



सत्यमेव जयते

**LAW COMMISSION OF INDIA**

**ONE HUNDRED AND NINTH REPORT**

**ON**

**OBSCENE AND INDECENT**

**ADVERTISEMENTS AND DISPLAYS :**

**SECTIONS 292-293, INDIAN PENAL CODE**

D. O. No. F. 2(12)/84-LC  
CHAIRMAN  
LAW COMMISSION  
GOVERNMENT OF INDIA

JUSTICE K. K. MATHEW

*Dated the 8th January, 1985.*

My dear Minister,

I am forwarding herewith the One Hundred and Ninth Report of the Law Commission on "OBSCENE AND INDECENT ADVERTISEMENTS AND DISPLAYS: SECTIONS 292-293, INDIAN PENAL CODE". The subject was taken up by the Law Commission on its own.

The Commission is indebted to Shri P. M. Bakshi, Part-time Member, and Shri A. K. Srinivasamurthy, Member-Secretary, for their valuable assistance in the preparation of the Report.

**With regards,**

**Yours sincerely,**

Sd./-

**(K. K. MATHEW)**

Shri Ashok Kumar Sen,  
Hon'ble Minister of Law and Justice,  
NEW DELHI.

Encl: 109th Report

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## CHAPTER 1

### INTRODUCTORY

1.1. The question dealt with in this Report is this. Is there any need for reforming the law relating to indecent advertisements and displays in India? An examination of the question has been taken up by the Law Commission of its own, in view of the feeling occasionally expressed that indecent advertisements of various types find display in the streets or are published in newspapers, periodicals and other media, and that these could harm the morals of society, apart from their being derogatory to the honour and dignity of the fair sex. Scope and significance.

1.2. There does exist, in the Indian statute book, a variety of provisions intended to check the evil referred to above. Some of the provisions are of a general character, while a few are of a specialised nature.<sup>1</sup> Whether or not these provisions, taken in their totality, are adequate for checking indecent advertisements, will be a matter of opinion. But an examination of these provisions could at least help in clarifying one's thoughts on the subject and in enabling a serious student of the problems to acquire a better familiarity with the terrain covered by the present law. Utility of a study of the law on the subject.

1.3. Accordingly, we propose to deal, in brief, with the present law, and then to examine if any improvements are needed therein. The subject of indecency has received some attention in England very recently, where an Act<sup>2</sup> has been passed on the subject of indecent displays. It will be useful to have a look at the recent developments in England also—though it must be pointed out that focus in the recent English Act is not on the whole gamut of indecent advertisements, but rather on certain outrageously explicit displays that might, by reason of their taking place at public places (particularly, the market place), “shock and disgust” the people.<sup>3</sup> Methodology.

1.4. It may be mentioned that in order to elicit opinion on the subject, we had prepared a Working Paper and circulated it to interested persons and bodies, inviting their comments. A few comments have been received on the Working Paper, which will be discussed in a later chapter.<sup>4</sup> Working Paper.

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1. See Chapter 2, *infra*.
  2. Indecent Displays (Control) Act, 1981, (Ch. 42) (Eng.).
  3. See paragraph 3.7 to 3.12, *infra*.
  4. Chapter 6, *infra*.

## CHAPTER 2

### THE PRESENT LAW IN INDIA AS TO OFFENSIVE ADVERTISEMENTS

General and special provisions as to offensive advertisements.

2.1. The punishment of offensive advertisements is, under the present law in India, permissible under a number of statutory provisions. These can be broadly classified into—

- (i) General provisions; and
- (ii) Special provisions.

By "general" provisions, we have in mind the provision in the Indian Penal Code relating to obscenity (section 292).<sup>1</sup> This section applies to a variety of matters and is comprehensive enough to cover all obscene publications. In contrast, special provisions are confined to special types of writings or other obscene matter.

General provision (section 292, IPC).

Sale, etc. of obscene books etc.

