
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**CONCEPT OF DEFAMATION WITH A CRITICAL ANALYSIS OF
SUBRAMANIAN SWAMY'S CASE**

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ABSTRACT

“Next to life, the most precious thing that a person holds can be considered as the reputation of that person in the society”

And defamation targets to tarnish the sole property of the person. Though, defamation creates a burning sensation on the life of the people, including both the victim and also the people around them. There is still another version of apprehension, that whether in their capacity, as which statement may become the reason of theirs might constitute a furor or land them behind wars.

The main problem which is acting as a plague is the reasonability to understand that, their freedom of speech and expression, doesn't provide them abandon power to harm the reputation of other people, by their will against that person, rather this fundamental right has been provided to them for the benefit of theirs living a good, and healthy, Nourished life.

This paper mainly focuses on the breach of duty done in regards to and to specify the extent of reasonability in terms of the Right to privacy, and freedom of speech and expression relating it with Defamation.

KEYWORDS- Article 19, Right to Privacy, Right to Reply, speech and expression, Defamation

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INTRODUCTION

In today's world, the man cares the most about his reputation and always endeavors to bulwark it in all forms of circumstances. When someone makes a mendacious verbalization about the person which can injure or damage his reputation and gives a lamentable impact on society this damage of reputation is termed defamation. "Defamation per se means that the statement is defamatory, the court does not have to interpret the defamatory statement but with the defamation per code, it is required by the plaintiff to provide an explanatory statement, that why he thinks that the statement is defamatory.

Defamation is the act of making a mendacious verbalization about another that damages his reputation. As per the Black law dictionary, defamation means the offense of injuring a person's character, fame, or reputation by a false and malicious statement². This particular article will analyze the evolution and illicitness of defamation within India and withal the present position of defamation within the laws of India. In this particular article, we discuss the constitutionality of defamation in India. As here we discuss the leading case of *Subramanian Swamy v. Union of India*³ in which the court held that defamation is a malefactor offense. Provision of malefactor defamation criminalizes verbalization that is envisioned to harm the reputation of any person. So here the chances of misuse of this bulwark increase as it is cumulated in the Indian Penal Code⁴. Finally, now the constitutional status of this offense is queried.

Categories of Defamation:

Defamation is categorized within two categories which are⁵;

- 1. "Slander** - Whenever any verbalization is given in oral or in some form of gesture that seems to be defaming another person is termed as slander.
- 2. Libel-** When any defamatory verbal expression is in indicted form or has been published such verbal expression is termed libel".

²[https:// Dictionary.thelaw.com](https://Dictionary.thelaw.com)

³ Subramaniam Swamy v. Union of India, AIR 2016 SC 2728.

⁴ Indian Penal Code 1860, section 499 of the act 1860.

⁵ <https://en.wikipedia.org>".

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Evolution and meaning of defamation

In the earlier period of times and present, reputation is considered as the whole life earning of a person and if someone by any betokens causes harm to the reputation of any person it feels like he harmed his soul and he lost everything he earned in his whole life.

In India, defamation can be divided into two aspects, which are as follows:

(a) Defamation as a crime

Defamation in India was brought by “Thomas Babington Macaulay within the year 1837” within the first draught of the Indian legal code which is codified in 1860. The British in India considered the offense of defamation as a criminal offense with the view of protecting the British raj, security of the state, and maintaining public order⁶. Some sections were enacted within the Indian Penal code such as “Section 499 and section 500” which again mains unaltered for the past 158 years.

Section 499⁷ says that “whoever, by words either spoken or intended to be read or by sign or by visible representation, makes or publishes any imputation will harm, the reputation of such person, is claimed except within the cases hereinafter excepted, to defame the person.

Section 500⁸ provides the punishment of defamation it says whoever defames another shall be punished with simple imprisonment for a term which can touch 2 years, or with a fine, or with both”.

(b) Defamation as a tort

In general rule, within tort law, the main focus is usually on libel which suggests written defamation, and tort law does not focus upon slander defamation which implies oral defamation. Herein, the interesting aspect in tort regarding defamation that the person whose reputation is been defamed he susceptible to prove before the court that the words used against him defame his reputation.

Here, the question arises regarding the injunction been provided by the court before the pre-publication. In India, we rarely follow the pre-publication injunction as here we follow the common law rule laid down in 1891 within the case of “*Bonnard v. Perryman*”⁹.

