Page 1:  
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LAW COMMISSION OF INDIA  
  
ONE HUNDRED AND NINTH REPORT  
  
. ON  
. “OBSCENE AND INDECENT -  
  
ADVERTISEMENTS AND DISPLAYS: =  
  
i | SECTIONS 292-293, INDIAN PENAL CODE. -  
  
  
  
Page 2:  
D.O. No F. 2(12) 84446  
Chameax  
Law Connaisstos  
Goversstexr oF It,  
  
Daal the 8 Janusry, 1988  
  
My dear Minsses,  
  
{am forwarding herewith the One Hundeed and Ninth Report of the Law  
Commission on “OBSCENE AND INDECENT” ADVERTISEMENTS. AND  
DISHLAYS: SECTIONS 292-293, INDIAN PENAL CODE". ‘The subject was  
taken’ ap dy the Law Conia Oa Ow  
  
The Commission is indebted to Shei P.M, Bakshi, Part-time Member, and  
Shri ASK. Srivssamurthy. MemborSeereaty, for thir valuable assistance ia  
the prepuzation of the Report  
  
With regards,  
‘Yours sincerely,  
Sie  
kK. Manew)  
Shri Ashok Kunar Seo,  
Howblo Minister of Law aad Jastie,  
New Dri  
  
Encl: 108 Report  
  
  
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‘cunrsan  
  
1. INTRODUCTORY  
2. THE PRESENTLAWIN INDIA  
3. THELAWIN ENGLAND  
  
4. CHANGE, NEEDED IN SECTION 292, INDIAN  
PENAL CODE  
  
5. INDECENCY AND OUSCENITY : NEED TOIN-  
SERT SiCTION 2084, a  
  
6 COMMENTS RECEIVED ON THE WORKING  
PAPER  
  
7. RECOMMENDATIONS  
  
Pow  
  
2  
  
  
Page 4:  
‘CHAPTER 1  
rNTRODUCTORY  
  
Jet. The guction dele wit inthis Report is hb. Is thete ary sel Scope  
for reforming the aw relating 0 indceatadveruncmeats and displays in dn? ©  
‘An cuamunution of the question has been taken up by ihe ‘Liw Commision  
‘F's owe, in view ofthe feling occasionally expretsed tha indecat adver  
‘ment of vasious type tnd psy in the sets brane publated ia Mewopepens,  
Periodicals and other modi, und that these could harm the marsl of eesey,  
Spar from their being erogatory to the hoaout and Giphty ot te fair oe  
  
4.2, Thote docs exist, in the Indian statute book, a vasiely of provisions iui of »  
intended wo check the evil seferted {0 above. Some ol the provsiond ate Ol s hea clige  
general character, while a few are of 4 spicalned nature, Whether or not leon  
fhete provisions, taken in their tluliy, ae adequate or checking iadccrat “=  
screener of epiin. uta, xian, ote  
provisions could’at least help in clardying one's thoughts onthe subject tnd  
2 cnabling'a serious sudeat of the problems to acduie beter ality  
with the terrain covered By the presen law.  
  
seein Ri terreno cd Del Te  
Toa irc neler Mais ts  
sag eects hk eno est weg  
gor ence Pas ca a  
  
i See Capte 2, nt  
2 Indecent Diop (Con Act 198, (Ch. 42) (Eng,  
3. See poragaph 37 10 312, inf  
  
4 Chapter 6 ita  
  
  
Page 5:  
Gene sot  
Sten  
‘See  
  
CHAPTER 2  
THE PRESENT LAW IN INDIA AS ‘TO OFFENSIVE ADVERTISEMENTS  
  
241. The punishment of offensive advertisements is, under the present law  
  
in tae, pormbible unde w number of sulory provisos. "These cua be  
Sifed into  
  
(ii) Special provisos,  
  
By “genera” provisions. we have in miad the provision in the Indian  
Penal Code relating to obscenity (selion 292)." Tie section apis. 14  
Yenety ol matters and fe comprohonsse™ cous to cover al obscene p  
  
‘ations. In contrast, special provisions are confinad to special pe  
Wrage or other obscene miler, pssal gps  
  
2.2. The general provision on the subject is, ay stated above, contained  
in section 292 Sf the Indian Poul Cae. sas ss und  
  
"292, (1) For the purposes of sub-sction (2), a book, pampbist, paper,  
‘writing, drawing, Psiling. representation, igure or aay wie object. shall be  
‘eemel to be ebscene WP lscvicus ot appeats to che pruet interest OF  
{ie efect ce (where It compres two ot tore divine ims) the effet of  
{ny one of io item iy H taken ae = whois, sch as to tend Yo deprave and  
Sokpl persoos who are likely, huving tegard wo all relevant eeumstanee, 10  
ead sot of beat the matter contsited cr embodied i i  
  
