



Limits of ‘Community Standard Test’ in obscenity jurisprudence of the Indian Supreme Court

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ABSTRACT: Community standard sprint down as the test to determine the conceptualization of obscenity in India, which is subject to multipronged interpretations by the constitutional sentinel to provide the safeguard for adolescent and general public in the respect of detrimental activity which is fanning the prurient, lascivious and libidinous interest. Hence analysis on ‘community standard test’ requires the methodological and prospective approach of jurisprudential wisdom to understand the Indian society accordingly, so far as the Indian Mythology is concerned, obscenity was considered as the highest form of sin which was prohibiting women to exhibit the private part of her body. Later on, the test of determination of obscenity was vehemently criticized on the tune of morality of the community sentiment of the society.

KEYWORDS: Obscenity, Community standard, offence

1. INTRODUCTION

The concept of ‘obscenity’ refers as the act of exhibition of the private part of the human body at the public place, which fanning the prurient and lascivious interest to the concerned person which corrupt the mind of such person towards commission of sexual offences under the various penal statutes. It prohibits the prescribed acts or omissions wherein punishments will be inflicted as otherwise consequence in the violation of such prescribed conducts as per the penal statutes.

Community Standards need satisfaction in the consonance of community sentiments which imbue the multipronged interpretations; there is no, as such universal and uniform definition of the term community sentiments, to provide the appropriate definition of the term ‘community standard’. The question involved here is having jurisprudential conundrum to determined resolute interpretation through judiciously. The only thing is to apprise here that a standard of the community

is usually based upon the practice and habits of the people who resided in a particular territory over a specific period of time which have underpinning effect to testify the essence of the community. Ultimately such community observes that which conduct is not detrimental to the interest of the society at writ and vice versa of the same is detrimental and pernicious for the young and adolescent.

Sir Henry James Sumner Maine stated that the changes are bound to happen in the progressive society therefore law and society must run parallel otherwise one would become obsolete consequently¹. Thus the community standard is only the subject matter of contemporary interpretation on the part of the Supreme Court by adroitly examining the interest and morality of the concerned society wherein it alleged to be committed. Hence analysis on ‘community standard test’ requires the methodological and prospective approach of jurisprudential wisdom to understand the Indian society accordingly, so far as the Indian Mythology is concerned,

¹ Maine, Sir Henry James Sumner, “*Ancient Law, Its Connection with Early History of Society and Its Relation to Modern Ideas*” John Murray, Albemarle Street, W. 1905. P178, 179

obscenity was considered as the highest form of sin which was prohibiting women to take bath with appropriate and sufficient clothing on that point of time. Later on, obscenity having subjected to vehemently criticisms even today in Indian Society as compare to the white color crime and so on.

2. JURISPRUDENTIAL CONUNDRUM ON OBSCENITY

The Supreme Court laid down particular standards as per looking the substance of the obscene materials available on that particular spur of the moment². Upholding the 'Hicklin Test'³ connotes immoral influences and the tendency which corrupt the mind by exaggerating prurient and lascivious interest intentionally. Hence it was narrow interpretation because corrupting the mind of vulnerable and adolescent should be confirmed with ritual and other local community sentiment. Although it is the subject matter of decency, modesty and hence ultimately nexus with the direct interest of the society, therefore looking the fast changing society, the Supreme Court provided the widen scope to understand keenly the gravity of obscene now.

Besides this, there is wide dimension refers for such standards in lieu of obscenity in India as during the passage of time, it changes its definition, nature and scope, thus at one point of time it may be appeared as an obscene but at the different point of time the same would be appeared diametrically opposite hence there is no uniform and universal definition of the term 'community standard test' that was laid down by the Hon'ble Supreme Court on that time because it has been subjected to the local community's standards, not the term 'obscenity' has been defined on the tune of universality and uniformity for the penal statute in India.

