

**THE CONSTITUTIONAL ASPECT OF AFSPA AND FOR ITS EFFECTS**

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**ABSTRACT**

*The Armed Forces Special Protection Act (AFSPA) is a legislation which aims to protect the national security in situations of international disturbances. It legitimizes deployment of the army in areas in which the civil administration may notify as disturbed areas. Though the objective of the act is to secure peace and order in disturbed areas, however it poses grave concerns to the human rights of the people living in those areas. In many instances, it is reported that the cases of human rights abuse have committed by the forces with impunity. As narrated above, the object of the AFSPA is to bring the peace and stability in the disturbed areas, contrary to this basic objective there are allegations that the army uses excessive force while implementing. Human reports and commission established by the Government of India found and argued that this legislation has not achieved its objective to curb the militancy and insurgency and restore normalcy in the affected areas. Further it is argued that the use of armed forces should be limited in a democracy and prolonged deployment of army may shows the reluctance of the government to address the issue through a democratic and constitutional process. Even in state like Nagaland designated as disturbed area, whereas it has not seen hostilities since decades and no casualty has been reported.*

*In light of this existing situation the current study analyses the role of AFSPA in the North Eastern states of India and its ramification in the security of the state. The study also tries study the constitutional validity of the clamping of the AFSPA in the state of Nagaland and problems of human since its implementation. Finally it argues that ways and means in which the interest and rights of the people of Nagaland to be protected under the constitutional mechanisms.*

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**Chapter-1**

**1.1 Introduction**

AFSPA - Armed Forces (Special Powers) Act (AFSPA), is an Act of the Parliament of India which was passed on 11 September 1958. It is a law with just six sections granting special powers to the Indian Armed Forces in what the act terms as "disturbed



areas"<sup>1</sup>. Under this designated disturbed area all security forces and security personnel are given unregulated and unaccounted power to carry out their operations. Even a non-commission officer have the power to detain and shoot to kill based on mere suspicion that it is necessary to do so in order to maintain “law and order in the disturbed area”<sup>2</sup>.

AFSPA gives the security forces wide powers to shoot, detain, search and arrest to whomever they suspect without being accounted for just in the name of “aiding the law and order of the society”. It was first applied to the North Eastern states of Assam and Manipur and was amended in 1972 to extend to all the seven states in the north-eastern region of India. The “seven sister” states of Tripura, Assam, Arunachal Pradesh, Mizoram, Meghalaya, Nagaland and Manipur. The implementation of this act has always been marred with controversies and human rights abuse. Many human rights watchdogs have reported about the incidents of arbitrary detention, torture, rape, looting by security personnel in the areas where this act is being enforced.

### 1.2 Research Problem

If we look closely, the objective of AFSPA is to provide law and order in the places where the normal order-ness has been disturbed but quite on the contrary this Act provides the security personnel with absolute powers without being accounted for. This leads to various atrocities and human rights violation by the security agencies.

The research looks to analyze the act and its provisions and identify human rights violation in the state of Nagaland in the due course of the Act in effect in the state by the security personnel and also analyze the present scenario and applicability of the Act to the present problems. The research aims to establish the constitutional validity of the said act and suggest reforms and recommendations to be brought up in the Act to ensure no such human rights violation and misuse of power occurs.

### 1.3 Legal Provisions

Act was enacted in 1958 to bring the “disturbed areas” termed by the government of India under control. The government considers those areas by reasons of differences or disputes between members of different religious, racial language or regional groups or castes or communities<sup>3</sup>.

The Section(3) of AFSPA Act empowers the governor of the state or union territory to issue an official notification on The Gazette of India, following which the center has the authority to send in armed forces for civilian aid. There is no clarity whether the governor requests for the troops or the center sends the troops on its own.

Once declared ‘disturbed’ the region is maintained as disturbed for a period of three months straight, according to The Disturbed Areas (Special Courts) Act, 1976. The government of the state can suggest whether the Act is required in the state of not. The different sections of the act may be applicable to the different states depending upon the

<sup>1</sup>South Asia Human Rights Documentation Centre (SAHRDC), *Armed Forces Special Powers Act - A study in National Security tyranny*, November 22, 1995 (October 5, 2017 10:00 pm),

[http://www.hrdoc.net/sahrhc/resources/armed\\_forces.htm](http://www.hrdoc.net/sahrhc/resources/armed_forces.htm).

<sup>2</sup> Ramakrishnan M, *AFSPA explained: How does it work exactly?*, L.M, May 28, 2015.

<sup>3</sup> Ibid



conditions<sup>4</sup>. The Act is non uniform in nature and have different statuses for different states.

#### 1.4 Scope and Objective of The Study

In this background, various Human Rights activist have brought froth the various atrocities and gross human rights abuse done by the security forces in the areas where AFSPA is still under force. This Act has often been argued and put forward as one of the draconian law passed by the Indian Parliament. Critics argue that due to this Act the security personnel are immune to the violations of the Article 21 and 22 of Indian Constitution. They have put forth the various instances of these violations. Based on these issues raised, the essay deals examine the relevance of these incidents to the misuse of power granted under AFSPA. This essay exclusively deals with some of the questions regarding the violation of human rights by the enforcement of AFSPA.

AFSPA has been implemented in many states and its effect in each state varies accordingly. But the fundamental issue of human rights abuse and violation of Article 21 and 22 remains the same<sup>5</sup>. This essay does not deal Due to some constraints this essay only examines and analyze the impact of AFSPA in the lives of people in the state of Nagaland only. The situation and atrocities reported by various media in the state has come up to the attention of the world. These incidents, further challenges the enforcement of the Act in India. Here, I am categorically using this statement as it is a challenge, because it is

been more than five decade, but the violation of the Article 21 and 22 still continues to occur and people still suffer from worst form of atrocities by the state. This essay will confine to the three major issues, primarily it seeks to examine the relevance of immunity granted to armed forces. Second, it seeks to analyse the difficulties arose due to the enforcement of this Act and human rights abuse. Thirdly, essay seeks critically examine the various recommendations and regulations being suggested to amend this act.

