

**THE ANDHRA PRADESH
PREVENTION OF DESFIGUREMENT OF OPEN
PLACES AND PROHIBITION OF OBSECENE AND
OBJECTIONABLE POSTERS AND
ADVERTISEMENTS ACT, 1997**

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**THE ANDHRA PRADESH
PREVENTION OF DESFIGUREMENT OF OPEN PLACES AND
PROHIBITION OF OBSECE AND OBJECTIONABLE POSTERS AND
ADVERTISEMENTS ACT, 1997**

(Act No.28 of 1997)

An Act to provide for the prevention of disfigurement by objectionable or unauthorized advertisements of places open to public view and for the prohibition of printing, publishing and display of obscene posters relating to cinemas and for matters connected therewith or incidental thereto.

Be it enacted by the Legislative Assembly of the State of Andhra Pradesh in the forty-eighth year of the Republic of India as follows:

**CHAPTER-I
Preliminary**

Sec. 1. Short title, extent and commencement:- (1) This Act may be called the Andhra Pradesh Prevention of Disfigurement of Open Places and Prohibition of Obscene and Objectionable Posters and Advertisements Act, 1997.

(2) It extends to the whole of the State of Andhra Pradesh.

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

COMMENTARY

1. Purpose of the Act:- The main purpose of passing the Act is to provide for the prevention of disfigurement by objectionable or unauthorized advertisements of places open to public view and for the prohibition of printing, publishing and display of obscene posters relating to cinemas and for matters connected therewith or incidental thereto.

It is an important interest of the society to suppress obscenity and protect the rights of both public and private persons.

2. Extent :- The Act extends to the whole of the State of Andhra Pradesh.

3. Commencement:- The Act came into force with effect from 1-3-1998 vide G.O.Ms.No.38, Home (General-A), Dt.16-2-98, published in A.P. Gazette, Part-I, Extraordinary, Dt.18-2-98.

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

- (a) "advertisement" includes any notice, circular, hand-bill, label, wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas;
- (b) "authority" means an authority constituted under Section 9;
- (c) "government" means the State Government of Andhra Pradesh:

- (d) “notification” means a notification published in the Andhra Pradesh Gazette and the word “notified” shall be construed accordingly;
- (e) “objectionable advertisement” means any advertisement;
 - (i) Which is likely to incite any person to commit murder, sabotage or any offence involving violence; or
 - (ii) Which is likely to seduce any member of the armed forces of the Union or of the Police forces from allegiance or his duty, or prejudice the recruiting of persons to serve in any such force or prejudice the discipline of any such force; or
 - (iii) Which is likely to incite any section of the citizens of India to commit an act of violence against any other section of the citizens of India; or
 - (iv) Which is deliberately intended to outrage the religious feelings of any Class of the citizens of India by insulting or blaspheming or profaning the religion or the religious beliefs of that else; or
 - (v) Which is grossly indecent or scurrilous or obscene or is intended to black-mail;

Explanation:- An advertisement shall not be deemed to be objectionable merely because words or signs or visible representations are used, --

- (1) expressing disapprobation or criticism of any law or of any policy or administrative action of the Government with a view to obtain its alteration or redress by lawful means;
- (2) criticizing any social ore religious practice without malicious intentions and with an honest view to promote social or religious reform or social justice;
- (f) “place open to public view” includes any private place or building, monument, statue, post-wall, fence, tree or other thing or contrivance visible to a person being in, or passing along, any public place;
- (g) “poster” means any printed, typed, hand written, cyclostyled or Xeroxed matter or design or pictorial representation usually meant to be displayed as a placard or pasted on any wall, building, hoarding or other place open to public view whether by cinematograph exhibition or otherwise but does not include the exhibition of a cinematograph film inside the auditorium of a cinema theatre;
- (h) “prescribed” means prescribed by rules made under this Act;
- (i) “public place” means any place (including a road, street or way, whether a thorough fare or not and a landing place) to which the public are granted access or have a right to resort, or over which they have a right to pass.

