



## FREEDOM OF SPEECH ART 19 VS SECTION 499 & 500 OF IPC, 1860

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### Abstract:

Reputation is considered as one of the most important assets of any person. The said person be any political leader, business tycoon, famous celebrity or even middle-class person. Everyone loves their reputation. Our Constitution gives us Right to freedom of speech via Article 19(1)(a) but it comes with the reasonable restrictions defined under Article 19(2). Defaming any person as defined under section 499 and shall be punished under Section 500 of Indian Penal Code, 1860.

This Article deals whether Section 499 and 500 of IPC, 1860 is unconstitutional as per Article 19 Right to Freedom of Speech which itself a Fundamental Rights protected and guaranteed under The Constitution of India. This Article put forwards various interpretations done by Hon'ble High court and Hon'ble Supreme Court, and with deep analysis and research and concluding on the same.

### Introduction

A good name is worth more than good riches. (Shakespeare's Othello, Act-II, Scene III, pp.167):-

*Good name in man and woman, dear my Lord  
Is the immediate jewel of their souls;  
Who steals my purse, steals trash; Its  
something nothing; T'was mine, t'is, and has*

*been slave to thousands; But he that filches  
from me my good name, Robs me of that  
which not enriches him And makes me poor  
indeed.<sup>1</sup>*

Freedom of Speech is the bulwark of democratic government. This freedom is essential for the proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succour and protection to all other liberties. It has been truly said that it is the mother of all other liberties.<sup>2</sup>

In Maneka Gandhi v UOI<sup>3</sup>, Bhagwati J, has emphasized on the significance of the freedom of Speech and expression in these words:

*Democracy is based essentially on  
free debate and open discussion, for  
that is the only corrective of  
government action in a democratic  
set up. If democracy means  
government of the people by the  
people, it is obvious that every citizen  
must be entitled to participate in the  
democratic process and in order to  
enable him to intelligently exercise  
his right of making a choice, free and  
general discussion of public matters  
is absolutely essential.*

In 1927, in Whitney v California<sup>4</sup>, Louis Brandeis J, made a classic statement on the freedom of Speech in the context of the US Constitution:

*Those who won our Independence  
believed that the final end of the state*

<sup>1</sup> Para 105 of Delhi High Court-Ram Jethmalani vs Subramaniam Swamy on 3 January, 2006  
Equivalent citations: AIR 2006 Delhi 300, 126 (2006)  
DLT 535

<sup>2</sup> Report of the Second Press Comm, Vol I, 34-35.

<sup>3</sup>Maneka Gandhi v UOI, AIR 1978 SC 597: (1978) 1 SCC 248

<sup>4</sup> Whitney v California, 247 US 214.



*was to make men free to develop their faculties... They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that the freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile... that public discussion is a political-duty; and that this should be a fundamental principle of the American Government.*

Talking about the First Amendment to the US Constitution which guarantees freedom of speech in the USA. The US Supreme Court has observed<sup>5</sup>:

*It is the purpose of the First Amendment to preserve an uninhibited market place of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market whether it be by the Government itself or a private licensee.<sup>i</sup>*

### **Fundamental Right- Article 19 of The Constitution of India.**

Article 19(1)(a)-“ to freedom of speech and expression;

Article 19(2)- “Nothing, in sub-clause (a) of clause (1) shall effect 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 in the interests of the (the sovereignty and integrity of India, ) the security of the State, friendly relations with Foreign States, public order,

decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.

### **Section 499 & 500 of Indian Penal Code, 1860.**

Chapter XXI- OF DEFAMATION-

Section 499. Defamation- Whoever, by words either spoken or intended to be read, or by signs or by visible 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 excepted, to defame that person.

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.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Exceptions:

<sup>5</sup> Associated Press v US, 326 US 1.



First Exception.—Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.—Public conduct of public servants.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception.—Publication of reports of proceedings of courts.—It is not defamation to

publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Sixth Exception.—Merits of public performance.—It is not defamation to

express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Seventh Exception.—Censure passed in good faith by person having lawful authority over another.

—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eighth Exception.—Accusation preferred in good faith to authorised person.

—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests.

—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.

— It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or



of some person in whom that person is interested, or for the public good.