#### Chapter 2

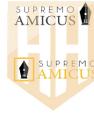
#### 2. Historical Background

The foundation of Armed Forces Special Powers Act can be traced back to the colonial era. When India was under British rule, on August 15, 1942 Lord Linlithgow, the then viceroy of India, promulgated the Armed Forces Special Powers (Ordinance) to suppress the Quit India Movement launched by Mahatama Gandhi a week earlier<sup>6</sup>. Mahatama Gandhi, Jawaharlal Nehru and most prominent leaders of the Indian National Congress were imprisoned. Indian started protesting and they targeted and burned down police offices and railway and telegraph lines, in order to secure the release of their leaders which the British saw as hindrance to the war effort against an impending Japanese invasion on the Burmese front. Linlithgow responded with brutal force: 2,500 were killed in police mass shootings on Indian protesters, tens of

<sup>4</sup> Ibid

<sup>5</sup> Armed Forces (Special Powers) Act 1958, Acts of Parliament, 1958 (India).

<sup>6</sup> Basharat Peer, *The Armed Forces Special Powers Act: A Brief History*, A.J. , March 8, 2014



thousands were arrested, rebellious villages were torched, and protesters were flogged and tortured.

Few years into Indian independence, Jawaharlal Nehru faced the insurgency of Nagas. In 1954 the Nagas began their insurgency for their independence. Indian government responded by sending in thousands of army soldiers and personnel from the Assam military to tackle the insurgency.

To provide legal sanction to its counterinsurgency plans and provide legal assistance to the military involved in the operations, the Nehru government in 1958 passed the Armed Forces Special Powers Act in the Indian parliament without much opposition<sup>7</sup>. Very few opposed this legislation.

Nehru acted on the similar lines as once Lord Linlithgow acted to crush the rebellion. Linlithgow acted to crush the rebellion for Quit India Movement with violence and legal protections of the Armed Forces Special Powers Ordinance. “No infirm government can function anywhere. Where there is violence, it has to be dealt with by government, whatever the reason for it may be,” Nehru told the Indian parliament. And Nehru’s soldiers in Nagaland mirrored the ruthlessness of the British forces in India. The stories of burned houses, villages and rice stacks were endless. Individuals were tied up and beaten mercilessly. The fathers, brothers and the sons were bayoneted to death and the mothers, sisters and daughters were raped<sup>8</sup>.

The discontent wasn’t limited to the Nagas. The signs of trouble was started to seen in the

former princely state of Manipur. A separatist militant group seeking independence from India, the United National Liberation Front, was formed in Manipur and resorted to violence. Many other such groups came up. India responded by declaring Manipur a “disturbed area” and imposed the Armed Forces Special Powers Act in late 1980. A brutal cycle of insurgency and counterinsurgency has continued ever since, claiming several thousand lives.

### 3. Facilitating Violations of Rights

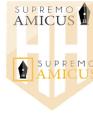
Initially the Act was limited to the north-eastern states of Assam and Manipur to curb insurgency by Naga militants. The 1972 amendment led to the implementation of AFSPA in all the seven north eastern states: Assam, Tripura, Meghalaya, Nagaland, Mizoram, Arunachal Pradesh and Manipur. Similar laws were also implemented in the state of Punjab from 1985 to 1994. A version of it still active in Jammu & Kashmir from 1990.

The powers that the AFSPA extends to the armed forces come into force once an area subject to the Act has been declared “disturbed” by the central or state government. This declaration is not subject to judicial review.

- Violation of Article 21 – Right to Life Article 21 of Indian Constitution which declares right to life as a fundamental right is violated by section 4(a) of the AFSPA, which grants power to the armed forces to shoot to kill in law enforcement situations without regard to international human rights law

<sup>7</sup> Ashwaq Masoodi, *A History of AFSPA*, L.M., May 28, 2015

<sup>8</sup> Ibid



restrictions on the use of lethal force. Lethal force is broadly permitted under the AFSPA if the target is part of an assembly of five or more persons, holding weapons, or “carrying things capable of being used as weapons.” The terms “assembly” and “weapon” are not defined<sup>9</sup>.

Article 21 reads “No person shall be deprived of his life or personal liberty except according to procedure established by law.” The judiciary interpreted it as a “procedure established by law means a fair, just and reasonable law” and it was upheld by the judiciary and set as a precedent in the case of Maneka Gandhi<sup>10</sup>. Justice that is served by use of force is no justice at all. Restraint should be shown while using force and it must be restricted to self-defense only.

There are several incidents which shows the abuse of power by Border Security Forces (BSF) and army personnel in the north-east. In April 1995, a villager in West Tripura was riding near a border outpost when a soldier asked him to stop. The villager did not stop and the soldier shot him dead. Even more grotesque were the killings in Kohima on 5 March 1995. The Rastriya Rifles (National Rifles) mistook the sound of a tyre burst from their own convoy as a bomb attack and began firing indiscriminately in the town.