2.2. The general provision on the subject is, as stated above, contained in section 292 of the Indian Penal Code. It reads as under :—

"292. (1) For the purposes of sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the pruriest interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) Whoever—

- (a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or
- (b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or
- (c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or
- (d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be procured from or through any person, or
- (e) offers or attempts to do any act which is an offence under this section,

shall be punished 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 of either description for a term which may extend to five years, and also with fine which may extend to five thousand rupees.

*Exception*—This section does not extend to—

- (a) any book, pamphlet, paper, writing, drawing, painting, 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,

1. Paragraph 2.2, *infra*.

writing, drawing, painting, 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 Monuments and Archaeological Sites and Remains Act, 1958, or
  - (ii) any temple, or on any car used for the conveyance of idols or kept or used for any religious purposes.”

2.3. Section 293, Indian Penal Code, reads as under :—

“293. Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees”.

Section 293—  
Sale, etc., of  
obscene objects  
to young person.

2.4. Section 294 of the same Code reads :—

“294. Whoever, to the annoyance of others—

- (a) does any obscene act in any public place, or
- (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.”

Section 294—  
obscene acts  
and songs.

2.5. The special provisions relating to indecency or obscenity are to be found in—

- (a) the Drugs Magic Remedies (Objectionable Advertisements) Act, 1954 ;
- (b) the Young Persons (Harmful Publications) Act, 1955;
- (c) Section 20, Indian Post Office Act, 1898;
- (d) Section 11, Customs Act, 1962.

Provision in  
special laws.

The Act mentioned at (a) above, while it does cover some indecent advertisements, is confined to advertisements of drugs and remedies connected with sexual disorders. Its target is not indecency or obscenity, as such.

2.6. The special statutory provisions mentioned in the preceding paragraph are rarely invoked in practice,<sup>1</sup> in the context of obscenity. For all practical purposes, the provision of a comprehensive character with an all-India operation which can be pressed into service for punishing obscene publications and exhibitions is section 292 of the Indian Penal Code.<sup>2</sup> A later chapter will, therefore, concentrate on that section and examine how far the section needs expansion, so as to make it an effective instrument for checking offensive advertisements.<sup>3</sup>

Importance of  
section 292,  
IPC.

Before doing so, we proceed to examine the English Law on the subject.

1. This also applies to stray local enactments relating to indecent advertisements.

2. Paragraph 2.2, *supra*.

3. Chapter 4, *infra*.

## CHAPTER 3

### THE LAW IN ENGLAND

The common Law.

3.1. At common law,<sup>1</sup> it is an indictable offence, punishable by fine and imprisonment at the discretion of the court, to say or do or exhibit anything in public which outrages public decency, whether or not it tends to deprave or corrupt those who see it. There are, however, restrictions on prosecutions for this common law offence.

Indecent Advertisements Act, 1889.

3.2. Under the Indecent Advertisements Act, 1889, (as supplemented by later enactments), a person,<sup>2</sup> affixing or inscribing on any building walls, post, tree etc. anything whatsoever so as to be visible to a person in any street or footpath or affixing on a public urinal or delivering to any person in street or footpath or exhibiting to public view in the window of a house or shop any picture or printed or written matter which is of an indecent or obscene nature is liable, on summary conviction, to a penalty not exceeding £ 20 or to imprisonment for any term not exceeding one month, any person who gives or delivers to any other person any such pictures or printed or written matter with the intent that it should be so affixed, inscribed, delivered or exhibited is liable, on summary conviction, to penalty not exceeding £ 50 or to imprisonment for a term not exceeding 3 months.

A constable or other peace officer may arrest without warrant any person found committing an offence<sup>3</sup> against the Indecent Advertisements Act, 1889, wilfully exposing any obscene print, picture etc. in any public place is punishable under the Vagrancy Act, 1824;<sup>4</sup> now the Indecent Displays (Control) Act, 1981.

Venereal disease.

3.3. There are also restrictions on advertisements relating to the treatment of venereal disease.<sup>5</sup>

Publication of obscene article.

3.4. The general law of obscenity in England is contained in the Obscene Publications Act, 1959. A person who—

- (i) publishes an obscene article, whether for gain or not; or
- (ii) "has" an obscene article for gain (whether gain to himself or gain to another),<sup>6</sup>

is punishable.