CHAPTER – II

Prevention of disfigurement of open places

Sec.3 Penalty for disfigurement by objectionable advertisements:- Whoever affixes to, or inscribes or exhibits on any place open to public view any objectionable advertisement, shall be punished with imprisonment of either description for a term which may extend to one year or with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees or with both.

COMMENTARY

This Section provides for punishment where a person affixes to, or inscribes or exhibits on any place open to public view any objectionable advertisement. An “objectionable advertisement” is defined in Sec.2(e), Sec. 2(a) defines what an advertisement is. An advertisement which does not fall under the category of “objectionable advertisement” is not an offence under this section.

Section 15 of this Act makes an offence under this Section a cognizable offence within the meaning of the Code of Criminal Procedure, punishable with imprisonment of either description for a term which may extend to one year or with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees or with both.

The offence is bailable. Unlike offence under Section 8, the offence under this section is not compoundable by the Police Commissioner or the District Collector as the case may be.

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Sec.4. Penalty for unauthorized disfigurement by advertisement:- Whoever affixes to, or inscribes or exhibits on any place open to public view any advertisement without the written consent of the owner or occupier or person in management of the property in which such place is situated shall be punished with imprisonment of either description for a term which may extend to three months or with fine which shall not be less than one thousand rupees but which may extend to two thousand rupees, or with both.

COMMENTARY

This Section provides for punishment where a person affixes to, or inscribes or exhibits on any place open to public view any advertisement without the written consent of the owner or occupier or person in management of the property in which such place is situated.

Section 15 of this Act makes an offence under this Section a cognizable offence within the meaning of the code of Criminal Procedure, punishable with imprisonment of either description for a term which may extend to three months or with fine which shall not be less than one thousand rupees but which may extend to two thousand rupees or with both.

The offence is bailable. Unlike offence under Section 8, the offence under this section is not compoundable by the Police Commissioner or the District Collector as the case may be.

Written consent – Burden of proof:- Where a person is prosecuted for committing an offence under this Section, the burden of proving that he has the written consent referred to in that section shall be on him. (Vide Section 18).

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Sec.5 Punishment of abettors:- Whoever in any manner whatsoever causes, procures, counsels, aids, abets or is accessory to, the Commission of any offence under Section 3 or Section 4 shall be punished with the punishment provided for the offence.

COMMENTARY

General:- The word “Abet” is not defined in the Act. We have therefore, to refer to the general law of abetment contained in Section 107 of Indian Penal Code. Section 107 of the Indian Penal Code reads as follows:

“107. Abetment of a thing:- A Person abets the doing of a thing, who –

Firstly – Instigates any person to do that thing; or

Secondly – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation I:- A person who, by willful misrepresentation, or by willful concealment of the material fact which he is found to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

ILLUSTRATION :- `A' a public Officer, is authorized by a warrant from a Court of Justice to apprehend `Z', `B', knowing that fact and also that `C' is not `Z' willfully represented to `A' that `C' is `Z' and thereby intentionally causes `A' to apprehend `C'. Here `B' abets by instigation the apprehension of `C'.

Explanation II:- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate a commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act”.

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Sec.6. Power to remove, erase, pull down and destroy objectionable advertisements:- (1) Any police officer not below the rank of Sub-Inspector or any other officer empowered in this behalf by the Government may remove, erase, or otherwise pull down any objectionable advertisement.

(2) Any advertisement removed or pulled down under sub-section (1) or a photograph of any advertisement erased under that sub-section shall be produced before a Magistrate of the First Class and if, in the opinion of the Magistrate, such advertisement is an objectionable advertisement, the Magistrate may cause the advertisement or the photograph thereof to be destroyed after giving an opportunity of hearing to the advertiser wherever he is known and where he is not known after recording that fact, but if in the opinion of the Magistrate such advertisement is not an objectionable advertisement the Magistrate shall dispose it of in the manner provided in

Sections 457, 458 and 459 of the Code of Criminal Procedure 1973 or in the case of an advertisement which is erased make an order that it shall be restored at the cost of the Government.

CHAPTER – III

Prohibition of obscene posters, etc.

