

KISS OF LOVE AND ITS LEGALITY

VISHNU S WARRIER, B.A.L, LL.M, UGC - NET

Assistant Manager – Legal, HLL Lifecare Limited (A Govt. of India Enterprise)

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Well, recently it was observed in the southern state of Kerala that, a group of volunteers comes up with a new mode of protest against the moral policing called “Kiss of Love”. Subsequently said form of protest gathered support from educational institutions outside of Kerala including University of Hyderabad, JNU Delhi, IISER Kolkata, Pondicherry University, IIT Madras and IIT Bombay. Students from Jadavpur University and Presidency University, Kolkata have organised similar protests against moral policing in Kolkata on 5 November 2014.

Kiss of Love is a non-violent protest against moral policing which started in Kerala and later spread to other parts of India. Kiss of Love protest was sparked off in October 2014 when a leading Malayalam news channel, telecast an exclusive report on alleged immoral activity at the parking space of Downtown Cafe in Kozhikode. The video showed a young couple kissing and hugging each other. Following the report, a mob of attackers, vandalized the cafe. Following this, Rahul Pasupalan, a short film maker from Kerala, and a group of friends had started the Facebook page “Kiss of Love”. Activists from all over Kerala decided to protest against the series of moral policing incidents by organizing a public event at Marine Drive beach on November 2 in Kochi.

Legality of Kiss of Love

Now let’s come to the legality of the issue. The major issues here are “Do you have a right to Kiss and Hug”? Of course you have right to Kiss and Hug. But, whether such an act can be done in a Public place? If such an act is conducted in a public place whether it can be interpreted as an “obscene act”?

It could be a possible argument by the *Kiss of Love* activists that, *Right to Kiss and Hug* is guaranteed as the *Fundamental Right to freedom of speech and expression* guaranteed under *Article 19 (1) (a)* of the Indian Constitution. However, author would like to counter such an argument by referring to *Article 19 (2)* of the Indian Constitution, which imposes reasonable restrictions on the *Fundamental Right to freedom of speech and expression*. *Article 19 (2)* says as follows;

Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

It is, therefore, obvious that subject to reasonable restrictions placed under *Article 19(2)* a citizen has a right to publish, circulate and disseminate his views and any attempt to thwart or deny the same would offend *Article 19(1)(a)*.

Further, under Section 294(a) of Indian Penal Code, “*Whoever, to the annoyance of others, does any obscene act in any public place shall be punished with imprisonment for a term which may extend to three months, or with fine, or with both*”. However, Indian Penal Code does not define the word “obscene”; hence it is interpreted differently by different authorities. Apex court in *S. Khushboo v. Kanniammal & Anr*¹, observed that “*obscenity*” should be gauged with respect to contemporary community standards.”

With regards to kissing and hugging in public places, the Supreme Court of India has made it clear that 'no case can be made out of two people consensually hugging and/or kissing. Supreme Court's verdict came in response to a petition filed by actor Richard Gere to quash the arrest warrant issued by a Jaipur court. The arrest warrant was issued after the actor had taken Shilpa Shetty in his embrace and kissed her on the cheek at an AIDS awareness programme. A verdict by Delhi High Court has also made it clear that kissing in public is not a criminal offence.

Re, to apex court's observation in *Chandrakant Kalyandas Kakodar v. The State of Maharashtra*² that, “standards of contemporary society in India are fast changing,” and the regarding the “contemporary community standards,” the Supreme Court further noted that it is not “the standard of a group of susceptible or sensitive persons” that can be held as the standard of the community³. This is equally applicable to the *Kiss of Love* activists as well as those who claim themselves as the representatives of moral policing.

However, in a country like India, *Kiss of Love* and other similar activities are a question of morality and culture, and “*Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy*”⁴.”

¹ Decided April 28, 2010

² 1970 AIR 1390

³ *Aveek Sarkar v. State of West Bengal*, Decided on February 3, 2014

⁴ *S. Khushboo v. Kanniammal & Anr*, Decided April 28, 2010

Though there are various judgments in permitting two people to consensually hug and/or kiss each other, keeping in mind the number of instances of moral policing, it is high time to define the term “*obscene*” or “*obscenity*”. Courts, in its decisions, has at various times endorsed all of them, some of them, or none of them. We await clarity on this important issue.

