**DEFAMATION: THE UNFOUNDED UNDERMINING OF A PERSON’S REPUTATION**

**BY**

**DIPALI SINGH**

**FAIRFIELD INSTITUTE OF MANAGEMENT AND TECHNOLOGY, NEW DELHI**



**ABSTRACT-**

Reputation is “not only salt of life but the purest treasure and the most precious perfume of life”[[1]](#footnote-2). In simple terms, defamation is the injury to reputation of a person. For instance, abusing, character assassination, publication of calumnious information etc. Defamation is one of the reasonable restrictions imposed to the fundamental right of free speech and expression. Right to reputation is a requisite element of [Article 21](https://indiankanoon.org/doc/1199182/) of the Constitution of India. A particular statement is defamatory or not, is checked on the basis of how the right-thinking members of society are likely to take it. Defamation occurs only when the statement is referred to the plaintiff and is published to a third person. There has always been a clash of two fundamental rights: the right to freedom of expression and the right to reputation. The guidelines of defamation law are formulated to mediate between these two rights. This paper covers the conceptual definition of defamation, look over the defamation laws and explains it in relation to the fundamental right of speech and expression. It will further critically analyse the law and its application.

**Keywords-**Defamation, Civil Defamation, Criminal Defamation, Right to Reputation, Freedom of Speech

**INTRODUCTION-**

The right to the unscarred possession of reputation and good name of a man is acknowledged by law. Next to life, a man’s prestige is more valuable than any other tactile asset. Every individual is entitled to have his or her reputation preserved unharmed[[2]](#footnote-3). Defamation is the offence of damaging a person's character or reputation by false and malicious statements. The term is inclusive of both libel and slander.[[3]](#footnote-4) There must be a loss of honor because of the fake proclamation without the apparent defamed person’s consent. Nevertheless, mere hasty utterance spoken in anger to which no hearer would accredit any set purpose to injure the character would not amount to defamation.

In India, defamation is a civil as well as a criminal offence. Under civil law, it is covered under Law of Torts and under criminal law, The Indian Penal Code under chapter XXI, sections 499-502[[4]](#footnote-5) safeguards an individual’s reputation.

As per the Section 499 of IPC, ―Whoever by words either spoken or considered to be read, or by any visible representations, makes or publishes any allegations regarding any person knowing and having reason to believe that such remarks will damage the reputation of such person, is said to defame that person.[[5]](#footnote-6)

A person committing the offence of defamation is liable with simple imprisonment for a term of 2 years or fine or with both.[[6]](#footnote-7)Whoever prints or engraves any matter[[7]](#footnote-8) or conducts sale of any such substance[[8]](#footnote-9) having enough reason to believe that such matter is defamatory of any person, shall be punished with imprisonment for a term of two years, or with fine, or with both.

**TYPES OF DEFAMATION-**

**Libel**: It is the proclamation of defamatory and fictitious statement in some permanent form without lawful justification. e.g., printing, cartoons, writing etc. Libel is actionable per se as it is in written form which can be presented as an evidence in the court of law. It is addressed to the eyes.

**Slander**: It is the announcement of defamatory statement or passing of fictitious remarks in transient form, whether visible or audible, such as hissing, gestures etc. It also involves the use of sign language. It is only actionable when the distressed person presents some proof of special damage.

MP High Court held that there may be a hybrid type of defamation not falling within the recognized categories of libel and slander. In that case it was held that the bride groom and his father in refusing to take the bride to their home after marriage in full gaze of the guests committed the tort of defamation and damages could be awarded for loss of reputation.[[9]](#footnote-10)

Under the English criminal law, libel is a criminal offence, whereas, slander is considered as a civil wrong. Unlike English law, Indian law does not distinguish between libel and slander, in fact both of them and are considered as criminal offences. It was held by the Bombay and Madras high court that no differences need to be made in between treating libel and slander as criminal offenses.[[10]](#footnote-11)

**Innuendo**

It is generally used in actions for slander when sometimes, the statement is not defamatory prima facie but due to some secondary meaning, it is considered defamatory. The plaintiff must prove the secondary meaning i.e. innuendo which makes the statement defamatory.