Sec. 7. Obscene Poster:- A Poster shall be deemed to be 'obscene' if, --

- (a) its effect is to tend to debase and corrupt persons who are likely, having regard to all relevant circumstances, to read or see the matter contained or embodied in it;
- (b) it holds out or recommends to the public anything to be used as, or suggestive of, a sexual stimulant,
- (c) it undermines the accepted canons of decency or encourages vicious or immoral acts;
- (d) it lowers the sacredness of the institution of marriage or depicts scenes of rape, criminal assault on women or other immoralities;
- (e) it exhibits the human form in a state of nudity or indecorous or sensual posture; or
- (f) it encourages lasciviousness or arouses impure and lecherous thoughts.

COMMENTARY

This Section defines what an 'obscene poster' is. The question whether a particular cinema poster is obscene or not is to be determined by the authority or authorities constituted under Section 9.

The concept of obscenity is moulded to a very great extent by the social outlook of the people. It usually differs from country to country depending on the standards of morality of contemporary society in different countries. Even the outlook of an authority may differ from another authority on the question of authority in as much as even in the matter of objective assessment the subjective attitude of the authority hearing the matter is likely to influence, though unconsciously, his mind and his decision on the question. The authority should apply his mind dispassionately to decide whether the poster complained of is obscene within the meaning of Section 7 of the Act. The authority should make a proper objective assessment.

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Sec.8. Prohibiting of printing, publishing or displaying obscene posters:- Notwithstanding anything contained in any law or contract to the contrary, but subject to the provisions of this Act, no person shall print, publish, distribute or display or cause to be printed, published, distributed or displayed any obscene poster relating to a cinema in any public place.

COMMENTARY

General:- This section specifically deals with obscene posters relating to cinema. Any person who prints, publishes, distributes or displays or causes to be printed, published, distributed or displayed any obscene poster relating to a cinema in any public place, subject to the provisions of this Act is punishable with imprisonment which may extend to six months or with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees. The offence under this Section is non-cognizable and bailable.

Determination of obscenity - Authorities :- The authority or authorities constituted under Section 9 shall determine all questions relating to obscenity of a Cinema Poster.

Sec. 9. Constitution of Authority for determination of questions relating to obscenity of poster:- The Government may, as soon as may be after the commencement of this Act by notification constitute an authority or authorities for the purpose of determining all questions relating to obscenity of a poster.

Sec. 10. Penalty:- Every person who contravenes the provision of Section 8 shall on conviction, be punishable with imprisonment which may extend to six months or with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees or with both.

Sec.11. Power to make search and seizure:- (1) The Commissioner of Police in the twin cities of Hyderabad and Secunderabad, Visakhapatnam and Vijayawada and the District Collector elsewhere may,--

- (a) 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 punishable under this chapter has been or is being committed;
- (b) seize, and detain any material which he has reason to believe contravenes any of the provisions of this chapter;
- (c) examine any record, register, document or any other material or object found in any place mentioned in Clause (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 chapter.

(2) Where any property is seized under sub-section (1), such seizure shall be reported to a Magistrate forthwith, and the provisions of Chapter XXXIV of the Code of Criminal Procedure, 1973, shall apply to the custody and disposal thereof as they apply to property referred to therein.

(3) The Commissioner of Police or the District Collector may, by order, delegate the powers under this Section to an officer not below the rank of an Inspector of Police or a Mandal Revenue Officer (Gazetted).

COMMENTARY

Scope:- The power to search and seize under this Section is restricted to offences punishable under Section 8.

Delegation of powers:- The Commissioner of Police may delegate the powers under this Section to an officer not below the rank of an

Inspector of Police. Similarly the District Collector to an officer not below the rank of a Mandal Revenue Officer (Gazetted).

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Sec.12. Forfeiture:- Where a person has been convicted by any Court for contravening any provision of this chapter or any rule relating thereto, the court may direct that any poster, or other document (including all copies thereof), articles or thing in respect of which the contravention is made, shall be forfeited to the Government.

Sec.13. Compounding of offences:- (1) The Commissioner of Police, in the twin cities of Hyderabad and Secunderabad, Visakhapatnam and Vijayawada and the District Collector else where may accept, from any person against whom a reasonable suspicion exists that he has committed any offence punishable under this chapter, such sum of money as may be prescribed by way of composition for the offence which such person is suspected to have committed.

