

including a description by some girls of their first experience with sex. But by far the bulk of the book dealt with the ways and means of running the profession and the methods of encountering them. Thus, the book was within the scope of clause (a) of the first exception. In *Bobby Art International v Om Pal Singh Hoon*,<sup>124</sup> while examining the validity of certificate of exhibition awarded to the film "Bandit Queen" it was held that nakedness does not always arouse the baser instinct. In *Director General, Directorate General of Doordarshan v Anand Patwardhan*,<sup>125</sup> the Supreme Court again referred to the Hicklin test and observed that the relevant questions are:

- (a) whether the average person applying contemporary community standards would find that the work, taken as a whole appeal to the prurient interest.
- (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically, defined by the applicable state law,
- (c) whether the work taken as a whole, lacks serious literary, artistic, political or scientific value.

In the case of *Ajay Goswami v UOI*,<sup>126</sup> the Supreme Court, while recognizing the right of adult entertainment, reviewed the position of law on obscenity and summarized the various tests laid down regarding obscenity.

#### **[s 292.1] A picture of a woman in the nude is not *per se* obscene.—**

Unless the picture of a nude/semi-nude female is an incentive to sensuality or impure or excite the thoughts in the mind of an ordinary person of normal temperament, the pictures cannot be regarded as obscene within the meaning of [section 292 IPC, 1860](#). But where repetitive photographs without any backdrop content are published in a magazine and nearly 1/4th of the magazine consists of nothing but repetitive photographs of semi-nude women, prominence being to display their breast, there being hardly any literary contents in the magazine, the matter loses any literary content and therefore the broad social outlook penned in *Ranjit Udeshi's case*<sup>127</sup> may not be available as a defence.<sup>128</sup> To fall within the scope of 'obscene' under [sections 292 and 294 IPC](#), 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.<sup>129</sup>

#### **[s 292.2] Hicklin Test and Community Standard Test.—**

One of the tests to be applied to find whether an article possesses the standard of obscenity is the Hicklin Test.<sup>130</sup> As per this, *the test of obscenity is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall*. The other test is *Community Standard Test*, whereby the obscenity has to be judged from the point of view of an average person, by applying contemporary community standards. In *Aveek Sarkar v State of WB*,<sup>131</sup> the Supreme Court was of the view that Hicklin test is not the correct test to be applied to determine "what is obscenity".

When the name of Mahatma Gandhi is alluded or used as a symbol, speaking or using obscene words, the concept of "degree" comes in. To elaborate, the "contemporary

community standards test" becomes applicable with more vigour, in a greater degree and in an accentuated manner.<sup>132.</sup>

### **[s 292.3] Khushboo Case.—**

In *Khushboo v Kanniammal*,<sup>133.</sup> the appellant, a popular actress expressed her personal opinion wherein she had noted the increasing incidence of pre-marital sex, especially in the context of live-in relationships and called for the societal acceptance of the same. However, appellant had also qualified her remarks by observing that girls should take adequate precautions to prevent unwanted pregnancies and the transmission of venereal diseases. The Supreme Court said it failed to see how the appellant's remarks amount to 'obscenity' in the context of [section 292 IPC, 1860](#). It was difficult to appreciate the claim that the statements published as part of the survey were in the nature of obscene communications.

### **[s 292.4] Meaning of the word obscene in sections 292, 293 and section 294(b).—**

The word 'obscene' is not defined differently in these sections but the punishments were prescribed differently in other sections depending upon the effect of 'obscenity' that causes on the viewer or hearer as the case may be. That also would sufficiently indicate that the said word is to be understood as understood for the purpose of section 292.<sup>134.</sup>

### **[s 292.5] Certificate of Censor Board.—**

Once the film is given a particular certification, no doubt the case of obscenity under [section 292 of the IPC, 1860](#), cannot be made out when the said film is shown to the particular category for which the certificate is granted. Again, the pre-condition is that there has to be a certification by the Board of Film Censors. In the absence of any such certificate, the petitioners cannot claim immunity from prosecution under [section 292 of the IPC](#).<sup>135.</sup> In *GP Lamba v Tarun Mehta*,<sup>136.</sup> explaining the role of the Censor Board certificate,<sup>137.</sup> the Court said:

The law presumes the regular performance of official acts. This is not to suggest that the grant of a certificate debars the court from judging the obscenity of a film..... or that the certificate is conclusive.... such a certificate is the opinion of a high powered Board especially entrusted with power to screen off the silver screen pictures which offensively invade or deprave public morale through over-sex... The rebuttable presumption, which arises in favour of the statutory certificate, can be negated by positive evidence. No such evidence was before the court.<sup>138.</sup>

In the matter of sex knowledge, the Court said:

In the present day society in India, a book, picture or a publication which deals with such matter cannot *per se* be said to be obscene.<sup>139.</sup>

The Court further added that in order to satisfy the requirement of *mens rea* there must be a distinct finding that the matter complained of was inserted by the order or owing to the negligence of the proprietor.<sup>140.</sup>

### **[s 292.6] Public interest.—**

An obscene advertisement was published in a daily. The advertiser said that the publication was intended in good faith to promote sale of condoms. The advertisement was withdrawn because of social objections. The advertiser also apologised. The complaint filed by a social worker was no doubt maintainable but it was quashed because the complainant's interest should give way to the larger public interest as to whether prosecution would be proper in the circumstances of the case.<sup>141.</sup>

### **[s 292.7] For sale.—**

Possession of obscene objects is punishable if the possession is for the purpose of sale, hire, distribution, public exhibition or circulation. Persons who were found viewing obscene films on television with the help of VCR could not be charged for the offence punishable under section 292.<sup>142.</sup>

### **[s 292.8] Effect upon children.—**

The accused could not be convicted of possessing an indecent photograph unless he knew that he had the photograph in his possession. The "making" of an indecent photograph included copying, downloading or storing it on a computer, provided that it was done knowingly.<sup>143.</sup>

### **[s 292.9] Pornography, incitement for supply of material.—**

Act of accused, privately viewing obscene film does not constitute an offence under [section 292 of IPC, 1860](#).<sup>144.</sup> Mere possession of an obscene cassette by itself does not amount to an offence punishable under [section 292\(2\) IPC](#). In the case on hand, the accused was found managing a video shop wherein obscene cassette containing a blue-film evidently kept for hire to the potential customers, was found. In such circumstances, it cannot be said that the possession of the cassette was without the requisite *mens rea* or that it does not attract the ingredients of the offence punishable under [section 292 IPC](#).<sup>145.</sup> In another case, it was proved that the accused showed pornographic film on the handycam to the prosecutrix. Though the charge of rape failed, conviction under sections 292 and 506 was upheld.<sup>146.</sup>

Generally, evidence of expert is inadmissible whether an article or book has a tendency to deprave and corrupt persons who are likely to read, hear or see the matter in question.<sup>147.</sup> The only exception is where the likely readers belong to a special class such as young children,<sup>148.</sup> In *Samaresh Bose's case*<sup>149.</sup> the Supreme Court of India considered the evidence of two eminent Bengali novelists to determine whether the book 'Prajapati', a Bengali novel, has a tendency to deprave and corrupt youth, who are likely to read it and having regard to their evidence decided the case in favour of the accused. It was however held that, though a Court of law may consider the views of reputed authors or leading literatures, the ultimate duty to make a proper assessment regarding obscenity or otherwise of a book rests only with the Court.<sup>150.</sup> The prosecution need not prove something which the law does not burden it with. As regards the second part of the guilty act (*actus reus*), i.e. the selling or keeping for sale an object which is found to be obscene, here of course the ordinary *mens rea* is required to be shown before the offence can be said to be complete. Even so, it was

held in this case that in criminal prosecution *mens rea* must necessarily be proved by circumstantial evidence alone unless the accused confesses. Thus, it is not required that prosecution must prove guilty intention to possess or possess for sale, by positive evidence. The Court will presume that the owner of the shop is guilty if the book is sold on his behalf and later found to be obscene unless he can establish that the sale was without his knowledge or consent. Thus to escape liability he has to prove his lack of knowledge.<sup>151</sup> In India, it is also a defence to plead a certificate given by the Board of Censors. Thus, a certificate granted by the Board of Censors under [section 5A of the Cinematograph Act 1952](#), certifying a film to be fit for public exhibition, circulation or distribution would by virtue of [section 79, IPC, 1860](#), make prosecution under [section 292, IPC](#), unsustainable even if the film be obscene, lascivious or tending to deprave or corrupt public morale. This is so as [section 79, IPC](#), (justification on ground of *bona fide* mistake of fact) is exculpatory when read with [section 5A of the Cinematograph Act](#) and the certificate issued thereunder.<sup>152</sup>

### **[s 292.10] Obscenity in the internet and other electronic mediums.—**

[section 67 of the Information Technology Act 2000](#) is the first statutory provisions dealing with obscenity on the Internet in India. [Sections 67, 67A and 67B](#) of the [Information Technology Act 2000](#) deal with obscenity in electronic sphere.