) we  
See en ie ace pene  
ia a te  
Seed aie sre acy canals  
ee Toe ay batt tn come ot  
cH as PS a ig aaa  
Sree Deda oth ply lS  
roi Beet re  
een cas eta a any en  
si me arra ma e k  
was oe  
su pel cote sense wi npc of te eon  
ei em i a ny My a  
Sa eect gaat tse ae age  
  
Exception—This section does not extend to—  
(a) thnk pmol pat, wl, doing, nig, rpenaton  
  
(i) the publication of which is proved tobe justibed as being for  
ths Buble good on The proud hat such bok, pamphlet, peer,  
  
1 Poragaph 33, nha  
  
  
  
Page 6:  
3  
  
‘wcitng, drawing, painting, representation, or figure is, inthe  
Iie of Scene, Mera, “Sor learning of other ebeets of  
sseral soner, or  
  
(Gi) which is Kept oF used bons fide for religious purposes;  
(©) amy seston sete, enn, pad oe oterwie repre  
  
{G) any ancient monument within the meaning of the Ancient Mon  
fod. Archacoogical Sits and: Remains Act, 1988, oF  
  
(4) any tomple, ge om any ear vied for the conveyance of idols of  
Koper used tor" religous purposes  
  
Section 293, fadian Penal Cok, reas as under -— seen 2  
  
23, Se Penal Cale, reads as unde ey  
  
“392, Wher sl eto he ds, sbi geet amy oa  
person tnd the age Ucn” years any auch chacene objet a efered  
  
the lst reed sco or ec oy atmpe st do shall be pened  
  
fn st comin win improament of cer eseriion for teri wish  
  
Say exend fo hve sear and with Se which may extend to two thousand  
  
‘pes and ie event of & sven or absequntcutcon, wth pdsonment  
  
etter detripion for cm which may cited Yo seven Years aad abo  
  
‘Tubes ich ay nich To Be thew supe"  
  
24, Section 294 of the same Cade eas — Spo  
Se  
  
“294, Whocvsr, to the annoyunee of oshers—  
  
(4) dass any obscene act in any public place,  
  
() sings, recites of utters any obscene song, ballad or words in or near  
{ny public plac, shall. bo punshed” with imprisonment of either  
  
‘ccrpion fora term which may extend £0 three Months, or wil se,  
or wilt both  
  
“The special provisions relating 0 indseeney or obscenity ate to be Prong ia  
sound TH srs ating y or obscenity ae to be Frain ty  
  
(3) te Dues Masle Remedi (Obiectimable Advetiement) Act  
19st  
  
(b) the Young Persons (Harmful Publications) Act, 1955;  
  
(6) Section 20, Indian Post Office Act, 1898;  
  
(&) Seaton 1, Customs Ast, 1962,  
  
“The Act mentioned at (a) above, while it does cover some indecent  
  
advertsements, "is conned 10 advertisements of drugs and. remedies connected  
‘Tih sexual disorders is targt is not indocency or obscenity, a8 sach.  
  
2.6, The spss suatury provisos mention inthe prendig pean lara  
  
are rely ivobed in practice, in the context of obscenity. Por all  
the provision of 2 comprehensive character with a all-Iodia  
  
hich ca be pressed soto service for punishing obscene publications and exhib  
  
Tons i sedun 292 of the ndisn Penal Cade A later chapter wil,  
  
fon that section ‘and examine how far the” section  
  
Sete fama 0 sso make dean edie inset fr beck eine  
  
Before doing yo, we proceed to examine the English Law on the subject.  
  
T “Govlies to ray local enactments veling to indent advertisements,  
2 Penaieps 13. 00,  
  
3 Ghaier «ete  
  
2osI9 LADINO  
  
  
  
Page 7:  
Peon  
  
erent  
Ae ins,  
  
diese  
  
Pybetin.  
etone  
  
Drosesti,  
  
(CHAPTER 3  
  
‘THE LAW IN ENGLAND  
  
JM At common lav: it isan indictable oflence, punishable by Sine and  
iy ‘atthe esereon of the court, to say oe do or exhibit anything in  
ppuble which outrages public-deveney, whether ox not i tends to Jepeave or  
fprrae thre tho Re Ie There ae, boweer,fstisions on prnecaons fr  
  
