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WHO IS THE REASONABLE MAN? A COMMENT ON THE REASONABLE MAN TEST IN INDIA

ABSTRACT

The 'reasonable person' is one of the most well-known but least understood persons in the legal world. There is no legislation that defines who a 'reasonable person' is. It is, on the face of it, a very subjective concept, it has been interpreted differently by different courts. In addition to this, these interpretations are also subject to the changing societal and legal standards and norms. This comment discusses the origin, the differing interpretations and the criteria associated with the test.

Who is the Reasonable Man? A comment on the Reasonable Man Test in India

The "reasonable person" standard, also commonly known as the Reasonable Man Test, is a legal concept established in the United Kingdom. It serves as a hypothetical standard by which the behaviour and actions of individuals are judged in various legal contexts. While it sounds like a fairly simple concept, it is anything but. This paper delves into the intricate facets of the reasonable person standard, with a particular focus on its application within the Indian Criminal Justice System.

The reasonable person standard finds its origins in tort law but has, over time, found its way into multiple other areas of law, including but not limited to criminal law. The 1837 English case of *Vaughan v Menlove*¹ first established the objectivity of the test. Since then, the reasonable man has played an indispensable role in common law.

Before we talk about the reasonable man, it is important to understand the meaning of the word 'reasonable.' It is a word that is used in every aspect of the law, ranging from 'reasonable care' to 'reasonable doubt' to 'reasonable compensation', but the question to ask here is what is 'reasonable'? Marcia Baron suggests that perhaps such a standard is so widely used because it is assumed to be a magical one-size-fits-all concept, however in criminal law, its interpretation leans towards being a benchmark for self-control in the presence of intense emotions.² Reasonability is not an empirical standard which measures how the average person behaves

¹ *Vaughan v Menlove* 132 Eng. Rep. 490

² Marcia Baron, *The Structures the Criminal Law* (Oxford, 2011) ch 2

but instead is a normative measure of how a person should think, feel or behave.³ The reasonable person is neither good nor ordinary but instead is a hybrid of the two.⁴

Neither the term 'reasonable person' nor the 'Reasonable Person Standard' have been defined by any court. In the first case where this standard was noticed, *Vaughan v Menlove*, the court simply stated that the conduct of a person was to be judged on the basis of whether their behaviour was that of a reasonable and prudent person. However, there is no clear method of determining whether a certain behaviour is reasonable or prudent, making it a highly vague and subjective standard. It is claimed that this standard is to allow for objectivity in deciding such cases.

One of the first cases where the reasonable person standard or test was used in India was in the case of *Bhagwati Charan Shukla v Provincial Government*.⁵ In this case, the court cited Lord Buckmaster in the case of *Bowman v Secular Society*⁶ stating that when the law is not clear, the judgement of a reasonable man must be used. It further quoted Lord Sumner in the same case stating that this standard or judgement of a reasonable man is dynamic and that it is subject to change with changes in society's morals and beliefs. While it is true and important that society as a whole's morals and beliefs have changed over the years, such a dynamic concept makes it harder to maintain consistency and objectivity in applying such a test or standard.

This standard has been since used in India extensively, one such case is that of *Ramesh v. Union of India*,⁷ with regard to hate speech. In such a case, the principle was applied not from the stance of the offender but from the perception of certain speech or text from the stance of the receiver. The court stated that "...that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view." This judgement shows that this standard is not always applied exclusively to determine the nature of the judgement of the offender.

The Kerala High Court in the case of *Minor Veeran v. T.V. Krishnamoorthy*⁸ cited the English case of *Glasgow Corporation v. Muir*⁹ where the House of Lords stated that "...The reasonable man is presumed to be free both from over-apprehension and from over-confidence, but there is a sense in which the standard of care of the reasonable man involves in its application a subjective element. It is still left to the judge to decide what, in the circumstances of the particular case, the reasonable man would have had in contemplation, and what, accordingly, the party sought to be made liable ought to have foreseen." This confirms the fact that the

³ Peter Westen, 'Individualizing the Reasonable Person in Criminal Law' (2008) 2 Crim L & Phil 137

⁴ Tobia K, 'Legal Standards Invoke the "Reasonable Person". Who Is It?: Aeon Ideas' (Aeon, 25 January 2019) <<https://aeon.co/ideas/legal-standards-invoke-the-reasonable-person-who-is-it>> accessed 13 September 2023

⁵ *Bhagwati Charan Shukla v Provincial Government* AIR 1947 Nag 1

⁶ *Bowman v Secular Society* [1917] A.C. 406

⁷ *Ramesh v. Union of India* AIR 1988 SC 775

⁸ *Minor Veeran v. T.V. Krishnamoorthy* AIR 1966 Ker 172

⁹ *Glasgow Corporation v. Muir* 1943 AC 448

courts and, thereby the Judges, do have the power to use their subjective reasoning powers to determine whether the behaviour of a person is “reasonable.”

The Reasonable Man Test or Standard is, in my opinion, a test that is flawed in its current form and needs to be developed to make it truly objective. However, I also believe that such a test could never be truly objective, this is because the behaviour of a reasonable person is highly dependent on the facts and circumstances of a case. By defining a rigid outline of a reasonable man, it would place a large restriction on the ability of the court to fairly administer justice. The court is given a certain amount of discretion in all arenas of the law to better their ability to be fair and just and placing a restriction on this discretion would be hindering justice.

In conclusion, the ‘Reasonable Man Test’ is a test originating from tort law that has since permeated various legal realms. It heavily relies on a notion of ‘reasonableness’, which is ubiquitous in law but has not been precisely defined. Despite its intention to inject objectivity into legal judgements, its application proves elusive due to its inherent subjectivity, heavily influenced by evolving societal norms. Indian courts have adopted and applied this standard, demonstrating its role in evaluating the role of the test in determining the behaviour of both the offender and the persons being subject to offensive behaviour. While advocating for its refinement for greater objectivity, it is acknowledged that complete objectivity is unattainable. Striking a balance between objectivity and judicial discretion is crucial to ensure fair and just legal outcomes.