

The allegation is that the petitioner was a spectator of the blue-film and therefore an abettor of the offences under [sections 292, 293 and 294 IPC, 1860](#). This interposition as a mere spectator to the exhibition of a blue-film without any further complicity, in view of the above Supreme Court decision, cannot be taken to be amounting to abetment of the main offence.¹⁶⁰

[s 293.2] Benefit of Probation.—

Exhibiting a blue-film in which man and woman were shown in the act of sexual intercourse to young boys would definitely deprave and corrupt their morals. Their minds are impressionable. On their impressionable minds, anything can be imprinted. Things would have been different if that blue-film had been exhibited to mature minds. Showing a man and a woman in the act of sexual intercourse tends to appeal to the carnal side of the human nature. Even if he is the first offender, he cannot be given the benefit of [Probation of Offenders Act, 1958](#).¹⁶¹

¹⁵⁷. Subs. by Act 8 of 1925, section 2, for section 293.

¹⁵⁸. *Dhanisha v Rakhi N Raj*, [2012 Cr LJ 3225](#).

¹⁵⁹. *Raj Kapoor v State (Delhi Administration)*, [AIR 1980 SC 258](#) [[LNIND 1979 SC 428](#)] : (1980) 1 SCC 43 [[LNIND 1979 SC 428](#)].

¹⁶⁰. *Dr B Rosaiah v State of AP*, [1990 Cr LJ 189](#) (AP).

¹⁶¹. *Gita Ram v State of HP*, [AIR 2013 SC 641](#) [[LNINDORD 2013 SC 18666](#)] : (2013) 2 SCC 694 [[LNIND 2013 SC 82](#)] ; *Uttam Singh v The State (Delhi Administration)*, (1974) 4 SCC 590 [[LNIND 1974 SC 113](#)] : 1974 SCC (Cr) 626 : [AIR 1974 SC 1230](#) [[LNIND 1974 SC 113](#)] : 1974 (3) SCR 722 [[LNIND 1974 SC 113](#)] : [1974 Cr LJ 423](#) ; *Bharat Bhushan v State of Punjab*, reported in 1999 (2) RCR (Cr) 148.

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CHAPTER XIV OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY CONVENIENCE, DECENCY AND MORALS

The following specific instances of nuisance are dealt with in this Chapter:—

1. Act likely to spread infection (sections 269–271).
2. Adulteration of food or drink (sections 272–273).
3. Adulteration of drugs (sections 274–276).
4. Fouling water of a public spring or reservoir (section 277).
5. Making atmosphere noxious to health (section 278).
6. Rash driving or riding (section 279).
7. Rash navigation (sections 280–282).
8. Exhibition of false light, mark or buoy (section 281).
9. Danger or obstruction in a public way or line of navigation (section 283).
10. Negligence in respect of poison (section 284), fire (section 285) or explosive substances (section 286).
11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

162. [s 294] Obscene acts and songs.

[Whoever, to the annoyance of others—

- (a) **does any obscene act in any public place, or**
- (b) **sings, recites or utters any obscene songs, 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.]

COMMENT.—

Ingredients.—(i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained of is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited

or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed.¹⁶³ To fall within the scope of 'obscene' under [sections 292 and 294 IPC, 1860](#), the ingredients of the impugned matter/art must lie at the extreme end of the spectrum of the offensive matter. The legal test of obscenity is satisfied only when the impugned art/matter can be said to appeal to an unhealthy, inordinate person having perverted interest in sexual matters or having a tendency to morally corrupt and debase persons likely to come in contact with the impugned art. It must also be remembered that a piece of art may be vulgar but not obscene. In order to arrive at a dispassionate conclusion where it is crucial to understand that art from the perspective of the painter, it is also important to picture the same from a spectator's point of view who is likely to see it.¹⁶⁴ The obscene act or song must cause annoyance. Though annoyance is an important ingredient of this offence, it being associated with mental condition, has often to be inferred from proved facts. Thus, where a Doctor was filthily abused in a public place by dragging the name of his wife and he and some members of the public were impelled to complain to the police, it was held that there was sufficient indication of the fact that they were all annoyed even though it was not stated or spoken to by them in their evidence.¹⁶⁵