282, Under the Iadeecat Advertncments Act, 1889, (3s supplemented oy  
te aint) pean afaing oF iis co amy ble.  
fete cc swimsoorer so as to be vile to.» person ih  
{Geil orang ‘cas poblic urinal or delivering to ny petson Im Steet  
{Rorpath ef exiting to public view ja the window ef Bouse or shop 2x)  
Fotis oe rite or wien mater which i of au fodecent or obvcene ars  
BS Gatton coiionf pen ot ercdie 20 to  
any (rm not exceeding ee mouth, any person who gives ot  
SBRtee te any othe pesen aay such Blur or pimteg” or ween man  
Sith the intent that t shosld beso ated, Inscnbed, dicted or exhibited  
{lable on summary caviction, to penalty ot cxceding £ $0 or 1 impruonment  
{or ier not execoling 3 mons  
'A constable or other peace ofcer may atest without warrant any petson  
found omni nese agin te Tadeo “AdveiSepeat, Aa 1889,  
‘Pilly peeing ny’ cicene pit pte ce in any pubic pace piss  
Thder the Vagrency Act, 18249" sow the Indecent Dispays (Conta) Ac, 1981  
  
2  
  
33, There are sso restrictions on advertisements relating 0 the treatment  
of vensreal disease  
  
‘34, The general law of obscenity in-England is contained inthe Obscene  
Publiations Ag, 1989.” A person Who  
  
@) publishes an obscene article, whether for gain oF not; of  
  
ii) “bas” an obycene artie for gain (whether ain to himselt or gain  
to another)  
  
5 punishable  
  
“The meaning ofthe expression “publishes” is defined, inter aia a8 covering  
ay ee aE She CPi na ebscne aie’ Aa aban  
Set of obscenity 8 ao lee down  
  
35. 4 prosecution for obscenity in England requires consent of the  
Direatr of Publis Prosecutions where the article is a moving picture fm not  
Picecor Sie mn. wile and is publication takes place, or expected t0 take  
Place only ia the coune of a cimematograph exhibition.”  
  
17 Manu, ih Ed, Vol 11 (Criminal aw, poe SH, pararapb 1026  
  
FAN Ilene Asteramente Act, 108950 ameded and supplemented by secon  
SSSNEARAMMI ESM ARTS End “tice i, Crna Tose Act,  
  
te eMinacent Aiverscmens Act 195, an amended by Soctoe 2, Indeat  
  
SEATS amendment Ace 97  
  
otsury, th Edy Vol 11 (Cia Law, pass HEI  
  
‘Sicuon & Veeieal Daese Act, 1947, Masbury, AE, Vol. oe Media  
  
‘Son 2), Ovens Publetins Act 195  
  
‘ction 10), Obscene Buliation Ae, 199.  
  
Scion 36, Obscene Prieto Act 199.  
  
Scion 390), Obese Pubcon AS, 1988  
  
4  
  
  
  
Page 8:  
2:6 Seung enslicend matter describing human sexual techniques oF senting unt  
‘unsolicited advertisements of such matter isa offence" ses  
317, Recently, there bas een enacted in England (ia 1981) an Act 10-The Aet of  
sake “Fes provition” with respect 10.tbe publics daply of indocent mate, BU  
4s main target Is the “public muisance™ aspect of miccent: deplays ef ()  
cinema club posters; (ii) bookshop window Gsplays th peop cool awk  
Seeing se they walk along the” pavement of fo" lato a “hep to" boy (ay)  
sigaretts of 8 (t) sx show window displays 2  
‘The Act! makss i an offence to “make”, “cause” or “permit” the pubic  
display of any indecent matter. "The old statutory offences ee repealed.  
  
3.8. The principal provision [Section 1(1)] of the Act of 198E reads sexton 1)  
under = TP PC rev St  
“IC1) Hf any indecent matter is publicly displayed, the person making the favs  
  
isp any” person ean 0 peng the dpa tbe as  
  
Stall Be pity of an offence  
  
‘The sction does not apply to television broadcasts by the BBC or ITA,  
  
{o art gales or museums, performance of plays, and ciemstograph exh  
tos it Heemed pacts,  
  
33 The exprenion “matter” inctades anythiag capable of being displayed, Indecent  
but doesnot include an acta! aman Body Or Pa tSceot sete FNP  
  
‘The expresion “indecent” is ot defined in the Act of 1981. Raliags  
fon analogous laws hold that the word shoul Be given its ordinary meaning  
  
340 The punishment under the English Act of 1981 is—  
  
(2) fine not exareding the statutory maximum, on summary conviction;  
  
(©) imprisonment upto two yeas or Bae or Both on conviction on ind:  
  
ment (scetion 4).  
  
