

INDECENT REPRESENTATION OF WOMEN

THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986¹

[Act, No. 60 of 1986]

[23rd December, 1986]

PREAMBLE

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:--

1. Published in the Gazette of India, Extra., Pt. II, section 1, dated 23rd December, 1986.

Section 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, except the State of Jammu and Kashmir.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

1. 2-10-1987 vide Notification No. G.S.R. 821 (E), dated 25th September, 1987, see Gazette of India, Extra., 1987, Pt. II, section 3 (i).

Section 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, or 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.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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 anybody corporate and includes a firm or other association of individuals; and
- (b) "director", in relation to a firm, means a partner in the firm.

Section 8 - Offences to be cognizable and bailable

(1) 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.

Section 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.

Section 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.

The Indecent Representation of Women (Prohibition) Rules, 1987

G.S.R. 822(E), dated 25th September, 1987—In exercise of the powers conferred by Sec. 10 of the Indecent Representation of Women (Prohibition) Act, 1986 (60 of 1986), the Central Government hereby makes the following rules, namely :

1. Short title and commencement.—

- (1) These rules may be called the Indecent Representation of Women (Prohibition) rules, 1987.
- (2) They shall come into force on the 2nd October, 1987.

2. Definitions.—

- (1) In these rules, unless the context otherwise requires.—
 - (a) "Act" means the Indecent Representation of Women (Prohibition) Act, 1986 (60 of 1986);
 - (b) "article" means any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation of figure;
 - (c) "authorised officer" means any Gazetted Officer authorised by the State Government for the purpose of Sec. 5 of the Act;
 - (d) "section" means a section of the Act.
- (2) Words and expressions used in these rules and not defined shall have the meanings respectively assigned to them in the Act.

3. Manner of seizing of articles.—

- (1) Every seizure made in pursuance of the provisions of sub-section (1) of Sec. 5 shall be made in the manner hereinafter provided in these rules.
- (2) The authorised officer seizing any advertisements of articles under sub-section (1) of Sec. 5 shall prepare a list of such advertisements or articles containing such details relating to the description, quality, quantity, mark, number and other particulars thereof as he may consider relevant to the identity of such advertisements or articles in any proceeding under the Act, in the Form annexed to these rules.

(3) The authorised officer shall pack and seal such advertisements or articles in the manner provided in rule 4 and shall deliver a copy of the list so prepared to the person from whom such advertisements or articles are seized.

(4) The advertisements or articles so seized shall be marked with a distinguishing number and shall also be signed by the authorised officer, the person from whom such advertisements or articles have been seized and two respectable inhabitants of the locality. If it is not possible to mark any such advertisement or article, the marking may be done on the packaging or in any other manner which the authorised officer thinks proper.

4. Manner of packing and dealing with the advertisements or articles seized.—

(1) The advertisements or articles seized shall be packed in adequately strong paper, cloth or in any other packing material in such a way that the advertisements or articles may not be tampered with and the ends of paper, cloth or other packing material shall be neatly folded in and affixed by means of gum or other adhesive or stitched in or tied.

(2) The package shall be further secured by means of strong twine or thread and the twine or thread shall be fastened on the package by means of sealing wax on which there shall be at least four distinct and clear impressions of the seal of the authorised officer of which one shall be on the top of the package, one at the bottom and the other two at the body of the package and knots of the twine or thread shall be covered by means of sealing wax bearing the impression of the seal of the authorised officer.

(3) Where necessary, the authorised officer shall put the advertisements or articles in a box or a container of a suitable material and seize and seal it in the manner provided in sub-rule (2).

5. Manner of seizing and sealing of advertisements or articles in certain cases.—

Notwithstanding anything contained in rules 3 and 4, where the authorised officer is of the opinion that it is not possible to seize and seal any advertisement or article in the manner prescribed in rules 3 and 4 due to the size or the nature of such advertisement or article, he may take such steps as he thinks fit for the seizure and sealing of such advertisement or article without affecting the integrity, utility or saleable value thereof.

FORM

See rule 3 (2)

List of Advertisements or Articles Seized

To,

(Name and Address of the person from whom the advertisements or article/(s) are seized)

.....

.....

The advertisement/(s), article/(s) detailed below has/have this day been seized by me under sub-section (1) of Sec. 5 of the Indecent Representation of Women (Prohibition) Act, 1986 (60 of 1986), from the premises.....situated at..... Details of the advertisement/(s), article/(s) seized.

Place:.....

Seal

.....

(Authorised Officer)

Area.....

LANDMARK JUDGMENTS

• P.K. Somanath Vs State of Kerala and Ors 1990 Cri LJ 542

Section 3 & 4: It is the duty of the Court to examine the magazine alleged to be containing photographs depicting indecent representation of women, and see whether it offends any of the provisions of Act. For considering that question, it is not necessary for High Court while quashing proceedings to examine or compare the impugned publication with reference to any other magazine, books or story.

• S. Khushboo Vs Manniammal & Anr. On 28 April, 2010 AIR 2010 SC 3196

Complaint against accused for expressing her personal views on pre-marital sex that were published by new magazine would not be tenable as accused was neither advertiser nor publisher. Even though the constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions on grounds such as 'decency and morality' among other, there is need to tolerate unpopular view in the socio-cultural space. The framers of our Constitution recognized the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a pre-condition for meaningful governance in the political sense, we must also promote a culture of open dialogue when it comes to societal attitudes. The appellant's remarks did provoke a controversy since the acceptance of pre-marital sex and live-in relationships is viewed by some as an attack on the centrality of marriage.