

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

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ISSN

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DEFAMATION VIS-À-VIS FREEDOM OF SPEECH

Authored By-Tarishi Agrawal¹

Introduction

Free speech and expression are regarded fundamental rights in democratic societies, but they are not absolute, and defamation is one of those legitimate constraints. As per Black's Law Dictionary, defamation means the offence of injuring a person's character, fame, or reputation by false and malicious statements. Libel and slander seem to be covered by the word. Defamation has become a hot-button issue in the modern day because of the media frenzy that has been generated over the freedom of speech and expression guaranteed by Article 19 (1) (a) of the Indian Constitution. Individuals, whether in their private or official capacities, have a presumption that every comment they make might result in a public outcry or incarceration.

This paper aims to examine the concept of defamation, its position in India and the ambit of defamation laws under the umbrella of the fundamental right of freedom of speech and expression through various cases and development. Defamation has been a burning topic in the present times where almost saying anything to anyone makes it come under the garb of harm to reputation and thus leading to slapping of defamation proceedings. Therefore it becomes very pertinent to examine the position of the defamation law and the various defences which are available and to what extent a person is free to present his opinion to escape the bounds of defamation.

¹ The author is currently studying Masters of Law (LL.M.) in Constitutional Law from Maharashtra National Law University, Aurangabad.

Definition And Ingredients: Defamation

By law, defamation means harming the reputation of another person by false publication or communication to a third party which leads to lowering of reputation in the eyes of such persons. If you trace back the history of defamation laws mostly all of us believe that defamation is a product of English law however we had similar concepts which existed earlier for example in the Roman law Even the chance which were found abusive or capable of being punished also in the German law as well as in the English law, the punishment for such insults included the cutting of the tongue. In the later part of the 18th century, in England, if a crime was imputed or imputation of any social disease or allegations of professional incompetence also constituted the charge of slander however they were not codified later the slander of women act came in 1891 which made the imputation of unchastity illegal. As per the French law on defamation, conspicuous retraction of libellous material in newspapers and allowed a defence only when the material is pleaded to be true of w.r.t. publications concerned public figures. Similar position of law is seen when we talk about the German law in present context. However, when the matter the criminally defamatory, then there are very meek chances of getting the defence of truth, when we talk about Italy.

When we talk about a particular person then we consider a publication or communication to be defamatory when the same is done without the consent of the concerned person and the matter holds to truth. The material should be such which causes a loss of reputation and not just when it's hurtful to the feelings of that person. Also, one peculiar thing to notice is that merely if the supposedly defamed person feels that his reputation has been attacked, the Court will not just consider that person's point of view in his mind, rather it will give regard to the views of a reasonable prudent man and his view point. There may be cases where aspersions are made not w.r.t. a specified person explicitly, rather they have been made indirectly, even that would be enough to constitute the charge of defamation. The important thing is that sufficient evidence prevails for the person to be made out. But when we talk about a group of individuals or a particular class, in that case, the defamatory material must relate to every single person of that group or when certain members are defamed making reference to that class or group.

Broadly, there are two sub categories of defamation i.e. libel and slander. But there has been a difference of opinion as to what constitutes libel and what constitutes slander as per the medium on which defamatory matter was published or communicated. Defamation on television and radio is considered as libel mostly, however in certain places, the same is considered slander. On one hand, if a lawsuit is filed for Libel then the remedy available is general damages or special damages as the case maybe the general damages are recoverable in case of reputation loss whereas special damages are remedy in case of specific economic loss on the other hand, we can recover special damages in case of slander however this rule is subjective to different jurisdictions when defamatory material affects the interest of the public at large then a person is criminally liable for defamation

Apart from this there are several defences which are available against a lawsuit for defamation which include truthfulness of the fact or fair comment and criticism which would be discussed later in this paper.

Defamation is the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right-thinking members of society generally or tends to make them shun or avoid him.²

We can see two forms of defamation. First, label which is a representation in permanent form for example by printing my pictures by writing etc. and secondly, by slander, which is in a temporary form i.e., mainly by spoken words or gestures.

Ingredients Constituting Defamation

1. Statement has to be made:

To constitute defamation there has to be a statement which can either be in spoken form or written or by science or visual representations the statement should be made with the intention to be read. For example: if in a group of people A inquired from B regarding who stole his necklace. B, though not saying something explicitly simply points towards C making it look as if C stole the necklace this amounts to C's defamation.

² W.E. Peel, J. Goudkamp, Winfield & Jolowicz on Tort 360 (Sweet & Maxwell, 19th edn., 2014).