M1. The offender against the Act of 1981 cannot be arrested without Amat under  
  
Warrant Vales bo gives & false name and addres, but a constabis may size Oe T8TAS,  
  
‘tle which He bas reasonable rounds for alicving to be of 0 Sanien  
ielkcat mater and t have besa wed the cms o£ Sica a  
  
Sa  
1 Seaton 4. Unlisted “Goods and) Services Act, 971, See DPF. w. Boat hwo  
Sore PS SA SL ae ATH Se om  
  
  
  
Page 9:  
CHAPTER 4  
CHANGE NEEDED IN SECTION 292, INDIAN PENAL CODE  
  
42. Having set out the positon under the present statutory framework  
in india, and having sted certain other developments, we have now {0 examine  
‘he queition whehier aay changes are-needed to dvicr w tendency to publish  
bcd or indecent névertzements, Prima facie, It would appear tht the generat  
‘rovken ia the Indies Penal Code, section 292, penishing» obscene publications,  
BrGuitaded to check and (oa one view) can be pressed into servile for checking  
Sorcene sdveriiments without mach dificuty. "The delnition of obscenity, 38  
BE i scction 292(1, seems to take i all publications that can be reasonably  
bic toon sre of poms ev els he ma es rea  
  
142, However, as will be indicated. presently, there f scope for improve  
meat ia’ ctala respects in the law a5 contained In section 292.) We fit  
mest onelves to a lacena in existing section 292(2). For wndentanding  
‘Hestunac it's desrble fatto analyse secon 202,” Leaving aside the  
aa eee heme of the seeton i as follows. The section does not begin  
See te ‘nbatanive penal provision. but with a definition of | “obscene”  
Tahahed in'sobesecton (D1. The penal provision creating and punishing  
[eontteace appears in sub-section (2). Here aso. one ean concentrate 0  
Ihe, ence (PFreminiag causes ot being material forthe present Purpose.  
  
142, Now, if one goes through the text\_of sub-setions (1) and, (2) of  
  
section 292 Cheflly, one finds that in one respect, there J hiatus between  
Seti Fount aay perhaps be. roparded as only a verbal hiatus. |The  
Mae me’ ortdes of the two sub-sections can be put in two paral columns  
  
ae onde  
‘Section 292(1) Indian Penal Code Section 292(2 (4) Indian Penal Code  
site the purpetenjof subsection (2), "Whoever sells ets to hie, distribu  
a peak pompbicts paper, writing dea- 6s, publicly exhibits or im any manner  
‘hncepurating representation, figure puts into cireulation....any obscene  
smb iether sect, shall be: dcemed book, pampiet, paper, drawing Pain~  
tobe ubscene fines representticn or Beure ef any  
ther income object WhaLsOever.  
  
1 will be noticed shat the word “writing” Is specially mentioned in  
scot 392(1), but that word docs not appear in sceton 292(2)(a). The  
Fea Ze Ae ge the fll advontage ofthe defnition contained in the former.  
  
‘ince section 292(2)(a) is the substantive penal provision, itis desirable  
that gts the fll vantage of ection 292(1), whic fs the defiing provision  
  
‘4, Ot course, it can be argued that the disharmony between section 292(1)  
and Aice'SSED) Cah Tadlan Penal Code, revealed by the above analyst  
ra erie be ued over by recourse to the reduary words "any other  
can, act phatsocvess; witch cecur in section 292(2)(a),\_ However,  
fy rr waved cone, appears ec ht won 2920) at  
i or te penal Cose spould be tmended by inserting, alter the word “paper  
ao ee ering’ After ths amendment, the sewion would cover obscene  
te acme in writing, particularly those In periodicals and posters.  
  
1 Paropoph 23. wr  
2 Se puraph 44 ft  
3. Parapeaph 22, sor.  
Panga 0, pre  
  
  
Page 10:  
CHAPTER 5  
INDECENCY AND OBSENITY : NEED TO INSERT SECTION 2934  
  
$5.1 Pina foe it would spear tha the aw sald cot sch a, The It  
the scope of the law. "The public exhibition of "obscene mater is 2 subject ™=e™  
falling within section 292, Indian Penal Cade, But the rection i silent about  
‘alter which is meely indecent, without being obscene. ‘Should the scope of  
  
[peal law be extended to cover such matte? That is the proce question  
tone comsidere,  
  