**ANALYSIS OF ARTICLE 19: FREEDOM OF SPEECH AND EXPRESSION**

One’s belief and political attitude can be expressed through their freedom of speech which ultimately leads to the welfare of the society and state. Freedom of speech provides a mechanism to establish a reasonable balance between stability and social change. In State of West Bengal Vs. Subodh Gopal Bose[[11]](#footnote-12) case, it was held that the State has a duty to protect itself against certain unlawful actions and, therefore, the state may enact laws which would ensure such security. The right that emanates from Article 19(1) (a) is not absolute and unchecked. The liberty cannot be absolute and uncontrolled in nature as well as in operation so that it remains wholly free from any restraint. Had there been no restraint, the rights and freedoms may become synonymous with anarchy and disorder.[[12]](#footnote-13) In S. Rangarajan v. Jagjivan Ram’s case[[13]](#footnote-14), the test of `proximate and direct nexus with the expression’ was provided by the court, and it was held that the restriction should be based on the principle of least invasiveness. The Court also take into consideration whether or not the anticipated event would be intrinsically dangerous to public interest.[[14]](#footnote-15)

**DEFAMATION V. FREEDOM OF SPEECH AND EXPRESSION**

The right to freedom of speech and expression under [Article 19(1)](https://indiankanoon.org/doc/1142233/)is considered as one of the most basic elements of healthy democracy. However, it is not absolute. Under [Article 19(2)](https://indiankanoon.org/doc/493243/) it is subjected to reasonable restrictions and government can impose restrictions on many grounds such as in the interest of sovereignty, integrity and security of India, for maintaining friendly relations with foreign states, for public order, decency and contempt of court, defamation and incitement to an offence. Defamation laws acts a counter balance to this right. The right to repute cannot be crucified at the altar of another’s privilege of speech. Free speech is required because it enables the media to hold the government and people accountable for their actions.

Criminal defamation is often misused by the people in power to suppress the speech of another individual. It can be used as a tool to suppress political criticism and to coerce the media in order to avoid the exposure of political wrongs. Criminalizing defamation is an unwarranted restriction on free speech when the global norm is that a civil suit claiming damages is enough to protect reputation. Defamation being a criminal offence is problematic. It is a law of old days and was made an offence when there used to be a fight or clash in order to protect one’s reputation. Moreover, defamation having both a civil and criminal remedy for the same damage forces an already overburdened judiciary to respond to the same matter twice.

Civil defamation needs reformation too. It is a well-established fact that fighting a case in India is an exhaustive and expensive task which only gets resolved after many years. This fact is often exploited by rich individuals and corporations. They know that they can bear the costs of a long-lasting trial, hence they threaten their critics with a protracted defamation suit. Moreover, they are filed in a remote court in order to increase the travelling costs. These suits generally ask for exorbitant damages. These suits have been termed as Strategic Lawsuits against Public Participation or SLAPPs. The defendants to SLAPP do not have the same resources as the complainants, and they find it burdensome to defend their cases financially. Sometimes multiple notices threatening multiple lawsuits in many jurisdictions are filed claiming lakhs and crores in damages, in order to buy the silence of the other party.

**Subramanian Swamyv. Union of India**[[15]](#footnote-16)

In this landmark case, lawyers juxtaposed two antagonistic interests- the right to free speech in opposition to the right to a person’s reputation. A petition concerning the decriminalization of defamation was filed under Article 32 of the Indian Constitution. It questioned the constitutional rationality of Section 499 and 500 of the Indian Penal Code, 1860 as an obstructive restriction on the freedom of speech and expression. It also questioned the constitutionality of Section 199(1) and 199(4) of the Code of Criminal Procedure on whether it is or not violative of the Right to Freedom of speech and expression under Art. 19(a) of the Constitution of India.