It must be noted that the both under [IPC, 1860](#), and the [Information Technology Act, 2000](#), the test to determine obscenity is similar.<sup>153</sup>

A special law shall prevail over the general and prior laws. Electronic forms of transmission is covered by the [IT Act](#), which is a special law. When the Act in various provisions deals with obscenity in electronic form, it covers the offence under [section 292 IPC, 1860](#). Once the special provisions having the overriding effect do cover a [criminal act](#) and the offender, he gets out of the net of the [IPC](#) and in this case, [section 292 IPC, 1860](#). Though charge has not been made out under [section 67 of the IT Act](#), yet the accused-appellant could not be proceeded under [section 292 IPC](#).<sup>154</sup>

### **State Amendments**

#### **(Section 292-A insertion)**

**Orissa.—** *The following amendments were made by Orissa Act No. 13 of 1962, s. 3 (w.e.f. 16-5-1962).*

In its application to the whole State of Orissa, after Section 292, insert the following new section, namely:—

*292-A. Printing, etc. of grossly indecent or scurrilous matter or matter intended for blackmail.—* Whoever—

(a) prints or causes to be printed in any newspaper, periodical or circular, or exhibits or causes to be exhibited, to public view or distributes or causes to be distributed or in any manner puts into circulation any picture or any printed or written document which is grossly indecent, or is scurrilous or intended for blackmail; or

(b) sells or lets for hire, or for purposes of sale or hire makes, produces or has in possession, any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail; or

(c) conveys any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail knowing or having reason to believe that such

picture or document will be printed, sold, let for hire, distributed or publicly exhibited or in any manner put into circulation; or

(d) takes part in, or receives profits from any business in the course of which he knows, or has reason to believe that any such newspaper, periodical, circular, picture, or other printed or written document is printed, exhibited, distributed, circulated, sold, let for hire, made, produced, kept, conveyed or purchased; or

(e) 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 newspaper, periodical, circular, picture or other printed or written document which is grossly indecent or is scurrilous or intended for blackmail can be procured from or through any person; or

(f) offers or attempts to do any act which is an offence under this section, 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.

*Explanation I.*—For the purposes of this section, the word "scurrilous" shall be deemed to include any matter which is likely to be injurious to morality or is calculated to injure any person:

*Provided* that it is not scurrilous to express in good faith anything whatever respecting the conduct of—

(i) a public servant in the discharge of his public functions or respecting his character so far as his character appears in that conduct and no further; or

(ii) any person touching any public question, and respecting his character, so far as his character appears in that conduct and no further.

*Explanation II.*—In deciding whether any person has committed an offence under this section, the Court shall have regard, *inter alia*, to the following considerations:—

(a) the general character of the person charged, and where relevant, the nature of his business;

(b) the general character and dominant effect of the matter alleged to be grossly indecent or scurrilous or intended for blackmail;

(c) any evidence offered or called by or on behalf of the accused person as to his intention in committing any of the acts specified in this section".

**Tamil Nadu.**— *The following amendments were made by T.N. 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, after Section 292, insert the following new section, namely:—

*"292-A. Printing, etc., of grossly indecent or scurrilous matter or matter intended for blackmail.*— Whoever—

(a) prints or causes to be printed in any newspaper, periodical or circular, or exhibits or causes to be exhibited, to public view or distributes or causes to be distributed or in

any manner puts into circulation any picture or any printed or written document which is grossly indecent, or is scurrilous or intended for blackmail; or

(b) sells or lets for hire, or for purposes of sale or hire makes, produces or has in his possession, any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail; or

(c) conveys any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail knowing or having reason to believe that such picture or document will be printed, sold, let for hire, distributed or publicly exhibited or in any manner put into circulation; or

(d) takes part in, or receives profits from, any business in the course of which he knows or has reason to believe that any such newspaper, periodical, circular, picture or other printed or written document is printed, exhibited, distributed, circulated, sold, let for hire, made, produced, kept, conveyed or purchased; or

(e) 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 newspaper, periodical, circular, picture or other printed or written document which is grossly indecent or is scurrilous or intended for blackmail can be procured from or through any person; or

(f) offers or attempts to do any act which is an offence under this section, <sup>155</sup>[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 <sup>156</sup>[and not more than two years] and with fine.