The meaning of the expression "publishes" is defined, *inter alia*, as covering anyone who distributes or circulates an obscene article.<sup>7</sup> An elaborate test<sup>8</sup> of obscenity is also laid down.

Sanction for prosecution.

3.5. A prosecution for obscenity in England requires consent of the Director of Public Prosecutions where the article is a moving picture film not less than 16 mm. wide and its publication takes place, or is expected to take place only in the course of a cinematograph exhibition.<sup>9</sup>

1. Halsbury, 4th Ed., Vol. 11 (Criminal Law), page 587, paragraphs 10-26.
2. Section 3, Indecent Advertisements Act, 1889, as amended and supplemented by section 1(2), Criminal Law Act, 1948, and section 92(1), Criminal Justice Act, 1967.
3. Section 6, Indecent Advertisements Act, 1889, as amended by Section 2, Indecent Advertisements (Amendment) Act, 1970.
4. Halsbury, 4th Ed., Vol. 11 (Criminal Law), paras 118-119.
5. Section 2, Venereal Disease Act, 1917, Halsbury, 4th E., Vol. on Medicine.
6. Section 2(1), Obscene Publications Act, 1959.
7. Section 1(3), Obscene Publications Act, 1959.
8. Section 2(6), Obscene Publications Act, 1959.
9. Section 20(3), Obscene Publications Act, 1959.

3.6. Sending unsolicited matter describing human sexual techniques or **Sending unsolici-  
unsolicited advertisements of such matter is an offence.**<sup>1</sup> cited matter.

3.7. Recently, there has been enacted in England (in 1981) an Act to **The Act of  
make "fresh provision" with respect to the public display of indecent matter.** 1981.  
Its main target is the "public nuisance" aspect of indecent displays e.g. (i)  
cinema club posters; (ii) bookshop window displays that people cannot avoid  
seeing as they walk along the pavement or go into a shop to buy (say)  
cigarettes or chocolates; (iii) sex show window displays.<sup>2</sup>

The Act<sup>3</sup> makes it an offence to "make", "cause" or "permit" the public  
display of any indecent matter. The old statutory offences are repealed.

3.8. The principal provision [section 1(1)] of the Act of 1981 reads as **Section 1(1),  
under :—** **Indecent Dis-  
plays etc. Act,  
1981.**

"1(1) If any indecent matter is publicly displayed, the person making the  
display and any person causing or permitting the display to be made  
shall be guilty of an offence."

The section does not apply to television broadcasts by the BBC or ITA,  
to art galleries or museums, performance of plays, and cinematograph exhibi-  
tions in licensed places.

3.9. The expression "matter" includes anything capable of being displayed, **Indecent  
but does not include an actual human body or part thereof [section 1(5)].** matter.

The expression "indecent" is not defined in the Act of 1981. Rulings  
on analogous laws hold that the word should be given its ordinary meaning.<sup>4</sup>

3.10. The punishment under the English Act of 1981 is—

- (a) fine not exceeding the statutory maximum, on summary conviction;
- (b) imprisonment upto two years or fine or both, on conviction on indict-  
ment (section 4).

3.11. The offender against the Act of 1981 cannot be arrested without **Arrest under  
warrant unless he gives a false name and address, but a constable may seize the 1981 Act.**  
any article which he has reasonable grounds for believing to be or to contain  
indecent matter and to have been used in the commission of an offence under  
the Act.

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1. Section 4, Unsolicited Goods and Services Act, 1971. See *D.F.P. v. Beate Uhso  
(UK) Ltd.*, (1974) 1 All E.R. 753.  
2. Mr. T. Sainsbury, H. C. Debates, Vol. 997, Col. 1167.  
3. Indecent Displays (Control) Act, 1971 (Ch. 42) (Eng.). See R.T.H. Stone, "Out of  
Sight, out of Mind" (January 1982) 45 Modern Law Review.  
4. *R. v. Stamford*, (1972) 2 W.L.R. 1055.



