

Fourteenth Kerala Legislative Assembly

Bill No. 106

**THE CRIMINAL LAW (KERALA AMENDMENT)
BILL, 2018**

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further to amend the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 in its application to the State of Kerala.

Preamble.—WHEREAS, it is expedient further to amend the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973, in its application to the State of Kerala, for the purposes hereinafter appearing;

BE it enacted in the Sixty-ninth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Criminal Law (Kerala Amendment) Act, 2018.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *Amendment of Act 45 of 1860.*—In the Indian Penal Code, 1860 (Central Act 45 of 1860), after section 292, the following section shall be inserted, namely:—

“292A. *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 to 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, lets to 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, lets to 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 1.—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 with respect to his character so far as his character appears in that conduct and no further; or

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

Explanation 2.—In deciding whether any person has committed an offence under this section, the court shall have regard *inter alia* to the following considerations, namely:—

(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.”.

3. *Amendment of Act 2 of 1974.*—In the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), in the FIRST SCHEDULE, under the heading “OFFENCES UNDER THE INDIAN PENAL CODE”, under the sub-heading “CHAPTER XIV—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS”, after the entries relating to section 292 in column 1, and the entries against it in columns 2 to 6, the following entries shall, respectively, be inserted, namely:—

“292A	Printing, etc., of	Imprisonment	Non-Cognizable	Bailable	Any
	grossly indecent	of either			Magistrate.”.
	or scurrilous	description for			
	matter or matter	2 years, or			
	intended for	fine, or with			
	blackmail	both			

STATEMENT OF OBJECTS AND REASONS

The Indian Penal Code, 1860 (Central Act 45 of 1860) contain provisions in respect of publication of obscene matters. However, the printing and similar methods or representation, particularly to blackmail people, are not covered by the sections. While considering two Public Interest Litigations, the Hon’ble High Court of Kerala, as per the order dated 14th August, 2009 in WP(C) Nos. 4363 & 23282 of 2009, have directed the Government to address the

issue with regard to the requirement of a provision like section 292A of the Indian Penal Code, as has been introduced in Tamil Nadu and Orissa. The objective of the amendment is to make the law more certain, definite and stringent in view of the increasing trend to publish obscene materials with a view to blackmailing. For the said purpose, a new section 292A has to be inserted in the Indian Penal Code and in the corresponding SCHEDULE of the Code of Criminal Procedure, 1973.

2. The Bill is intended to achieve the above objects.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure out of the Consolidated Fund of the State.

PINARAYI VIJAYAN

EXTRACT FROM THE INDIAN PENAL CODE, 1860
(Central Act 45 of 1860)

292. *Sale, etc., of obscene books, etc.*—(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 person, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(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 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.

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;

(b) 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.

EXTRACT FROM THE CODE OF CRIMINAL PROCEDURE, 1973

(Central Act 2 of 1974)

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Section	Offence	Punishment	Cognizable or non-cognizable	Bailable or non-bailable	By what court triable
1	2	3	4	5	6
292	Sale, etc., of obscene books, etc.	On first conviction, with imprisonment for 2 years, and with fine of 2,000 rupees and, in the event of second or subsequent conviction, with imprisonment for five years and with fine of 5,000 rupees	Cognizable	Bailable	Any Magistrate