*Explanation I.*—For the purposes of this section, the word 'scurrilous' shall be deemed to include any matter which is likely to be injurious to morality or is calculated to injure any person:

*Provided* that it is not scurrilous to express in good faith anything whatever respecting the conduct of—

(i) a public servant in the discharge of his public functions or respecting his character so far as his character appears in that conduct and no further; or

(ii) any person touching any public question, and respecting his character, so far as his character appears in that conduct and no further.

*Explanation II.*—In deciding whether any person has committed an offence under this section, the Court shall have regard, *inter alia*, to the following considerations:—

(a) the general character of the person charged, and where relevant, the nature of his business;

(b) the general character and dominant effect of the matter alleged to be grossly indecent or scurrilous or intended for blackmail;

(c) any evidence offered or called by or on behalf of the accused person as to his intention in committing any of the acts specified in this section".

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103. Subs. by Act 8 of 1925, section 2, for section 292.
104. Ins. by Act 36 of 1969, section 2 (w.e.f. 7-9-1969).
105. Section 292 renumbered as sub-section (2) thereof by Act 36 of 1969, section 2 (w.e.f. 7-9-1969).
106. Subs. by Act 36 of 1969, section 2, for certain words (w.e.f. 7-9-1969).
107. Subs. by Act 36 of 1969, section 2, for *Exception* (w.e.f. 7-9-1969).
108. *MF Husain v Raj Kumar Pandey*, 2008 Cr LJ 4107 (Del).
109. *CT Prim*, AIR 1961 Cal 177 [LNIND 1959 CAL 81] .
110. *Gita Ram v State of HP*, AIR 2013 SC 641 [LNINDORD 2013 SC 18666] : (2013) 2 SCC 694 [LNIND 2013 SC 82] .
111. *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 .
112. *Devidas Ramachandra Tuljapurkar v State of Maharashtra*, AIR 2015 SC 2612 [LNIND 2015 SC 338] : 2015 (6) Scale 356 [LNIND 2015 SC 338] .
113. *Ranjit D Udeshi*, (1965) 1 SCR 65 [LNIND 1964 SC 205] SC : (1964) 67 Bom LR 506 : AIR 1965 SC 881 [LNIND 1964 SC 205] : 1965 (2) Cr LJ 8 .
114. *Ibid*.
115. *Chandrakant Kalyandas Kakodkar*, (1969) 72 Bom LR 917 SC : AIR 1970 SC 1390 [LNIND 1969 SC 293] : 1970 Cr LJ 1273 .
116. AIR 1970 SC 1390 [LNIND 1969 SC 293] at p 1394 : 1970 Cr LJ 1273 .
117. *KA Abbas v UOI*, 1970 (2) SCC 780 [LNIND 1970 SC 388] : AIR 1971 SC 481 [LNIND 1970 SC 388] : 1971 (2) SCR 446 [LNIND 1970 SC 388] .
118. *Mishkin v New York*, 383 US 502.
119. *Samaresh Bose v Amal Mitra*, AIR 1986 SC 967 [LNIND 1985 SC 296] : 1986 Cr LJ 24 : (1985) 4 SCC 289 [LNIND 1985 SC 296] .
120. 1986 Cr LJ 24 , at p 38.
121. *Thakur Prasad*, AIR 1959 All 49 [LNIND 1958 ALL 94] .
122. *Promilla Kapur (Dr) v Yash Pal Bhasin*, *Promilla Kapur (Dr) v Yash Pal Bhasin*, 1989 Cr LJ 1241 (Del).
123. At p 1245 per PK Bahri J.
124. *Bobby Art International v Om Pal Singh Hoon*, 1996 (4) SCC 1 [LNIND 1996 SC 2602] : AIR 1996 SC 1846 [LNIND 1996 SC 2602] .
125. *Director General, Directorate General of Doordarshan v Anand Patwardhan*, 2006 (8) SC 255 .
126. *Ajay Goswami v UOI*, 2007 (1) SCC 143 [LNIND 2006 SC 1133] : AIR 2007 SC 493 [LNIND 2006 SC 1133] .
127. *Supra*.
128. *Vinay Mohan Sharma v Administration*, 2008 Cr LJ 1672 (Del); *Sree Ram Saksena*, (1940) 1 Cal 581 .
129. *MF Husain v Raj Kumar Pandey*, 2008 Cr LJ 4107 (Del).
130. *R v Hicklin*, 1868 L.R. 2 Q.B. 360.
131. *Aveek Sarkar v State of WB*, 2014 Cr LJ 1560 : (2014) 4 SCC 257 [LNIND 2014 SC 84] .
132. *Devidas Ramachandra Tuljapurkar v State of Maharashtra*, 2015 Cr LJ 3492 .