(2) On the payment of such sum of money to the Commissioner of Police or the District Collector as the case may be the suspected person, if in custody shall be discharged and no other proceedings shall be taken against him.

COMMENTARY

Scope:- This Section provides for the compounding by the Commissioner of Police in the twin cities of Hyderabad and Secunderabad, Visakhapatnam and Vijayawada and District Collector in other areas in respect of offences punishable under Section 8 only. Compounding is not permissible in respect of offence punishable under Secs. 3 or 4. Where the offence is compounded, no further proceedings shall be taken against the accused.

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CHAPTER – IV

Miscellaneous

Sec.14. Offences by companies:- (1) Where an offence has been committed by a company, every person who, at the time when 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 in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an 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 gross negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that

offence and shall be liable to be proceeded against and punished accordingly.

Explanation:- For the purpose of this Section, -

- (a) '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.

COMMENTARY

1. Object and Scope:- Every person, who is incharge and is responsible to the company for the conduct of the business of the company as well as the company itself, shall be liable for the commission of the offence committed under this Act. Thus every officer of the company whether he may be director, manager, secretary, or any other officer who is responsible for the conduct of the business of the company as well as the company, run the risk of being prosecuted and punished for the offence under this section. In cases where, such officer of the company proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence, shall not be liable for punishment.

Sub-Section (2) of this section provides that the director, manager, secretary, or other officers of the company shall be liable for punishment in the following cases:

- i. That an offence has been committed by the company; and
- ii. The offence has been committed with the consent or connivance of such director, manager, secretary, or other officers of the company;
- iii. the offence has been committed due to negligence on the part of such director, manager, secretary or other officer of the company.

This Section penalizes company's director, managers, secretary or any other office bearer of a company when any offence under this Act is committed by a company, unless the above officers prove beyond reasonable doubt that the commission of such offence was without their knowledge or that they exercised all due diligence to prevent the commission of the offence. Similarly, a partner is also liable for punishment irrespective of his being a sleeping partner unless, due diligence is exercised by him to prevent the commission of such offence. Sub-Section (2) lays down that where an offence against the company established the burden of proving either of the above said officers were innocent, lies on the accused and shifts from the prosecution.

2. No knowledge is required by the Director:- It is not required to prove that it was in the knowledge of Director of a company, and thus there is an absolute liability and the knowledge on the part of the managing director is not essential, in order to justify the conviction, the section applies in case of limited companies as well as partnerships, but does not apply to proprietorial business.

3. Proprietor not liable:- Where an offence was alleged to have been committed by an oil mill and the accused was one of the proprietors

and incharge of the mill and there was no evidence that the accused was the mill owner or was responsible for the conduct of the business of the company. Held that the accused could not be convicted for the offence under this Section. *Jagadesh Prasad Vs. State of West Bengal*, 65, Cal. W.N. 1107.

4. Liability of a partner:- Not only the company, but also every person who at the time offence was committed was incharge of the company or responsible for the conduct of business of the company shall be liable for the offence committed and the argument that the partner cannot be charged under the Act cannot be sustained.

5. Vicarious liability:- Where an offence is committed by a partnership firm, the question arises whether a partner who was incharge and was responsible to the firm for conduct of its business was liable to be prosecuted and punished, came up for consideration in *Municipal Corporation of Delhi Vs. Bhagwan Das*, 1972, FAC 177 (Delhi High Court) and it was held that natural persons are made vicariously liable if it is proved that the offence was committed by a company or firm because of the reasons that these persons had some nexus with the crime either due to their connivance with or due to their criminal negligence in consequence of which the offence was committed.

6. Burden of Proof:- Where an offence is alleged against a company, the prosecution must prove that the person sought to be made liable was at the time of the commission of the offence incharge of, and was responsible to, the Company for the conduct of its business, and it is only after the discharge of this onus by the prosecution, the burden of proof shall shift on the defence to prove that the offence was committed without his knowledge or that he exercised all due diligence for the prevention of such offence. *Municipal Committee vs. Bhatta Singh*, 1966, Cr.L.J.52.

