

OBSCENITY REVISITED

THE LAW of obscenity throws up interesting controversies at infrequent intervals in India. The conflict between literary or artistic freedom and the constraints of the law came up in an acute form in a prosecution arising out of the publication of a Bengali novel by a writer of eminence.¹ Samaresh Bose, whom another Bengali literary scholar described as one of the most important Bengali novelists, had the misfortune to be dragged to the court. The charge was that the novel *Prajapati*, published in the annual Pujā number of the well known Bengali magazine *Desh* (the novel has now been published in book form also), contained several obscene passages. The author and the publisher had to face prosecution before the chief presidency magistrate at Calcutta, who convicted them under section 292 of the Indian Penal Code 1860. The author was sentenced to a fine of Rs. 201 for writing and getting published an obscene novel. The conviction and the sentence were maintained by the Calcutta High Court, but reversed by the Supreme Court.

Several important propositions on the law of obscenity were re-affirmed in the judgment of the Supreme Court. The interest of the judgment lies not so much in any totally new principle expounded by the court as in a liberal application of the standards of obscenity to the facts of the case. The court gave considerable weight to the views expressed before the trial judge by two eminent Bengali scholars in their evidence. These two scholars were Budhadev Bose, formerly chairman of comparative literature at Jadavpur University, and Naresh Chandra Guha, professor and head of the department of comparative literature at the same university.

The main theme of the book charged as obscene is the character and mental world of its hero Sukhen who, because of his unhappy life at the home of his parents, turns restless. His restlessness is born out of the fact that he had no occasion to experience human love. It drives him to a number of sexual episodes which are described in the book in an uninhibited manner. The story begins with an incident in a room where Sukhen is trying to catch a beautiful butterfly moving about and where Shikha, a girl, is lying on the bed. The girl thwarts his efforts to catch the butterfly and takes it in one of her own palms. He notices her scanty dress. The description of the incident and of Sukhen's feelings on seeing the girl's anatomy is one part of the book. At that moment, he also remembers how sometime ago he had an affair with Zina, a girl of about 14 years of age, during a picnic. His reminiscences of that affair were also held by the trial judge and the High Court to be obscene. There was another episode between Sukhen and Manjari, his friend's sister, which was also charged as obscene because of descriptions suggestive of sex. Finally, the affairs of his brother with the

1. *Samaresh Bose v. Amal Mitra*, A.I.R. 1986 S.C. 967.

maidservant's daughter and his description of the same were held to be obscene.

The trial judge and the High Court regarded these descriptions as obscene, because of the reference to various acts and a description of the body of female characters, and the use of slang words. But the Supreme Court adopted a different attitude. It attached sufficient importance to the author's objectives of exposing certain ills pervading in society. According to the court, while it was possible that some persons might be shocked and disgusted by the book, that did not resolve the question of obscenity. It made an important observation that the mere fact that the language used was vulgar would not be enough to adjudicate the book as obscene because a vulgar writing is not necessarily obscene. The essence of obscenity of a novel is the effect of depraving, debasing and corrupting the morals of its readers. Vulgarity may arouse disgust and revulsion among them but does not necessarily corrupt their morals.

Another important principle re-affirmed by the court is that the characters described by the author were not mere figments of his imagination. Such characters are often to be seen in real life in the society and the author tried to focus attention on them. He used his own technique and choice of words to serve properly the purpose of the novel. Some of the words and descriptions may not appear to be in proper taste but the book was meant for all classes of readers and it would not be right to insist that the standard should always be for the writer to see that the adolescent may not be brought into contact with sex. The judges concluded:

On a very anxious consideration and after carefully applying our judicial mind in making an objective assessment of the novel we do not think that it can be said with any assurance that the novel is obscene merely because slang and unconventional words have been used in the book in which there have been emphases on sex and description of female bodies and there are the narrations of feelings, thoughts and actions in vulgar language.²

A perceptive reader of the judgment will notice that the court has attempted to strike a reasonable balance between various factors which compete against each other and create an antithesis whenever questions of obscenity are raised. The factors presenting an antithesis are the young and adolescent reader versus the total reading audience; the literary merit of a book versus the possible moral objections against its contents; realism in literature which is the author's dominant consideration versus the maintenance of social order as existing, which is a demand of society; and the creative urge (which is limitless) versus legal constraints which try to keep within confines every human activity that is viewed as harmful to society. How difficult the task is, would be manifest from the very fact that in the present case, the court

2. *Id.* at 983.

had to set aside the concurrent judgments of two lower courts. One wonders if it is appropriate to apply the sanctions of the criminal law indiscriminately against works of distinguished authors without some kind of preliminary screening of the proposed prosecution by a senior legal expert, say, by the advocate-general. No one need be considered as above the law. But there should be some safeguards at the threshold to ensure that creative writers and artists of eminence are not, in the pursuit of their self-expression, thwarted by ill-advised prosecutions.

Incidentally, it is gratifying to note that in the case under comment, the court gave considerable credence to the views of two eminent scholars of Bengali literature, thus re-affirming *dicta* in some of its earlier judgments which assumed that in judging the character of a book charged as obscene, courts could take expert evidence. This assumption needs to be given a legislative recognition at an appropriate time and place.

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