133. *Khushboo v Kanniammal*, 2010 (5) SCC 600 [LNIND 2010 SC 411] : 2010 (4) Scale 462 [LNIND 2010 SC 411] : AIR 2010 SC 3196 [LNIND 2010 SC 411] : 2010 Cr LJ 2828 .
134. *Dhanisha v Rakhi N Raj*, 2012 Cr LJ 3225 .
135. *R Basu and Etc v National Capital Territory of Delhi*, 2007 Cr LJ 4254 (Del). See other SC cases relating to censorship KA Abbas, AIR 1971 SC 481 [LNIND 1970 SC 388] ; *Raj Kapoor*, 1980 Cr LJ 436 ; *Bobby Art International v Om Pal Singh*, AIR 1996 SC 1846 [LNIND 1996 SC 2602] ; *S Rangarajan's case*, (1989) 2 SCC 574 [LNIND 1986 SC 198] : 1989 (2) JT (SC) 170; *Ramesh v UOI*, (1988) 1 SCC 668 [LNIND 1988 SC 74] : 1988 SCC (Cr) 266; *Director General, Directorate General of Doordarshan v Anand Patwardhan*, AIR 2006 SC 3346 [LNIND 2006 SC 661] .
136. *GP Lamba v Tarun Mehta*, 1988 Cr LJ 610 (P&H).
137. Issued under the Cinematographic Act, 1952. See also *PK Somnath v State of Kerala*, 1990 Cr LJ 542 (Ker), Violation of Indecent Representation of Woman (Prohibition) Act, 1986 proceedings not quashed and points of difference between obscenity and pornography explained.
138. *GP Lamba v Tarun Mehta*, 1988 Cr LJ 610 (P&H).
139. Issued under the Cinematographic Act, 1952. See also *PK Somnath v State of Kerala*, 1990 Cr LJ 542 (Ker), Violation of Indecent Representation of Woman (Prohibition) Act, 1986 proceedings not quashed and points of difference between obscenity and pornography explained.
140. *Ibid*, see at p 613.
141. *Chairman & MD, Hindustan Latex Ltd v State of Kerala*, 1999 Cr LJ 808 (Ker).
142. *Jagdish Chawla v State of Rajasthan*, 1999 Cr LJ 2562 (Raj). *Damodar Sarma v State of Assam* 2007 Cr LJ 1526 (Gau) - Obscene books.
143. *Atkins v DPP; Goodland v DPP*, (2000) 1 WLR 1427 (QBD).
144. *Deepankar Chowdari v State of Karnataka*, 2008 Cr LJ 3408 (Kar); *Jagdish Chawla v State of Rajasthan*, 1999 Cr LJ 2562 (Raj).
145. *Abdul Rasheed v State of Kerala*, 2008 Cr LJ 3480 (Ker).
146. *Vijay Sood v State of HP*, 2009 Cr LJ 4530 (HP).
147. *Ibid*.
148. *Ibid; Director of Public Prosecutions v A & BC Chewing*, (1967) 2 All ER 504 .
149. *Samaresh Bose v Amal Mitra*, 1986 Cr LJ 24 : AIR 1986 SC 967 [LNIND 1985 SC 296] : (1985) 4 SCC 289 [LNIND 1985 SC 296] .
150. *Ibid*.
151. *Ibid; See also State of Karnataka v Basheer*, 1979 Cr LJ 1183 (Kar).
152. *Raj kapoor v Laxman*, 1980 Cr LJ 436 : AIR 1980 SC 605 [LNIND 1979 SC 492] .
153. *MF Husain v Raj Kumar Pandey*, 2008 Cr LJ 4107 (Del).
154. *Sharat Babu Digumarti v Govt of NCT of Delhi*, AIR 2017 SC 150 [LNIND 2016 SC 616] .
155. Subs. for the words "shall be punished on first conviction with imprisonment of either description for a term which may extend to two years or with fine or with both, 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 with fine" by the T.N. Act 30 of 1984, section 2 (w.e.f. 28-6-1984).
156. Ins. by T.N. Act 30 of 1984, section 2 (w.e.f. 28-6-1984).