## CHAPTER 4

### CHANGE NEEDED IN SECTION 292, INDIAN PENAL CODE

Whether reform needed.

4.1. Having set out the position under the present statutory framework in India, and having noted certain other developments, we have now to examine the question whether any changes are needed to deter a tendency to publish obscene or indecent advertisements. *Prima facie*, it would appear that the general provision in the Indian Penal Code, section 292, punishing<sup>1</sup> obscene publications, is intended to check and (on one view)<sup>2</sup> can be pressed into service for checking obscene advertisements without much difficulty. The definition of obscenity, as enacted in section 292(1), seems to take in all publications that can be reasonably objected to on the score of possible evil effects on the morals of listeners or readers of obscene matter.

Scheme of section 292, I.P.C.

4.2. However, as will be indicated presently, there is scope for improvement in certain respects in the law as contained in section 292. We first address ourselves to a lacuna in existing section 292(2). For understanding this lacuna, it is desirable first to analyse section 292. Leaving aside the section,<sup>3</sup> the scheme of the section is as follows. The section does not begin with the substantive penal provision, but with a definition of "obscene" [contained in sub-section (1)]. The penal provision creating and punishing the offence appears in sub-section (2). Here also, one can concentrate on clause (a), the remaining clauses not being material for the present purpose.

Section 292(1) and section 292(2) compared.

4.3. Now, if one goes through the text of sub-sections (1) and (2) of section 292 carefully, one finds that in one respect, there is a hiatus between the two, though it may perhaps be regarded as only a verbal hiatus. The relevant portions of the two sub-sections can be put in two parallel columns as under :—

#### Section 292(1) Indian Penal Code

"For the purposes of sub-section (2), a book, pamphlet, paper, *writing*, drawing, painting, representation, figure or any other object, shall be deemed to be obscene....."

#### Section 292(2) (a) Indian Penal Code

"Whoever sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation.....any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever....."

It will be noticed that the word "writing" is specifically mentioned in section 292(1), but that word does not appear in section 292(2)(a). The latter does not get the full advantage of the definition contained in the former.

Since section 292(2)(a) is the substantive penal provision, it is desirable that it gets the full advantage of section 292(1), which is the defining provision.

Possible amendment of section 292(2)(a), I.P.C.

4.4. Of course, it can be argued that the disharmony between section 292(1) and section 292(2)(a), Indian Penal Code, as revealed by the above analysis,<sup>4</sup> can, in practice, be tided over by recourse to the residuary words "any other obscene object whatsoever", which occur in section 292(2)(a). However, in order to avoid controversy, it appears desirable that section 292(2)(a) of the Indian Penal Code should be amended by inserting, after the word "paper", the word "writing". After this amendment, the section would cover obscene advertisements in writing, particularly those in periodicals and posters.

1. Paragraph 2.2, *supra*.
2. See paragraph 4.4, *infra*.
3. Paragraph 2.2, *supra*.
4. Paragraph 4.3, *supra*.

## CHAPTER 5

### INDECENCY AND OBSENIETY : NEED TO INSERT SECTION 293A

5.1. *Prima facie* it would appear that the law should cover such acts. The scope of the law. The public exhibition of obscene matter is a subject falling within section 292, Indian Penal Code. But the section is silent about matter which is merely *indecent*, without being obscene. Should the scope of the penal law be extended to cover such matter? That is the precise question to be considered. Indecent matter.

5.2. *Prima facie*, it would appear that the law should cover such acts. The Constitution in article 19(2), permits such legislation and it would seem that, on the merits, there is a case for punishing public display of indecent matter. No doubt, a pretty large number of writings, pictures and gestures which are indecent on the score of their sexually explicit character would also be obscene, in the sense of the likelihood of depraving and corrupting the minds of the audience or the readers. But, at least in theory, one can conceive of indecent matter that is not obscene. Although the amount of harm caused by its display or publication may be negligible and its frequency may not be alarming, the matter requires consideration. It may be mentioned that section 292 of the Indian Penal Code<sup>1</sup> does not punish the publication of indecent matter as such. Questions considered.

