

Standing Order

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Subject : STANDING ORDER REGARDING OBSCENE LITERATURE AND HARAMFUL PUBLICATIONS

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STANDING ORDER REGARDING OBSCENE LITERATURE AND HARAMFUL PUBLICATIONS

I. INTRODUCTION: This Standing Order lays down general principles governing action to be taken against absence literatures and harmful publications.

2. There is a distinction between objectionable and actionable literature. A considerable quantity of literature in circulation may be objectionable from moral, social or ethical point of view, but it may not be actionable under the law. Police cannot take action with regard to such literature and any attempt on their part to act as censor of people's morals is bound to be resented and ridiculed. Therefore, police have to confine themselves to taking action under the law.

II. ACTIONABLE LITERATURE Actionable literature can be divided into the following three broad categories:-

(i) Obscene literature covered by sections 292 and 208 of the Indian Penal Code.

(ii) Harmful publications covered by young persons (Harmful) publications Act, 1956.

(iii) Publication which indulge in tendentious reporting including objectionable & inflammable material which incite communal tensions and attract provisions of sections 124/A, 153/ A, 295/ A, 505 IPC & Sec. 9 of Punjab Security of State act.

III. LEGAL PROVISIONS Sections 292 and 293 IPC are reproduced below :-

(i) "292, 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 abscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) Imports, exports or conveys any obscene to: object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, lets to hire, distributes or publicly exhibits or in any manner puts 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 with imprisonment of either description for a term, which may extend to two years and with fine, which may extend to rupees two thousand (on first conviction), and in the event of second or subsequent conviction, with imprisonment of a term which may extend to five years and also with fine which may extend to five thousand rupees.

Exception:

This section does not extend to any book; Pamphlet writing, drawing or painting kept or used for bonafide religious purposes or any representation sculptured engraved painted or otherwise represented on or any car used for the conveyance of idols or kept, or used for any religious purpose."

(ii) Section 293. 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 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 in the event of second or subsequent conviction with imprisonment for a term which may extend to seven years and also with fine, which may extend to five thousand rupees.

Both the offences mentioned above are cognizable and available.

3. The Young Persons (Harmful Publications Act, 1956) defines a harmful publication as follows:-

"Harmful publication" means any book, magazine, pamphlet, leaflet, newspaper or other like publication, which consists of stories told with the aid of pictures or without the aid of pictures or wholly in pictures, being stories portraying wholly or mainly;

(i) The commission of offences; or

(ii) Acts of violence or cruelty; or

(iii) Incidents of a repulsive or horrible nature; in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, whether by inciting or encouraging him to commit offences or acts of violence or cruelty or in any other manner whatsoever;

4. Under this Act a Young person means a person under the age of twenty years.

5. The main provisions of this Act are contained in Section 3(1) which runs as follows:-

"If a person":-

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, any harmful publication or;

(b) for purposes of sale, hire, distribution, public exhibition or circulation prints, makes or produces or has in his possession any harmful publication, or

(c) advertises or makes known by any means whatsoever that any harmful publication can be produced from or through any person;

he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

6. Offences under this Act are cognizable and the Act is meant mainly to deal with horror comics, which are mostly published abroad and smuggled into India.

7. Police do not have any powers to carry out periodical inspections of book shops for checking the sale of obscene literature. Under Section 94(2) of Cr.P.C., however, if a Magistrate 1st Class, on receipt of information and after such enquiries as may be necessary, has reason to believe that any place is used for deposit, sale, manufacture or publication of any obscene object, he may issue warrant to a police officer above the rank of Constable to enter and search such place and take possession of any obscene object found therein. The main draw back in this section is that some time is taken in obtaining the warrants and the suspected persons during that time either escape or do away with the obscene literature. A great deal of care is, therefore, necessary to ensure that nothing is done to arouse the suspicion of the persons, whose premises have to be raided.

8. The word 'obscene' occurring in section 292 and' 293 IPC, has not been defined. The main test of obscenity is whether the tendency of the" matter charged as obscene is to deprive and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall. It is not necessary that a matter dealing with sex only may have the tendency to corrupt the minds of others In ,a case in John Calder (Publications) Ltd. Vs pewell (1965) I. All E.R. 159, the court condemned a book as obscene because it high lighted the favourable effects of certain drugs. Lord Chief Justice Parker observed that obscenity and tendency to deprive or corrupt can, in law, embrace matters other than sexual. The Indian Law Courts have followed with respect such a view of law on obscenity as enuciated by the above mentioned judges and jurists.