Judgement Overview-

Section 499 and 500 IPC was held to be non-discriminatory and non-arbitrary and not violative of the right to equality guaranteed under Article 14 of the Constitution by the apex court. It was observed that the concept of ‘reputation’ was included in the protection of ‘dignity’ which is constitutionally a part of the Right to Life. In a democracy, an individual has a right to criticize and dissent, but his right is not absolute and is restricted under Art. 19(1)(a) of the constitution. A person cannot defame another person as that would offend the aggrieved person’s fundamental right to reputation which is an important part of Art. 21 of the Constitution. The Court held that the penal code provision is not disproportionate. The reasonableness and proportionality of a restriction is examined from the point of the interest of the general public, and not from the point of view of the person upon whom the restrictions are imposed. Applying this, the Court judged the criminal defamation laws to be appropriate. The Court disapproved the contention that defamation is a notion of the mass meant to cripple the freedom of speech and expression as too broad a proposition to be treated as a guiding principle to adjudicate the reasonableness of a curtailment. The court also directed the trial court to be extremely careful and it should thoroughly scrutinize the complaints before issuing the summons in a criminal defamation case.

The judgement has received a mixed response which appears to be ex-facie negative. It is observed that, by not decriminalizing defamation, unfettered powers will vest especially with the politics and corporations who can manipulate according to their own wishes.

**R. Rajagopal v. State of Tamil Nadu**[[16]](#footnote-17)

This case examined the constitutional validity of civil defamation and its relation with freedom of speech. In this case, the court held that common law defamation stood unreasonably restricted under Article 19(1) (a) because it thrust undue advantage of no-fault liability. The major strike against Section 499 was that by criminalizing what is primarily a private wrong. The Section added up to limitation upon free discourse. Therefore, to hold someone liable for civil defamation, one has to prove that the defendant committed defamation with reckless disregard for the truth.

**IMPACT OF DEFAMATION ON THE INDIAN PUBLISHING INDUSTRY**

For the publication of a book, it is necessary that it should be free from any false content that may negatively impact a person’s reputation. No accusations should be made without any valid proof. The burden of proof mostly lies on the defendant.

Defamation has often led to books being banned. For instance, *Jayalalithaa – A Portrait*, penned by senior political journalist Ms.Vaasanthiwas banned from publication and permanent injunction against the book was ordered.[[17]](#footnote-18)(*Selvi J. Jayalalithaa vs. Penguin Books India* (C.S. NO. 326 OF 2011)). The Madras High Court granted an injunction against the book's publication causing damage to Jayalalitha's political image and violation of her right to privacy. It was also held that reasonable verification of the contents of the book had not been done.

In another case, the Delhi High Court banned the publication, distribution and sale of the book based on Ramdev Baba- '*Godman to Tycoon: The Untold Story of Baba Ramdev*' written by Priyanka Pathak Narain. It was held that the parts of the book were defamatory[[18]](#footnote-19) (*Swami Ramdev vs. Juggernaut Books* (CM(M) 556/2018)). It was alleged by the petitioner that the book, was an unauthorized biography, and contained defamatory material which violated his fundamental right to privacy and reputation under Article 21 of the Constitution.

The following conclusions between freedom of speech, fair comment, right to reputation and defamation was drawn by the Court in this case-

* **Balance between Freedom of Speech and Right to Reputation**

The right to reputation and the freedom of speech and expression needs to be harmonized, as no amount of damages can redeem the adverse impact on a person's reputation. Merely because previous similar publications exist does not permit repetition of prima facie defamatory implications.

* **Test for Defamation**

The test for defamation in this case was done on the basis of what an ordinary reasonable reader would think of the book, with the help of book reviews and comments.

* **Public Interest**

The Court held that whatever may be of interest to the public, but has no element of public interest, may amount to violation of privacy. The fact that the person is a public figure does not give a licence to the author and the publisher to defame him.

* **Fair Comment**

To be accounted as a fair comment, it must appear as a comment and should not be mixed up with facts. A comment must not convey dishonourable motive unless supported with adequate proof. A reader should be able to differentiate between facts supported with evidence from comments.

**CYBER DEFAMATION-**

The wide accessibility of internet has changed everyone’s lives. It has made the world a close nit establishment. Although, such increase in ease of communication has comparatively increased the disruption caused by the mishandling of the channels of communication. The broadening of social networking sites has given people unbridled capability to post fabricated and false statements about another person or an entity and thereby impairing their benevolence and prestige. Such act, idiomatically known as “trolls” literally amounts to cyber defamation. Likewise, all such activities taking place on the cyber space leads to online defamation. Cyber defamation takes place when internet is used as a tool to blacken the character of a person or entity. For instance, publishing of a defamatory statement on social networking sites such as Facebook, twitter etc.