5.3. Before formulating any concrete proposal on the subject of indecency, two points require consideration, namely— Questions to be considered.

- (a) the scope of the expression “indecent”, *in general*; and
- (b) one *special* question, namely, whether the concept of “indecent” is, in its content, confined to matters dealing with sex, or whether it can take within its sweep other matters also.

5.4. As to the first question, legislative precedents do not appear to furnish much guidance. The expression “indecent” does not carry any legislative definition. The expression occurs occasionally in legislative usage, sometimes singly, at other times in conjunction with words like “obscene” or “lewd”. But its exact ambit remains undefined. Legislative usage.

The fact that the word “indecent” has not been defined and different people have different standards, was accepted<sup>2</sup> in the debate on the English Act of 1980. The Williams Committee in England thought that the word “indecent” was surrounded with vagueness<sup>3</sup> and confusion, as to be useless. In fact, when the Bill leading to the Protection of Children Act, 1978 was debated in England, the vagueness of “indecent” was used as a justification for requiring the consent of the Director of Public Prosecutions for prosecution under the Act.<sup>4</sup>

5.5. The Williams Committee<sup>5</sup> in England, while noting the vagueness of the expression “indecent”, seems to have taken the view that if the expression *had* to be defined, then some such formula as “offensive to reasonable people” might be considered. Suggestion of the Williams Committee.

5.6. It may also be of relevance to refer, at this stage, to a decision of the Supreme Court of the United States, where the Court had to consider the question of “indecent” speech in the context of regulation of broadcast matter.<sup>6</sup> In that, case, the authority of the Federal Communications Commission to effect qualitative content control through the regulation of radio An American ruling.

1. Chapter 2, *supra*.

2. T. Benyon, H. C. Debates, Vol. 997, Col. 1196.

3. Committee on Obscenity & Film Censorship (1979), Cmd. 7772, para 9.21.

4. *R. v. Khuller*, (1973) A.C. 435 (H.L.).

5. Committee on Obscenity and Film Censorship, Report, (1979), Cmd. 7772, para 9.21.

6. *F.C.C. v. Pacifica Foundation*, (1978), 98 S.Ct. 3026.

broadcast which that Commission finds "indecent but not obscene", was challenged. The case concerned a recorded monologue, broadcast on the New York radio station in the early afternoon, as part of a discussion of contemporary attitudes towards language. The title of the monologue was "Filthy Words" and the broadcast was prefaced by an advice that the record contained "sensitive language which might be regarded as offensive to some". Five weeks later, the Federal Communications Commission received a complaint about the programme from a listener who had heard the broadcast while driving with his fifteen year old son. The Commission granted the complaint, though it declined to impose formal sanctions on the Radio Station. The Commission's conclusion was, that the seven words which had been broadcast and objected to, depicted "sexual and excretory activities and organs in a manner patently offensive by contemporary community standards for the broadcast medium". The words in question were therefore "indecent" and prohibited by 18 United States Code, section 1464, which forbids the use of "any obscene, indecent, or profane language by means of a radio communication". Expressly stating that the "indecent" speech which it sought to control was not subsumed by the concept of obscenity, the Commission justified using the broader category by reference to the "unique qualities" of the broadcast media.

5.7. The action of the Federal Communications Commission was reversed by a divided panel of the U.S. Court of Appeal for the District of Columbia Circuit. On appeal, the Supreme Court of the United States (by a majority of five against four) reversed the judgment of the Court of Appeal. Mr. Justice Stevens rejected the contention that "indecent" means no more than obscene in 18 U.S. Code, section 1464. He determined that "prurient appeal is an element of the obscene, but the normal definition of "indecent" merely refers to non-conformance with "accepted standards of morality". He conceded that the Supreme Court had previously construed the expression "indecent" (as occurring in similar statutes) to mean "obscene". But he reasoned that the history of section 1464, and the type of media to which it was addressed (broadcast as opposed to print), warranted a different construction in its case.

The constitutional question.

