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# RIGHT TO FREEDOM OF SPEECH AND EXPRESSION V. DEFAMATION

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## Introduction

With the ever growing rift between people exercising their right of freedom of speech and expression and the other set of people getting offended by it, a discussion on the topic of my paper is necessary. If we are not aware of our rights and responsibilities, then we may see India become a dystopia where everything is controlled by a few and each expression gets thoroughly filtered. My paper herein aims to bring awareness about the finer details of the two competitors, what actually comes under freedom of speech and expression and what comes under the ambit of the offence of defamation, it is only when the people are aware then only we could tackle the underlying problem of growing differences between various ideologies in a vastly diversified nation as ours. Several judgements over the years have been given by the Honourable Courts which serve as the guiding principles when we traverse this topic. But there are still a lot of ambiguities as to what is truly non defamatory, as its a matter of interpretation.

If I was in any power in the legislation then I would try to bring more and more awareness among the masses as this problem cannot be solved through any single legislation. People have to themselves understand their rights and what responsibilities those rights carry. My paper therefore aims to illuminate the reader on the basics of the topic, galvanise the everyday debate on the local tea stall on the aforementioned topic.

Oftentimes in the legal circles a question arises from time to time that which is more important, the fundamental right to freedom of speech and expression or defamation? On the face value of the question the answer is always freedom of speech and expression. But after deep deliberations, one understands the nuances of it. Law is not black and white, it is the grey area which the society chooses to function with. On one hand we have something as important as our fundamental right to freedom speech and expression, but on the other we have defamation which is caused by practising the freedom to speak and express.

## Right to Freedom of Speech and Expression

Article 19 (1) (a)<sup>1</sup> of The Constitution guarantees to each and every citizen the fundamental right to freedom of speech and expression. Adding this provision is also in line with our Preamble, wherein each citizen is guaranteed by the State-

*“LIBERTY of thought, expression, belief, faith and worship;”*

Although Preamble in itself is not an enforceable instrument, but it is the soul of our constitution<sup>2</sup>. It's validity is the subject matter of multiple landmark cases in our Supreme Court but it is not the subject matter of this paper.

In itself article 19 (1) (a) is a perfect fundamental right, but cracks seem to develop overtime as more and more people started misusing it. Within one year of the enforcement of our constitution, a clause 19 (2) was added through an amendment<sup>3</sup>, with retrospective effect, to put reasonable restrictions on this right. The clause read as-

*“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...”*

However, any limitation in the exercise of the right under this clause against clause (1) (a) not falling under the reasons given under 19 (2) cannot be held valid. Freedom of speech and expression includes one's right to express one's views or opinions on any issue through any medium, be it through words of mouth, writing, printing, film, singing<sup>4</sup>, etc. Therefore a right to communicate and to propagate or publish automatically attaches itself to this fundamental right. However, free speech cannot be equated or confused with a license to make unfounded and irresponsible allegations against the judiciary<sup>5</sup>. A mature and fully developed society lays its foundations with citizens who have access to all their basic rights but the citizens should also be responsible while exercising their rights, misuse of any law leads to rifts between the

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<sup>1</sup> India Const. art. 19, cl. 1(a) **Protection of certain rights regarding freedom of speech, etc.**— All citizens shall have the right—  
to freedom of speech and expression;

<sup>2</sup> Thakurdas Bhargav, member of the Constituent Assembly

<sup>3</sup> amended by the Constitution (First Amendment) Act, 1951, s.3, for cl. (2)

<sup>4</sup> Singing has also been included in 19 (1) (a) in the case of Usha Uthup v State of West Bengal, AIR 1984 Cal. 268 (India)

<sup>5</sup> Radha Mohan Lal v Rajasthan High Court, (2003) 3 SCC 427 : AIR 2003 SC 1467 (India)

citizens and the State. The State uses this “misuse” as an excuse to impose draconian laws which encroach upon the liberty of the citizens. A fine line has to be considered by citizens and State alike when it comes to sensitive topics like the fundamental rights.

## **Defamation**

Defamation in itself means communicating false information about someone with the intention to cause injury to the reputation of that person in the society. It has been treated as a crime under Indian Penal Code, 1860. Section 499, of IPC, 1860 reads-

*“Whoever, by words, either spoken or intended to be read, or by signs or by visual representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.”*

Further three *explanations* have been given explaining who can be defamed and what all constitutes in an imputation. As per the explanations any deceased person, any company or an association or collection of persons also are capable of being defamed. Further, any ironical or satirical statement also counts as an imputation which may amount to defamation.