Section 469 of the Indian Penal Code, 1860 has been amended by the Information Technology Act, 2000[[19]](#footnote-20) which now includes ‘electronic record forged’– whoever commits forgery, knowing that the document or electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of three years, and shall also be liable to fine.*[[20]](#footnote-21)*The liability of cyber defamation lies on the author of the defamatory content, it can also lie on the service provider of the intermediary. However, an intermediary shall not be liable, when acted with due diligence and in accordance with the intermediary guidelines provided by the Central Government, for any third-party information, data, or communication link made available or hosted by him under certain circumstances[[21]](#footnote-22). A person aggrieved of cyber defamation can file a complaint on the cyber-crime investigation cell, which is a unit of crime investigation department. Section 503 of the Indian Penal Code, 1860 defines criminal intimidation by use of emails and other electronic means of communications for threatening any person for his reputation or property.

**SMC Pneumatics (India) Pvt. Ltd. v. Jogesh Kwatra*[[22]](#footnote-23)***

In this case, a dissatisfied and angry employee sent derogatory, and abusive emails to the fellow employees of the company and to its subsidiaries all over the world with an intent to defame the company. The High Court of Delhi granted ex-parte ad interim injunction restraining the defendant from defaming the Plaintiff in both the physical and in the cyber space.

**Shreya Singhal v. Union of India**

This landmark case challenged the constitutional validity of section 66-A, 69-A and 79 of the Information Technology Act of 2000 and questioned whether or not section 66-A is curtailing the freedom of speech and expression or not. The Court agreed that none of the grounds contained in Section 19(2) were capable of being invoked as legitimate defences to the validity of Section 66A of the IT Act. The Supreme Court of India quashed section 66A of Information & Technology Act 2000,due to obscurity in the definition of the word ‘offensive’. The section asserted that sending any derogatory content to a computer or any other communication device would be an offence. Such unfettered power, under section 66A, was misused by the Government in curtailing and suppressing people’s freedom of speech and expression and hence repealed.[[23]](#footnote-24)

**Swami Ramdev &Anr. v. Facebook Inc. &Ors*[[24]](#footnote-25)***

In the following case, an order to remove all defamatory content posted online against yoga guru Baba Ramdevwas passed, without any territorial limit, stating that if the content is uploaded from India or such content is located in India on a computer resource, then the Courts in India should have international jurisdiction to pass worldwide injunctions. The Delhi High court opined that Section 79 of the Information Technology Act, 2000 states that the disabling of access has to happen at the computer resource including computer networks. This implies that this section will apply to all the computer networks and not a geographically limited network.

**DEFENCES AVAILABLE AGAINST DEFAMATION-**

Truth is an outright defence. If a person has made an authentic statement then it would not amount to defamation. Nothing is derogatory which is a fair- minded comment in the interest of public.

The concept of absolute privilege, gives a person the absolute right to make defamatory statements. The person with this privilege is immune from the liabilities arising out of defamation lawsuits. It exempts, communication made between spouses; during political speeches and debates in the parliament[[25]](#footnote-26); statements made by government officials; pronouncements during judicial trials; announcements made by legislators in parliament.[[26]](#footnote-27)

A person can take the defence of qualified privilege when the statements were made under social, legal or moral duty and the interest of the listener is involved. It can be availed during job interviews; answering of police enquiries; communication between parents- teachers, employer-employees etc. This defence fails when false statements are made with malicious intent.

If the statement made is just an opinion and not a statement of fact then it cannot be considered as defamatory. Moreover, the consent of the plaintiff provides absolute privilege to the publisher to make derogatory statements. However, if the consent is obtained through coercion or fraudulently or from a person of unsound mind then it will be held invalid. No defamation arises when censure is passed in good faith by the individual having lawful authority.

**CONCLUSION-**

The apex court has expressed in numerous cases that the ambit of freedom of speech and expression is “sacrosanct” and is not “absolute”. The constitutionality of this provision is multifaceted; hence it is important to maintain the balance between its implementation without contradiction with the freedom of speech and expression. Both needs to be synchronized. However, this provision is used and abused by some. Criminal defamation should not act as a tool for powerful people to blackmail, harass and silence the speech of people. In order to avoid misuse of criminal defamation, superfluous complaints should not be registered until and unless the evidence is prima facie. The newer forms of defamation in this era of internet needs utmost attention.