Under this section it must be established by the prosecution that when an offence is committed by a company or any one of its employees, that must be with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer which has resulted in its commission. *D.K.Jain vs. The State*, AIR 1965, Delhi 525.

Where it was shown that the accused were proprietors of the company and there was lack of evidence to show that they were incharge of or were responsible to the Company for the conduct of the business of the company, their acquittal was held proper. *Calicut Corporation vs. Kandagouri*, AIR 1966, Kerala 190.

7. Defence:- When an offence has been committed under the Act, the officer of the company may put forward their defence that the offence was committed without their knowledge, or that they had exercised due diligence whatever were possible by them to prevent the commission of such offence, and despite their best efforts to prevent the offence, the offence was committed. The liability under this section is of the person who at the time of the commission of the offence was incharge and was responsible to the company for the conduct of its day to day function. It is not required to show his guilty knowledge.

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Sec.15. Certain offences to be cognizable:- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) the offences punishable under Sections 3 and 4 shall be deemed to be cognizable offences within the meaning of that Code.

COMMENTARY

1. Offence under Sections 3 and 4 only are cognizable:- The offences punishable under Secs. 3 and 4 are deemed to be cognizable offences within the meaning of the Code of Criminal Procedure, 1973.

2. “Cognizable Offence” means :- Section 2© of the Code of Criminal Procedure, 1973 defines the term “Cognizable Offence”, “as an offence for which, and ‘cognizable case’ means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant”;

3. When police may arrest without warrant:- (Section 41, Cr.P.C.) Any Police officer may without order from a Magistrate and without a warrant, arrest any person –

(a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or

(b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or

© who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonable be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty; or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule, made under sub-section (5) of Section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might

lawfully be arrested without a warrant by the officer who issued the requisition.

4. Objects and Scope:- This section is mainly intended to arrest persons immediately and to see that by the delay in arresting, persons accused of serious offences escape the clutches of law. The section therefore confers powers on the police officers to arrest offenders without an order from the Magistrate or a warrant for arrest.

The only limitation of the wide power given to police officers in cognizable cases, is the necessary requirement of reasonability and credibility of information to prevent the misuse of the powers, 40 Mad. 1028, 18 Cr.L.J.709. Mere suspicion is not sufficient to arrest a person without warrant. The suspicion must be reasonable. Where a person is arrested on suspicion, prompt investigation should be carried out. *Sehadat Khan vs. State*, 1965, Cr.L.J.139: AIR 1965, Tripura 27. The section makes it clear that a cognizable offence must have been committed and the person sought to be arrested must have been concerned with the offence. A person cannot be arrested on the ground that there is likelihood of a cognizable offence being committed by him in future. *Wasihmia vs. Tripura Admn.*, 1962, (1) Cr.L.J.673 (Tripura). The expressions 'credible' and 'reasonable' in clause (g) refer to the mind of the person by whom the information is received and mere assertions cannot form the material for the exercise of an independent judgement, by such person.

5. Applicability:- This section can be pressed into service for the arrest of a person without an order from the magistrate or a warrant, only when there is a reasonable complaint or, reasonable suspicion or credible information about the involvement in a cognizable offence, punishable under Section 3 or 4.

The detention and arrest of members of the public are not matters of caprice but are governed by and must be conducted upon certain rules and principles which the law clearly lay down. To arrest persons without any justification is one of the most serious encroachment upon the liberty of the subject.

Sec.16. Cognizance of offences:- No Court shall take cognizance of any offence punishable under this Act except on a complaint filed, in the twin cities of Hyderabad and Secunderabad, Visakhapatnam and Vijayawada by the Commissioner of Police or by any Police Officer not below the rank of an Inspector of Police authorised by him in this behalf and elsewhere by the District Collector or any Officer not below the rank of a Mandal Revenue Officer authorised by him in this behalf.

COMMENTARY

1. Authorisation:- The words 'in this behalf' in this Section does not mean that the person should be authorised in every case. What it means by is that he should be authorised to file a complaint in respect of an offence under this Act. General authorization is sufficient. A similar provision arising under E.C. Act was considered in *M.Surender Reddy vs. The State*, 1979, Cri. L.J.65 (A.P.)

