
91. *Manohar Shrinivas v Avtarsingh*, (1969) 72 Bom LR 629 .

92. *Abdul Kalam v State*, 2006 Cr LJ 3071 (Del).

THE INDIAN PENAL CODE

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).
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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).

[s 289] Negligent conduct with respect to animal.

Whoever knowingly or negligently omits to take such order with any animal in his possession ¹ as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, ² shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

COMMENT.—

This section deals with improper or careless management of animals. It does not refer to savage animals alone, but to any 'animal', wild or domestic, e.g., a pony.⁹³

In the case of wild and savage animals, a savage or mischievous temper is presumed to be known to their owner and to all men as a usual accompaniment of such animals; and hence a positive duty is cast on the owner to protect the public against the mischief resulting from such animals being at large. Anyone who keeps such a wild

animal as a tiger or bear, which escapes and does damage, is liable without any proof of notice of the animal's ferocity; in such a case it may be said '*res ipsa loquitur*'.

In the case of animals, which are tame and mild in their general temper, no mischievous disposition is presumed. It must be shown that the defendant knew that the animal was accustomed to do mischief. Some evidence must be given of the existence of an abnormally vicious disposition. A single instance of ferocity, even a knowledge that it has evinced a savage disposition, is held to be sufficient notice.^{94.}

1. 'Animal in his possession'. Where the owner knowing that his buffalo was of a savage and vicious disposition *vis-a-vis* human beings, negligently omitted to take such order with the animal as was sufficient to guard against probable danger to human life or any probable danger of grievous hurt, and the animal attacked the complainant in a jungle and wounded him with her horn, it was held that he was guilty of an offence under this section.^{95.}

2. 'As is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal'.—Where a pony, which was tied negligently, got loose and ran through a crowded bazar, it was held that the conviction under this section was good, because the pony on such an occasion might create danger to the lives or limbs of men, women and children walking in the bazar.^{96.} The accused, a horse-keeper, harnessed his master's horse, put him into his carriage, and then went away, leaving the horse and carriage standing in the road of the compound of his master's house without any justification; it was held that the accused had committed an offence under this section, since the horse was not the less in the actual possession of the servant, because it was for some purpose in the constructive possession of his master.^{97.}

^{93.} *Chand Manal*, (1872) 19 WR (Cr) 1.

^{94.} See the authors' *LAW OF TORTS*, 19th Edn, chapter XX.

^{95.} *Moti*, (1954) Nag 585.

^{96.} *Chand Manal*, (1872) 19 WR (Cr) 1.

^{97.} *Natha Reva*, (1881) Unrep Cr C 163.

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12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 290] Punishment for public nuisance in cases not otherwise provided for.

Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

COMMENT.—

This section provides for the punishment of a nuisance falling within the four corners of the definition given in section 268 but not punishable under any other section.

[s 290.1] CASES.—

The display of unauthorized hoardings / banners / posters not only result in defacement of public property and any place open to public view, but is an eyesore to the viewers thereby causing public nuisance. In a given case, it may also result in obstructing the free flow of traffic on the public roads. The same would not only be unlawful but unjust and unreasonable, irrespective of whether it has the effect of advertisement or otherwise. Suffice it to observe that the Authorities have a bounden duty to prevent and regulate display of illegal hoardings / banners / posters in the

interests of amity and public safety.⁹⁸ Though corporate bodies act through their agents, there is no reason to exempt such bodies when their agents or servants, while purporting to act on their behalf commit an offence like public nuisance, which is punishable with fine only. So a Municipality could be convicted for not maintaining the cleanliness of the town under [section 290, IPC, 1860](#).⁹⁹ But in deciding cases of nuisance the rigid standards of urban society cannot be applied to Indian villages.¹⁰⁰ Where a Coal Depot had been in existence for seven or eight years and only two neighbours complained against its continuance at that site, it could not be said that it constituted a public nuisance. At best, it was a private nuisance.¹⁰¹ Playing the radio loud at a particular time did not constitute public nuisance and it was too trivial a matter for the Court to take notice of it.¹⁰²

⁹⁸. *SP Jadhav v State of Maharashtra*, [AIR 2010 \(4\)](#) Bom section 548.

