

The Indecent Representation of Women (Prohibition) Act, 1986
(No. 60 Of 1986)
[23rd December, 1986]

An Act to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for the matters connected therewith or incidental thereto

Be it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:

(3) **Short title, extent and commencement.**-(1) This Act may be called the Indecent Representation of Women (Prohibition) Act, 1986.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

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

Comments

It is well settled that when the language of the statute is clear and admits of no ambiguity, recourse to the Statement of Objects and Reasons for the purpose of construing a statutory provision is not permissible.

The Court must strive to so interpret the statute as to protect and advance the object and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The Court must, therefore, keep the legislative policy in mind in applying the provisions of the Act to the facts of the case.

Rule of interpretation.-It is an accepted proposition of law that Acts must be construed as a whole. Guidance with the regard to the meaning of a particular word or phrase may be found in other words and phrases in the same section or in other sections although the utility of an extensive consideration of other parts of the same statute will vary from case to case.

In interpreting the provisions of the exercise undertaken by the Court is to make explicit the intention of the Legislature which enacted the legislation.

It is not for the Court to reframe the legislation for the very good reason that the powers to "legislate" have not been conferred on the Court.

In order to sustain the presumption of constitutionality of legislative measure, the Court can take into consideration matters of common knowledge, matters of common report, the history of the times and also assume every state of facts which can be conceived existing at the time of the legislation.

Generalia specialibus non-derogant.-It is well-known proposition of law that when a matter falls under any specific provision, then it must be governed by that provision and not by the general provision (generalia specialibus non-derogant).

Construction of words.-It is settled view that in determining the meaning or connotation of words and expressions describing an article in a tariff schedule, one principle which is fairly well settled is that those words and expressions should be construed in the sense in which they are understood in the trade by the dealer and the consumer. The reason is that it is they who are concerned with it and, it is the sense in which they understand it which constitutes the definitive index of the legislative intention.

2. Definitions.-In this Act, unless the context otherwise requires,-

(3) "advertisement" includes any notice, circular, label, wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas;

(b) "distribution" includes distribution by way of samples whether free or otherwise;

(c) "indecent representation of women" means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or is likely to deprave, corrupt or injure the public morality or morals;

(d) "label" means any written, marked, stamped, printed or graphic matter, affixed to, or appearing upon, any package;

(e) "package" includes a box, carton, tin or other container;

(f) "prescribed" means prescribed by rules made under this Act.

Comments

This section defines the various expressions occurring in the Act.

Interpretation of section.-The Court can merely interpret the section it cannot re-write, recast or redesign the section.

3. Prohibition of advertisements containing indecent representation of women.-No person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.

Comment

This section imposes prohibition of advertisements containing indecent representation of women.

4. Prohibition of publication or sending by post of books, pamphlets, etc., containing indecent representation of women. No person shall produce or cause to be produced, Sell, let to hire, distribute, circulate or send by post any books, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which. Contains indecent representation of women in any form:

Provided that nothing in this section shall apply to-

(3) any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure:

(3) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure is in the interest of science, literature, art, or learning or other object of general concern; or

(ii) which is kept or used bona fide for religious purposes;

b) any representation sculptured, engraved, painted or otherwise represented on or in

(3) any ancient monument within the meaning of the Ancient Monument and Archaeological Sites and Remains Act, 1958 (24 of 1958), or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purposes;

(c) any film in respect of which the provisions of Part II of the Cinematograph Act, 1952 (37 of 1952), will be applicable.

Comment

This section imposes prohibition of publication or sending of books, pamphlets, etc. containing indecent representation of women.

Proviso.-A proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a provision may be embedded in the main provision and becomes an integral part of so as to amount to a substantive provision itself.

5. Powers to enter and search.-(1) Subject to such rules as may be prescribed, any gazetted officer authorized by the State Government may, within the local limits of the area for which he is so authorized, -

(3) enter and search at all reasonable times, with such assistance, if any, as he considers necessary, any place in which he has reason to believe that an offence under this Act has been or is being committed ;

(b) seize any advertisement or any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which he has reason to believe contravenes any of the provisions of this Act;

(c) examine any record, register, document or any other material object found in any place mentioned in Cl. (a) and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act :

Provided that no entry under this sub-section shall be made into a private dwelling-house without a warrant :

Provided further that the power of seizure under this sub-section may be exercised in respect of any document, article or thing which contains any such advertisement, including the contents, if any, of such document, article or thing if the advertisement cannot be separated by reason of its being embossed or otherwise from such document, article or thing without affecting the integrity, utility or saleable value thereof.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to any search or seizure under this Act as they apply to any

search or seizure made under the authority of a warrant issued under Sec. 94 of the said Code.

(3) Where any person seizes anything under C1. (b) or C1. (c) of sub-section (1), he shall, as soon as may be, inform the nearest Magistrate and take his orders as to the custody thereof.

Comment

This section lays down the power of entry and search to an authorized gazetted officer, who has reason to believe that an offence has been committed under the Act. The said officer is also authorized to seize any advertisement, pamphlet, etc., in case it contravenes any of the provisions of the Act.

The search and seizure has to be made according to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

6. Penalty.-Any person who contravenes the provisions of Sec. 3 or Sec. 4 shall be punishable on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees.

Comment

This section makes provision for punishment for contravention of the provisions regarding prohibition of advertisements and publication of books, pamphlets, etc., containing indecent representation of women.