⁶<https://en.wikipedia.org>.

⁷ Indian Penal Code 1860, Section 499 of the act.

⁸ Indian Penal Code 1860, Section 500 of the act.

⁹ *Bonnard v. Perryman*, (1891) 2 CH 269”.

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During this case, it is laid down that although the court possesses jurisdiction to restrain publication altogether but the exceptional cases ought to not issue the interlocutory injunction to restrain the publication¹⁰ when the court is obvious that the defense will not be able to prove its point.

This principle has been followed in India in 2002 by the Delhi high court in the case of “*Khushwant Singh v. Maneka Gandhi*”¹¹ and this particular case, it was held that in exceptional cases the court has the power to issue the pre-publication injunction but in non-exceptional cases, the court must have the tendency to support free speech.

In “*Sharma v. DainikBhaskar Corporation Limited case*”¹², the court discussed the extremely high threshold to allow pre-publication censorship like the other free democratic countries. The court stressed that if the judiciary did not follow those established principles of requiring a very high threshold for pre-publication censorship then it risked stifling public debate¹³.

Rajiv defamation Gandhi bill:

In July 1988, Rajiv Gandhi had introduced one of the most draconian bills crafted by the Indian regime. When the Hindu and the Indian Express newspaper made the detailed coverage regarding the before scandal that implicated several politicians of the congress party which is including the prime minister coerced him to introduce such a bill.

On 4th September 1988, the former Prime Minister Rajiv Gandhi made the verbal expression to the press that “we are consummately convinced that the bill is needed and I am me convinced that we are proceeding on the right line. This defamation bill was the product of the prime minister's desire to curb malefactor imputation and scurrilous indictments. The bill was introduced in the LokSabha and was passed by the members of the lower house and the bill was peregrinated to the RajyaSabha. But then this bill was cumulated by the media as it seems that the bill is introduced to control the media. The protest staged by the media was amalgamated and strategic. Not only the media that jolted the decision of passing the defamation bill but also the

¹⁰“<https://inform.org>.”

¹¹*Khushwant Singh v. Maneka Gandhi*, AIR 2002 Delhi 58.

¹² *Sharma v. DainikBhaskar* (2018) case.

¹³ <https://globalfreedomofexpression.columbia.edu>”.

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group of lawyers, students, trade cumulating members came out on the streets to protest against the authoritarian move of the regime. The mounting pressure on the prime minister was further invigorated by the election looming in near future”.

In September afternoon 1988 the Rajiv Gandhi evoked the emergency cabinet meeting where he apprised his colleagues that he is considering the withdrawal of the defamation bill. Then the prime minister verbalized to the press that a free press is an integral part of the inner vigor and dynamism of our democracy. The imperishable values of our liberation struggle have gone into making the press in India and we uphold this legacy¹⁴. He determinately relented submitting to the mass outrage, thereby re-establishing the liberation of the press.

“Subramanian Swamy v. Union of India”

“Two judges bench of the Supreme Court consisting of Equity Deepak Mishra and Equity PC Pant decided to maintain the constitutional validity of malefactor defamation law and withal that the particular law is not in dissension with the liberation of verbalization and expression. To this judgment, some people even argued that this will restrict the liberation of verbalization. This particular case will be kened for its colorful languages more than its scholastic values. Through their analysis, they communicated that there is a requisite of the public for the loss of reputation they suffer and wanted to provide public remedies for private wrongs. Article 19(2) of the Indian Constitution provides plausible restrictions on the liberation of verbalization in the interest of defamation. But the particular article does not verbally express that defamation deals with whether civil as well as malefactor defamation. It is withal mentioned that the magistrate must be punctilious while issuing the, evokes on a plea for any malefactor defamation case, it is not indispensable that everyone must sing the same musical composition.

The two main issues raised in the writ petition filed by SubramaniamSwamy were:

- (1) Declaring sections 499 and 500 of the Indian penal code as unconstitutional.
- (2) Declaring section 199(2) of code of criminal procedure as unconstitutional”.

Court judgment regarding issue 1:

¹⁴<http://indianexpress.com>.

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In “SubramanianSwamy v. Union of India (2016), the Supreme court held that sections 499 and 500 of the Indian Penal code dealing with malefactor defamation as constitutionally valid”.