[s 294.1] Public Place.—

Hotels like the one where cabaret dances are performed and entry is restricted by purchase of the tickets, would still be the public places within the meaning of [section 294 of the IPC, 1860](#).¹⁶⁶ An offence under the section could not be made out by uttering words in a private garden which was not a public place.¹⁶⁷

[s 294.2] CASES.—

Where the accused addressed openly two respectable girls who were strangers to him, in amorous words suggestive of illicit sex relations with them and asked them to go along with him on his rickshaw, he was held to have committed an obscene act.¹⁶⁸ 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.¹⁶⁹

[s 294.3] MF Husain's case.—

The renowned artist MF Husain challenged the summoning orders against him which arose from a contemporary painting celebrating nudity made by petitioner. Subsequently in the year 2006, the said painting entitled 'Bharat Mata' was advertised as part of an online auction for charity for Kashmir earthquake victims organised by a non-governmental organisation with which the petitioner claimed to have no involvement. It was stated that the petitioner at no point in time had given a title to the said painting. There can be no exasperation caused by viewing such painting on the website for the reason that a person would first access such a website only if he has some interest in art and that too contemporary art, and in case he does view such a website, he always would have the option to not to view or close the said web page. It appeared that the complainants are not the types who would go to art galleries or have an interest in contemporary art, because if they did, they would know that there are many other artists who embrace nudity as part of their contemporary art. Hence, the offence alleged under [section 294 IPC, 1860](#), could not be made out.¹⁷⁰

[s 294.4] Cabaret dance.—

In *Narendra H Khurana v Commissioner*,¹⁷¹ a division bench of Bombay High Court examined the question whether the nude cabaret dances which are *per se* indecent and obscene, held in a restaurant on purchase of tickets would warrant prosecution under [section 294 of the IPC, 1860](#), in the absence of express evidence of annoyance by any of the persons who attend such shows. It was held that cabaret dances where indecent and obscene act *per se* is involved would not attract the provision of [section 294 of the IPC](#) without fulfilment of its essential ingredients, i.e. Evidence pertaining to "annoyance to others". In *State of Maharashtra v Indian Hotel & Restaurants Association*,¹⁷² the Supreme Court lifted the ban on dance bars holding that "we fail to see how exactly the same dances can be said to be morally acceptable in the exempted establishments and lead to depravity if performed in the prohibited establishments. Rather it is evident that the same dancer can perform the same dance in the high-class hotels, clubs, and gymkhanas but is prohibited of doing so in the establishments covered under section 33A of Bombay [Police Act, 1951](#). We see no rationale which would justify the conclusion that a dance that leads to depravity in one place would get converted to an acceptable performance by a mere change of venue".

[s 294.5] Moral turpitude.—

Offence under section 294 does not involve moral turpitude.¹⁷³

[s 294.6] Section 294(b).—

To make out an offence under section 294(b) of [IPC, 1860](#), the alleged obscene act must have been committed by the accused in or near a public place. Writing obscene letters and sending them to the victim on her personal address and which were expected to be read by her privately does not constitute the offence.¹⁷⁴

¹⁶². Subs. by Act 3 of 1895, section 3, for section 294.

¹⁶³. *Pawan Kumar v State of Haryana*, [AIR 1996 SC 3300](#) [[LNIND 1996 SC 2868](#)] : (1996) 4 SCC 17 [[LNIND 1996 SC 2868](#)] .

¹⁶⁴. *MF Husain v Raj Kumar Pandey*, [2008 Cr LJ 4107](#) (Del).

¹⁶⁵. *Patel HM v Malle Gowda*, [1973 Cr LJ 1047](#) (Mys).

¹⁶⁶. *Narendra H Khurana v Commissioner*, [2004 Cr LJ 3393](#) (Bom).

¹⁶⁷. *Saraswathi v State of TN*, [2002 Cr LJ 1420](#) (Mad); *K Jayaramanuja v Kanakraj*, [1997 Cr LJ 1623](#) (Mad), words complained of did not show annoyance to others. Acquittal, no interference in revision.

¹⁶⁸. *Zafar Ahmad*, [AIR 1963 All 105](#) [[LNIND 1962 ALL 125](#)] ; *Sadar Prasad*, [1970 Cr LJ 1323](#) (Pat).