In the Indrajit Barua<sup>11</sup> case, the Delhi High Court held that it’s the duty of the state to protect the right to life conferred by the constitution under Article 21 to all the citizens. Under the pretext of greater good the state has continuously denying the fundamental right for the people of North East. The court said that if a law protect the

larger community and their social interest then such law is beneficial even though they violates the liberty of some individual. This is a direct contraction of Article 14 of Indian Constitution which guarantees right to equality before law. This article guarantees that “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

- Protection against arrest and detention – Article 22

The Article 22 of Indian Constitution states that no person arrested can be detained in custody without being informed and also it is requisite that any person arrested is to be produced before nearest magistrate within a time period of twenty four hours of arrest. On the face of it AFSPA leads to arbitrary detention which is clearly the violation of the said principles in Article 22. The right to liberty and security of person is violated by section 4(c) of the AFSPA, which fails to protect against arbitrary arrest by allowing soldiers to arrest anyone merely on suspicion that a “cognizable offence” has already taken place or is likely to take place in the future. Further, the AFSPA provides no specific time limit for handing arrested persons to the nearest police station. Section 5 of the AFSPA vaguely advises that those arrested be transferred to police custody “with the least possible delay.”<sup>12</sup>

Section 6 of AFSPA provides the officers with immunity against any legal proceedings against them thus violating the right to seek

<sup>9</sup> Armed Forces (Special Powers) Act 1958, Acts of Parliament, 1958 (India).

<sup>10</sup> 1978 AIR 597

<sup>11</sup> AIR 1983 Delhi 513

<sup>12</sup> Ibid



remedy under Indian Constitution. This section of the AFSPA prohibits even state governments from initiating legal proceedings against the armed forces on behalf of their population without central government approval.

In the case of *Luithukla V. Rishang Keishing*<sup>13</sup> (1988) 2 GLR 159, a habeas corpus case which highlighted the lack of restraint shown by the army personnel while detaining the accused. He court found that the man had been detained by the army and that the forces had mistaken their role of “aiding civil power”. The court said that the army may not act independently of the district administration. Repeatedly, the Guwahati High Court has told the army to comply with the Code of Criminal Procedure (CrPC), but there are is no enforcement of these rulings.

The AFSPA has also had the opposite effect to that intended by the Indian government: in each state where the AFSPA has been implemented and soldiers have been deployed, the armed forces have become a symbol of oppression and an object of hate. Human rights violations have served to fuel conflicts and act as a recruiting sergeant for militant groups in many parts of the country. Arbitrary detention, torture, and the killing of peaceful critics have had the effect of closing democratic and peaceful paths of opposition, forcing organizations underground and fueling a growth in militancy.

#### 4. The position of AFSPA in Nagaland after 59 years.

Almost 6 decades have been passed since the AFSPA was first introduced in the state of Nagaland in April, 1958. The Act was first introduced in the Naga soil to crush the Naga insurgency to defend their declared independence. The political and the historical situation in which the Act was introduced was the situation of a war. The government mobilized its troops to fight the insurgents. The troops deployed were assisted by the Indian Air Force, heavy artillery and mechanized tanks. Very soon the casualties began to come up. Hundreds of Naga villages burned to ashes and hundreds of Nagas died from the bullets, bombs, starvation and disease.

This war was projected as the situation of law and order breakdown by the Indian government. It was war in which the tiny Nagaland tried to defend its independence whereas the might India tried to impose its independence on the Nagas in the most brutal way possible.

The AFSPA was coined down to protect the perpetrators of the war from any judicial action against them. The Act which gave the Indian soldiers sweeping powers like searching without search warrants, arresting without arrest warrants, and even shooting to death on mere suspicion is a most illegal act enacted in the annals of human legal history. In fact it is an Act that negates and even nullifies the very concept and principles of law. This is because here is an act that says a person can be shot to death on mere suspicion when the Law says “A person is innocent until proven guilty.”<sup>14</sup>This Act in short violates the Articles 21 and 22 of the Indian

<sup>13</sup> (1988) 2 GLR 159

<sup>14</sup> Kaka D. Iralu, *The AFSPA 1958: A Review From Nagaland After 52 years*, KANGLA ONLINE (



Constitution denying the Nagas of their right to life<sup>15</sup>.

Ever since the implementation of AFSPA in Nagaland there have been various reports of human rights abuse few of them which has been highlighted in the chapter. There was an incident, recorded in a letter to the Peace Mission by the members of the Village Panchayat of Khuivi under Zunobetuo district. They wrote that the family members of the National workers were separated and punished in the army concentration at Atukuzu under Zunobetuo district for eight months in 1959. It was reported that on 4th April 1959, in Akutuzu the Indian army raided the camp of the Home Guards and shot dead four Home Guards. The Army Post Commander at Akutuzu ordered the villagers to re-excavate and bring the remains of the victims to his post. The villagers were punished by being made to dig the ground and erect army bashas (camps) at Zunheboto for seven days. Further, on 18th April, 1960 ten villages were grouped along with Atukuzu, Vishepu, Kilo Old Kukiye, Lukhai, Tukunasami, Sheipu, Nunumi, Satakha old and new. Besides this, the villagers were reported to have been treated discriminately. They even introduced forced labour by making the villagers above the age of twelve carry the stocks on their back for transportation of military goods<sup>16</sup>. A report of the Naga Hills Rehabilitation Committee submitted to the Naga National Council mentioned that up to December 1960 many Christian Churches were damaged, burnt and destroyed in several parts of Nagaland. For

instances, in Angami areas 37 Churches were burnt and 12 damaged, in Chakhesang areas 18 and 20 Churches were burnt and damaged respectively, in Lotha areas 3 and 15, Rengma areas 5 and 7, Sema areas 41 and 21, Yimchunger areas 5 and 5 and in Konyak and Sangtam areas 10 and 3 Churches respectively were burnt by the Indian army.<sup>17</sup> Further, in one of the Ao Naga inhabited areas, the Indian army even carried out a policy Known as 'earth-scorch Policy' in 1960. By this policy they intended to flush out all the Naga armies taking shelter in the jungles and at the same time destroy all their hideouts. The total area of jungle burnt accounted to 351,840 acres or 549 square miles.<sup>18</sup>

### 5. The Consequences of the Act

With the enforcement of the AFSPA in Nagaland, an analysis of the opinion of both the Indian army and the State police strongly indicate that there is a positive result in curbing insurgency and maintenance of law and order. They further said that this Act should continue to remain enforced in Nagaland to bring about complete peaceful situation and economic progress and development. According to the opinion expressed by the Indian Army and State police the Act has been effective in achieving its objective of maintaining law and order in the State to a certain extent. On the other hand, there is no denying the fact that there has been excessiveness on the part of some Indian armed personnel while performing

<sup>15</sup> INDIA CONST art 21 and 22.