52, Prima fai, would appear thatthe law should cover such ats. The Quen,  
Contin in arc 19(3), permite ch leghlion and would soo at, =.  
tthe mei theresa cave Yor pong pubic play ikem mate  
No doubt a pecty lege aumber Qf wings? pices and ostrich ee  
Indesent ae score of tele sexually emp Caras woukt also be obscene,  
Inve scoe. of the tkelood of gepetving and" comping tie mais of he  
oct ede Bt at ein hay ow stn cone nea  
‘ater tha is bot obscene. Albough the amount of arm cased by #8 aay  
Bremoleation mag he gin ee aun arm cued by ay  
‘ial roqres cOpsderatont i may be. meniohed that secuon 292 3 te  
‘ean Poll Code! docs nl pois the publston of nascent mater as Soc  
  
‘5. Before formulating any concrete proposal on the subject of indecency, Qoetiony to  
‘to polats require consideation, namely aie  
(a) the scope of the expression “indecent”, In general: and  
(b) one special question, namely, whether the concept of “indecent” i, in  
[is content, conised to mates dealing wih sex, or whether i can  
‘within is Sweep other matters aso  
  
5.4, As tothe ist question, legislative precedents do not appear to fursish Legatne  
much guidance, The expression Tindeceot” doesnot” carry any legislative Ye  
Aetinion. The expression occurs occasionally in legslative sage, sometimes  
  
‘singly, at other times ia conjunction with words ike “obscene” or “Towe™= BUT  
  
Itsetit smbit remains undefined.  
  
“The fact that the word “indecent” has, not been defincd and diferent  
people have diferent standards, was accepied! in the debate on the Lglsh Act  
SF.1080,. The Willams Committee in England thought thatthe word "indeceat™  
‘was surrounded with vagueness" and confusion, us to be Useless. In fot, when  
‘he Bill leading to the Protection of Chidden Act, 1978 was "debated in  
England, the vagueness of “indecent” was wed as a justieation for requ  
the consent of the Decor of Pubic Prosecutions for prosecution under the Ac.  
  
5. The Willm Committe? in England, while noting the vagueness of Suggation ot  
the expression “indecent seems to bave taken the view th ifthe expression fhe Willams  
had ‘o' be defined, then some ch formulas “ollensive to reasonable peop" Comme,  
might be considered.  
  
‘56. 11 may also be of relevance to refer, at this stage, 10 a decision of Ax Amercoa  
‘the Sopreme Court of the United Sites, where the, Court nad to consider the  
‘Question ‘of “indecent” spezch inthe” coateat” Of regulation of broadcast  
fatter In that, case, the autborty of the Federal “Communications  
Comimissio to efect qualitative content control through the regulation of radio  
  
‘Chapter Bur  
{TBenyon, H.C, Deas, Vl, 97, Ct 1196  
  
Commitee on Obscenity & Fm Censonhip (979), Cid 7772 para 92  
Rev. Kuster (973) AC. 85 (HED.  
  
Conmisee om Obtenty sed Fim Cenontip, Report, (197), Gnd  
FEC. ¥. Fakes Foundation, (978, 98 SCL 36,  
  
1  
  
7, pra 92  
  
aweeee  
  
  
Page 11:  
Te srt  
  
broadcast which that Commission finds “indecent but ot obscene”, wat  
alleged. The case conered a recorded monologue, "bresdeat ot the  
SESE wfc Caro, a ot doc  
Simtenpuraryatituds towards Languages The ile of the monologue was  
Tit Wad he rome peed by ap ai ‘a the record  
coulaged “sensine lenguage wach might be regarded ss aensve 10 some  
fNevwecks ite the Federal “Communieatons sCommistion Teeved a com:  
put abou the programme from 4 tener who had heard the broadeast while  
fing with his fiten year old son. The Common ranted the compat,  
‘hous declined to apo Terma sancions on the ‘adio Station» The  
Gommissions cooctunon way thatthe seven words which had been broadcast  
Sniobjced to dapied "acxiol and eterotoryeties and copa in &  
‘ans pac ofemie by contemporaty community standards foe the broad  
Eiinedun” The words ia qusrtton moe therefore “indeect™ and prohibited  
SpE ane state Couy sce 1464, which forbids the we of "any obscene  
‘deca, o profane lagsge by meas of a radio communication”. ‘  
‘Eiing tha io cndeceat™ peti which It sought to contol Was ot sbsomed.  
Sym Concept oc obsexnty, the Commision untied using the broader eatery  
8} feterecs vot cumgee alice” of the broadcast media,  
  
