

The Indecent Representation of Women (Prohibition) Act, 1986¹

[Act 60 of 1986]

[23rd December, 1986]

An Act to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or incidental thereto

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:—

Statement of Objects and Reasons.—The law relating to obscenity in this country is codified in Sections, 292, 293 and 294 of the Indian Penal Code. In spite of these provisions, there is a growing body of indecent representation of women or references to women in publications, particularly advertisements, etc. which have the effect of denigrating women and are derogatory to women. Though there may be no specific intention, these advertisements, publications, etc. have an effect of depraving or corrupting persons. It is, therefore, felt necessary to have a separate legislation to effectively prohibit the indecent representation of women through advertisements, books, pamphlets, etc.

The salient features of the Bill are:—

- (a) Indecent representation of women has been defined to mean the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent or derogatory to, or denigrating, women or is likely to deprave, corrupt or injure the public morality or morals.
- (b) It is proposed to prohibit all advertisements, publications etc. which contain indecent representation of women in any form.
- (c) It has also been proposed to prohibit selling, distribution, circulation of any books, pamphlets etc. containing indecent representation of women.
- (d) Offences under the Act are made punishable with imprisonment of either description for a term extending to two years and fine extending to two thousand rupees on first conviction. Second and subsequent convictions will attract a higher punishment.

2. The Bill seeks to achieve the aforesaid objects.

CASE LAW ▶ Object of the Act.—Object of the Act is to punish publishers and advertisers who knowingly disseminate materials portraying women in indecent manner. It cannot be used against a person whose statement, although published, had merely referred to incidence of premarital sex and called for its social acceptance. More so when that person was neither an advertiser nor publisher, *S. Khushboo v. Kanniammal*, (2010) 5 SCC 600 : (2010) 2 SCC (Cri) 1299.

1. Short title, extent and commencement.—(1) This Act may be called the Indecent Representation of Women (Prohibition) Act, 1986.

(2) It extends to the whole of India ²[* * *].

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1. Received the assent of the President on December 23, 1986 and published in the Gazette of India, Extra., Part II, Section 1, dated 23rd December, 1986, pp. 1-5.
 2. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, Ss. 95, 96 & Sch. V (w.e.f. 31-10-2019).

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Date of Enforcement.—The Act was brought into force w.e.f. October 2, 1987 [*Vide* G.S.R. 821(E), dated September 25, 1987].

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) “advertisement” includes any notice, circular, label, wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas;
- (b) “distribution” includes distribution by way of samples whether free or otherwise;
- (c) “indecent representation of women” means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, denigrating, women, or is likely to deprave, corrupt or injure the public morality or morals;
- (d) “label” means any written, marked, stamped, printed or graphic matter, affixed to, or appearing upon, any package;
- (e) “package” includes a box, carton, tin or other container;
- (f) “prescribed” means prescribed by rules made under this Act.

3. Prohibition of advertisements containing indecent representation of women.—No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.

CASE LAW ▶ “Obscenity” what constitutes.—Nudity alone is not enough to make material legally obscene, *Ajay Goswami v. Union of India*, (2007) 1 SCC 143 : (2007) 1 SCC (Cri) 298.

▶ **Standard to judge obscenity.**—Standard to be adopted for judging obscenity, should be that of an ordinary man of common sense and prudence and not an “out of the ordinary or hypersensitive man”, *Ajay Goswami v. Union of India*, (2007) 1 SCC 143 : (2007) 1 SCC (Cri) 298.

▶ **Publication whether “obscene”.**—It is necessary that publication must be judged as a whole and the impugned publication should also separately be examined so as to judge whether the impugned passages are so grossly obscene and are likely to deprave and corrupt, *Ajay Goswami v. Union of India*, (2007) 1 SCC 143 : (2007) 1 SCC (Cri) 298.

▶ **Obscenity and art.**—Where art and obscenity are mixed, what must be seen is whether the artistic, literary or social merit of the work outweighs its “obscene” content, *Ajay Goswami v. Union of India*, (2007) 1 SCC 143 : (2007) 1 SCC (Cri) 298.

4. Prohibition of publication or sending by post of books, pamphlets, etc., containing indecent representation of women.—No person shall produce or cause to be produced, sell, let to hire, distribute, circulate or send by post any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contains indecent representation of women in any form:

Provided that nothing in this section shall apply to—

- (a) any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure—
- (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure is in the interest of science, literature, art, or learning or other objects of general concern; or
 - (ii) which is kept or used bona fide for religious purposes;
- (b) any representation sculptured, engraved, painted or otherwise represented on or in—
- (i) any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958 (24 of 1958); or
 - (ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose;
- (c) any film in respect of which the provisions of Part II of the Cinematograph Act, 1952 (37 of 1952), will be applicable.

CASE LAW ► Obscenity — What constitutes.—Obscenity, should be determined from point of view of average person and in context of contemporary mores and national standards, as concept of obscenity keeps on changing with changing social values. Message which offending object intended to convey is significant. Photograph of a nude/semi-nude woman by itself cannot be obscene. Obscenity would depend upon particular posture and background in which nude women is depicted. Looked at as a whole, it should tend to deprave and corrupt the mind and excite lustful sexual passion so as to constitute offence under Section 292, *Aveek Sarkar v. State of W.B.*, (2014) 4 SCC 257 : (2014) 2 SCC (Cri) 29.