The Supreme Court of United States throws the light on contemporary 'community standard test' as; the state must take utmost care while framing penal statutes purporting the obscene in the context of understanding the community in totality as well as it turns to analogous as contemporary community interest test as well⁴. Therefore if author of any Novel and book⁵ and Cinematographic film⁶ pens the clear picture of hue and cry of the society pertaining to the struggling downtrodden women in nexus with exhibition the body part of them if it is proved to be sine quo non and as it is the part of the same transaction, would not construe as an 'obscene' whereas ill- will of author or director appears either by writing the content or exhibiting any

kind of scene in the cinematographic film respectively, which corrupt the mind of vulnerable group pertaining to prurient and lascivious interests of the person would be considered as an 'obscene' in the realm of 'community standard test'⁷. In addition, we may understand that if anything is filthy abusive, unnatural, unethical, unhealthy and detrimental in a sexual manner to the society at large is 'obscene'.⁸

Furthermore, to constitute section 294 IPC one must prove beyond reasonable doubt that obscene act was performed at public place; otherwise this section is not made out conspicuously. Similarly obscene dance performed within the closed premise of hotel is said to be 'public place' where Bombay High Court held that hotel is not private place mere on the verge of purchasing the costly tickets, buying the branded standard liquor and so on. Hence the term 'public' refers to the group of the people participate at the place without any discrimination as to income, caste, sex and place of birth⁹. Whereas in another case Bombay High Court refused to accept the same 'dicta' and held that it is a common parlance in the view by analyzing the situation on the part of ordinary prudent man for annoying in a particular situation or not, if yes, it comes under the category of annoyance, consequently the same would be determined the purpose of the section. Even though it would be significant to determine the place is public or not, thereby it should also be specified, whether at closed premises situation would be annoying or not.

Hence the Bombay High Court held that the act of 'obscene dance' is not come under the annoying kind of act because person has purchased the ticket for restricted entry voluntarily¹⁰. Thus anything is done by free volition would not be annoying; hence 'community standard' has widen interpretation as the same is considered to be genus of various species. Therefore decency, morality and modesty should not be only parameter to decide 'the community standard' rather it is very dynamic concept, wherein it requires quintessential judicious acumen on the part of the Supreme Court to specify conspicuously the acid test of 'community standard' which would be essential from one point of time to another point of time pertaining to above averment. It is possible in the postmodern society will adopt different methodological interpretation on the basis of deconstruction of present conceptualization because the very concept of obscenity sprint down various and multipronged connotations pertaining to resolute solution for adopting paradigm for to

² Vibhute, K I, "PSA Pillai's Criminal Law" LexisNexis Butterworths Wadhwa, Nagpur, Edn-Tenth 2012.

³ R. V. Hicklin (1968)3 QB 360.

⁴ Miller v. California 413US 153 (1973)

⁵ Samaresh Bose v. Amal Mitra AIR 1986 SC 967

⁶ Bobby Art International v. Om Pal Singh Hoon, (1996) 4SCALE 75.

⁷ Ranjit D. Udeshi v. State of Maharastra AIR 1965 SC 881.

⁸ Memoirs v. Massachusetts 303 US 413, 418 (1966)

⁹ Narendra H Khurana & Ors v. Commissioner of Police & Anr, (2004) Cr.LJ 3393 (Bom).

¹⁰ State of Maharashtra v. Miss Joyce (1976) ILR Bom 1299.

determine the community standards test in the consonance of obscenity.

The Bombay High Court although explicatively examined the 'dicta' of annoyance on the part of prudent person to determine and perceiving the nature of particular 'act' is detrimental pernicious or not to corrupt the mind and whether the same would be in closed or in public place, It would be immaterial for future generation on the verge of critical legal studies and post- modern perspective. The very next generation sprint down the adoption of obscenity on the common spectrum which would nullify the effect of the section-294 IPC as we have been observing the fast-changing paradigm of the society pertaining prohibited act or omission under section -294 IPC. Therefore, this is right time to think over it for the betterment of future generation.

3. CONCLUSION

Basically, the concept of 'obscenity' refers as the act of exhibition of the private part of the human body at the public place, which fanning the prurient and lascivious interest to the concerned person which corrupt the mind of such person towards commission of sexual offences under the various penal statues. It prohibits the prescribed acts or omissions wherein punishments will be inflicted as otherwise consequence in the violation of such prescribed conducts as per the penal statutes.

Community Standards need satisfaction in the consonance of community sentiments which imbue the multipronged interpretations; there is no, as such universal and uniform definition of the term community sentiments, to provide the appropriate definition of the term 'community standard'. The question involved here is having jurisprudential conundrum to determined resolute interpretation through judiciously. The only thing is to apprise here that a standard of the community is usually based upon the practice and habits of the people who resided in a particular territory over a specific period of time which have underpinning effect to testify the essence of the community. Ultimately such community observes that which conduct is not detrimental to the interest of the society at writ and vice versa of the same is detrimental and pernicious for the young and adolescent.

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