2. Statement should be such which causes defamation:

The defamatory statement should not just hurt the feelings of the person rather it must bring him certain ridicule or hatred and harm to the reputation in the eyes of people. The deformity remark should be such that the person is likely to lose his reputation which he holds in the eyes of the people of the society. Abusive language may also amount to defamation. Criticism might not lead to defamation but lowering the reputation in the eyes of all the rightful thinking people of the society amounts to defamation.

3. The statement should be regarding the plaintiff:

The defamatory statement should be with respect to the plaintiff. the statement may be Express or implied. There might be cases where the defendant has not expressly mentioned the plaintiff's name in his defamatory statement but impliedly refers to him. in such cases the court would see the outlook of the reasonable people of the society.

4. Defendant's intention:

The defendant who is making the defamatory remarks should do so with the intent of making the other people believe that his statements are true and it will thereby cause injury or harm to the reputation of the person who is being defamed.

5. Falseness of the statement:

The statement being made by the defendant should be false and hold no truth because truth is available as a valid defence against a defamatory statement. Even though a statement which is true might be impolite but if it's true then the charges of defamation do not hold well.

6. Privileged communication:

Privilege communications are the communications where people are secure from any form of liability due to the nature of their relationship. For example, the communication made by husband to his wife about a third person will not amount to defamation. The main reason for providing privileged communication as a defence is a matter of policy and intimacy of relationship.

7. Publication of statement:

In order to constitute defamation it is an essential that the statement so made has been published or been communicated to a third person. A statement written by the defendant not with the intention of publishing it would not amount to defamation however the same would become defamatory if the defendant knew that there was a slight possibility of that's statement being seen by a third person. In the case of Mahendra Ram v. Harnandan Prasad³ it was held that it would amount to defamation where a letter has been written and sent to the plaintiff in Urdu language, knowing that the plaintiff does not understand Urdu.

8. The third party should believe that then defamatory statement is true:

Apart from being published, for a matter to be defamatory, it requires that the statement must look true to the rightful thinking people of the society.

9. Statement must lead to loss of reputation:

The statement should be such that it leads to a loss of reputation of the plaintiff in the eyes of the people of the society.

Defamation Laws In India

In India the defamation is both a criminal offence as well as a civil wrong however there is no definite difference which has been drawn between label and slander.

Under criminal law:

In India defamation is covered as a crime under the Indian penal code, 1860. Section 499 Section 502 covers the crime of defamation against a person or an individual. Apart from that defamation against the state is covered under Section 124A which talks about the crime of sedition, Section 153 which talks about riots that is defamation of a class. Also Section 295A is also one aspect of defamation against a class which talks about hate speech which outrages the religious sentiments of people. Defamation has been defined under Section 499 of the Indian penal code has –

³ AIR 1958 Pat 445

- By words spoken or written signs or visible representation
- Is an imputation upon a person with the published or spoken verbally
- In the criminal aspect of defamation intention plays an important role. That implies that there must exist an intention of causing injury to the reputation of a person along with the knowledge that such aspersions or imputations have a tendency to harm the reputation of the person talked about.

The Section provides for four explanations and 10 exceptions or the defences which are available which can be interpreted as follows:

- ❖ “Impugning a deceased person so as to cause harm to his reputation is considered as defamation

Illustration- A had a very loose character. He had many extra-marital affairs.

- ❖ Impugning a company, an association or a group of individuals in such a way which harms their reputation is also considered as defamation.

Illustration- Company A cannot be trusted for any deal owing to their dishonesty.

- ❖ If the imputation assigned to the individual or individuals, does not, by other's estimation, both directly and indirectly, lowers or intends to lower the character of the person, then it is not considered as defamation.

Illustration- A is a very honest man and is very well mannered. Although, this statement may not be true but it doesn't lower down A's reputation and it is actually a boost to his reputation, it is not defamation.

- ❖ Any statement made ironically or any imputation assigned ironically with an intention to harm the reputation of the person is defamation

Illustration- A says that B is a very honest man and can't steal C's book with an intention to impugn B of stealing C's book, it is defamation.

A broad interpretation of the exceptions:

- ❖ If we impute something regarding a person which is true and accurate and is published in public good, it is not defamation.

- ❖ If a person expresses his opinion regarding a public servant with respect to his conduct in discharging his duty without harming his/her character unless the character is represented in his conduct duty, it is not considered as defamation.
- ❖ It is not defamation if a person expresses his/her opinion on a person touching a public query without doing any harm to his reputation unless his reputation or character is represented in his/her conduct.
- ❖ To publish true facts and reports of cases decided by the court is not defamation.