157 The ation of the Federal Communications Commission was reversed  
by a divided panel of the US. Court ot Appeal for the Duct of Columbia  
Chcuit “OnPappeal the Sopreme Court atthe United States (by 2 maj  
Sine agunst fave) evened the judgment of the “Court of Appeal,  
Sie estes Stevens rected the contention that “indecent” means 0 mers  
thin sbteene in T8 US, Code, section L464.” He determined that “prurieat  
Spptal ean glement of the obscene, but the normal debmtion of “indeezat  
‘Riedy fefers fo now conformance with “accepted standards of morality”. He  
Ernceed at the Sopeme Court had previously contre the etpresion  
SRigssent” (as occuring, in similar states) to mean “obscene”. But he  
‘asooed that te history Of seston 1404, and the type of media to which i  
fas addres (broadesst ss opposed fo print), warranted a diferent construction  
  
28, This determined the question wheter the statute in sue aor  
tne Ctkmion to tepals tbe sposch at save. Tbe constitutional question  
sy Sn, names woud th inpetaion ples By the Sapreme Cou  
iL eae sonny aceeped speech? Mes Susie Stevens wolated to  
ee eens ie he broaieet medi to jexly lesser constitutional protection  
tort nce ae, nt ene  
  
we posency nding ito the i ne; aad  
Frgudcas are uniquely accesible to unsupervised hire.  
  
'A eared commento, comenting on the above case expresied the view  
nat iets pvcy angen, put forth by | Josie” Steven had some  
BALIN GS Eumcat ot protclon of the youre children might be wrongs  
Fetes coe fonher sate that the cao fost ot be read 3 7 i  
‘Nose ode eer Gee Fel Comming Comming  
  
wer to rege indecent tbo read rae 38  
Er udng ihe cer imi of tut “hie comment fer ponte, eat  
mene shorich “time gong of brotdeaty only when the boudcast  
UR texans edeasive to most people In depicting Setual texto  
GD wee nesaes tha pngunge ot cet, but fepeiely, (3) at the  
ea tn ay hen dhlen ei oe tne a (8 ty  
fo infucnce eden?  
  
£9, This ring ofthe American Supreni Court it must be pointed ot,  
sows RR fie ate fag te aco of Federal Com  
sees, 29 se Commision in earning an decent. programme, i the conte  
maniations Comms mane in which, the, ater was broadcast 18  
Sat tec ras neon tothe conitubonal wpe and emis  
ret ean exposing Tein on adecet  
Sfeschecmst stil past the\_consutonl te  
ee peeme Cove 177 Tem. (970 92 Hrs RH  
Free pn rocndtam, C970, 98 8.CC 36 3935, 204, 3041 nae 79 and  
  
  
  
Page 12:  
9  
  
It is possible that the ambiguity residing in. the expression “indecent”  
ould, to tome extent, be reduced the magiitude cl the vise deted by  
some’ qualying words, which would introduce 2 modicum of precisam, We  
shall make a concrete’ suggestion late”  
  
$40, Another question peta  
  
i  
  
04 coed fo text Teeny and de®, fying Set  
  
{0 sexual content, According to one Sexual  
  
‘hich an ordinary decent man or wemsan sould And to be shocking. disposi  
nd revoting. "This view was tlered woth the debuts om tne Bile  
ed 0 the English "Act of 1981, but must speskere hha Soke epee  
"Indesency” as conned to indsssncy wih 4 ceva! Come  
  
Sd. In England. the sending by post of “indosnt or ebsas” wings “dese” ond  
5, of Basen een ‘rile i punahible by sete hiv boty eld geo  
that ia section 11 ofthe Post Ofc Act. 1983, the wos andceot or encom: fe  
sonvey ‘one ie, namely, “oflending again the reoganedsundands at  
Bropiety, indecent ‘being at the lower nd of th sls and obec at  
  
cod of the scale... an indcmt atile i not mecewatlyobncene  
ala an scene “ale “min amos cy bndcent =  
  
atthe expression “indecent” (in the Post Offe. Act) He confined  
  
{0 seutalindesne)r sad exten 1) ur improper mate  
  
$42, On some consideration, it scems that while mont mutces of at Spel  
gindesen characee would be lense Pecsuse of xi Sctus impicaltons, Sos  
{Bere could possibly be other matters which fled ccency by Nowsthual ee,  
¢ depitions. It may not therefore, be mesteut) to conte aay  
‘proposal in this regard to sexual indcecey,  
  
puoad dts Bobet nny, mins be tae ie fo a  
‘outrage of indeceney conatiied by” pubic ‘ad adverinements, Sagas  
  
ete sponta the subject will ol ous Pav fats nt oh fa  
  
issues. dicated in ing\_paragraphs, und take patter care of  
  
eed 10 cenine theme to Sai thi oes neta esas ges  
  
‘ed not cover everything that may ofend = hypersensitive: pores  
  
$14, Toking all the above aspects into consideration, one possible course Indecent ade  
TQUELDS ‘9 ime de the Indian" Penal Cd a woe "stton to‘ cover geste und  
  
indecency. “rie fououing i'n pole amcodmsat Byway of Sling a new Sopa  
  
Section 2934, 10 be inserted in the Indien Penal Code  
(1) The provisions of sections 292 and 293 shall apply 10 pesca who  
ily" displays any ndecent mater, asthe) apply 0 2 psrson who  
  
