ARYAVART SHODH VIKAS PATRIKA
RNI TITLED NO. UPBIL04292
RNI REG. NO. UPBIL/2014/66218 PP. NO.- 249-250

ISSN NO.-2347-2944 (Print)
e-ISSN NO.-2582-2454 (Online)
Vol.-13, No.-III, Issues-18, YEAR- Dec. -2020

Obscenity under Indian Penal Code : Problems & Challenges

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Received- 27.10.2020, Revised- 01.11.2020, Accepted - 04.11.2020

Abstract: ***The problem of defining what is obscene is not easy to solve. Social changes in the behaviour and outlook of the people from age to age bring in variation in the idea of obscenity. If one compares the dress worn by women from time to time in different parts of the world and even in the same part at different periods of history, one will be astounded as to the variable ideas of obscenity prevalent the world over the changes in the ideas of obscenity may be in the terms of persons. It may even be that with the same person the same thing may not be obscene at all stages of his life.[1]***

The Indian Penal Code borrowed the word "obscenity" from the English statute. The common law offence of obscenity was established in England three hundred years ago when Sir Charies Sedley exposed his person to the public gaze on the balcony of a Traven. [2]

Key words- academic, continuity, online education, challenges.

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The word "Obscent" is not defined in the penal code. What has to be considered as obscene or indecent has changed from time to time and may not exactly be the same in different countries. The tendency in recent times is not to prohibit sex knowledge to be spread on scientific line. Works of art are generally not considered as obscene. Treating with sex in a manner offensive to public decency and morality, judge of by the national standards and consider likely to pander to lascivious, prurient or sexually precocious minds, must determine the result.

A balance should be maintained between freedom of speech and expression and public decency and morality but when the latter is substantially transgressed the former must give away.

The word "obscene" may be taken as meaning offensive to chastity or modesty, expressing or personating to the mind or view something that delicacy, purity and decency forbid to be expressed, anything expressing or suggesting unchaste and lustful ideas, impure, indecent, lewd where a publication is for sale to all the sundry in order to stix sex impulses and leads to sexual and impure thoughts and tends to corrupt the youth, the publication would be obscene. Obscenity is no advance of civilization. It is its very negation. [3] Law against obscenity are often made or defended in the name of public morality, such laws seems to presuppose that there is such a thing as public morality that has some claim on the individual member of the community. Obscenity has some connection with sex and sex, is related to love an intimate private concern of all men. Thus the problem of obscenity involves far-reaching questions about the nature of our community the ends and values by which this civil society should be governed, and it also involves the most delicate and personal interests of individual human beings. In their form and in their contents, these materials vital and depreciate fundamental standards of morality or decency.

obscenity is not a legal term. It can not be defined so that it will mean the same to all people, all the time everywhere. Obscenity is very much a figment of the imagination, an indefinable something in the minds of some and not in the minds of others, and it is not the same in the minds of the people of every clime and country, nor the same today that is was yesterday and will be tomorrow.

Analogous Law- These section (292, 293, 294) is added accordance with the resolution passed by the International convention for the suppression and circulation of and traffic in, obscene publications signed at Geneva on behalf of the Governor-General of the council, the 12th day of September, 1923. The select committee in their report, dated 10th February, 1925

ISSN NO.-2347-2944 (Print)
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intended to exclude religious, artistic and scientific writings etc. but they did not think it necessary to enlarge the exception, which they left to be supplemented by "a substantial body of case law" which they added, made it clear that bonafide religious, artistic, and scientific writing etc. are not obscene within the meaning of the IPC." The two sections must, then, be understood as supplemented by case-law on the subject. The exception, as drafted by the select committee, was some what enlarged by the legislative assembly which added the words, any book pamphlet writing, drawing or painting kept or used bonafide for religious purposes are to the original exception as enacted in the Act of 1860, which the select committee had reproduced in the draft.

Section 292 of IPC imposes a restriction on the fundamental right of the individual, which is permissible under Art. 19 of the constitution. This section has been protected keeping in view the interest of public decency and morality. Section 292 is not invalid in view of Art. 19(2) of the constitution of India. It embodies a reasonable restriction in the interest of the general public because the law against obscenity seeks no more than to promote public decency and morality. The validity of the section was challenged in the Supreme Court in Ranjit D. Udeshi Vs. State of Maharashtra.[5]

The word "obscenity" is not really vague because it is word which is well understood even if persons differ in their attitude to what is obscene and what is not.

It is, however clear that obscenity itself has extremely poor value in the prepogation of the idea, opinion and information of public interest or profit the approach to the problem may become different because then the interest of society may till the scale in favour of free speech and expression. It is thus that, book on medical science with intimate illustrations and photographs, though in a sense immoral, are not considered to be obscene, but the same illustration and photograph collected in book form without the medical text would certainly be considered to be obscene. Section 292 IPC dealt with obscenity in this sense and can not thus be said to be invalid in view of second clause of Art. 19 of constitution.

Conclusion- The criminal offences can be divided into Actus Reus and Mens Rea, obscenity being an essentially criminal act should have as its constituent a guilty intent. But though by and large and state of a man's mind has been held to be as a much a fat as the state of his digestion. This factor has been generally ignored by the courts mainly because of the difficulty in proving it. Thus the farouvable judicial theory has been that a person intends the natural consequences of his act and if there be any infraction of the law the intuition to break the law must be inferred. Cockborn, C.J. has been consistently followed in all Indian decisions and occasionally a judge has adopted even more rigid attitude. The question of intention is not germane to the consideration of the offence under section 292 of the Indian Panel Code. Indian case law has also laid down that the impugned work need not be looked at as a whole. An entire book may be adjudged obscene even if it contains a single obscene passage. The obscene of any specific legal definition has conferred judicial discretion on the courts to decide as to what is the exact definition of obscenity and what materials, says or acts may amount to the offence of obscenity. This fact has raised various problems in Indian society particularly the obscene of balanced and harmonious relation between the interest of the traditional Indian society on one hand and the interest of the so called modern and liberals of the society.

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PIF-7.500 *ASVS Reg. No. AZM 561/2013-14*