Illustration- If A makes a remark that B, a public servant is incompetent in doing his duty is not defamation. It is his opinion which is protected by the constitution. But, if A says that it is owing to the corrupt character of B as a person that he is unable to perform his duty is defamation.

If a person impugns a person without publishing it, the person is not liable for punishment. This means that only when a person publishes an imputation regarding a person, can he be punished”⁴.

While Section 500 of the Indian penal code provides for the punishment for defamation, the Code of Criminal Procedure, puts forth the procedure in which the proceedings would be conducted. Defamation is punishable with simple imprisonment of up to 2 years or a fine or both. Also, defamation is a non-cognizable and bailable offence. Mostly, in cases of defamation complaint proceedings are followed under which the aggrieved party filed a complaint before the magistrate. As stated above, since defamation is a non-cognizable offence, there can be no arrest without a warrant. The proceedings for defamation in the criminal aspect are harsher than the proceedings in the civil matter. For instance, truth can be taken as a defence against defamation in almost all the cases however when it comes to criminal proceedings the defence of truth is available in a limited sphere.

⁴<https://www.legalserviceindia.com/legal/Article-4771-a-critical-analysis-of-right-to-privacy-and-defamation>, last visited on September 26, 2022.

Under Civil Law:

Under civil law the branch of tort law deals with defamation. Mostly in civil cases the suit is filed for libel i.e. where representation is done in written form. In order to establish the tort of defamation the following points need to be proved:

- False remarks
- Has to be in written form
- Should be defamatory
- Must have been published⁵

In civil laws for defamation the remedy of damages is awarded. The amount of damages increases as the degree of harm caused. While in civil cases, mere preponderance of probabilities is enough to incur liability, in criminal cases, the fault has to be proved beyond reasonable doubts. Unlike criminal law, a civil suit for the defamation of a deceased person usually cannot be filed unless such defamatory statement affect the life of the heirs of the deceased person. Also, in tort law if a person apprehends that someone is about to defame him, then he can seek injunction from the court to stop the person from making any such publication. We can see that the burden of proof in criminal cases is greater than that in civil cases. Such inventions, though being an option is rarely exercised the court in the case of *Bonnard v. Perryman*⁶ stated that:

“The Court has jurisdiction to restrain by injunction, and even by an interlocutory injunction, the publication of a libel. But the exercise of the jurisdiction is discretionary, and an interlocutory injunction ought not to be granted except in the clearest cases—in cases in which, if a jury did not find the matter complained of to be libellous, the Court would set aside the verdict as unreasonable. An interlocutory injunction ought not to be granted when the Defendant swears that he will be able to justify the libel, and the Court is not satisfied that he may not be able to do so.”

⁵ Ratanlal and Dhirajlal, *The Law of Torts* 279 (LexisNexis, New Delhi, 26th Edn., 2013).

⁶ *Bonnard v. Perryman* (1891) 2 CH 269

A similar view has been taken in the case of Khushwant Singh v. Maneka Gandhi⁷ by the Delhi High Court. However, mostly in such cases the pre-publication of any statement which might be apprehended to be defamatory is not stopped by the courts and then there are some exceptional circumstances, that is, where the court is of the view that paying of damages to the aggrieved party would not serve justice to him. It is interesting to know that a Defamation Bill was introduced in the year 1988 by the Rajiv Gandhi government dealing with the provisions for defamation however it received a lot of criticism due to which it was withdrawn.

ARTICLE 19(1) (A): FREEDOM OF SPEECH AND EXPRESSION

Article 19(1) (a) of the Indian Constitution states that, “all citizens shall have the right to freedom of speech and expression”. The main aim is to provide every citizen a freedom of thought expression however this right is also subject to reasonable restrictions imposed by the Constitution itself and provided under Article 19 (2). It is pertinent to note that the said right is available to the citizens only and not to any other person. This right enables a person to have a freedom of thought and be opinionated about any issue. This right also enables a person to speak his voice by means of words representation writing etc.. However the right is not absolute and reasonable restrictions have been provided in the Constitution, which enables the government to frame laws imposing reasonable restrictions in the interest of society and integrity of the state, or the security of the state, or on ground of friendly relations with foreign states, public order, decency and morality and contempt of court, defamation and incitement of offence. Article 21 of the Constitution provides for right to life and personal liberty. The ambit of Article 21 is very huge. Article 21 not only protects the life but also gives the right to a decent living with dignity. It covers under its broad umbrella the right to reputation also. The freedom of speech and expression is not absolute and defamation is available as a reasonable restriction to the same under Article 19(2). The policy behind imposing reasonable restrictions to the right of freedom of speech and expression is protecting the reputation of a person when a person lives in a society he owes respect and

