

MEDIA AND CRIMINAL LAW

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- Article 19(2) and Penal law
- Media and Crime of Defamation - Section 499 Indian Penal Code
- Media and Crime of Sedition- Section 124A Indian Penal Code
- Media and Crime of Obscenity - Section 292 Indian Penal Code
- Statutory Liabilities of Media
- Trial by Media

Cinematography Act:

Guidelines to censor the films before they are permitted for public exhibition.

The objectives of film certification will be to ensure that -

- a. the medium of film remains *responsible and sensitive* to the values and standards of society;
- b. artistic expression and creative freedom are not unduly curbed;
- c. certification is *responsive to social change*;
- d. the medium of film provides clean and healthy entertainment; and
- e. as far as possible, the film is of aesthetic value and cinematically of a good standard."

- Clause (2) states that the Board of Film Censors shall ensure that -
 - i) human sensibilities are *not offended by vulgarity, obscenity or depravity*;
 - ii) scenes degrading or denigrating *women* in any manner are not presented;
 - iii) scenes involving sexual violence against women like attempt to rape, rape or any form of molestation or scenes of a similar nature are avoided, and if any such incident is germane to the theme, they shall be reduced to the minimum and no details are shown;

- Clause (3) reads thus:

The Board of Film Certification shall also ensure that the film is judged in its entirety from the point of view of the overall impact; and is examined in the light of the period depicted in the film and the contemporary standards of the country and the people to which the film relates, provided that the film does not deprave the morality of the audience.

- The specific sub-clauses of clause 2 of the guidelines cannot outweigh the sweep of clauses 1 and 3 and, indeed, of sub-clause (ix) of clause (2). Where the theme is of social relevance, it must be allowed to prevail. Such a theme does not offend human sensibilities nor extol the degradation or denigration of women.
- The Supreme Court referred these rules in Bandit Queen case, and said: —It is to this end that sub-clause (ix) of clause 2 permits scenes of sexual violence against women, reduced to a minimum and without details, if relevant to the theme. What that minimum and lack of details should be is left to the good sense of the certification authorities, to be determined in the light of the relevance of the social theme of the film. The Film Censor Board, acting under Section 5-A, is specially entrusted to screen off the silver screen pictures which offensively invade or deprave public morals through over-sex, the Supreme Court added.

- Section 5B of the Cinematography Act states that a film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interest of, inter alia, decency.
- The guidelines say that the human sensibilities should not be offended by vulgarity, obscenity or depravity. Scenes degrading or denigrating women in any manner are not presented. Scenes involving sexual violence against women, and if any such incident is germane to the theme, they shall be reduced to the minimum and no details are shown.
- There is another clause saying that the film should be judged in its entirety from the point of view of the overall impact.
- Wider interpretation of this provision by the Supreme Court helped the film 'Bandit Queen' to retain its Censor Certificate for public Exhibition.

Indecent Representation of Women Act 1986:

- Section 2C of the Indecent Representation of Women Act 1986 : As per this Act the 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
- Section 3 prohibits exhibition, publication or advertisement of indecent representation of women in any form. Section 4 punishes sending such things by post or circulating, **unless it is for public good or used bona fide for religious purposes in the shape of sculptures, paintings, ancient monuments or in temples, etc.**

Child Pornography:

- Cyber pornography is an aggravated form of offence while the child pornography is much more serious crime.
- The Information Technology Amendment Bill 2006 did not propose this to make a specific crime until the Nikhil Kumar Committee took it seriously.
- Clause 31 proposed to insert Section 67A whereby punishment has been provided for publishing or transmitting of material containing sexually explicit act in electronic form.

- Article 9 of the Council of Europe Convention on Cyber Crimes:

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

- (a) producing child pornography for the purpose of its distribution through a computer system;
- (b) offering or making available child pornography through a computer system;
- (c) distributing or transmitting child pornography through a computer system;
- (d) procuring child pornography through a computer system for oneself or for another person;
- (e) possessing child pornography in a computer system or on a computer-data storage medium.

- 2. For the purpose of paragraph 1 above, the term —child pornography‖ shall include pornographic material that visually depicts:
 - (a) a minor engaged in sexually explicit conduct;
 - (b) a person appearing to be a minor engaged in sexually explicit conduct;
 - (c) realistic images representing a minor engaged in sexually explicit conduct.
- 3. For the purpose of paragraph 2 above, the term —minor shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.
- 4. Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d. and e, and 2, sub-paragraphs b. and c.

- Section 67 of the IT Act 2000, after amendment in 2008 states:

Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is 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, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh 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 ten lakh rupees.

- **66E. Punishment for violation of privacy (Inserted Vide ITA 2008)**

Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.

Explanation - For the purposes of this section--

- a. —transmit means to electronically send a visual image with the intent that it be viewed by a person or persons;
- b. —capture, with respect to an image, means to videotape, photograph, film or record by any means;
- c. —private area means the naked or undergarment clad genitals, pubic area, buttocks or female breast;
- d. —publishes means reproduction in the printed or electronic form and making it available for public;
- e. —under circumstances violating privacy means circumstances in which a person can have a reasonable expectation that-- i) he or she could disrobe in privacy, without being concerned that an image of his private area was being captured; or ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.

- **67A. Punishment for publishing or transmitting of material containing sexually explicit act, etc. in electronic form:**

Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of 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 ten lakh rupees.

Exception: This section and section 67 does not extend to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form 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.

- **67B. Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc. in electronic form :** Whoever,-

- a. publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct or
 - b. creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner or
 - c. cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource or
 - d. facilitates abusing children online or
 - e. records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,
- shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees and in the event of 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 ten lakh rupees:

- Provided that the provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form. 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 for bonafide heritage or religious purposes

Explanation: For the purposes of this section, "children" means a person who has not completed the age of 18 years.

- New Section 67B introduced to cover Child Pornography with stringent punishment, imprisonment 5 or 7 years and fine Rs. 5 or 10 lakhs for first and subsequent instances respectively, it also covers "grooming" and self-abuse. It increased imprisonment and fine compared to Section 67.
- **Section 67C** is a new section introduced requiring Intermediaries to preserve and retain certain records for a stated period. However the period is not specified by law.

Trial by Media:

- Whether media reporting influences the people in power and effect a change in the policy or program?
- Media generates an opinion, provokes viewpoints which certainly will impact the administrator's decisions.
- Issues: Information is leaked out, the victims' family's rights, journalistic ethics, the police and the media's liability for defamation and the people's right to know

Arushi Murder case

- Can freedom of press be allowed to degenerate into a licence to malign the character of a dead person?
- Does our Constitution not guarantee the right to privacy even to the dead?



- Section 228A of Indian Penal Code 1860 (IPC), which was introduced in 1983, prescribed 2 years of imprisonment and fine for this offence. The Supreme Court in *Dinesh @ Buddha vs State of Rajasthan* observed:

“Section 228A of IPC makes disclosure of identity of victim of certain offences punishable ... True it is, the restriction does not relate to printing or publication of judgment of High Court or Supreme Court. But keeping in view the social object of preventing social victimisation or ostracism of the victim of a sexual offence for which sec. 228A has been enacted, it would be appropriate that in the judgments, be it of this court, High Court or Lower Court, the name of the victim should not be indicated.”

- Jessica Lal Murder Case
- Priyadarshini Mattoo Case
- Nitish Katara Murder Case

- In *Zahira Habibullah Sheikh v. State of Gujarat*, the Supreme Court explained:

“Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.”

Thank You