2. Report by unauthorized person:- A complaint in a court in respect an offence under this Act can be filed by –

(1) in the twin cities of Hyderabad and Secunderabad, Visakhapatnam and Vijayawada by the Commissioner of Police or by any Police Officer not below the rank of an Inspector of Police authorised by him in this behalf.

(2) In other areas by the District Collector or any Officer not below the rank of a Mandal Revenue Officer authorised by him in this behalf.

An unauthorized person cannot file a complaint in a Court. The Court cannot take cognizance of a complaint filed by an unauthorized person.

(3) **Complaint:-** Sec. 2(d) of the Code of Criminal Procedure, 1973 defines the term complaint as follows:-

(d) “Complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation:- A report by a police officer in a case which discloses, after investigation, the Commissioner of a non-cognizable offence shall be deemed to be a complaint, and the police officer by whom such report is made shall be deemed to be the complainant.

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Sec.17. Protection of action taken in good faith:- No suit, prosecution or other legal proceedings shall lie against the Government the authority any local authority or any public servant or person, in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rule made thereunder.

COMMENTARY

1. Scope: The provisions of this Section are comprehensive in nature. They are intended to give protection to persons acting a or intending to do anything in good faith under this Act. The section bars suits, prosecutions or other legal proceedings against all persons when they are doing or intending to do anything in good faith in pursuance of this Act.

2. “Good Faith – Defined”: This Act does not define the word “Good Faith. Section 52 of the Indian Penal Code defines the term “Good Faith”, as follows:

Section 52 of Indian Penal Code: Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention.

This definition of “good faith” is merely a negative one. It does not define “good faith”. It says that an act is only done in good faith if it is done with due care and attention. Absence of good faith means simply carelessness or negligence. Although the definition of “good faith” in this section is negative it does imply that if for instance an opinion is expressed

with due care and attention, honestly believing it to be true and without malicious, it can be said to have been made in good faith.

According to the General Clauses Act, “a thing shall be deemed to be done in “good faith” where it is in fact done honestly whether it is done negligently or not. That definition is borrowed from an English Statute and it differs materially from one contained in this section. The law cannot mark, except in this vague way, the amount of care and attention requisite; but if a man takes upon himself an office or duty requiring skill or care, and a question arises whether he has acted therein in good faith, he must show not merely a good intention, but such care and skill as the duty reasonably demands for its due discharge.

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Sec. 18. Burden of proof in certain cases: Where a person is prosecuted for committing an offence under Section 4, the burden of proving that he has the written consent referred to in that section shall be on him.

COMMENTARY

Burden of Proof – Scope of: The general rule with regard to burden of proof is that he who asserts an affirmative must prove the existence of that affirmative i.e., in Criminal jurisprudence, the prosecution is to establish the guilt of the accused.

This Section is applicable in respect of an offence under Section 4. Where a person is prosecuted for an offence under Section 4, the Section puts the burden on the accused to prove that he has the written consent referred to in Section 4.

Sec. 19. Power to issue directions: The Government may, from time to time, issue such directions not inconsistent with the provisions of this Act or the rules made thereunder as they may think fit, setting out the principles which shall guide the authority in discharging its duties under this Act.

Sec. 20. Act to override other laws: The provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom, usage or contract or decree or order of a Court or other authority.

Sec. 21. Power to remove difficulties: (1) The Government may for the purposes of removing any difficulty, by order published in the Andhra Pradesh Gazette direct that the provisions of this Act shall, during such period as may be specified in the order, have effect subject to such

adaptations whether by way of modification, addition or commission as they may deem necessary or expedient:

Provided that no such order shall be made after two years from the commencement of this Act.

- (2) Every order made under sub-section (1) shall be laid before the Legislative Assembly of the State.
- (3) No order under sub-section (1) shall be called in question in any Court on the ground that no difficulty as is referred to in sub-section (1) existed or was required to be removed.