⁷ Khushwant Singh v. Maneka Gandhi AIR 2002 Delhi 58.

reputation and harming the reputation becomes a hindrance to a dignified life. Hence defamation has not only been made a criminal offence under Section 499 and Section 500 of the Indian Penal Code but also a civil wrong. Providing absolute right of right to freedom of speech and expression could cause widespread abuse of this right and disturb the peace and harmony of the society.

Challenge To The Constitutionality Of Defamation

Provisions

S.499 of the Indian Penal Code states that: “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 expected, to defame that person.”

This provision has been challenged on the ground of being unconstitutional considering it to be violative of freedom of speech and expression under Article 19 of the Constitution.

Arguments In Favour Of Keeping Section 499 And Section

500 Valid:

1. Balancing between Article 19 and Article 21 of the Indian Constitution is very important. Declaring the law invalid for unconstitutional would not serve the purpose. Instead we need to balance one is right to reputation protected by Article 21 of the Constitution against others right of free speech and expression.
2. Main complaint proceedings are initiated under Section 199(1) of the Code of Criminal Procedure the complainant can pursue the complaint without involving any state machinery, thus, the freedom of speech and expression. This ensures that no false and frivolous complaints are instituted where the complainant is not willing to incur any responsibility.

3. The criminal provisions stated under Section 499 and 500 provide for various exceptions and explanations. These explanations and exceptions add more substance to the provision and no complaint can be filed lightly.

4. The provision can't be declared unconstitutional only on the ground that the provision could be misused.

Arguments For Declaring Section 499 & 500 As

Unconstitutional:

1. Even though truth is available as a defence for defamation, the defence is not available in Delhi as Section 499 exception one clearly states that the statement should be made for public good. What constitutes public goods would be a question of fact which would be determinable by the courts. Since the Courts have to decide, people are usually hesitant to say anything about high profile people and politicians, even though they are truth because they fear that the court would not find the statement is made in public goods and then they would have to face criminal charges.

2. People do not understand the difference between criticism and defamation and approach the court regarding statements that criticise them or statements which they do not find in their favour. Though Court is a guardian of the rights of the citizens, but that too happens when a person is being dragged to court which causes unnecessary burden and hassle.

3. Even though a person might not have made a defamatory statement, the court can still prosecute that person on the charges of conspiring to make such defamatory statement with the person who has actually made such defamatory statements.

4. Defamation is already punishable as a civil wrong also having sufficient remedies. Hence, there is no need to include it as a criminal offence also since the remedies against a civil wrong are also sufficient.

5. A person can be punished for the defamation of a deceased person also. In such cases there can be abuse of the law by the deceased heir who wants to mint money out of such proceedings.

Why criminal defamation becomes a better option?

Civil defamation provides for the remedy of Damages and in India, either people find multiple ways to escape it, even when the Court acts as a watchdog, or, are willing to give the money and not accept the wrong they've done. Hence, making a person criminally liable for defamation remains a feasible option. Moreover, state is considered as a guardian of the rights of an individual. So it is the duty of the state to protect the rights of its citizens and making it a criminal offence allows the state to fulfil its "Compelling interest".

THE FAMOUS CASE OF SUBRAMANIAN SWAMY V. UNION OF INDIA⁸: EXPLANATION OF SUPREME COURT'S VIEW ON THE CONSTITUTIONALITY OF DEFAMATION LAWS

Several politicians like Subramanian Swamy, Rahul Gandhi and Arvind Kejriwal, were charged with the case of criminal defamation. So, several petitions were filed by them challenging the constitutionality of the offence of criminal defamation. Their stance was that the offence of criminal defamation obstructs the right to freedom of expression. During the pendency of the constitutional proceedings, the criminal proceedings were stayed.

Petitions were filed under Article 32 of the Indian constitution and the constitutional validity of Section 499 and Section 500 of the Indian Penal Code as well as Section 199(1) to 199(4) of the Code of Criminal Procedure was challenged.