<sup>16</sup> IRALU, KAKA, D, NAGALAND AND INDIA: THE BLOOD AND THE TEARS, (published by the author, 2000), pp. 155-56.

<sup>17</sup> Ibid pp 144.

<sup>18</sup> Ibid pp 155-162.



their duties such as rape, torture, atrocities, etc., which have been alleged by members of the public as well as victims who themselves comprised the sample in the study. Such allegations are supported by reports appearing in newspapers and other media. The very fact that various inquiry committees were constituted by the law enforcing agencies whenever such allegations are made show that there could be some truth against such atrocities.

The data collected from the second group comprises of the victims, family members of the deceased victims and the NGOs. As they share the same opinion regarding the army they are placed in the same group. These groups believed that the enforcement of AFSPA has indeed resulted in gross violations of human rights in Nagaland. From the questionnaires and interviews conducted it revealed that most of the victims were arrested, shot death, some detained or taken into custody and whose whereabouts are not known till today. All these usually took place while the Indian armies were conducting operations. Further, it is found that most of the victims were illiterate and were not at all aware about the reason leading to the enforcement of the AFSPA 1958 neither about the provisions of the Act nor are they aware of their rights.

Some prominent knowledgeable citizens of Nagaland also expressed their opinion saying that the presence of the Indian army in Nagaland has really affected their day today life as random checking at regular frequency

in all areas of Nagaland, creating fear-psychosis in the minds of the people that they may be arrested, harassed, physically assaulted, etc., merely on ground of suspicion became the order of the day following the enforcement of AFSPA 1958<sup>19</sup>.

## 6. Present Situation

After 59 years of imposition of AFSPA, the state has seen a decline in the cases of insurgency, extortion killings, kidnapping and other crimes. They are still there under the belt, but are well below the acceptable rate that the state police can take over and the army is no longer needed to maintain the law and order on the state as for AFSPA it is required that an area to be designated to be as a “disturbed area”. But Nagaland clearly is far away from being disturbed. No single soldier has suffered casualty in the state of Nagaland in the past decade and there has been appeal from the state government to remove the Act from the state but to no avail. The Act has become the symbol of oppression and hate towards the army in the state. The Act is the perpetuator of the rights abuse by the army and till the time being it’s in force the people of Nagaland will be denied their right to freedom which is a fundamental right according to the Indian Constitution. The Act need to remove from the state to restore the normalcy that is been deprived to the people of the Nagaland for almost six decades. That’s the least we can do for the people who have already suffered a lot under oppression.

<sup>19</sup>NEPRAM AND TURNER, ARMED VIOLENCE AND POVERTY IN NORTHEAST INDIA, p. 12.



**REVISITING DEFAMATION:  
EXAMINING THE AMBIT OF  
“PERSON AGGRIEVED” U/S 199 OF  
CR.P.C**

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**ABSTRACT**

The paper reviews the locus standi of a friend or an acquaintance to make a complaint in lieu of damage to his reputation due to the defamation of a person he is closely associated with. The purpose of research on this topic arose when a case was handed to us by our senior while at our internship in New Delhi and we were asked to research on the locus standi of our client under the provision of section 199 of Cr.P.C. The research is for one yet to be instituted case. In this research, the point of discussion, i.e., ambit of ‘person aggrieved’ under section 199 had been challenged and discussed many a times, but the problem faced by a person (a friend) associated with the defamed person had not been addressed. Drawing upon the available case laws and interpretation by learned judges, and application of the golden rule of interpretation of statutes it has been scrutinized and reasoned that the clause is not exhaustive and a complaint can be filed by any person aggrieved of the offence. The resultant conclusion is that the person should be allowed to make a complaint, and whether

harm was caused or not is a matter to be decided by the court.

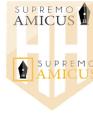
**I. INTRODUCTION**

The elementary purpose of law is to set right the grievances of its subjects. If a person has suffered some loss or damage, he is free to approach the judicial platform for redressal. The law lays down the rights of all persons through innumerable statutes and legislations. When any of these rights are infringed, a person can present a suit and obtain a decree in his favour by showing cause. The indefinite question is here who is this person who can institute a suit? In case of trespass of property, the owner or possessor of the property can institute a suit. In case of breach of contractual agreements, the parties interested in the subject matter of the contract can institute a suit. In case of violation of rights of a corporation, the persons authorised to act on behalf of the corporation have been permitted to institute suits. The law tries to provide for all the rights of individuals who can be affected by any actions or omissions committed by another person. *Interpretation cessat in claris*, however, it is required on the part of the judges to interpret the true meaning of laws wherever necessary and this includes the specific illumination of the words used in statutes.<sup>20</sup> An example of this situation is the use of the words “person aggrieved” in Section 199 (1) of the Code of Criminal Procedure, 1973.<sup>21</sup>

<sup>20</sup> "(J)udicial interpretation is only necessary when the plain meaning of statutory text does not reveal clear legislative intent or leads to ambiguous results.... The principle is based on the Latin maxim of statutory interpretation, *interpretatio cessat in claris*: there is no need for interpretation when the text is clear." Barrett

Hall and Rebecca, *Wolf in Sheep's Clothing: Dressing-up Substantive Legislation to Trigger the Interpretive Exception to Retroactivity Violates Constitutional Principles*, 67 La. L. Rev. p. 599 (2006).