In this case, it is apperceived that the right to reputation is a component of the right to life under article 21 of the Indian constitution. It is declared that the right to free verbalization under article 19(1) (a) is balanced against the right to reputation. The Supreme Court held that the press is a public inculcator but this liberation is not absolute and cannot be utilized by the media to cause injury to the individual reputation.

The court held that the criminalization of defamation to bulwark individual dignity of life and reputation is a plausible restriction on the fundamental right of free verbalization and expression. Defamation is a malefaction committed against society at immensely colossal and the state must redress the hurt caused to citizen's dignity.

Court regarding issue 2:

The constitutional validity of malefactor defamation the Supreme Court withal abnegated demands to strike down section 199(2) to (4) of the criminal procedure code. The court repudiated the argument that this section engenders a separate class. It withal dismissed the contention that the relegation enumerated in this provision has no rationale and does not bear constitutional scrutiny. The provision in the criminal procedure code sanctions the public coadjutant to file a complaint in a session court through a public prosecutor for the alleged defamatory comments on their official acts. The court verbalized that the right of the public auxiliary to file a defamation complaint is under section 199(6) to personally file a complaint before the magistrate.

According to the decision of the Supreme court in Subramanian Swamy v. Union Of India the defamation perpetuates to be a malefaction in advisement to being a civil erroneous. This judgment does not appear to give a consequential impact on the subsisting laws.

Critical evaluation of the case:

There is enough evidence that the subsisting statute leads to stifling legitimate reprehension. In this case, the court has sought to engender an artificial balance between the fundamental right of free speech under article 19(1) (a) and a right to reputation as a component of article 21 of the

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Indian constitution. The court did not explicate how the balancing exercise must be carried out but simply asserted that reputation could not be crucified at the altar of free verbalization.

The court's argument was to invoke something that it called constitutional fraternity which was designated to complement civil rights for not eradicating them. Over the past 30 years, the court has expanded the scope of the right to life and personal liberty.

Section 199 of the criminal procedure code utilized the very nebulous terminology that any person aggrieved can file a defamation complaint would open a flood gate for frivolous litigation. In this situation, the court did not provide any particular mechanism by which the court can check on the frivolous litigation and merely verbally expressed that this will depend only on the fact situation of the particular cases.

Under sections 199(2) to (4), the court held that the public auxiliary is a different class which does not seem to provide parity under the Indian constitution.

State of Equilibrium-

“A chilling effect” in the legal context means where the speech and expression are suppressed by the fear of penalization at the interests of an individual group, the same situation is deployed, when it comes to defamation.

This fact is crystal clear that the constitution framers, framed the constitution of India keeping in mind the fundamental rights that are given to the citizen of India securing their dignities, so here the main focus is on the rights and liberties of people, but when it comes to the conflict between Article 19 freedom of speech and expression and the fundamental rights, this platform is itself debatable in its preference.

In simple words, the frustrating behavior that revolves around Article 19 and fundamental right is that Article 19 gives voice and soul to the words of the citizens to show their dissatisfaction, and raise their voices against any disorder in the society but this privilege can be seen often exploited because rather apply these privileges for one's benefit, people living in today's society tend to extract and destroy the reputation of other citizens by the way of mere words, and then try to take article 19 as a defense shield against their libel or slander. And this foregoing ambiguity,

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that the rights that were given as a safeguard, citizens have converted these as tools to harm other people and so on.

So, after detailed scrutiny of a plethora of cases, the court took its jurisdiction by saying that the 'Rule of Harmonious Interpretation' must be applied to balance the fundamental right. And also the other important point that is required to ponder is that¹⁵ the Acknowledgement of the fact that the imposed restrictions are reasonable or not must be taken into count based on current social, political circumstances and not the ex-post-facto scenario.

Whereas the term "restriction" provided under Article 19(2) of the constitution also defines the clear ambit on the applicability of Article 19, which should be used as a tool to curb defamatory speech.

¹⁶The Meaning of the term "Reasonable Restriction" as defined by the court connotes that the restrictions imposed as mention in 19 (2) should not be arbitrary and must not hamper the essence of freedom of speech and expression. The exercise of this fundamental right should be considered valid when a person with a prudent mind exercises his right with utmost diligence and care.