The judgement was delivered by Justice Dipak Misra and Justice Prafulla C.Pant agreed. The judgement widely discusses the constitutional validity starting by analysing what defamation and reputation means. The court held that reputation is protected by the right to life and personal liberty guaranteed under Article 21. However, Article 21 is a protection against the actions of the state. In the Supreme Court, however, notwithstanding the slight hurdle in textual context, held that a balance has to be stretched between Article 21 which protects right to reputation and Article 19(1)(a). Though the court did not discuss as to how the balancing was to be done, but it asserted that free speech could not become a hindrance to a person's right to reputation.

⁸ Subramanian Swamy v. Union of India AIR 2016 SC 2728

Thus, the court made it clear that right to reputation is a fundamental right protected under Article 21 of the Constitution, and, it also emphasised that the same prevails over freedom of speech and expression. We all know that, in the last 30 years, the Court has widely interpreted Article 21 to include various aspects like right to pollution free environment or right to sleep, etc. Most importantly, “Instead of using Article 21 as a shield to protect the individual against the state persecution or indifference, it used it as a sword to cut down the fundamental right to freedom of speech and expression”⁹.

Secondly, the court invoked the concept of “Constitutional fraternity”. The court held that it is the feeling of fraternity and solidarity that exist between the members of a society which protects the criminal defamation law. Article 19(2) of the Constitution, does not include constitutional fraternity, i.e., constitutional fraternity is not a part of the eight categories provided under Article 19(2). The question that arises is that, when Article 19(2) nowhere talks about constitutional fraternity, then where does this concept originate from. The answer to this lies in the preamble. The three words, “liberty”, “equality” and “fraternity” emerged after the French revolution. It is from here that the balance of free speech against constitutional fraternity is talked about.

Loopholes In The Judgement-

The judgement, though declared Section 199 and 500 of the Indian Penal Code and Section 199(1) to 199(4) of the Code of Criminal Procedure, as constitutionally valid, yet had traces of certain silences and emissions. For example, the court did not discuss as to why an honest mistake is not allowed as a defence under Section 499. This omission specifically comes into limelight because The Supreme Court, long back was itself of the opinion that the civil law on defamation is unconstitutional as it does not allow honest mistake as a defence. Also, it was quite surprising that the claim that “criminal defamation creates a chilling effect upon speech” was not discussed widely and dismissed in one paragraph.

“Furthermore, the Court addressed the question whether the criminal defamation provisions violate the concept of ‘reasonableness’, either substantively or procedurally, examining whether it is vague, or arbitrary or disproportionate.

⁹ <https://www.thehindu.com/opinion/lead/a-blow-against-free-speech/Article14321176.ece1>, last visited on September 27, 2022.

Examining the four explanations included in the Penal Code provision on defamation, the Court concludes that these were neither vague nor ambiguous. The Court takes note that an imputation can only be treated as defamatory if it directly or indirectly, in the estimation of others, lowers a person's character or his credit. The Court took note that truth is a defence only when a statement also serves the public good, but opines that if a truthful statement is not made for any kind of public good but only to malign a person, this should not be constitutionally protected.

Finally, the Court holds that the penal code provision is not disproportionate. The reasonableness and proportionality of a restriction is examined from the stand 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 standard, the Court judged the criminal defamation laws to be proportionate. The Court rejected the contention that defamation is fundamentally a notion of the majority meant to cripple the freedom of speech and expression as too broad a proposition to be treated as a guiding principle to adjudge the reasonableness of a restriction"¹⁰.

Analysis Of The Famous Case Of Shreya Singhal V. Union Of India¹¹:

Two women were arrested under Section 66A of the Information Technology Act, 2000 by the police officers for posting allegedly offensive and objectionable comments on Facebook about the propriety of shutting down the city of Mumbai after the death of a political leader. The Section provides that-

“66A. Punishment for sending offensive messages through communication service, etc.--

Any person who sends, by means of a computer resource or a communication device,

(a) any information that is grossly offensive or has menacing character; or

(b) any information which he knows to be false, but for the purpose of causing annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred or ill

¹⁰ <https://globalfreedomofexpression.columbia.edu/cases/subramanian-swamy-v-union-india/>, last visited on September 27, 2022.

¹¹ Shreya Singhal v. Union of India AIR 2005 SC 1523; Writ petition (Criminal) No. 167 of 2012.

will, persistently by making use of such computer resource or a communication device;

(c) any electronic mail or electronic mail message for the purpose of causing annoyance or inconvenience or to deceive or to mislead the addressee or recipient about the origin of such messages,

shall be punishable with imprisonment for a term which may extend to three years and with fine.

Explanation.--For the purposes of this Section, terms "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.”