169. *KP Mohammad*, 1984 Cr LJ 745 (Ker). See also *Chander Kala v Ram Kishan*, AIR 1985 SC 1268 [LNIND 1985 SC 166] : 1985 Cr LJ 1490 : (1985) 4 SCC 212 [LNIND 1985 SC 166] : 1985 SCC (Cr) 491, where the offence was proved with cogent evidence.
170. *MF Husain v Raj Kumar Pandey*, 2008 Cal LJ 4107 (Del).
171. *Narendra H Khurana v Commissioner*, 2004 Cr LJ 3393 (Bom),
172. *State of Maharashtra v Indian Hotel & Restaurants Association*, AIR 2013 SC 2582 [LNIND 2013 SC 665] : (2013) 8 SCC 519 [LNIND 2013 SC 665] .
173. *Pawan Kumar v State of Haryana*, AIR 1996 SC 3300 [LNIND 1996 SC 2868] : (1996) 4 SCC 17 [LNIND 1996 SC 2868] .
174. *MM Haris v State*, 2005 Cr LJ 3314 .

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11. Negligence in respect of machinery (section 287), building (section 288) or animals (section 289).
12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

175. [s 294A] Keeping lottery office.

[Whoever keeps any office or place for the purpose of drawing any lottery ¹ 176. [not being ^{177.} [a State lottery] or a lottery authorised by the ^{178.} [State] Government], shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes ² any proposal to pay any sum, or to deliver any goods, ³ or to do or forbear from doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.]

State Amendments

Andhra Pradesh.—*This amendment was made by A.P. Act No. 16 of 1968, s. 27, (w.e.f. 1-2-1969).*

In its application to the State of Andhra Pradesh, the provisions of section 294-A are repealed.

Gujarat.— *The following amendments were made by Bombay Act No. 82 of 1958, s. 33 read with Bom.*

Act No. 11 of 1960, s. 87.

In its application to the State of Gujarat, the provisions of section 294A are repealed.

Karnataka (Mysore).— *The following amendments were made by Mys. Act 27 of 1951, s. 33.*

In its application to the whole of the Mysore area except Bellary district, the provisions of section 294A are repealed.

Maharashtra.— *The following amendments were made by Bom. Act No. 82 of 1958, s. 33 (w.e.f. 1-5-1959).*

In its application to the State of Maharashtra, the provisions of section 294A are repealed.

Uttar Pradesh.— *Section 294A of Indian Penal Code shall be omitted, vide U.P. Act No. 24 of 1995.*

COMMENT.—

Lottery stands on the same footing as gambling because both of them are games of chance. The section does not touch authorized lotteries, but intends to save people from the effects of those not authorised by prohibiting (1) the keeping of offices or places for drawing them, and (2) the publication of any advertisement relating to them.

Bombay Lotteries (Control and Tax) and Prize Competitions (Tax) Act 1958, Bombay Act No. LXXXII of 1958, by section 33 repeals the operation of this section in the State of Maharashtra.

State Governments can authorise lotteries in any way. No procedure is prescribed.^{179.}

[s 294A.1] Ingredients.—

This section requires two things—

1. Keeping of any office or place for the purpose of drawing any lottery.
2. Such lottery must not be authorized by Government.

1. 'Drawing any lottery'.—A lottery is a distribution of prizes by lot or chance without the use of any skill.^{180.} It makes no difference that the distribution is part of a genuine mercantile transaction.^{181.}

2. 'Publishers'.—This word includes both the persons who sends a proposal as well as proprietor of a newspaper who prints the proposal as an advertisement.^{182.} The proprietor of a Bombay newspaper who published an advertisement in his paper relating to a Melbourne lottery was held to be guilty under this section.^{183.}

3. 'Goods'.—The term 'goods' includes both movable and immovable property. The publication of an advertisement of a lottery by which the lucky winner would get a factory for less than its real value is an offence under this section.^{184.}

[s 294A.2] CASES.—

Agreement for contributions to be paid by lot is not lottery.— An agreement whereby a number of persons subscribe, each a certain sum, by a periodical instalment, with the object that each in his turn, (to be decided by lot), shall take the whole subscription for each instalment, all such persons being returned the amount of their contributions, the common fund being lent to each subscriber in turn, was held to be not illegal.^{185.}