Section 500. Punishment for defamation.— Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Fundamental Right of Freedom of Speech i.e. Article 19 Vs Section 499 & 500 of IPC,1860 can be cleared through various High court and Honble Surpeme Court Judgements which are as follows as :-

1. In the case of- *Abk Prasad vs Union Of India (Uoi) And Ors*<sup>6</sup>

Writ petition was filed by the petitioner seeking a declaration that section 499 and 500 of Indian Penal Code are arbitrary, illegal and ultra vires of constitutional limitations and violative of Articles 14, 19(1)(a) and 21 of the Constitution of India.

The Senior counsel- Mr. S. Ramachandra Rao, appearing for the petitioner admits that,

*In view of the fact that the law of defamation was enacted about one and half century back by colonial rulers and after freedom India having become republic governed by a Constitution this law cannot remain a part of statute. He contended that section 499 of I.P.C is directly opposed to the freedom of expression which includes freedom of press and as such it cannot have any place in a democracy like ours. He further contended that, if it was not possible*

*to strike down section 499 as a whole then the first exception to section 499 needs to be struck down partially.*

The learned Advocate General who appeared for respondents submitted that,

*Right of freedom of speech is guaranteed by the Constitution and it includes freedom of press but freedom of speech by no means can include right to defame. The learned Advocate General was of the view that under Article 19 of the Constitution reasonable restrictions can be imposed on freedom of speech by competent legislations. The learned Advocate General was further of the view that freedom of press though sacred could not be higher than freedom of a citizen.*

The court observed that

*Now, coming to Article 19, true it guarantees to all the citizens of India freedom of speech and expression but clause (2) to Article 19 gives power to the State to have restrictions on rights to freedom. Laws with respect to libel and slander existing at the time of coming into force the Constitution of India were saved. Later on, by First amendment clause (2) was amended and certain new grounds of restrictions were introduced. Libel and Slander were substituted by word Defamation. So, from 1951 there is a constitutional protection to section 499 I.P.C. Therefore, it is not open at all to the petitioners to contend that section 499 is ultra vires to Article 19 of the Constitution of India. Section 499 was in existence at the time of commencement of the Constitution and section 499 of I.P.C is in chapter XXI*

<sup>6</sup> Andhra High Court- Abk Prasad vs Union Of India (Uoi) And Ors<sup>6</sup> on 25 January, 2002, Equivalent citations: 2002 (3) ALT 332, 2002 CriLJ 2464



*which deals with 'OF DEFAMATION'. The title under section 499 has been incorporated in I.P.C as 'Defamation'. Therefore, in the absence of any challenge to the First Constitutional amendment of 1951 substituting the words Libel and Slander by Defamation it may not be possible by any stretch of imagination to hold that section 499 I.P.C was ultra vires to Article 19. It appears that, Libel and Slander were substituted by Defamation because Libel and Slander were not defined in section 499 or any other provisions of Indian Penal Code whereas Defamation had been defined very elaborately.*

Further observed that-

“Now, applying these principles and acknowledging that defamation is one of the exceptions created under Article 19(2) of the Constitution, we do not think that Section 499 or 500 suffers from any Constitutional infirmity. The excerpts from the judgment expressing doubts by Supreme Court with respect to vires of Section 499 or 500 I.P.C have been expressed because it appears that such an argument had been made but it had not been tested by the Supreme Court. This appears to be a just passing reference and in the case in which this reference was made the facts would suggest that there was a likelihood of damage to the reputation of the persons concerned who had moved the Court, but even then the Supreme Court did not go into the question of vires of section 499 and 500 I.P.C.

We are of the considered view that right of freedom of press is not higher than the right of freedom of speech of an individual and this right, as is said, is not an absolute right. This is a right guaranteed under Article 19 of the Constitution of India and this right is subject

to restrictions mentioned in Article 19 of the Constitution. Even without that, it is well settled principle of equity that, one's freedom to move his arm ends where somebody's nose starts.

Freedom of expression or freedom of press would not certainly include freedom to defame. It would be, however, a different story if such publication is made which is factually correct and which is in public interest.