Ecamis any ence une ne accuse a alga Baba  
imate falling Within tho ston  
  
(2) For the purposes of this seton, mater is indecent iti ffesine  
fo'reasomble persons fom the pot of iow of deceny  
  
Fongooh $56 ii  
  
AF Ril, (91) AC. 5 (HL) (per Lo Rl.  
  
Seay 9691 All ER ab  
  
4 Sth €Hogn,Crimaal Ie 9), pages 767  
  
  
  
Page 13:  
Seong  
  
. CHAPTER 6 ie  
COMMENTS RECEIVED ON THE WORKING PAPER  
‘6 In the Working Paper which the Commision had circulated on the  
sabiee the poinss made in the preceding Chapters were incorporated. ia  
SEB, reba the nscs in, a concete form and 10 falta @ consideration  
see ipoctane aspects ‘Comments of terested penons and bodies were  
iavited gs fo the need for—  
  
{4) amcndacnt of section 292(2)(a) of the Indian Penal Code, 00  
TEER inated im the, Working Paper, which were the same as  
those metioned ia this” Report and  
  
(2) sso the insertion of w mew setion 293A. in that Code, a8 proposed  
iMac working Paper—he proposal being the same as has been  
tmertioned inthis Report?  
  
(62. Commas have been received on the Working Papert froa—  
  
(a) two Ste Government  
  
(&) one High Court  
  
(@) a social oxponsation? based at Delhi, and certain gentlemen associated  
‘wih that crgansaton"; and  
  
(2) one inividual®  
  
63. (2) The comments recived on the Working Paper from the State  
  
Govesanenty und Troan one High Court whose comments hasbeen reexved  
SROSEBoIk the amendments that were” put forth in the Worklog Paper  
  
(b) The comments received from the social, organhation mentioned  
  
above sod certain genome associated with it, while favouring, in substance,  
  
shove and sents put forihe by the. Commision: have made certain  
se Ye shall ater in tis Chapter, deal with Such of the atonal  
  
pains ae are of importance,  
(c) Finally, one gentlemen has drawn, attention to the ed for using  
tho ace modis by setsing the Meffects of (indecent) advertisement.  
  
the additional points made ia some of the  
  
plate the ageton Gat hg dein ot  
See errs be retramed, so ae to provide that matter which & capable  
Jahan kta thought action or sensution should be rezarded as obscene  
Fea ee suesetion that the mater should be treated as obscene which  
Teeter ares intihe presence of One's grown wp children  
  
Fine Commision Wokag Pop dae 1 Sepewber OH  
2 Ponenh  
3 Pangrgh $18 pe  
FERRERS wots toh Novemter, 1984 hase ees ten into ascot  
  
Pere re Nev F.20384. heer ted 1h and 200 Ostber, 1984,  
Too Cobiniscn be No. F. UQW4LG, Teer of 28 Oster, 1984,  
  
‘The Nec Mase, Debi  
  
TES Coking ne No. F 20RH44C, 8. No.3 40 8. No. S  
  
12y Ciniaien Fae No. F 2028416, S, No. 6,  
  
UE ERR re Nov, 2428446, lets of 17, 28 an 29% October, 194  
Panath 61 ure  
  
Teton Fa No F 20K, 8. No. 3,48  
  
Prganh 64 fe  
  
CartCemmision Fe No. . 2028416, 8. No, 6  
  
10  
  
  
  
Page 14:  
We do aot, however, think tat the present concept of obscenity st  
Brovded in the’ Penal Code™ neess any sutwantial change, ftom ie, cole  
{entlowed above," No serous rodent ef subwance hs aren ffom the preset  
eocept of obscenity a concept which Iw cvaved at fehl of pola  
Secbions apd takes due ute Ol Sonstatnal ryuleneas UAE fest oe  
elect im the dition of the debits being too Ital has been otced.  
‘No dul, vais componcnin of the concsp."oay have 1 be upped by the  
spisan' Anita psd ty x jage may fer ow ante  
  