5.8. This determined the question whether the statute in issue authorised the Commission to regulate the speech at issue. The constitutional question still remained, namely, would the interpretation placed by the Supreme Court forbid constitutionally accepted speech? Mr. Justice Stevens isolated two characteristics of the broadcast media to justify lesser constitutional protection for the airing of indecent material: (1) the broadcast media are a uniquely pervasive presence, intruding into the protected enclave of the home; and (2) broadcasts are uniquely accessible to unsupervised children.

A learned commentator, commenting on the above case,<sup>1</sup> expressed the view that while the privacy argument, put forth by Justice Stevens, had some weakness, the argument of protection of the young children might be stronger. The comment further states that the case must not be read as "permissive", in the sense of defining the inner core of the Federal Communications Commission's power to regulate indecent speech, but must be read rather as "restrictive" and as marking the outer limit of that power. The comment further points out that the case authorises "time zoning" of broadcast, only when the broadcast (1) uses language offensive to most people in depicting sexual or excretory activities, (2) uses that language not incidentally, but repetitively, (3) is at the time of the day when children are likely to be in the audience, and (4) is likely to influence children.<sup>2</sup>

Possible approach towards defining obscenity.

5.9. This ruling of the American Supreme Court, it must be pointed out, does not seek to define "indecent". It upholds the action of Federal Communications Commission in restraining an indecent programme, in the context of the time at which, and the manner in which, the matter was broadcast. In fact, the ruling indirectly draws attention to the constitutional aspect, and reminds us that a restraint on speech and expression—including a restraint on indecent speech—must still pass the constitutional test.

1. Supreme Court 1977 Term. (1978) 92 Harv. L.R. 57, 162.

2. *F.C.C. v. Pacifica Foundation*, (1978), 98 S.Ct 3026, 3035, 3040, 3041 note 29 and 3052.

It is possible that the ambiguity residing in the expression "indecent" could, to some extent, be reduced if the magnitude of the vice is defined by some qualifying words, which would introduce a modicum of precision. We shall make a concrete suggestion later.<sup>1</sup>

5.10. Another question pertains to sexual content. According to one view,<sup>2</sup> indecency is not confined to sexual indecency and includes anything which an ordinary decent man or woman would find to be shocking, disgusting and revolting. This view was referred to in the debates on the Bill which led to the English Act of 1981, but most speakers in the debate regarded "indecency" as confined to indecency with a sexual content. Sexual content of "indecency".

5.11. In England, the sending by post of "indecent or obscene" writings etc. or indecent or obscene article is punishable by statute. It has been held that in section 11 of the Post Office Act, 1953, the words "indecent or obscene" convey one idea, namely, "offending against the recognised standards of propriety, indecent being at the lower end of the scale and obscene at the upper end of the scale . . . . an indecent article is not necessarily obscene whereas an obscene article must almost certainly be indecent."<sup>3</sup> It is possible that the expression "indecent" (in the Post Office Act) is not confined to sexual indecency, and extends to other improper matter.<sup>4</sup> "Indecent" and "obscene" in Post Office Act.

5.12. On some consideration, it seems that while most matters of an "indecent" character would be offensive because of their sexual implications, there could possibly be other matters which offend decency by non-sexual descriptions or depictions. It may not therefore, be necessary to confine any proposal in this regard to sexual indecency. Sexual indecency whether necessary.

5.13. The problem of indecency is mainly to be tackled in regard to public outrage of indecency constituted by public displays and advertisements. Legislative proposals on the subject will, of course, have to take note of the issues discussed in the preceding paragraphs, and take particular care of the need to confine themselves to matter that offends reasonable persons—they need not cover everything that may offend a hyper-sensitive person. Indecent displays.

5.14. Taking all the above aspects into consideration, one possible course would be to insert in the Indian Penal Code a specific section to cover indecency. The following is a possible amendment by way of adding a new section :— Indecent advertisements and displays: possible amendment.