Let us assume that a person is involved in anti-national activities and a publication is made bringing it to the notice of the general public that such person is involved in anti-national activities and if it is factually correct it would be in the interest of the public to know such accusation, but if such accusation is factually incorrect then damage would be done to the person about whom such a story is published. Therefore, we do not find that the law of defamation is in any way unreasonable or section 499 of I.P.C violates any principles on which our democratic set up rests. Truth is an exception to the law of defamation.”

Coming to conclusion it stated that

Truth should be a defence without further conditions, there are two conditions under section 499 I.P.C for truth to become an effective defence in a complaint of defamation. One is that it should be factually correct and the other is that it should be in public interest. We do not find how it is unreasonable. It is not always necessary to bring truth to the notice of general public.

Let us assume that there is a victim of rape. In Indian society, if it is known that a particular woman has been subjected to rape there is guarantee for a miserable life to her. In such a social order the poor victim may try



to hide this truth from the public. Would it be right for the press to publish such a story. After all, it is not going to serve any public purpose. In such a situation that poor lady shall be entitled to have a right to privacy although factually it would be correct that such a lady was raped. Therefore, it would not be always sufficient defence that the story published was factually correct. If the contention pleaded before us is accepted that truth should be a defence without further qualifications, then the pressmen shall enter anybody's bed-room.

As has been held in R. Rajagopal's case that the right to privacy and right of freedom of press have to be balanced, therefore, a laxman rekha has to be drawn somewhere and in our view the laxman rekha is the public interest. If publication of truth is in public interest it would not be a defamation, but if it has nothing to do with public interest and relates to privacy of an individual then it would certainly be defamatory. Therefore, in our view it would be dangerous if truth without further qualifications is made a defence in an action against defamation.

2. In the case of *Ram Jethmalani vs Subramaniam Swamy*<sup>7</sup>

It was held by Justice Pradeep Nandrajog that statement made by defendant was prima facie defamatory. It was a case of exceeding the privilege and that by itself was held to be evidence of malice. The statement was quite on connected with and irrelevant to the situation, actual malice on part of defendant was well established . This harmed the image

<sup>7</sup> Delhi High Court- Ram Jethmalani vs Subramaniam Swamy on 3 January, 2006, Equivalent citations: AIR 2006 Delhi 300, 126 (2006) DLT 535

<sup>8</sup> <http://www.legalserviceindia.com/legal/article-399-ram-jethmalani-v-s-subramaniam-swamy-a-case-analysis.html>

of plaintiff at large and such allegation destroy the personal and political reputation ,as LTTE is banned organization and connecting the name with it leads to loss of reputation. However such loss is not recoverable , said by justice , but still compensation of Rs 5 lacs awarded in favour of plaintiff and against the defendant , considering his professional status and his social status.<sup>8</sup>

3. In the Case of *Subramaniam Swamy v. Union of India*<sup>9</sup>

In the year 2014, Dr. Subramaniam Swamy alleged corruption charges on Ms. Jaylathitha. After which Ms. Jaylathitha framed defamation charges on Dr. Subramaniam Swamy. He in return challenged the constitutional validity of Section 499 and Section 500 of the India Penal Code.

The court, in this case, upheld the constitutional validity of the offense of criminal defamation. And ruled out that Section 499 and Section 500 of the India Penal Code, impose reasonable restrictions on the right to freedom of speech and expression.<sup>10</sup>

4. In the case of *Vijaykant & Anr. v City Public Prosecutor & Ors.*<sup>11</sup>

The Order was passed by a Bench comprising of Justice Dipak Misra and Justice R.F. Nariman. Justice Misra is the author of the decision in Subramaniam Swamy v Union of India & Ors [W.P. (Crl.) No. 184 of 2014 and other petitions], upholding the constitutional

<sup>9</sup> Writ petition (Criminal) No. 184 of 2014

<sup>10</sup> <https://blog.iplayers.in/defamation-section-499-to-502-of-ipc/>

<sup>11</sup> Writ Petition (Criminal) No. 43/ 2016; Writ Petition (Criminal) No. 193/ 2015.



validity of the criminal defamation provisions in the Indian Penal Code, 1860. Justice Misra observed that a political rival in a democracy, like any other common man, has the right to criticize the government of the day. He further stated that democracy is predicated fundamentally on the ideas of criticism, dissent, and tolerance, noting that the will, desire, aspirations and sometimes the desperation of the people are expressed through such criticism. Defamation proceedings should not be instituted in response to political criticism, including allegations of corruption in the government or that a politician is unfit to run the government.