► **Concept of obscenity.**—The concept of obscenity is moulded to a great extent by the social outlook of the people who are generally expected to read the book or an article and hence, in relation to nude/semi-nude pictures of a woman it would depend on a particular posture and the background in which the woman is shown. Nude/semi-nude pictures of a woman published with the sole purpose of attracting readers who have a prurient mind is liable to be prosecuted under Section 292 IPC, *Vinay Mohan Sharma v. Delhi Admn.*, (2008) 146 DLT 14 (Del).

► **Vexatious pleadings.**—Writ petition cannot be filed to abuse others. During pendency of application before CBFC for grant of certificate to a film (Padmavati/Padmaavat), PIL was filed praying that film should not be exhibited in other countries without obtaining certificate and seeking writ of mandamus to CBI to register FIR against R-1 & R-2 and their team members for offences punishable under Section 7 of Cinematograph Act r/w Sections 153-A, 295-A, 499 and 500 IPC and Section 4 of Indecent Representation of Women (Prohibition) Act, 1986. Pleadings found scurrilous, vexatious, misconceived, unfounded and untenable in law hence, writ petition liable to be dismissed, *Manohar Lal Sharma v. Sanjay Leela Bhans*, (2018) 1 SCC 770.

5. Powers to enter and search.—(1) Subject to such rules as may be prescribed, any Gazetted Officer authorised by the State Government may, within the local limits of the area for which he is so authorised,—

- (a) enter and search at all reasonable times, with such assistance, if any, as he considers necessary, any place in which he has reason to believe that an offence under this Act has been or is being committed;
- (b) seize any advertisement or any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which he has reason to believe contravenes any of the provisions of this Act;
- (c) examine any record, register, document or any other material object found in any place mentioned in clause (a) and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act:

Provided that no entry under this sub-section shall be made into a private dwelling house without a warrant:

Provided further that the power of seizure under this sub-section may be exercised in respect of any document, article or thing which contains any such advertisement, including the contents, if any, of such document, article or thing if the advertisement cannot be separated by reason of its being embossed or otherwise from such document, article or thing without affecting the integrity, utility or saleable value thereof.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under Section 94 of the said Code.

(3) Where any person seizes anything under clause (b) or clause (c) of sub-section (1), he shall, as soon as may be, inform the nearest Magistrate and take his orders as to the custody thereof.

6. Penalty.—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 two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees.

7. Offences by companies.—(1) Where an offence under this Act has been committed by a company, every person, who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence



has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

- (a) “company” means any body corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.

CASE LAW ▶ Offence committed by society or company.—Natural persons are made vicariously liable for an offence when it is established that the offence was committed by a company and these persons had some means with the crime either because of their connivance with or due to their criminal negligence which had resulted in its commission. *Municipal Corporation, Delhi v. Bhagwan Dass*, 1972 Cri LJ 1433; See also *Municipal Corporation, Delhi v. Deepak Kumar*, 1974 FAC 496.

Every person in charge of conducting the affairs of the company at the time the offence under Prevention of Food Adulteration Act, 1954, was committed will be liable and it is not incumbent that the company and the partners should be prosecuted as a condition precedent to the prosecution of the person in charge. *Public Prosecutor v. Boggarapu Pullaiah*, 1974 Cri LJ 155. A different view was taken by the Madras High Court in *B.K. Verma v. Corporation of Madras*, AIR 1971 Cri Mad 40; 1971 Cri LJ 60.

Where a company has been acquitted whatever the reasons for the acquittal may be, it is not possible to deem any person to be guilty of the offence because of his being in charge of the business of the company. *Municipal Corporation, Delhi v. Krishan Chand*, 1975 FAC 374.

▶ **Punished accordingly.**—Section 7 is similar to Section 34(2) of Drugs and Cosmetics Act, 1940. The words “punished accordingly” in Section 34(2) in the context mean that a person deemed to be guilty of an offence committed by a company shall receive the punishment that is prescribed by the Act for that offence. These words do not suggest that the persons mentioned therein can be punished only in the same way as a company would be punishable, that is, only with a fine and not with imprisonment. *Rajasthan Pharmaceutical Lab. v. State of Karnataka*, (1981) 1 SCC 645.

8. Offences to be cognizable and bailable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under this Act shall be bailable.

(2) An offence punishable under this Act shall be cognizable.

9. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Central Government or any State Government or any officer of the Central Government or any State Government for anything which is in good faith done or intended to be done under this Act.

10. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the manner in which the seizure of advertisements or other articles shall be made, and the manner in which the seizure list shall be prepared and

delivered to the person from whose custody any advertisement or other article has been seized;

(b) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

NOTIFICATION

Ministry of Home Affairs, Noti. No. S.O. 477(E), dated May 12, 1988, published in the Gazette of India, Extra., Part II, Section 3(ii), dated 12th May, 1988, p. 2

In pursuance of clause (1) of Article 239 of the Constitution, the President hereby directs that, subject to his control and further orders, the powers and functions of the State Government under Section 5(1) of the Indecent Representation of Women (Prohibition) Act, 1986 (60 of 1986) shall also be exercised and discharged by the Administrator of every Union Territory (whether known as the Administrator, Chief Commissioner or the Lieutenant Governor) within the respective Union Territories.