⁹⁹. *Kurnool Municipality*, [1973 Cr LJ 1227](#) (AP).

¹⁰⁰. *Chakra Behera*, [1974 Cr LJ 423](#) (Ori).

¹⁰¹. *Berhampore Municipality v Oruganti Kondaya*, [1977 Cr LJ NOC 279](#) (Ori).

¹⁰². *Ivor Heyden v State*, [1984 Cr LJ NOC 16](#) (AP).

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12. Selling obscene literature and pictures (sections 292, 293) or doing obscene acts (section 294).
13. Keeping a lottery office (section 294A).

[s 291] Continuance of nuisance after injunction to discontinue.

Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

COMMENT.—

This section punishes a person repeating or continuing a nuisance after he is enjoined by a public servant not to repeat or continue it. [Sections 142](#) and [143](#) of the [Cr PC, 1973](#) empower a Magistrate to forbid an act causing public nuisance.

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103.[s 292] Sale, of obscene book,

104.[(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 prurient 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.]

105.[(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 ^{106.}[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].

^{107.}[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, 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;
- (a) 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](#) (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.]]

State Amendments

Orissa.— *The following amendments were made by Orissa Act No. 13 of 1962, s. 2 (w.e.f. 16-5-1962).*

In its application to the whole State of Orissa, in Section 292, for the words, "which may extend to three months", substitute the words "which may extend to two years" and insert the following proviso before the Exception, namely:—

"*Provided* that for a second or any subsequent offence under this section, he shall be punished with imprisonment of either description for a term which shall not be less than six months and not more than two years and with fine".

Tamil Nadu.— *The following amendments were made by Tamil Nadu Act No. 25 of 1960, s. 2 (w.e.f. 9-11-1960).*

In its application to the whole of the State of Tamil Nadu, in Section 292, for the words "shall be punished with imprisonment of either description for a term which may extend to three months or with fine or with both", substitute the following, namely:—

"shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that for a second or any subsequent offence under this section, he shall be punished with imprisonment of either description for a term which shall not be less than six months and not more than two years and with fine".

COMMENT.—

[section 292 IPC, 1860](#), was enacted by the Obscene Publications Act to give effect to Article I of the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications to which India is a signatory. By Act 36 of 1969, section 292 was amended to give more precise meaning to the word 'obscene' as used in the section in addition to creating an exception for publication of matter which is proved to be justified as being for the public good, being in the interest of science, literature, art or learning or other objects of general concern. Prior to its amendment, section 292 contained no definition of obscenity. The amendment also literally does not provide for a definition of 'obscenity' in as much as it introduces a deeming provision.¹⁰⁸ In order to make the law relating to the publication of obscene matters or objects deterrent, the section provides for enhanced punishment. The Exception to the original section, which is now redrafted, exempts from the provisions of the section any representation, sculptured, engraved or painted on or in any ancient monument. The possession referred to in this section connotes conscious possession.¹⁰⁹ By Act 25 of 1960, the State of Tamil Nadu has added a new section as section 292A for dealing with printing, of grossly indecent or scurrilous matter or matter intended for blackmail. The State of Orissa has followed suit by Act 13 of 1962. The intention of the Legislature while amending the provision is to deal with this type of offences which corrupt the mind of the people to whom objectionable things can easily reach and need not be emphasized that corrupting influence is more likely to be upon the younger generation who has got to be protected from being easy prey.¹¹⁰ This section was amended by Act XXXVI when apart from enlarging the scope of the exceptions, the penalty was enhanced which was earlier up to three months or with fine or with both. By the amendment a dichotomy of penal treatment was introduced for dealing with the first offenders and the subsequent offenders. In the case of even a first conviction, the accused shall be punished with imprisonment of either description for a term which may extend to two years and with fine which may extend to Rs 2,000.¹¹¹