G5. These ss sen mode a suggest  
  
thatthe jury system should be Osher  
  
Introduced in the wal ot charges or cbseeny. The suggestion aceme 40 be Season,  
  
‘based oa the assumption that judse arc. at presen. taking to ibeel a view  
tthe law,” Reported diss on Seen 292, however, do 10% appear 10  
Bear out this assumption. Sumy, ihe suggestion that the punishaeat for  
‘bicemity shosld severt hn ot appeaiod to u8. I fact We find  
from ome of the. vices Torwadsd 10'as that" there Sto scveal persons  
Particularly, "womgs who tcalise the limitations of the law in dealing. with  
BSbtesnity nd” whe have sought to ‘omphasse the vole ol seccty in Greting  
beter meat climate in this Bl  
  
We hve very carefully, gone though all the commeals and have come to  
  
the conclusion that so far is the points made therein ure gyncerned. they do  
ot all for aay uiber reirms in section 292 of the Indian Pesal Cede  
  
661 nuns, case tog  
syste‘ cemorthip of advertisements. We  
  
fourse of scuon. Apart trom  
legal provision (in regetd to advcrisenicat) would be eaticmely SiMeult a9  
  
ststain ia the context of the heads of "decene)" or and “morality spectiod  
fn artile 19(3) of the Constation,  
  
1 Seton 2, Te  
2. Cf Usha Uihapv, The Sie of WH, ALR. 1984 Cal. 268, 275 Sapte  
  
it)~that thers should be 1 the guaion  
‘Miongly opposed Wo any such Apa  
se che the eopstutonaliy cf gach. a cemonbip,  
  
  
Page 15:  
CHAPTER 7  
RECOMMENDATIONS  
  
7. ta the light of the discussion in the preceding chapers, we make the  
following recommendations for amending the fran Penal Code -—  
(1) Seaton 292(2)(a) of the Code should be amended on the tines  
sireadyindiesed” “What we recommend is that section 29302) (a)  
‘O° the lida Pega Code sould be scnded By Inserting ater  
the word "paper" the word “writing”  
(2) The following section should be inserted ia the Code -—  
  
Section 2934 (as recommended)  
  
(1 The rion of ecto 292 and 298 sll apl wo 4 pron  
who publi doplays any indent matter. av ey Spply 10 2  
‘who Commits any effenes under thexe sections in retion to" obscene  
‘ator falling witia those sexo  
  
(2) For the purpose of this section, mater is indesnt if  
to reasonable pecs from the pat of ew of deseney\*  
  
is offensive  
  
  
  
Page 16:  
(kK, MATHEW)  
(CHAIRMAN  
  
@. P. CHATURVEDD)  
‘MEMBER  
  
(DR. M. B, RAO)  
MEMBER  
  
(P.M. BAKSHI)  
PART-TIME MEMBER  
  
(VEPA P. SARATHI,  
PART-TIME MEMBER  
  
(A. K. SRINIVASAMURTHY),  
MEMBER SECRETARY  
  
Dave : 8 Jowary, 1985,  
  
OWN SHS H-SI9 L.A. DNDN BH  
  
  
  
Page 17:  
ERRATA  
Front Page at boltom read “JANUARY 1985",  
  
Page 1. in para 1.2, io Hine 6, for “that focus" read “tbat the fous"  
Page 4 in paca 33, i line 2, for “disease read “disease  
  
age 4, in Foot Note 5, jor “E read “Ed”  
  
[Page 4. in Foot Note 5, for “Hasbury” read "Halsbuty”  
  
aye 4, in Foot Note 9, for “section 200)" read “setion 2037  
Page 5, in para 37, i Sins 7, for “pubic” read “pubic  
  
age 6 in para 42. ia lloe 4-3, for “aside the section” read “aside the  
‘Exception 10 The Seti  
  
Page 7. ia lite 2, for “OBSENITY: NEEED" real “OBSCENITY.  
NEED”  
  
Page 7 9 pata So line 1, for “Primo face it would appear that the law  
‘shouldeowsr such ace. The™ road “It so nosesery to/ceamDe I  
(Hal another qae'ton conoerning”  
  
Page 7, in para $2 in lie 1, for "Prime fac” read “Prima face.  
  
age 7, marginal note to para $2, for “Questions” rea! “Question”  
  
Page 7, in para SA, ia line 12 for “pubic” read “public”.  
  
Page 7. in para S4, i line 12, for “proseetion” read “prosecutions.  
  
aye 7, in para 5.6. i five 6, for “in that, ease" read “in that case,”  
  
Page 8 in pata S38, ja lie 16, for “soning” rea! “zoning  
  
age 10, in pura 63 (0, line 1. fr “ned read “nest”  
  
Page 12, at marginal note 1 para 7.1, read “Recommendations”,