[s 294A.3] Prize chit.—

A prize chit was started with the object of creating a fund for a temple. It consisted of 625 subscribers, the monthly subscription being Rs 3. The subscription was to be paid for 50 months. A drawing was to take place every month, one ticket was to be drawn out of 625 tickets and the subscriber who drew the ticket was to be paid Rs 150 without any liability to pay future instalments. That process was to be repeated every month till the 50th month. After the 50th month the remaining 575 subscribers were to be each paid in a particular order Rs 150, and the chit fund was to be closed. It was held that the chit fund was a lottery.^{186.}

[s 294A.4] Transaction in which prizes are decided by chance amounts to lottery.—

It has, been held by the High Court of Kerala that lucky draw prize schemes organised by manufacturers as part of promotion of sale of manufactured goods come within the ambit of this section. Government, however, has a discretion to select firms by rotation and such a *bona fide* selection cannot be attacked as discriminatory under [Article 14 of the Constitution](#).^{187.}

^{175.} Ins. by Act 27 of 1870, section 10.

^{176.} Ins. by Act 27 of 1870, section 10.

^{177.} Subs. by Act 3 of 1951, section 3 and Sch., for "a lottery organised by the Central Government or the Government of a Part A State or a Part B State" (w.e.f. 1-4-1951).

^{178.} Subs. by the A.O. 1950, for "Provincial".

^{179.} *Rama Nava Nirman Samithi v State of TN*, [1990 Cr LJ 2620](#) (TN).

^{180.} *Sesha Ayyar v Krishna Ayyar*, (1935) 59 Mad 562 : 566 (FB); *Taylor v Smetten*, (1883) 11 QBD 207 ; *Mukandi Lal*, (1917) PR No. 35 of 1917.

^{181.} *GC Chakrabatty*, (1915) 9 BLT 124 , 17 Cr LJ 143.

^{182.} *Mancherji Kavasji*, (1885) 10 Bom 97.

^{183.} *Ibid*.

^{184.} *Malla Reddi v State*, (1926) 50 Mad 479.

^{185.} *Vasudevan Namburi v Mammod*, (1898) 22 Mad 212.

^{186.} *Sesha Ayyar v Krishna Ayyar*, (1935) 59 Mad 562 (FB).

187. *Tata Oil Mills Co Ltd*, [1982 Cr LJ NOC 171](#) (Ker).

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CHAPTER XV OF OFFENCES RELATING TO RELIGION

The principle on which this chapter has been framed is a principle on which it would be desirable that all governments should act, but from which the Government of India cannot depart without risking the dissolution of society; it is this, that every man should be suffered to profess his own religion and that no man should be suffered to insult the religion of another.^{1.}

[s 295] Injuring or defiling place of worship with intent to insult the religion of any class.

Whoever destroys, damages or defiles ¹ any place of worship, or any object^{2.} held sacred by any class of persons^{3.} with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

COMMENT.—

The object of this section is to punish those persons who intentionally wound the religious feelings of others by injuring or defiling a place of worship. This section is intended to prevent wanton insult to the religious notions of a class of persons.²

[s 295.1] Ingredients.—

This section requires two things—

1. Destruction, damage or defilement of (a) any place of worship or (b) any object held sacred by a class of persons.
2. Such destruction, etc., must have been done (i) with the intention of insulting the religion of a class of persons, or (ii) with the knowledge that a class of persons is likely to consider such destruction, etc., as an insult to their religion.

1. 'Defiles'.—This word is not to be restricted in meaning to acts that would make an object of worship unclean as a material object, but extends to acts done in relation to the object of worship which would render such object ritually impure.³

2. 'Object'.—The word 'object' does not include animate objects. It refers only to inanimate objects such as churches, mosques, temples, and marble or stone figures representing gods.^{4.} Killing of a cow by a Mohammedan, within the sight of a public road frequented by Hindus, is not punishable under this section.^{5.} Similarly, where a bull dedicated and set at large on a ceremonial occasion of Hindus in accordance with a religious usage was killed by certain Mohammedans secretly and at night in the presence of none but Mohammedans; it was held that no offence was committed.^{6.} Any object, however trivial or destitute of real value in itself, if regarded as sacred by any class of persons would come within the meaning of this section nor is it absolutely