Though the two women were eventually released but it sparked media attention and criticism. These women also filed a petition, challenging the constitutional validity of these provisions on the ground that the right to freedom of speech and expression is been violated by the provision of Section 66A of the Information Technology Act, 2000.

The Supreme Court looked into the matter and while the constitutional validity of the provision was being evaluated and interim measure was taken that prohibited the arrest of any person pursuant to Section 66A unless the senior police officers approve such arrest.

The judgement was delivered by Justice Chelameswar and Justice Nariman. Section 66 a was analysed to have a chilling effect on right to freedom of speech and was struck down by the apex court. It was declared unconstitutional and was widely criticised for its weakness and over breadth. However, the court in the Subramanian Swamy case held that the Shreya Singhal case sat on a different footing than that of the present case. Shreya Singhal case had a narrow interpretation while in the Subramanian Swamy’s case which involved the right to reputation as an internal part of Article 21, had a very wide interpretation. The term chilling effect means a situation where the interest of an individual or a group is at stake and the freedom of speech and expression is under a dilemma of being suppressed by fear of penalisation.

A threat is posed to the natural as well as the legal right of an individual by a legal provision. With respect to being over breath, the Supreme Court held that the overall Area covered by Section 66A was very wide it covered any opinion on any subject matter virtually. Justice Nariman opined that the right to freedom of speech and expression is not merely an aspiration rather, it is “a cardinal value that is of paramount significance under our constitutional scheme.”

Article 19(1)(a) provides for the freedom of speech and expression and Article 19(2) provides for the various reasonable restrictions which can be imposed to limit the right to this freedom. The petitioners were of the opinion that the grounds stated in 19(2) more not legitimate defences and that they could not support the validity of Section 66A of the Information Technology Act, 2000.

They also argued that the provision of Section 66A does not fulfil the criteria of being a perfect criminal revision as it is not clear in its words and does not explicitly provide as to what would be punishable. Furthermore, the petitioners also argued that Section 66A was an obstruction to the right to freedom of speech and expression and the right to form an opinion or dissent. None of the grounds stated by the counsel on behalf of the State was able to justify as to why The penal provision should not be struck down as none of the defences like defamation, public order, decency or morality or the incitement of offence etc., contained in Article 19(2) was sufficiently able to justify the keeping of Section 66A in the statute books. Nariman J stated “Any law seeking to impose a restriction on the freedom of speech can only pass muster,” he further said, “if it is proximately related to any of the eight subject matters set out in Article 19(2).” The court pointed out that there was no nexus whatsoever between the criminalisation of “grossly offensive” or “annoying” speech and the restrictions permitted under the Constitution were self-evident.

Conclusion

The main crux of the discussion is the reconciliation between the law of defamation and the right to freedom of speech and expression - both are guaranteed under the Constitution. While the right to reputation is covered under Article 21 of the Indian Constitution, Article 19(1)(a) provides for freedom of speech and expression. There is a dire need of balancing the

two considering the increase in the number of cases filed under defamation law, basing its challenge on the right to freedom of speech and expression for example the case of Defamation filed against Tarun Gogoi, the arrest of comedian Kiku Sharda, etc. though the decision of the Subramanian Swamy case settles the law regarding defamation to be valid, yet certain questions remain unanswered. For example, what is the need of having criminal provisions for defamation when India believes in the concept of reformatory justice and not retributive justice?

Also, seeing the stand of the Supreme Court in the Subramanian Swamy's case, it is amply clear that the court is not of the opinion of striking down the criminal defamation provisions. Hence, the following measures can be taken into consideration for better implementation of laws:

1. Before convicting anyone under the criminal defamatory provisions, it should be made thoroughly clear that all the ingredients of the said offence are fulfilled.
2. Also no charges of criminal defamation should be finalised until and unless it is definitely proved that the statements made were either false or reckless and were made with the intent to harm the party claiming to be defamed.
3. The police authorities should not take part in the initiation or public prosecutors should not take part in the prosecution and criminal defamation cases, irrespective of the case being a high-profile one or not.
4. Also long time in presentment pleased to the suspension of the right to freedom of speech and expression again. Suspension to use any form of media or to continue in a certain profession like journalism or excessive fines should not be a resort in case of defamation charges.

Criticism is good only up to the time it is healthy. Healthy criticism enables creativity and growth. Judiciary, at its level, gives its best efforts to make harmonious construction in cases of matters relating to defamation. But, we as citizens also have certain duties to abide by in return of the rights guaranteed to us by the state.