1. 'Obscene'.—The word obscenity is not defined in the [IPC, 1860](#). The word 'obscene' was originally used to describe anything disgusting, repulsive, filthy or foul. The use of the word is now said to be somewhat archaic or poetic; and it is ordinarily restricted to something offensive to modesty or decency, or expressing or suggesting unchaste or lustful ideas, or being impure, indecent, or lewd.¹¹² The obscene matter in a book must be considered by itself and separately to find out whether it is so gross and its obscenity, so decided, that it is likely to deprave and corrupt those whose minds are open to influences of this sort and into whose hands the book is likely to fall. In this connection, the interests of our contemporary society and particularly the influence of the book on it must not be overlooked.¹¹³ It was further observed in this case that

merely treating with sex and nudity in art and literature cannot be regarded as evidence of obscenity without something more. It was held that where obscenity and art are mixed, art must be so preponderating as to throw the obscenity into the shadow or the obscenity so trivial and insignificant that it can have no effect and may be overlooked. When treatment of sex becomes offensive to public decency and morality as judged by the prevailing standards of morality in the society, then only the work may be regarded as an obscene production.¹¹⁴ In considering the question of obscenity of a publication what the Court has to see is that whether a class, not an isolated case, into whose hands the book, article or story falls suffer in their moral outlook or become depraved by reading it or might have impure and lecherous thoughts aroused in their minds.¹¹⁵ It was also observed in this case that the question of obscenity may have to be judged in the light of the claim that the work has a predominant literary merit. Referring to the impact on the mind of the youth, the Court said:¹¹⁶

We do not think that it can be said with any assurance that merely because the adolescent youth read situations of the type presented in the book, they would become deprived, debased and encouraged to lasciviousness. It is possible that they may come across such situations in life and may have to face them. But if a narration or description of a similar situation is given in a setting emphasising a strong moral to be drawn from it and condemns the conduct of the erring party as wrong and loathsome, it cannot be said that they have a likelihood of corrupting the morals of, those in whose hands it is likely to fall—particularly the adolescent.

In *KA Abbas v UOI*,¹¹⁷ the Supreme Court has called the test laid down in *Mishkin's case*¹¹⁸ as 'selective audience obscenity test' and observed as:

our standards must be so framed that we are not reduced to a level where the protection of the least capable and the most depraved amongst us determines what the morally healthy cannot view or read

The requirements of art and literature include within themselves a comprehensive view of social life and not only in its ideal form and the line is to be drawn where the average moral man begins to feel embarrassed or disgusted at a naked portrayal of life without the redeeming touch of art or genius or social value. If the depraved begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman's legs in everything, it cannot be helped. In our scheme of things ideas having redeeming social or artistic value must also have importance and protection for their growth.

In the case of *Samaresh Bose v Amal Mitra*¹¹⁹, wherein the Supreme Court provided the following guidance:¹²⁰

In our opinion, in judging the question of obscenity, the judge in the first place should try to place himself in the position of the author and from the view point of the author the judge should try to understand what is it that the author seeks to convey and what the author conveys has any literary and artistic value. The judge should thereafter place himself in the position of a reader of every age group in whose hands the book is likely to fall and should try to appreciate what kind of possible influence the book is likely to have in the minds of the readers. The judge should thereafter apply his judicial mind dispassionately to decide whether the book in question can be said to be obscene within the meaning of the section by an objective assessment of the book as a whole and also of the passages complained of as obscene separately.

It is no defence to a charge of obscenity merely to urge that the information has been copied from similar works.¹²¹

In *Promilla Kapur (Dr) v Yash Pal Bhasin*, *Promilla Kapur (Dr) v Yash Pal Bhasin*,¹²² the Delhi High Court felt¹²³ that there was nothing wrong if a sociologist made a research on the subject of call-girls in order to know the reasons as to why and how the young girls fall in this profession and what society could do in order to eradicate or at least minimise the possibility of young budding girls joining the flesh trade. The book was in the form of interviews with the girls in the profession. The portion marked by the Magistrate as obscene was a description of their encounters with unscrupulous males