**SUGGESTIONS-**

The need of the hour is to reform and decriminalize defamation in order to make it clearer and fairer. Limits should be set around the law to prevent groundless accusations. The loss to reputation must be serious, and proof should be substantial in order to proceed with the case further. Direct nexus should be established between injury caused to their reputation and the alleged statement. It should be demonstrated that material injury to reputation was caused as a direct result of the said statement. The scope of defamation defences should be made broad enough to include truth, opinion and reasonable inference. Moreover, exemplary costs should be imposed on frivolous suits that waste the time of the courts.

1. Vishwanath Agrawal v. SaralVishwanath Agrawal, [2012] 7 SCC 288 [↑](#footnote-ref-2)
2. Sir William Blackstone, Commentaries on the law of England, (2nd ed. 1769) 101-04 [↑](#footnote-ref-3)
3. *Black’s Law Dictionary*.(11th ed.2019) [↑](#footnote-ref-4)
4. The Indian Penal Code, 1860, Act. No. 45 of 1860, ss. 499-502. [↑](#footnote-ref-5)
5. The Indian Penal Code 1860, Act. No. 45 of 1860, s. 499. [↑](#footnote-ref-6)
6. The Indian Penal Code, 1860, Act. No. 45 of 1860, s.500. [↑](#footnote-ref-7)
7. The Indian Penal Code, 1860, Act. No. 45 of 1860, s.501. [↑](#footnote-ref-8)
8. The Indian Penal Code, 1860, Act. No. 45 of 1860, s.502. [↑](#footnote-ref-9)
9. Noor Mohd. V. Mohd. Jiauddin, AIR 1992 MP 244, p. 249 [↑](#footnote-ref-10)
10. HirabaiJehangir Mistry vsDinshawEduljiKarkaria, AIR 1927 Bom 22 [↑](#footnote-ref-11)
11. 1954 AIR 92, 1954 SCR 587 [↑](#footnote-ref-12)
12. State of West Bengal Vs. SubodhGopal Bose,1954 AIR 92, 1954 SCR 587 [↑](#footnote-ref-13)
13. 1989 SCR (2) 204, 1989 SCC (2) 574 [↑](#footnote-ref-14)
14. S. Rangarajan v. Jagjivan Ram, 1989 SCR (2) 204, 1989 SCC (2) 574 [↑](#footnote-ref-15)
15. Subramanian SwamyVs Union of India, Ministry Of Law &Ors, on 13th May, 2016; [↑](#footnote-ref-16)
16. R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632. [↑](#footnote-ref-17)
17. Vaasanthi, ‘Jayalalitha: A Portrait’*Outlook India*(03 March2014) <https://www.outlookindia.com/magazine/story/jayalalithaa-a-portrait/289579> [↑](#footnote-ref-18)
18. Scroll Staff,’ Delhi High Court restrains publication of book on Ramdev until ‘defamatory’ parts are removed’(Scroll.in, 30 Sep 2018)<https://scroll.in/latest/896417/delhi-high-court-restrains-publication-of-book-on-ramdev-until-defamatory-parts-are-removed> accessed 20th August 2020 [↑](#footnote-ref-19)
19. The Information Technology Act, 2000, <https://www.indiacode.nic.in/bitstream/123456789/1999/3/A2000-21.pdf> [↑](#footnote-ref-20)
20. The Indian Penal Code, 1860, Act No. 45 of 1860, s. 469 [↑](#footnote-ref-21)
21. The Information Technology Act, 2000, s. 79. [↑](#footnote-ref-22)
22. Smc Pneumatics (India) Pvt. Ltd vs Shri JogeshKwatra on 12 February, 2014 [↑](#footnote-ref-23)
23. Shreya Singhal v. Union of India, (2013) 12 SCC 73 [↑](#footnote-ref-24)
24. FAO (OS) 212/ 2019 [↑](#footnote-ref-25)
25. The Constitution of India, art.105 [↑](#footnote-ref-26)
26. The Constitution of India, art.194 [↑](#footnote-ref-27)