



## SUBRAMANIAN SWAMY V. UNION OF INDIA

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### INTRODUCTION

In *Subramanian Swamy v. Union of India*, the constitutional validity of criminal defamation under Section 499 and 500 of the Indian Penal Code, 1860 ('IPC') was challenged.

In its judgment, the Supreme Court upheld the constitutional validity of criminal defamation under Section 499 and 500 IPC on the basis that –

- Through it we achieve the goal laid down in Preamble of fraternity assuring dignity of individual that will result in unity and integrity of nation. This is also a fundamental duty under Article 51(e) and (j).
- Criminal defamation is a reasonable restriction on Article 19(1)(a) under Article 19(2) and it also maintains social balance.

This paper analyze the case and gives argues that criminal defamation is an unreasonable restriction on freedom of speech and expression under Article 19(1)(a).

The court held that criminal defamation helps to achieve the objective of preamble, but the same preamble also provide us with, LIBERTY of thought, expression, belief, faith, worship. To achieve the objective of

preamble criminal defamation is not the only source. Just because an individual said something which other person did not like and it hurts his feeling, could lead him into jail, and he would be treated as a criminal. This is an overarching punishment since that object can be achieved by civil defamation alone. This case should not be examined using the framework of preamble because here the real issue is whether such restriction is consistent with Article 19 and 21.

Article 13 of the Constitution provides laws which are inconsistent with fundamental rights shall be void. Criminal defamation falls under the above discussed rule because, "liberty of free speech is a foundation of any democratic country", means which means that democracy is only possible if people can speak and can give their personal opinion freely. In our Constitution Article 19(1)(a) provides the same but Section 499 along with 500 IPC infringes it.

All the reasonable restrictions provided under Article 19(2) are concerned with public wrongs and concerned with public interest in which the State will be a party. In fact all fundamental rights provided to us are against the State and not against individual citizens. So defamation which is instituted against any citizen by any other citizen can't come under Article 19(2) and nor can it be a crime, because,

*"Crime is an act committed or omitted in violation of public law forbidding or commanding it".*

Although Section 40 of the IPC defines 'offence' instead of crime but they mean the same. Defamation is between individuals and hence is a civil wrong.



Admittedly right to reputation was declared a *facet* of Article 21 in *Sukhwant Singh v. State of Punjab*. However in *Maneka Gandhi v. Union of India* Supreme Court said that Articles 14, 19, and 21 should be read together. If a person does not have rights to speak freely where will his personal liberty lie? When at the time where civil defamation is giving strong ground to any person speak on reasonable note like Mr. Arun Jaitly's 10 crore civil defamation suit against Arvind Kejriwal. Justice P.B.Sawant v. *Times Now* in which *Times Now* was slapped 100 crore as a compensation. These are the perfect examples which show civil defamation is enough to maintain a social balance and criminal defamation exceeds what is needed. Criminal defamation is working as an instrument through which powerful or political leaders can stop criticism. For example in Tamil Nadu 80 MLA's of opposition party were evicted and suspended from state assembly on the ground of criminal defamation. Later on Supreme Court held that it was the misuse of criminal defamation law by Ruling party.

In *Shreya Singhal v. Union of India*, Supreme Court struck down Section 66A of Information Technology Act 2000, on the ground that it violates the free speech and it is not protectable under Article 19(2) because, Section 66A is over-broad and vague. This section has lots of similarity with Section 499 and 500 IPC. Both protect one's reputation and they provide for imprisonment. In today's technological world it is easy to interpret that one can offend other's reputation online very easily. Nevertheless Supreme Court said Section 66A is an unreasonable restriction and civil remedy will be enough. In that case civil

remedy should be sufficient for defamation too. Section 499 is overbroad and vague similar to Section 66A. Section 66A was declared vague because it was not clear which information may offend anyone. Similarly in Section 499 there is no specific interpretation of the term 'reputation'. Even a lightly remarked comment can be defamatory.

Further, under the first exception of Section 499 one can't take even truth as defense because under this section even if you are telling truth it should be for public good which the Court decides. This seriously threatens citizens' free speech because it's very hard for anyone to decide which speech will not be a public good in view of the Court. The United Kingdom from which this law was borrowed has also repealed criminal libel and provided only for civil remedy.

In conclusion, India, as a country with democratic status should provide freedom of speech and expression to everyone without any unreasonable restriction.

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