<sup>21</sup> Act No. 2 of 1974.



The domain of Section 199 as to the definition of a “person aggrieved” has been examined many a times. The provision is laid down as follows:

**“199. Prosecution for defamation.**

– (1) No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

*Provided that where such person is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his behalf or her behalf.”*

The proviso to Section 199 (1) clearly provides for situations in case of a minor, a lunatic, persons unable to register a complain due to sickness or infirmity, and persons who according to customs ought not to appear in public.<sup>22</sup> Any person on behalf of the before mentioned persons can file a complaint for defamation with the leave of the Court even when he himself has not been aggrieved by the defaming imputation. Therefore, the right of such persons to institute proceedings is upheld.

A point to be noted here is that the proviso clearly does not refer to persons who

themselves have been aggrieved by the defamatory sentence. It merely allows a third person to file a complaint on behalf of the person defamed, therefore, allowing that person to seek justice in the name of and for the person defamed.

Further, Explanations I and II to Section 499 of the Indian Penal Code (45 of 1860) lay down exceptions in situations where a suit for defamation may be brought by persons other than the person the imputation was aimed at:

*Explanation 1. – It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.*

*Explanation 2. – It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.*

It is obvious that a deceased person cannot defend his reputation and thus, the right shifts to his/her legal heirs, family members and other near relatives. Explanation 1 is an exception to *action personalis moritur cum persona*. In a case where Netaji Subhash Chandra Bose had been defamed, his nephew was allowed to file a complaint on behalf of the deceased freedom fighter as allowed by

<sup>22</sup> A Power of Attorney holder is justified in making a complaint on behalf of the person defamed; Thomas M.v. State of Kerala, 2002 SCC Online Ker 351; Arcot

N. Veerasamy v. J. Jayalalitha, Madras, 2002 SCC Online Mad 361.



Explanation 1 to sec 499.<sup>23</sup>With reference to Explanation 2, the Supreme Court has expressed that the same is wide and thus a collection of persons must be an identifiable body so that it is possible to say with precision that a group of particular persons as distinguished from the rest of the community stood defamed.<sup>24</sup> Further, expanding the ambit of “person aggrieved” under Section 199, the Apex Court has held that if a company is described as engaging itself in nefarious activities, its impact would certainly fall on every Director of the company.<sup>25</sup>

Attention should be given to the use of the words “by **some** person aggrieved” instead of the phrase “by the person defamed” in Section 199(1). It indicates that the lawmakers did not propose the statute to be limited to the person whom a defamatory imputation intended to indicate. It means that **any person** who has suffered a grievance because of the offence of defamation can make a complaint.

In a present case at hand, one journalist submitted in a local newspaper of certain imputations regarding the unprofessional conduct of a public servant while in duty. He accused him of taking heavy bribes to complete the favours of the public. The newspaper article was clearly indicating the public servant. As a result, a close friend of

this public servant was then looked down upon for being associated with him and he despite knowing that the imputations are false, suffered mental agony at the hands of the society. His grievance was a result of the defamatory statement published by the newspaper. As per Section 199 (Cr.P.C.) and Section 499 (IPC) the status of this person falling within the definition of “person aggrieved” is to be examined. Whether the complainant can file a complaint and institute a proceeding thereon? Whether the complainant has *locus standi* in this situation or not? The complainant claims his reputation has been injured even though he wasn't the person defamed. Defamation concerns itself solely with reputation, and reputation is the exclusive preserve of defamation,<sup>26</sup> by this observation any person who has suffered any harm to his reputation should be allowed to claim for damages.

Although it is a question of fact that is to be determined whether there has been harm to a person's reputation or not. However, in this case the point of discussion is whether the complainant has a right to challenge his violation of right of reputation under the said provisions. Can a magistrate take cognizance in such cases?

## II. JUDICIAL INTERPRETATION OF ‘PERSON AGGRIEVED’

the company or is duly authorised by the company, in accordance with law, he would not have the right to initiate a complaint on behalf of the company.

<sup>26</sup>Eric Descheemaeker, *Protecting Reputation: Defamation and Negligence*, 29 Oxford Journal of Legal Studies p. 604 (2006).

<sup>23</sup> Pat Sharpe v. Dwijendra Nath Bose, 1963 SCC Online Cal 114.

<sup>24</sup> Foundation for Media Professionals v. Union of India, (2015) 9 SCC 252; Sahib Singh Mehra v. State of Uttar Pradesh, AIR 1965 SC 1451.

<sup>25</sup> John Thomas v. Dr. K. Jagadeesan, AIR 2001 SC 2651; Sabal Kumar Dey v. Ranjan Sarkar, 2013 Cr LJ 470 it was held that unless a person is the director of



Firstly, to discuss the ambit of the phrase “person aggrieved” in general law. As per *Advanced Law Lexicon*<sup>27</sup> an “aggrieved party” is a person whose legal rights have been affected, injured or damaged in a legal sense. The phrase was examined as early as in the year 1870 where it was held that an “aggrieved person” is one who has a more particular or peculiar interest of his own beyond that of the general public, in seeing that the law is properly administered.<sup>28</sup> It is to be noted that in this case E was living in the neighbourhood of the roads which were to be abandoned as a result of the certificates issued by the justices. He would have suffered special inconvenience by the abandonment. Thus, E had shown a particular grievance of his own beyond some inconvenience suffered by the general public. Therefore, in this case the plea of E was taken cognizance of and E was deemed to be an “aggrieved party”.

In another case *King v. Groom ex parte*<sup>29</sup>, the parties were rivals in liquor trade. The complainants (brewers) had persistently objected to the jurisdiction of the justices to grant license to one J. K. White in a particular month. It was held that the complainants had a sufficient interest in the matter to enable them to be considered “person(s) aggrieved”.