9. It has been laid down as a rule of law by the Supreme Court in the case of the book 'Lady Chatterley's Lover' that in a prosection under section 292 IPC, the question whether the book is obscene or not does not altogether depend on oral evidence of a writer and art critic because the offending novel and the portions which are the subject of the charge must be judged by the court in the light of section 292 IPC and the provisions of the Constitution. The Investigating Officer, thus may examine such witnesses but the court will ultimately decide whether the book is obscene or not by examining it in the light of the test laid down in "Hicklen's case (1868) Z.Q.B. 360".

IV. ROLE OF ANTI- OBSCENITY ADVISORY BOARD

(a) Obscene publications which are seized will be forwarded to the Anti-Obscenity Advisory Board of Delhi Administration, Delhi after a preliminary scrutiny. However, in view of the Supreme Court ruling in Lady Chatterley's Lover case it is not necessary to cite such opinion as evidence for the prosecution of case.

(b) a register shall be maintained in the Crime Branch in which all books declared to be obscene by the Advisory Board shall be listed in an alphatical order. However, possible a specimen copy of the book will also be kept on record so that repeated references are not made to the Advisory Board with regard to the same book. In this register such books as have been prescribed by the Govt. for various reasons will also be entered. At the time of making raids, this register will be taken along for guidance.

V. TENDENTIOUS PUBLICATIONS

Complaints may be filed under the provisions of the Press Council Act 1978 and Press Council (Procedure for Enquiry) Regulation 1979 either by DM or State Govt. as soon as reports appear in newspapers which are violative of the standard of journalistic ethics. Apart from the above provocative publications which tend to spread communal hatred and ill feeling in society are required to be curbed by resorting to the powers available under sections 153-A, 153-B, 295-A and 505 IPC and Section 95 and 108 of Cr. P.C. Action in this connection shall be initiated by Spl. Branch in consultation with the Directorate of Publicity/Law departments or such other agency as may be concerned with the matter in Delhi Admns. as per instructions contained in D.O. letter No. 4/2/86-CHC I (Vol.1) dated 25.3.87 from Home Minister (India) (copy enclosed at annexure-I). The Spl. Branch shall maintain all relevant statistics in this regard for supply to Govt. as & when required. Sanctions of the State Govt. required to be taken u/s 196 Cr. P.C. for the prosecution of accused persons in such cases shall be obtained by Distt. DCsP on completion of investigation and culprits brought to book as early as possible.

VI ROLE OF PROSECUTORS

(a) All prosecuting officers should be thoroughly conversant with the legal provisions & rulings mentioned above.

(b) they should impress upon the courts that in case of conviction a sentence of fine only should not be imposed but the accused be sentenced to a substantive term of imprisonment also.

VII. SUPERSESSION CLAUSE

This S.O. supersedes the previous S.O. issued vide this Hdqrs. No.2242-57/CB dated 1.2.1966.

(VIJAY KARAN) COMMISSIONER OF POLICE: DELHI

5/6/89

No.XXIII/23/89/37100-300/C&T -AC-IV, dated, Delhi, the 7/6/89

ANNEXURE -'I'

Copy of d.o. letter No. 4/2/86/CHC(Vol.I), dated March 28, 1987 from the Home Minister of India, New Delhi to Lt. Governor, Raj Niwas, Delhi.

1. Your Government was requested to curb distorted reporting of the communal situation by resorting to the use of the provisions contained in the Press Council Act, 1978 vide my Ministry's letter No. 11/2/82-CHC dated the 1st January, 1983. During the discussion in the last winter session of the Lok Sabha regarding communal situation in various parts of the country, it was urged upon the newspapers that they should observe a great deal of restraint as well as balance in their reporting. Despite official briefing to the press and release of press-note from time to time, some local newspapers tend to indulge in distorted reporting of the communal incidents which exacerbated the situation.

2. I would also invite a reference to this Ministry's letter No.II/14015/20/79-S&P(D-IV) dated the 25th September, 1979 to all the State Governments and Union Territory Administrations, requesting them to strengthen the existing machinery both at the District level and at the State level for keeping a watch on objectionable writings in Newspapers and periodicals and also requested to furnish quarterly report on the prescribed proforma indicating action taken against such newspapers/periodicals.

3. To curb this tendency, I wish to reiterate that complaints may be filed under the provisions of the Press Council Act, 1978 and Press Council (Procedure for Inquiry) Regulation, 1979 either by the District Magistrate or State Government as soon as reports appear in newspapers which are violative of the standards of journalistic ethics. In this connection, the Press Council could be moved for expeditious action in the matter. Apart from the above, the provocative publications which tend to spread communal hatred and ill-feeling in society, are required to be curbed by resorting to the powers available under the Indian Penal Code Sections 153A, 153B, 295A and 505) and the Code of Criminal Procedure (Section 95 and 108) as suggested in our letter No.II/12025/1/82-IS-DO-(D-V) dated 6th September, 1985.

4. I shall be grateful to be kept informed of the action initiated by you With regards.