Penal Provision.- Penal provision is to be construed rigidly.

7. Offences by companies.-(1) Where an offence under this Act has been committed by a company, every person, who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without

his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-

(3) “company” means any body corporate and includes a firm or other association of individuals ; and

(b) “director”, in relation to a firm, means a partner in the firm.

Comment

This section deals with the matter relating to the offences committed by companies.

Explanation.-It is now well settled that an explanation added to a statutory provision is substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision.

8. Offences to be cognizable and bailable.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under this Act shall be bailable.

(2) An offence punishable under this Act shall be cognizable.

Comment

This section lays down that an offence punishable under this Act shall be cognizable and bailable.

9. Protection of action taken in good faith.-No suit, prosecution or other legal proceeding shall lie against the Central Government or any State Government or any other officer of the Central Government or any State Government for anything which is in good faith done or intended to be done under this Act.

Comments

This section grants immunity from civil and criminal proceeding to the Central Government and State Governments and their officers for exercising their powers or discharging their functions or for anything done or intended to be done in good faith.

Social welfare legislation.-In construing social welfare legislation, the Courts should adopt a beneficent rule of construction and in any event, that construction should be preferred which fulfills the policy of the legislation. Construction to be adopted should be more beneficial to the purposes in favour of and in whose interest the Act has been passed.

10. Power to make rules.-(1) The Central Government may, by notification in the official Gazette, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(3) the manner in which the seizure of advertisements or other articles shall be made, and the manner in which the seizure list shall be prepared and delivered to the person from whose custody any advertisement or other article has been seized,

(b) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Comment

This section empowers the Central Government to make rules for carrying out the provisions of this Act. Such rules are required to be laid before each House of Parliament at the earliest for approval with modification, if any.

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Indecent Representation Of Women (Prohibition) Rules, 1987

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

1. Short title and commencement.-(1) These rules may be called the Indecent Representation of Women (Prohibition) Rules, 1987.

(2) They shall come into force on the 2nd, October, 1987.

2. **Definitions.**-(1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Indecent Representation of Women (Prohibition) Act, 1986 (60 of 1986),

(b) "article" means and book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation of figure ;

(c) "authorised officer" means any gazetted officer authorised by the State Government for the purpose of Sec. 5 of the Act;

(d)"section" means a section of the Act.

(2) Words and expressions used in these rules and not defined, shall have the meanings respectively assigned to them in the act.

Comments

This rule defines the various terms, words and expressions used in these rules.

Principle of interpretation of a statute.-One may state the accepted principle of interpretation of a statute that every legislation is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. The question whether a statute operates retrospectively or prospectively is one of legislative intent. If the terms of the statute are clear of unambiguous and it is manifest that the Legislature intended the Act to operate retrospectively, unquestionably it must be so construed, if, however, the terms of a statute do not of themselves, make an intention certain or clear, it should be presumed to operate prospectively. An act is retrospective, if it takes away or impairs any vested right acquired under an existing law or creates a new liability or

obligation in respect of transactions already past or creates a new obligation or liability in respect of past transactions.

Rules of interpretation. - It is well-known rule of construction that it is not for the Court to make the law and the law should be applied even if the law does not accord with the notions of right and wrong of the Court. These are, no doubt, correct rules of interpretation.

3. Manner of seizing of articles.-(1) Every seizure made in pursuance of the provisions of sub-section (1) of Sec. 5 shall be made in the Manner hereinafter provided in these rules.

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

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

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

Comment

This rule lays down the procedure manner of seizing articles, which are believed to contravene any of the provisions of the Act.

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

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

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

Comment

This rule prescribes the manner of packing and dealing the prohibitory advertisements or articles seized according to the provisions of the Act.

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

Comment

The authorised officer is empowered to take such steps as he thinks fit for the seizure and sealing of advertisement or article, which, due to size or nature, is not possible to be seized and sealed according to the provisions of the rules. Care has, however, to be taken to ensure that the integrity, utility or saleable value of such advertisement or article is not affected in any way.

FORM
[Sec rule 3 (2)]

List of Advertisement of Articles Seized

To,

(Name and address of the person from whom the advertisement/s or article/s are seized)

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

Place: -----

SEAL

(Authorised Officer)

Area

Area-----

THE INDECENT REPRESENTATION OF WOMEN (PREVENTION) ACT, 1986

Statement of Objects and Reasons of the Act.-The law relating to obscenity in this country is codified in Secs. 292, 293 and 294 of the Indian Penal Code. In spite of these provisions, there is growing body of indecent representation of women or references to women in publications, particularly advertisements, etc. which have the effect of denigrating women and are derogatory to women. Though there may be no specific intention, these advertisements, publications, etc. have an effect of depraving or corrupting persons. It is, therefore, felt necessary to have a separate legislation to effectively prohibit the indecent representation of women through advertisements, books, pamphlets, etc.

The salient features of the Bill are

- (a) Indecent representation of women has been defined to mean the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent or derogatory to or denigrating, women or is likely to deprave corrupt or injure the public morality or morals.
- (b) It is proposed to prohibit all advertisements, publications, etc. which contain indecent representation of women in any form.
- (c) It has also been proposed to prohibit selling, distribution, circulation of any books, pamphlets, etc. containing indecent representation of women.
- (d) Offences under the Act are made punishable with imprisonment of either description for a term extending to two years and fine extending to two thousand rupees on first conviction. Second and subsequent convictions will attract a higher punishment.