Remedy

¹⁷The concept of defamation is old as hills, as it covers the path between the ancient legal periods to the modern legal era.

Which makes it clear that defamation is a dispute against the reputation of a person, where the ¹⁸reputation is considered as the property of the person, hence it is protected under Article 21 of the constitution.

Whereas to talk about defamation laws in India, IT has two branches, the civil remedy, and the criminal remedy –

¹⁵"The Senior Electric Inspector V. Laxminarayanchopra, AIR 1962 SC 159.

¹⁶Chintamanrao v. the state of MadhyaPradesh, AIR 1951 SC 118.

¹⁷GunjanRekhiMehrotra's commentary on Law of Defamation, Damages, Malicious prosecution 7th Edition.

¹⁸Maneka Gandhi V.UOI, AIR 1978 SC 597".

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In civil offense, the defense is provided under the law of tort, where you can file a case and can seek the court for monetary damages from the person who defamed the person, on the other hand, section 499 and 500 IPC, talks about criminal defamation. Defamation under criminal law is boailable, Non-cognizable, and a compoundable offense, which means FIR cannot be filed and police cannot start an investigation without a warrant.

The dichotomy of defamation being public or individual, court during its observation quoted the debates of the constitution-makers, by making it very clear that, from the beginning itself the intention behind defamation as wrong was never conferred a restricted meaning of defamation and also by applying the ‘principle of noscitur socii’, (is a rule of construction which means, makes the end conclusion that defamation has its own identity) was contended that reputation has been held to be a particular aspect of Article 21.

Since defamation involves the quality of an individual, therefore criminal defamation cannot hold public remedy, the apex court backed this statement by holding into account the fact that defamation protects the reputation aiming public at large and treating defamation as a criminal offense, does not constitutes the interest of the public at large and does not serve any social interest or collective value holds no ground.

As mentioned above earlier Defamation pursuits for both civil and criminal wrong. Therefore the aggrieved party in case of civil wrong can file a complaint under tort and under criminal wrong, same can be done for criminal law under section 500 of IPC, Where the punishment is given for two years, however, the number of damages depends upon case to case.

SUGGESTION

“Right to Reply” generally means the basic right, of the Right to defend an individual against public criticism.

Talking about Europe and Latin America, it is affirmed that “ Right to Reply” is not universally accepted but as an alternative, ARTICLE -14, of the American Convention on Human rights- which says, anyone who is harmed by an offensive statement, has the right to reply and can make a correction using the same outlet.

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Right to Reply can be considered as an Alternative action for defamation, this is because offering an opportunity to the aggrieved party to publish detailed rebuttals can deplete the rate of other problems like violence, legal action, etc. but the antidote should be, that these rebuttals should be voluntary and not mandated by law, because it will be overburdening the government with another editorial work.

Media should encourage these types of rebuttals, and should provide an opportunity to the people, because it will act as a defense system because publishing a blog personally will lead to another connotation, and none is going to believe, but if Media will provide a helping hand to such aggrieved parties, it will be really helpful, and also it should be their moral obligation, that “ If we do have made a mistake, in which we have misrepresented someone, we should forsure make a correction, because here the concern is not about the personal matter, but rather it carries public interest.

CONCLUSION

The law of Defamation seeks to protect the reputation of an individual because it is considered as the sole property acquired by a person during his entire life, but due to sudden “ Mistake of Fact” on knowing the extent, of a person to interfere in the matter of others, is always a debatable question, because as stated from the fact, that it will not amount to defamation if the matters concerns about public interest and welfare because there is nothing more important than the public interest that can be given preference over the matter that is to be Aired in public through media or any other source.

The above discussion makes it very clear, that it is very easier to criticize, rather than looking at the fact because nobody can deny, that it isnot everything we see, and believes it to be true is true. Despite such criticism, we cannot ignore the fact, that the healthy criticism and scrutinizing of the case details can be considered in revealing the fact, but there is worst system prevailing in today’s scenario, is the ambiguity, as many people are compelled to speak about the unfair or unjust practices, till here the things go hand in hand and everything is completely fine because revealing unfair practices leads to the public interest, which is first and foremost, which requires attention, but the problem starts, when instead of supporting the observations or situations arising

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in day to day life of people, converts into the personal feeling of that person, and here it completely tarnishes the target of public interest by individual interest, through various platforms the Internet provides.



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