*Section 293A, to be inserted in the Indian Penal Code*

- (1) The provisions of sections 292 and 293 shall apply to a person who publicly displays any indecent matter, as they apply to a person who commits any offence under those sections in relation to obscene matter falling within those sections.
- (2) For the purposes of this section, matter is indecent if it is offensive to reasonable persons from the point of view of decency.

1. Paragraph 5.14, *infra*.  
 2. *R. V. Khuller*, (1973) A.C. 435 (H.L.) (per Lord Reid).  
 3. *Stanley*, (1965) 1 All ER. 1035.  
 4. *Smith & Hogan*, Criminal Law (1978), pages 796, 797.

## CHAPTER 6

### COMMENTS RECEIVED ON THE WORKING PAPER

Working paper.

6.1. In the Working Paper which the Commission had circulated on the subject, the points made in the preceding Chapters were incorporated,<sup>1</sup> in order to present the issues in a concrete form and to facilitate a consideration of the important aspects. Comments of interested persons and bodies were invited as to the need for—

- (1) amendment of section 292(2)(a) of the Indian Penal Code, on the lines indicated in the Working Paper, which were the same as those mentioned in this Report,<sup>2</sup> and
- (2) also the insertion of a new section 293A in that Code, as proposed in the Working Paper—the proposal being the same as has been mentioned in this Report.<sup>3</sup>

Comments received on the working Paper.

6.2. Comments have been received on the Working Paper<sup>4</sup> from—

- (a) two State Government,<sup>5</sup>
- (b) one High Court;<sup>6</sup>
- (c) a social organisation<sup>7</sup> based at Delhi, and certain gentlemen associated with that organisation<sup>8</sup>; and
- (d) one individual.<sup>9</sup>

Comments favouring the amendment.

6.3. (a) The comments received on the Working Paper from the State Governments, and from one High Court whose comments has been received,<sup>10</sup> favour both the amendments that were put forth in the Working Paper.<sup>11</sup>

(b) The comments received from the social organisation mentioned above and certain gentlemen associated with it, while favouring, in substance, the amendments put forth<sup>12</sup> by the Commission; have made certain additional suggestions. We shall, later in this Chapter,<sup>13</sup> deal with such of the additional points as are of importance.

(c) Finally, one gentlemen<sup>14</sup> has drawn attention to the need for using the mass media by stressing the ill-effects of (indecent) advertisements.

Some points considered : whether definition of 'obscene' to be revised.

6.4. To come, now, to the additional points made in some of the comments, there is, in the first place, the suggestion that the definition of "obscene" should be re-framed, so as to provide that matter which is capable of arousing lustful thought, action or sensation should be regarded as obscene. There is also a suggestion that the matter should be treated as obscene which one cannot see in the presence of one's grown up children.

1. Law Commission Working Paper, dated 15th September, 1984.
2. Paragraph 4.4, *supra*.
3. Paragraph 5.14, *supra*.
4. All comments received upto 10th November, 1984 have been taken into account.
5. Law Commission File No. F. 2(12)84, letters dated 17th and 29th October, 1984.
6. Law Commission File No. F. 2(12)84-LC, letter of 25th October, 1984.
7. The Neeti Manch, Delhi.
8. Law Commission File No. F. 2(12)84-LC, S. No. 3 to S. No. 5.
9. Law Commission File No. F. 2(12)84-LC, S. No. 6.
10. Law Commission File No. F. 2(12)84-LC, letters of 17th, 25th and 29th October, 1984.
11. Paragraph 6.1, *supra*.
12. Law Commission File No. F. 2(12)84-LC, S. No. 3, 4, 5.
13. Paragraph 6.4, *infra*.
14. Law Commission File No. F. 2(12)84-LC, S. No. 6.

We do not, however, think that the present concept of obscenity as provided in the Penal Code<sup>1</sup> needs any substantial change, from the angle mentioned above. No serious problem of substance has arisen from the present concept of obscenity, a concept which has evolved as a result of judicial decisions and takes due note of constitutional requirements. At least, no defect in the direction of the definition being too liberal has been noticed. No doubt, various components of the concept may have to be applied by the judiciary. And the interpretation placed by one judge may differ from another. But this is unavoidable.