*R. v. Manchester Legal Aide Committee*,<sup>30</sup> is another case where it was held that the complainants therein were “persons aggrieved” because they were grieved by the failure of Legal Aid Committee to give them

prior notice and hearing to which they were entitled under Regulation 15(2). Thus, it is a clear situation where one person had suffered a legal wrong. The Apex Court’s dictum in one case is that:

*“The meaning of the words “a person aggrieved” may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make “a person aggrieved”. Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words “a person aggrieved” is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the background of statutes which do not deal with property rights but deal with professional conduct and morality.”*<sup>31</sup>

Some more examples: The appellant, whose seniority is affected due to reinduction of respondent into service on acceptance of his request for withdrawal of voluntary retirement comes within the ambit of “person aggrieved”.<sup>32</sup> A person who feels disappointed with the result of a case is not a person aggrieved. The order must cause him a legal grievance by wrongfully depriving

<sup>27</sup>P. RAMANATHA AIYAR, *ADVANCED LAW LEXICON* 182 (3<sup>rd</sup> ed., 2005).

<sup>28</sup> *Queen v. Justices of Surrey*, (1870) 5 QB 466.

<sup>29</sup>*King v. Groom*, (1901) 2 KB 157.

<sup>30</sup>*R. v. Manchester Legal Aide Committee*, (1952) 2 QBD 413.

<sup>31</sup> *Bar Council of Maharashtra v. M. V. Dabholkar* (1975) 2 SCC 702.

<sup>32</sup> *P. Lal v. Union of India*, AIR 2003 SC 1499.



him of something.<sup>33</sup> A person who has pleaded guilty deliberately cannot be heard to say she is a person aggrieved by the conviction.<sup>34</sup> The word “person aggrieved” do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. He must be a man who has suffered a legal grievance.<sup>35</sup> In order to earn a *locus standi* as “person aggrieved” other than the aggrieved party before the Collector of Customs as an adjudicating authority it must be shown that such a person aggrieved being third party has a direct legal interest in the goods involved in the adjudication process, it cannot be of general public interest or interest of a business rival.<sup>36</sup>

Drawing from the above contentions, it is clear that the scope of “person aggrieved” is wide and non-exhaustive. Any person who has been affected by an act or omission whether directly or indirectly aimed at him falls within the definition. Any party who has an interest in a subject matter though not the original party to the act has a right to approach the court.

In the present case at hand, the complainant suffered mental agony on the hands of the journalist who published false statements against the public servant. He being a close friend of the officer is often associated with him. The defamation of the public servant has resulted in damage to the reputation of the

complainant even though his name was not mentioned in the article. The complainant knows the public servant since many years and thus believes him to be a true and genuine person. He clearly falls within the ambit “person aggrieved” because of the downfall in his reputation after the publication of the said article. His right was indirectly and unintentionally infringed by the journalist. It can, thus, said to be a case of *aberratio ictus*.

Right to reputation is a legal right generally protected under tort law. However, in India defamation has been criminalised under sections 499 and 500 of IPC whereby a person defaming another is subject to simple imprisonment for a term which may extend to two years, or with fine, or both.

### III. THE QUANDARY OF THE COMPLAINANT

Now referring to the phrase “person aggrieved” under Section 199, the High Court of Orissa has observed that it seems impossible to limit the scope of the expression “some person aggrieved”.<sup>37</sup> If that were the true view, then it is only the person defamed who can make a complaint. The Honourable Court in the case of *T. G. Goswami v. The State*, clearly stated that the standard to be applied in proof that the defamatory matter refers to the complainant is whether or not a reasonable man would understand so from the piece of libel even when no name has been mentioned,<sup>38</sup> but in

<sup>33</sup> *Adi Pherozshah Gandhi v. H. M. Servai*, AIR 1971 SC 385.

<sup>34</sup> *R. v. Deputy Chairman of the Country of London Quarter Sessions Appeal Committee*, (1957) 3 All ER 28.

<sup>35</sup> P. RAMANATHA AIYAR, *ADVANCED LAW LEXICON* 3558 (3<sup>rd</sup> ed., 2005).

<sup>36</sup> *Northern Plastics Ltd. v. Hindustan Photo Films Manufacturing Co. Ltd.*, 1997 (4) SCC 452.

<sup>37</sup> *J. Padmalochan Choudhury v. Nirakar Patel*, 36 (1970) CLT 940.

<sup>38</sup> *T. G. Goswami v. The State*, AIR 1952 Pepsu 165.



the former case the defamation of the wife resulted in the defamation of her husband because of their association with each other in the eyes of the society.<sup>39</sup> The husband was considered a “person aggrieved”. In another case, *Navin Das v. Ranjita Singh* the Supreme Court upheld the maintainability of the suit by the wife and daughter-in-law of the persons defamed as she fell within the ambit of “person aggrieved” because she was so closely associated with the defamed persons.<sup>40</sup>

Furthermore, in the case of *Devki Nandan v. K. Narinder*<sup>41</sup> the High Court of Punjab and Haryana observed that a person who suffers injury or is adversely affected by the act complained of is obviously the person aggrieved, though in some cases this expression may include a person who is not the direct target of attack.