The Court reportedly stated that, “you can’t use defamation cases to throttle democracy. This is not done. You are a public figure and you have to face criticism ... A government cannot be seen to use state machinery to file criminal defamation cases against political opponents. Cases for criticizing the government or bureaucrats create a chilling effect ... Even though we uphold the defamation law, if we find there is a continuous effort and deliberate design to engage government law officers to file cases, it is the duty of the court to protect them”.<sup>12</sup>

5. In the case of *Arvind Kejriwal v. Union of India*.<sup>13</sup>

There has to be a debate with regard to the conceptual meaning of the term ‘defamation’ used in article 19(2) of the Constitution and ‘defamation’ in section 499 of the IPC. It was also pointed out that the freedom of

speech and expression has to be a controlled one and does not include the concept of defamation as defined under section 499.<sup>14</sup>

6. In the case of *In N. Ravi v. Union of India*<sup>15</sup>

wherein it had been observed as follows: Strictly speaking on withdrawal of the complaints, the prayer about the validity of Section 499 has also become academic, but having regard to the importance of the question, we are of the view, in agreement with the learned counsel for the petitioners, that the validity aspect deserves to be examined.<sup>16</sup>

7. In the case of *Chintaman Rao vs. The State of Madhya Pradesh*<sup>17</sup>

The Supreme Court explained the meaning of “reasonable restrictions” imposed in Article 19 (2). It implies intelligent care and deliberation and that is required in the interests of the public.<sup>18</sup>

**Defamation through Internet/online it comes under provisions of The Information Technology Act, 2000 and Violation of Article 19 and attracts Section 499 & 500 of Indian Penal Code, 1860.**

In the Case of *Shreya Singhal vs U.O.*<sup>19</sup>

*Shreya Singhal’s* case is a landmark judgement in the field of freedom of speech and

expression. This epic case brings forth various dimensions which are important facets of

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<https://globalfreedomofexpression.columbia.edu/cases/vijaykant-anr-v-city-public-prosecutor-ors/>

<sup>13</sup> *Arvind Kejriwal v. Union of India* [W.P. (CrI) No. 56/2015].

<sup>14</sup> <http://ili.ac.in/pdf/paper10.pdf>

<sup>15</sup> 30 (2007) 15 SCC 631.

<sup>16</sup> <http://ili.ac.in/pdf/paper10.pdf>

<sup>17</sup> 1951 AIR 118, 1950 SCR 759

<sup>18</sup> <https://lexlife.in/2020/05/03/defamation-law-in-india/>

<sup>19</sup> IN THE SUPREME COURT OF INDIA-WRIT PETITION (CRIMINAL) NO.167 OF 2012



article 19(a). Section 66A which was widely criticised for its over breadth, vagueness and its

chilling effect on speech was struck down by the apex court as it was unconstitutional.

However, in Swamy's case Mishra J takes a different route and points out that there is a difference in the canvas on which the Shreya Singhal's case has been made. In that case there

was a narrow interpretation of the provision. However, in Swamy's case 'reputation' (which is implicit in article 21) was also involved and narrow interpretation was not the case.<sup>20</sup>

### **Conclusion:**

From the above analysis and research, we can conclude that Article 19(1) (a) provides Right to freedom of Speech & Expressions which comes along-with reasonable restrictions defined under Article 19(2), but if defamation is done then it should be dealt with Section 499 & 500 of Indian Penal Code, 1860.

Famous cases of defamation was on Tarun Gogoi<sup>21</sup> for Rs. 100/- Crore defamation case, and alleged arrest of comedian Kiku Sharda for defamation.<sup>22</sup> And Recent Defamation Case of Anchor Arnab Goswami<sup>23</sup>. Moreover there is one case which is making big chaos here is on stand-up comedian Agrima Joshua<sup>24</sup> who had gave defamatory statements.

From the above discussion we can state that fundamental Rights guaranteed by The Constitution of India is supreme over all other laws since it is Law of Land. But

defamation shall be dealt with punishments so that no other person in future does such acts.

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<sup>20</sup> Page-12 <https://ili.ac.in/pdf/paper10.pdf>

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