6.5. There has been made a suggestion that the jury system should be introduced in the trial of charges for obscenity. The suggestion seems to be based on the assumption that judges are, at present, taking too liberal a view of the law. Reported decisions on section 292, however, do not appear to bear out this assumption. Similarly, the suggestion that the punishment for obscenity should be more severe has not appealed to us. In fact, we find from some of the views forwarded to us that there are several persons—particularly, women—who realise the limitations of the law in dealing with obscenity and who have sought to emphasise the role of society in creating a better moral climate in this field. Other suggestions.

We have very carefully, gone through all the comments and have come to the conclusion that so far as the points made therein are concerned, they do not call for any other reforms in section 292 of the Indian Penal Code.

6.6. It is sometimes suggested—though faintly—that there should be a system of censorship of advertisements. We are strongly opposed to any such course of action. Apart from anything else, the constitutionality of such a legal provision (in regard to advertisements) would be extremely difficult to sustain,<sup>2</sup> in the context of the heads of “decency” or and “morality”, specified in article 19(2) of the Constitution. The question of pre-censorship.

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1. Section 292, I.P.C.

2. Cf. *Usha Uthup v. The State of W.B.*, A.I.R. 1984 Cal. 268, 275 (September).

## CHAPTER 7

### RECOMMENDATIONS

**7.1.** In the light of the discussion in the preceding chapters, we make the following recommendations for amending the Indian Penal Code :—

- (1) Section 292(2)(a) of the Code should be amended on the lines already indicated.<sup>1</sup> “What we recommend is that section 292(2)(a) of the Indian Penal Code should be amended by inserting after the word “paper” the word “writing”.”
- (2) The following section should be inserted in the Code :—

*Section 293A (as recommended)*

- (1) “The provisions of sections 292 and 293 shall apply to a person who publicly displays any indecent matter, as they apply to a person who commits any offence under these sections in relation to obscene matter falling within those sections.
- (2) For the purpose of this section, matter is indecent if it is offensive to reasonable person from the point of view of decency.”

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1. Paragraph 4.4, *supra*.

(K. K. MATHEW)  
CHAIRMAN

(J. P. CHATURVEDI)  
MEMBER

(DR. M. B. RAO)  
MEMBER

(P. M. BAKSHI)  
PART-TIME MEMBER

(VEPA P. SARATHI)  
PART-TIME MEMBER

(A. K. SRINIVASAMURTHY)  
MEMBER-SECRETARY

DATE : *8th January*, 1985.



## ERRATA

Front Page at bottom read "JANUARY 1985".

Page 1, in para 1.3, in line 6, for "that focus" read "that the focus".

Page 4, in para 3.3, in line 2, for "disease<sup>6</sup>" read "disease<sup>5</sup>".

Page 4, in Foot Note 5, for "E" read "Ed".

Page 4, in Foot Note 5, for "Hasbury" read "Halsbury".

Page 4, in Foot Note 9, for "section 20(3)" read "section 2(3)".

Page 5, in para 3.7, in line 7, for "pubic" read "public".

Page 6, in para 4.2, in line 4-5, for "aside the section" read "aside the Exception to the section".

Page 7, in line 2, for "OBSENITY: NEEDED" read "OBSCENITY: NEED".

Page 7, in para 5.1, in line 1, for "Prima facie it would appear that the law should cover such acts. The" read "It is also necessary to examine in detail another question concerning".

Page 7, in para 5.2, in line 1, for "Prime faci" read "Prima facie".

Page 7, marginal note to para 5.2, for "Questions" read "Question".

Page 7, in para 5.4, in line 12, for "pubic" read "public".

Page 7, in para 5.4, in line 12, for "prosecution" read "prosecutions".

Page 7, in para 5.6, in line 4, for "in that, case," read "in that case,".

Page 8, in para 5.8, in line 16, for "goning" read "zoning".

Page 10, in para 6.3 (c), in line 1, for "ned" read "need".

Page 12, at marginal note to para 7.1, read "Recommendations".