An old judgement of Calcutta High Court observed that it cannot be laid down as an inflexible rule that the expression “some person aggrieved” will only be limited to the person actually defamed or affected. The Section does not say that complaint can only be made by the person defamed. What it requires is that the complaint must be made by “some person aggrieved”.<sup>42</sup>

Following observation was made by the Bombay High Court in a case of defamation of a person’s father: The complaint can be filed by some person aggrieved by the

offence and thus aggrieved person can be other than the one against whom the offence was committed.<sup>43</sup>

In all the above-mentioned cases, the common factor was that the aggrieved party was related to the defamed person by marriage or blood relations. In the case of *John Thomas v. Dr. K. Jagadeesan* the Apex Court was of the view that the collocation of the words “by some persons aggrieved” definitely indicates that the complainant need not necessarily be the defamed person himself. Whether the complainant has reason to feel hurt on account of the publication is a matter to be determined by the court depending upon the facts of each case. In this case the Director of a hospital that was defamed was put within the ambit of “persons aggrieved”. Similarly, if a firm is described in a publication as carrying an offensive trade, every working partner of the firm can reasonably be expected to feel aggrieved by

All the above cases are covered by the Explanations to Section 499. But the particular case at hand refers to the close friendship of the complainant and the person defamed. People are more than often judged on the basis of persons they indulge themselves with. The complainant believes the public servant to be a genuine person who performs his duty truly. The imputations made by the journalist are believed to be false and misleading, and have therefore

<sup>39</sup> J. P. Choudhury v. Nirakar Patel, 36 (1970) CLT 940.

<sup>40</sup> Navin Das v. Ranjita Singh, 2016 SCC Online Ori 39.

<sup>41</sup> Devki Nandan v. K. Narinder, 1962 SCC Online 225.

<sup>42</sup> Mrs. Pat Sharpe v. Dwijendra Nath Bose, 1963 SCC Online Cal 114.

<sup>43</sup> Shri Vijay Vishwanath Kuvalekar v. Shri Suresh Raghunathrao Kalkundrikar, MANU/MH/0543/2000.

<sup>44</sup> John Thomas v. Dr. K. Jagadeesan, AIR 2001 SC 2651.



misrepresented the complainant in front of his family, friends and the society at large because of his close association with the person defamed. Based on the reasoning of the courts above, a “person aggrieved” u/s 199 might not necessarily be the person defamed and involves a person who has faced a grievance due to the offence of defamation.

The Kerala High Court in its judgement however has given an asymmetrical opinion. It has said that where a report states that some leaders of a strike indulged in a disgraceful conduct, all the leaders would not suffer in their reputation. In that situation, a member of such an unidentified and indeterminate class cannot pose as an aggrieved person within Section 199.<sup>45</sup>

An “aggrieved person” is someone who has got *legal grievance*, i.e. a person wrongfully deprived of anything to which he is legally entitled and not merely a person who suffered some sort of disappointment.<sup>46</sup> In this case, the complainant’s reputation to which he is legally entitled has been denied. No person is allowed to be defamed by words or actions as per Section 499 of IPC. Blameworthiness of conduct and protected interest are the two types of props which, when combined will make up the ‘grid’ of tort law.<sup>47</sup> However, it is to be noted that India does not have strict legislations on tort law as of yet. Many common torts such as negligence, defamation, assault, etc. have been criminalised by the Indian Penal Code. Though, a writ petition for decriminalisation

of defamation had been filed in the Supreme Court of India, the constitutionality of criminal defamation was upheld therein.<sup>48</sup> So, the only recourse available to the complainant is to file a complaint for criminal defamation under Section 499 of IPC (read with Section 199 of Cr.P.C.). This fact has been reiterated in the case of *Huzra Bee v. The State of Madhya Pradesh*:

*“Any damage to the reputation confers civil right to claim damages from the wrong doer and also right to prosecute the offender in terms of Section 499 of IPC.”<sup>49</sup>*

#### IV. APPLYING THE GOLDEN RULE OF INTERPRETATION OF STATUTES TO SECTION 199

The conventional way of interpreting a statute is to seek the intention of its makers.<sup>50</sup> The intention of the legislature can be interpreted through the three rules of interpretation – the literal rule, the golden rule and mischief rule. Where the words used in a statute are unambiguous but the intention of the legislature is not clear, the literal rule is applied to interpret the words in the plain, ordinary and grammatical sense that has been laid down by the legislature. Where the words used can be interpreted in more than one way, either the golden rule is applied to interpret the true intention of the legislature or the mischief rule is applied to gather the mischief that was sought to be rectified by the

<sup>45</sup>R. V. KELKAR, LECTURES ON CRIMINAL PROCEDURE 236 (6<sup>th</sup> ed., 2016).

<sup>46</sup>Parvinder Kaur v. Joginder Kaur, 2004 CrLJ 2329.

<sup>47</sup>Supra note 6 at 603.

<sup>48</sup>Subramanian Swamy v. Union of India, (2016) 7 SCC 221.

<sup>49</sup>Huzra Bee v. State of Madhya Pradesh, (Writ Petition No. 9060/2017, High Court of Madhya Pradesh).

<sup>50</sup>Bhatia International v. Bulk Trading SA and Another, (2002) 4 SCC 318.



legislature and the words are interpreted accordingly.

In the present statute under consideration, the golden rule of interpretation is appropriate for interpretation, as there is more than one meaning obtainable from the words “by some person aggrieved”. First, does it only refer to persons actually defamed; second, does it along with the first inference also refer to persons associated to the person defamed. The use of the words “some person aggrieved” obviously does not limit the jurisdiction to only the person defamed. It is clear from the proviso to section 199 and subsequent adjudications by the judiciary that the legislature did not intend to limit the applicability of the section only to persons that were defamed themselves but some person that was “aggrieved” by such an act of defamation.

The golden rule provides for interpretation of the words in cases where one interpretation leads to an absurdity, and another gives effect to the common sense which was originally intended by the law makers. The intention of the legislature by the use of the words is vibrant that any person aggrieved by the act of defamation should be allowed to file a complaint. If only the person actually defamed by the statement was allowed to file a complaint, then the intention of the legislature would have been misguidedly violated. This would limit the jurisdiction of the statute and result in absurdity which, by

the words used by the law makers, was certainly not intended.