COMMENTARY

This section is known popularly as the “**Henry VIII Clause**”. Similar section in other statutes have been attacked on the common ground that the provision suffers from the vice of excessive delegation and that the Legislature by placing such a strong weapon in the Government, has abdicated its legislative powers in favour of the executive. It is now a settled law that the essential legislative function is the determination of the legislative policy and its formulation is a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But in view of the multifarious activities of a welfare State it cannot presumably work out all the details to suit the varying aspects of a complex situation. The difficulty removal clauses in several statutes are intended to meet such complex situations which the Legislature could not have forethought. But Section 37 of the Payment of Bonus Act which authorised the Government to determine for itself what the purposes of the Act are and to make provisions for removal of doubts or difficulties was held to be invalid, on the ground that it amounts to the abdication of Legislative power in favour of the executive *M/s Jalan Trading Co. (P) Ltd. vs. Mill Mazdoor Sabha*, AIR 1967, SC 691. But this decision has been distinguished in *Kalawati Devi vs. Commissioner of Income Tax, West Bengal*, AIR 1968, SC 162 in which the Supreme Court while upholding Section 298 of the Income Tax Act has held that the Legislature can leave details to the executive in the working of taxation laws. The trend of the Supreme Court is therefore to examine the difficulty removal provision keeping in view with the scheme of the statute would be necessary for the working of the Act or not. The validity of Section 138 of the Madras Village Panchayats Act, 1950 which gave power to remove difficulties to the Government fell for consideration in *Panchayat, Pandrapadu vs. State of Andhra Pradesh* (1956) 2. An. WR 868. In that case it has been observed as follows:

“..... On this point, however, our attention has been drawn to a decision reported in *Sahib Hussain vs. Mangala*, AIR 1953 Orissa 171 at 174. In that case, Section 17 of the Orissa Tenants’ Protection Act, which is in similar terms was impugned as invalid. While the learned Chief Justice reserved his opinion on that matter for fuller consideration. Narasimham, J. the other Judge held that it was valid. In doing so, he observed at page 174 as follows:

“ It will be noticed that unlimited powers are not given to the Government to do anything which they like for the purpose of removing any difficulty. This Section makes it clear that if any difficulty arises “in giving effect to the provisions of the Act” the Government may do anything necessary for the purpose of removing the difficulty. A provision of this type usually known as the “Henry VIII Clause” is a well-known drafting device which is found in several Acts (India and British) such as Section 44 of the Calcutta Municipal Act, 1923 (Bengal Act III of 1923), Section 8 (4), Madras Medical Registration Act, 1938 (Madras Act XVI of 1938) Section 96, Road Traffic Act, 1930 (20 and 21 Geo. Vs. C 43) and Section 45, Unemployment Insurance Act, 1920 (10 and 11 Geo. Vs. C 30).

This form of delegation has excited the most vehement criticism in England. The Donoughmore Committee, without proposing the total abolition of this type of clause, recommended that it should be abandoned in all but the most exceptional cases, and should not be permitted by Parliament except upon special grounds stated in the Ministerial memorandum to the Bill. Allen in his “Law and Order” points out that actually the recommendation by the Donoughmore Committee has, upto the present time, resulted in the virtual abolition of the clause, that it has not been used since the report and in various big and complicated Acts, since 1932, such as the Local Government Act, 1933, and the Public Health Act, 1936, the executive has achieved what it declared to be impossible. In a democracy like ours, it is of the utmost importance that Parliamentary control should be more effective than in a country like England where parliamentary institutions have been in existence for a very long time. A power like the one conferred under Section 22 should be used only very sparingly and to resolve some difficulty which the best brains may fail to foresee.

The aforesaid decision of the Andhra Pradesh High Court applies equally to this Section also. The Government can exercise their powers under this section only very sparingly and to resolve some difficulties which the best brains may fail to foresee.

Proviso to sub-section (1):- The proviso to sub-section 91) puts a limitation of the powers of the Government. The said power cannot be exercised beyond a period of the two years from the date of commencement of this Act.

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Sec.22. Power to make rules:- (1) The Government may by notification, make rules for carrying out all or any of the purposes of this Act.

(2) Every rule made under this Act shall, immediately after it is made, be laid before the Legislative Assembly of the State if it is in session and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiration of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees in making any modification in the rule or in the annulment of the rule, the rule shall from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may

be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

COMMENTARY

This section provides for the making of rules by the Government. Before the rules are made the Government have to satisfy that they are meant for carrying out the purposes of this Act.