After a quick perusal of the section one may naturally feel that this section imposes a lot of restrictions on a person’s right to freedom of speech and expression. But that is not the case as further in the section *ten exceptions* have been provided which saves a person from false allegations of defamation. In a concise way these ten exceptions are-

1. Imputation of truth which public good requires to be made or published.
2. Honest opinion about the public conduct of a public servant.
3. Honest opinion about the conduct of any person touching any public question.
4. Publication of reports of proceedings of Courts.
5. Honest opinion about the merits of a case decided in Court or conduct of witnesses and others concerned.
6. Honest opinion about any merits of any public performance, including but not limited to

a book by an author or singing, dancing etc.

7. Censure passed in good faith by person having lawful authority over another. Like a parent over his child.
8. Accusation preferred in good faith to authorised person. Again like a teacher complaining about a child to his parents.
9. Imputation made in good faith by person for protection of his or other's interests.
10. Caution intended for good of person to whom conveyed or for public good.

### *Analysis of the offence of Defamation*

The offence of defamation all distills down to the usage of a harmful imputation. What is harmful and what is not is subjective, therefore the Courts have given the essential elements which make up the offence of defamation. They are-

- A. The words must be defamatory;
- B. They must refer to the aggrieved party;
- C. They must be maliciously published<sup>6</sup>

Having understood the elements a question now comes as to what "reputation" actually is ? Some judgements put reputation under the right to life under Article 21 of the Constitution<sup>7</sup>. Reputation or a right to enjoy private reputation is ancient in origin. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to enjoyment of life, liberty and property.<sup>8</sup> Reputation can also be defined to be good name, the credit, honour or character which is derived from a favourable public opinion or esteem, and character by report.<sup>9</sup>

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<sup>6</sup> BRK Murthy v. State, 2013 Cr LJ 1602 (AP) (India)

<sup>7</sup> Mehmood Azam v State, AIR 2012 SC 2573 (India) ; Vishwanath S/o Sitaram Agrawal v Sarla Vishwanath Agrawal, AIR 2010 SC 1974 (India)

<sup>8</sup> Smt. Kiran Bedi v Committee of Inquiry, AIR 1995 SC 117 (India) : D F Marion v Davis, 1989 (1) SCC 494 : AIR 1989 SC 714 (India)

<sup>9</sup> Ratanlal & Dhirajlal, The Indian Penal Code 836 (Reprint 2021)

‘Character’ and ‘Reputation’ are two terms often used in the same sense, but that is not the case. Character is what a man is and reputation is what he is supposed to be what people say he is. Character depends on attributes possessed and reputation on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present.<sup>10</sup>

### ***Constitutional Validity of Sections 499 and 500, IPC,1860 with section 199, CrPC, 1973***

The constitutional validity of the sections 499 and 500, IPC,1860 along with section 199, CrPC,1973 has been challenged in the case of *Subramanian Swamy v UOI, Ministry of Law*<sup>11</sup>, where the Supreme Court upheld-

*One cannot be unmindful that right to freedom of speech and expression is a highly valued and cherished right but the Constitution conceives of reasonable restriction. In that context criminal defamation which is in existence in the form of ss. 499 and 500 Indian Penal Code is not a restriction on free speech that can be characterised as disproportionate. Right to free speech cannot mean that a citizen can defame the other. Protection of reputation is a fundamental right. It is also a human right. Cumulatively it serves the social interest.*

### ***A way forward***

The contention between the two topics discussed will keep continuing as there is no one answer to the question. As a matter of fact most of the legal questions have no single answer, it is through the experiences of the Courts that we get some light on the issue. Freedom of speech and expression is a very crucial fundamental right, it gives a person the inner confidence that he needs to express his ideas and realise his potential. But such a right has no business of being misused, which we witness more and more these days with the rise of social media platforms. People have to be held responsible for their libels and it is the provision of defamation which puts them under a responsibility. The question as to which is more important now seems irrelevant as both the provisions work in a harmony with each other. Without freedom of speech and expression defamation hardly will occur as everything would then be controlled by the State. This balance between the two provisions is the prime reason India today is not a

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<sup>10</sup> Kishore Samrite v State of UP, (2013) 2 SCC 398 (India)

<sup>11</sup> Subramanian Swamy v UOI, Ministry of Law, 2016 Cr LJ 3214 : 2016 (5) SCJ 643 (India)

dystopian society.

*“It was not by making yourself heard but by staying sane that you carried on the human heritage.”*

*- George Orwell*