## V. DEFAMATION – A LEGAL INJURY

It is not disputed that defamation is a legal injury or not, the very fact that criminal proceedings can be instituted when somebody’s reputation is harmed is proof enough that defamation is a wrong. It is a settled point of law. The theme of discussion here is what constitutes as legal injury within the framework of defamation. The Supreme Court has held in the *Subramanian Swamy* case that the right to reputation is a “fundamental right”. A ‘legal injury’ cannot per se include a person feeling hurt because of the defamatory statement. The rule was clearly laid down in the case of *Hassainbhoy Ismail v. Emperor* where a member of a religious community was not allowed to bring a suit against the accused as his feelings were hurt because of the defamation of the community head.<sup>51</sup> In the present case however, the complainant alleges violation of his legal right and not just a feeling of hurt. A legal injury is an injury that is recognised by law, whether physical, monetary or loss of a legal right.<sup>52</sup> Grievance does not contemplate any fanciful sentimental grievance, it must be such a grievance that the law can appreciate, it must be a legal grievance and not a state *propratione voluntas* reason.<sup>53</sup>

Right to reputation is a right in rem, i.e., it is available against the whole world. The Bombay High Court’s dictum in a case before it was that:

<sup>51</sup>*Hassainbhoy Ismail v. Emperor*, 156 Indian Cases (1935), 567.

<sup>52</sup>P. RAMANATHA AIYAR, *ADVANCED LAW LEXICON* 2681 (3<sup>rd</sup> ed., 2005).

<sup>53</sup>M. L. SINGHAL, J., *CODE OF CRIMINAL PROCEDURE* 389 (21<sup>st</sup> ed., 2014).



*“Every person has a legal right to preserve his reputation inviolate. In law it has been accepted as personal property and it is jus in rem and a right good against all the world. A man’s reputation is property and degree of suffering occasioned by the loss of reputation as compared to that occasioned by loss of property is greater.”<sup>54</sup>*

In the present case, the complainant averts injury to his reputation. By all means and standards his case is that of defamation. His right to reputation to which he is entitled as against the whole world has been violated. However, whether actual injury did occur or not is a matter of facts that is to be decided by a learned judge. The code itself views it as an offence on account of the mental suffering of the person defamed.<sup>55</sup> In the United States, a Court permitted recovery for defamation solely on the basis of mental pain and anguish; no injury to reputation was alleged or proved.<sup>56</sup>

## VI. CONCLUSION

The *locus standi* of a person aggrieved by the offence of defamation has been a topic of discussion since decades. It is settled that family, friends and strangers cannot file a complaint on behalf of the defamed person unless their own reputation has been harmed because of association with the latter.

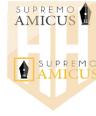
Secondly, deceased persons and companies are allowed to be represented by legally authorized persons. The complaint has to be filed by the person defamed in all other cases. On the other hand, husbands, wives, children and other family members have been put under the umbrella of “aggrieved persons”, the stance of a person who suffered injury or damage and one who is not related by blood or marriage to the person defamed has not been taken into account. The definition of a “person aggrieved” has repeatedly meant to refer to a person who has suffered a legal grievance, and therefore the complainant should be allowed to file a complaint. Right to reputation has been held to be a fundamental right which if violated attracts legal action. All the case laws that have been referred to above have in some way affected the right of reputation of a person. Whether the complainant has actually suffered harm is a matter of fact. Professor Prosser says reputation is harmed when there is diminution to the esteem, respect, goodwill or confidence in which the plaintiff is held.<sup>57</sup> In the opinion of the complainant, his reputation has been affected. A prima facie case is thus perceptible and therefore complaint should be admitted. The aim of this research was to examine whether the complainant has *locusstandi* to challenge the actions of the journalist, the answer to which stands in the positive. The point of a trial is to determine whether actual damage was caused to the plaintiff or not. In the opinion of the author, the complaint should be taken

<sup>54</sup>Umar Amid Khan v. VincyGonsalves, 2009 SCC Online Bom 1676.

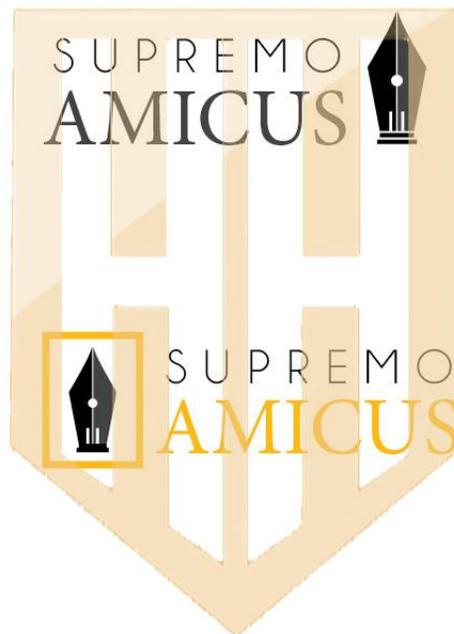
<sup>55</sup>DR. HARI SINGH GOUR, PENAL LAW OF INDIA 4723 (11<sup>th</sup> ed., 2003).

<sup>56</sup> Robert A. Steinberg, *Defamation, Privacy and First Amendment*, 5 Duke Law Journal p. 1017 (1976).

<sup>57</sup>Albert E. Harum, *Remolding of Common Law Defamation*,<sup>49</sup> American Bar Association Journalp. 149 (1963).



cognizance of under Section 199 (Cr.P.C.)<sup>58</sup>  
and a proceeding under Sections 499 and 500  
of IPC<sup>59</sup> should be allowed to be instituted.



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<sup>58</sup> S. 199 of Code of Criminal Procedure, 1973 (Act No. 2 of 1974).

<sup>59</sup>S. 499 & 500 of Indian Penal Code, 1860 (Act No. 45 of 1860).

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