

# **The Law Relating to Obscenity Under IPC**

The fundamental object and purpose of criminal law is not only to protect and to conserve the safety and security of primary personal rights of individuals, such as right to life, right to body, right to property, right to habitation., etc., but also to protect and guard public morals and public decency and to conserve the moral welfare of the State. Thus, it is the duty of the State to guard the citizens against attacks which may be insidious and punish an individual for obscene publications which tend to corrupt morals. The importance of the protection of such rights can be visualized

from the resolution passed by the International Convention for the Suppression and Circulation of, and Traffic in, obscene publications at Geneva as long as 1923. India signed the Convention on 12<sup>th</sup> September 1923.

## **What does obscenity mean?**

With regard to the meaning and definition of obscenity, it is difficult to give any precise and particular definition in view of cultural, religious and social diversity in the society. Oxford dictionary defines 'obscene' as (of the portrayal or description of sexual matters) offensive or disgusting by accepted standards of morality and decency. It is derived from

the French word 'obscene' or Latin 'obscene'. However, the definition of obscenity is subject to cultures of every country.

## **Evolution of Obscenity Law**

As early as 4<sup>th</sup> century, Roman Catholic Church had taken the first move by banning few heretical works. **In 1542 Pope Paul III established the Sacred Congregation of the Roman Inquisition** which was vested with the task of suppression of heretical and immoral books. Immoral works also were suppressed in Protestant countries such as England, where, prior to the 18th century, restrictions were applied almost exclusively to antireligious or seditious

acts or publications, rather than to obscene material in the modern sense.

The invention of the printing press sowed the seed of modern obscenity law. There was a wide and easy distribution of sexually explicit material. By the 17th century, such books and prints had become widely available throughout Europe; governments and church authorities responded by arresting and prosecuting publishers and distributors.

The first person to be convicted on a charge of obscenity in England was **bookseller Edmund Curll** way back in the 1720s. He had published a new edition of *Venus in the Cloister; or, The Nun in Her Smock*, a mildly pornographic work. His

sentence (a fine and one hour in the pillory) was due to the fact that there was no specific law on the subject matter. Thereafter obscenity was recognized as an indictable misdemeanour under common law.

## **Sale of Obscene Books, etc.**

**Sections 292, 293 and 294 of IPC** have been enacted with the ulterior motive to protect and safeguard the public moral by making the sale, etc., of obscene literature and publications in general, and to young persons in particular, a cognizable offence.

**“Clause (1) to section 292 states that the publication of a book, pamphlet, paper, writing, drawing, painting, representation, figure, etc., will be deemed obscene, if,-**

**i. It is lascivious (expressing or causing sexual desire); or**

**ii. Appeals to the prurient interest (excessive interest in sexual matters);**

**iii. If its effect, or the effect of any one of the items, tends to deprave and corrupt persons, who are likely to read, see or hear the matter contained in such materials.**

**Clause (2) to section 292 holds a person liable to punishment if he-**

**a.** Sells, lets to hire, distributes, publicly exhibits or puts into circulation, etc., any obscene material, or

**b.** Imports or exports or conveys any obscene objects for any of the purpose aforesaid;

**c.** Takes part in or receives profits from business in the course of which he knows or has reason to believe that any such obscene objects were made for any of the aforesaid purposes

**d.** Advertises or makes known by any means whatsoever that any person is engaged in, or is ready to be engaged in any act which is an offence under this section

e. Offers or attempts to do any act which is an offence under this section” [4]

**Section 293 punishes sales, etc., of obscene objects to young persons below the age of 20 years.**

The offence is cognizable, bailable, non-compoundable and triable by any Magistrate. On the other hand, section 294 deals with obscene acts and songs. The offence u/s 294 is cognizable, bailable, non-compoundable and triable by any Magistrate. In order to constitute an offence u/s 294 following ingredients are to be fulfilled:-

- . The accused  
1. did some act;



2. sang, recited or uttered any song or bailed;
- . Such an act was obscene;
  - . The act was performed in a public place; and
  - . It caused annoyance to others.

### **Illustration 1**

An Israeli couple after being married the Hindu way at Pushkar, Rajasthan was arrested u/s 294 of IPC for kissing in public. A fortnight later, a magistrate slapped a fine of Rs. 500/- on the couple for committing an act of indecency. .

### **Illustration 2**

A woman tourist from Finland was booked u/s 294, IPC on the charge of

skinny dipping in the Pushkar Lake and streaking on the streets up her hotel.

## **Position in England**

The earliest decision of House of Lords on obscenity was in the case of ***R v Hicklin*** wherein the test of literary morality was laid down. The test is whether the matter in question tends to deprave and corrupt those whose minds are open to immoral influences and into whose hands the publication may fall. The Obscene Publications Act, 1959 which was revised in 1959 and further broadened in 1977 to include pornographic films is the major legislation in force on the subject.

# Constitutional validity of Section 292

The constitutional validity of section 292 was challenged in *Ranjit Udeshi v State of Maharashtra 1965) 1 SCR 65*.

The facts of the case are that Ranjit D Udeshi one of the four partners, was the owner of Happy Book Stall. All the four partners were prosecuted for selling **Lady Chatterley's Lover**, a book by **D. H. Lawrence** under section 292. Udeshi contended that section 292 was infringing his fundamental right of freedom of speech and expression guaranteed under article 19(1)(a) of the Constitution. It was held that article 19(1)(a) of the Constitution is subject to the restrictions

enlisted under article 19(2). One of the grounds is public morality and decency. Section 292 dealing with obscene materials falls within this exception thereby addressing the issue of public decency and morality. Therefore, section 292 is constitutional.

## **Case Law on Obscenity**

***In Bobby Art International v Om Pal Singh Hoon, AIR 1996 SC 1846.***

the issue that came up for consideration was whether the film Bandit Queen can be banned on the ground of obscenity. The child named 'Phoolan Devi' was made to marry a man of her father's age.

She was stripped naked and paraded and made to fetch water from the village well under the gaze of the villagers, but no one came to rescue. To avenge herself upon her prosecutors, she joined a daicot's gang, humiliated and killed twenty Thakurs of the village. The apex court while allowing the appeal against the judgment of Delhi High court banning the film on the ground of indecency for the public exhibition held that a film that carries the message that social evil is evil cannot be made impermissible and banned for public exhibition for the same. The scene of nudity and rape as well the use of expletives were in aid of the theme and intended not to arouse prurient or lascivious thought but

revulsion against the perpetrators and pity for the victim.

In K.P. Mohammad's case, the court held that performance of Cabaret dance devoid of nudity and obscenity according to Indian social standards in hotels and restaurants is not liable to be banned or prevented.

In ***Ranjit Udeshi v State of Maharashtra (1962)***, the Supreme Court of India had adopted the Hicklin test. But in 2014 the Apex Court had explicitly rejected the Hicklin test in the prosecution of the tennis star Boris Becker. The Hon'ble Court had adopted the modern community standards test. The ratio was obscenity is to be

determined by contemporaneous social mores. Mere nudity does not by itself amount to obscenity. The law should change in accordance with social value.

**The US Supreme Court** has laid down **Miller test** in order to determine obscenity. The Miller test for obscenity includes the following criteria:

(1) whether 'the average person, applying contemporary community standards' would find that the work, 'taken as a whole,' appeals to 'prurient interest'

(2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and

(3) whether the work, 'taken as a whole,' lacks serious literary, artistic, political, or scientific value.