Rules to be consistent with provisions of the Act:- When powers to frame rules is conferred by the Act upon the State Government that power may be exercised within the strict limits of the authority conferred. If in making a rule the State transcends its authority the rule will be invalid, for statutory rules in exercise of delegated authority are valid and binding only if made within the limits of authority conferred. Validity of a rule whether it is declared to have effect as if enacted in the Act or otherwise is always open to challenge on the ground that it is unauthorized. *State of Kerala vs. R.M. Charia Abdullah*, AIR 1965, SC 1585.

In determining the 'validity of the rules' what is material is their substance and not form of the heading. A rule made under an enactment cannot be declared *ultra vires* unless it is found that the enactment does not confer any power at all to make the rule. A rule purported to have been made under a wrong provision of an Act nonetheless be valid if it is shown to be within the four corners of the power conferred by any other provision of the Act. AIR 1958, SC 232 and *Prem Shankar Sharma vs. Collector, East Nimar Khandwa*, AIR 1962, MP 262.

The purpose of the rules is to provide for procedural matters which are subsidiary of the provisions of the Act.. *Ganpat Shantaram More vs. Liongappa Balappa Gatade*, AIR 1962, Mad. 104. The authority is given to the end that the provisions of the statute may be better carried into effect and not with a view to neutralizing or contradicting those provisions. *Somdutta Choubey vs. Janapada Sabha, Sohagpur*, 1961 MPLJ 1129.

Rules cannot be made with retrospective effect:- This Section, does not authorize the Government to make rules with retrospective effect. The Supreme Court has held that unless the provision relating to the Subordinate Legislation specifically delegates to the Government the power to make the rules with retrospective effect, the Government is not empowered to make rules with retrospective effect. *Income Tax Officer, Alleppy vs. Poonoose*, AIR 1970, Sc 385; 1970 (1) SCJ 435.

For Carrying out all or any of the purposes of the Act:- Whatever may fairly be regarded as incidental to or consequential upon, those things which the Legislature has authorized can be said to carry out the purposes of the Act. A subordinate legislation should be invalidated only if such reasonable construction in favour of its *vires* is not possible. *Emperor vs. Sibnath*, AIR 1945, PC 156 and *Gokulanandror vs. President, District School Board*, AIR 1964, Cal. 568.

Interpretation of the Rules:- Rules are intended only to carry out the purpose of the Act. A statutory rule cannot enlarge the meaning of the Section. *The Central Bank of India vs. Their Workmen*, AIR 1960, Sc 12. When the words of an enactment are clear, the rules made thereunder

must if possible, be reconciled with it and, where that cannot be done, the rules must give way to the enactment. *Somdutta Choubey vs. Janapada Sabha Sahagpur*, 1961 MPLJ 1129.

It may in some cases be legitimate to read rules along with the provisions of the Act in order to find out the true intention of the Legislature in enacting the latter, but no rules can be construed to override the specific provisions of the Act itself. *Ganpat Shantaram More vs. Lingappa Balappa Gowda*, AIR 1962, Mad. 104. Where more than one construction is possible, then the rules framed under the Act would help the court in coming to the right conclusion as to the Act. *Nammabai Purushottam Asar vs. State*, AIR 1964, Bom. 267.

Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if they are contained in the Act and are to be judicially noticed for all purposes of construction or obligation. *State of Uttar Pradesh vs. Babu Ram Upadhyaya*, AIR 1961, Sc 751.

Sub-section (2) of this section contemplates the placing of the rules made by the Government on the table of the Legislature Assembly of the State. It cannot however be said that until the rules are so laid they will not come into force. The laying of the rules under this section is not at all condition precedent to the validity or the operation of the rules, but only condition subsequent which may result in the operation of the rules in a modified form, from the date of modification in case the Legislature chooses to modify. Therefore the operation of the rules is not to any extent kept in abeyance till they are laid before the Legislature. *Madhava Rao vs. State of Andhra Pradesh*, 1967 (2) An. WR 366.

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