The question that arises is: Does bringing the media under scrutiny curtails the freedom of the press? The doctrine of modern ultra vires can find an

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<sup>52</sup> Navanethem Pillay, 'Are Human Rights Universal' (*United Nation Chronicle*)

<<https://www.un.org/en/chronicle/article/are-human-rights-universal>> accessed 13 June 2022

<sup>53</sup> YK D'Souza, *Freedom of Press, Constitution of Media Responsibility* (1st edition, South Asia Books 1998)230 and 231

answer to this problem. For example: in the UK<sup>54</sup> rule-based judicial review is put on a higher pedestal than intent-based judicial review.

## **NATIONAL HUMAN RIGHTS COMMISSION GUIDELINES**

NHRC framed guidelines to "assist" the media in collaboration with UNICEF and Prasar Bharti. The guidelines state, "it is important that the issue of sexual abuse is presented as a serious violation of rights, media should through sensitive and meaningful projection and coverage of the issue, be instrumental in increasing a sense of moral indignation and outrage over incidents of sexual abuse". The other "don'ts" in the guidelines include: "media should not unwittingly glorify the act of sexual abuse by giving undue prominence to the perpetrator".

## **RECOMMENDATION AND CONCLUSION**

The role of the media as a public informer and educator is accepted, its privileges, duties, and obligations get automatically defined as that of public utility service. The need of the hour is to have a right to information act for every state with sanction provisions in case information is not furnished. Ombudsman in the media is highly suggested. The media ought to try not to portray the story given tattle about the ongoing investigation being led by the authorities. AarushiTalwar case is a good example that provides an opportunity to media to re-examine their code of ethics for this, it is suggested that news channels should fix a period between telecasting advertisements and sensitive matters in addition to this to have separate legislation to have control upon code of conduct of media and press. One of the key functions of the Press Council of India is related to punishment for objectionable writings, thus the requirement is to have legal sanctions for such sorts of writings. Gender is a significant element that has an effect on the distinct components of our society for that reason it suggested women's "involvement and access to the media" may additionally be beneficial toward female empowerment in addition sensitization amongst media about gender problems may additionally assist women shifting ahead in this process.

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<sup>54</sup> Lorraine E Talbot, 'Critical Corporate Governance and the Demise of the Ultra Vires Doctrine' (2009) 38 (2) Common Law World Review <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1396588](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1396588)> accessed 13 June 2022