## 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).
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).

#### **157.[s 293] Sale, of obscene objects to young person.**

**Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in the last preceding section, or offers or attempts so to do, shall be punished <sup>2</sup> [on first conviction with imprisonment of either description for a term which may extend to three 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 seven years, and also with fine which may extend to five thousand rupees].]**

#### **State Amendments**

**Orissa.**—*The following amendments were made by Orissa Act No. 13 of 1962, s. 4 (w.e.f. 16-5-1962).*

In its application to the whole State of Orissa, in Section 293:—

In section 293 of the said Code—

- (i) for the words "any such obscene object as is referred to in the last preceding section", the words, figures and letter "any such obscene object as is referred to in

section 292 or any such newspaper, periodical, circular, picture or other printed or written document as is referred to in section 292-A" shall be substituted;

(ii) for the words "which may extend to six months", the words "which may extend to three years" shall be substituted;

(iii) in the marginal note, after the words "obscene objects" the words "and grossly indecent or scurrilous matter or matter intended for blackmail", shall be inserted.

**Tamil Nadu.**— *The following amendments were made by T.N. Act No. 25 of 1960, s. 4 (w.e.f. 9-11-1960).*

In its application to the whole of the State of Tamil Nadu, in Section 293,—

*Amendment of section 293, Central Act XLV of 1860.*—In section 293 of the said Code—

(i) for the words 'any such obscene object as is referred to in the last preceding section', the words, figures and letter "any such obscene object as is referred to in Section 292 or any such newspaper, periodical, circular, picture or other printed or written document as is referred to in Section 292A", shall be substituted;

(ii) for the words 'which may extend to six months', the words 'which may extend to three years' shall be substituted; and

(iii) in the marginal note, after the words "obscene objects" the words "and grossly indecent or scurrilous matter or matter intended for blackmail", shall be inserted.

## COMMENT.—

This section provides for enhanced sentence where the obscene objects are sold, to persons under the age of 20 years. By Act 36 of 1969 the punishment for the offence is further enhanced. On going through section 293, it is clear that a separate penal provision was made with regard to the sale, exhibition, of such obscene object to any person under the age of 20 years where as section 292 (1) deals with sale, exhibition, of such obscene object to any person. Therefore, in order to make the provision more stringent and grave insofar as it relates to the sale, of obscene objects to younger persons—aged less than 20 years, a separate penal provision, made applicable in section 293, was introduced. It is in that context, the word 'obscene' occurring in section 292(1) is made applicable to section 293 also.<sup>158</sup> In a trial for the offences under [sections 292 and 293](#) of the [IPC, 1860](#), a certificate granted under [section 6 of the Cinematograph Act](#) by the Board of Censors does not provide an irrebuttable defence to accused who have been granted such a certificate, but it is certainly a relevant fact of some weight to be taken into consideration by the criminal Court in deciding whether the offence charged is established. The Court must have regard to the fact that the certificate represents the judgment of a body of persons particularly selected under the statute for the specific purpose of adjudging the suitability of films for public exhibition, and that judgment extends to a consideration of the principal ingredients which go to constitute the offences under [sections 292 and 293](#) of the [IPC, 1860](#). At the same time, the Court must remind itself that the function of deciding whether the ingredients are established is primarily and essentially its own function, and it cannot abdicate that function in favour of another, no matter how august and qualified be the statutory authority.<sup>159</sup>

## [s 293.1] CASE.—