

## DEFAMATION: EMERGING TRENDS IN INDIA

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### *Abstract*

*Freedom of Speech and Expression being a fundamental right in the democratic country is as essential as human existence. However, there arises a need to balance this right of freedom of speech and expression with one's right to reputation and thus rises the conflict. This paper aims to explore the various forms of defamation. The paper focuses on the dire need to regulate freedom of speech and expression on the internet as it is causing irreparable injury to the reputation of the people. The paper also highlights as to how Indian Judiciary has been in favour of criminalization of defamation.*

**Keywords:** Defamation, Freedom of speech and expression, internet, press, decriminalization.

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## **INRODUCTION**

Next to life, what man cares most is their reputation. Each man is qualified for have his reputation. Jurist Blackstones has added to this proposition and indicted that “Every man is entitled to have his reputation preserved inviolate”. A man’s reputation is his property. Contingent on impression of that man, reputation is more significant to him than whatever other property. Reputation is the condition of being held in high regard and respect or the general estimation that people in general has for a man. Thus, the privilege to have reputation includes appropriate to have reputation untouched or in place.

## **DEFAMATION: MEANING**

The word defamation is driven from Latin word ‘Diffamare’. Semantics or Etymology of the Latin word ‘Diffamare’ provides that it means ‘Spreading evil report about someone’. Thus, defamation is causing injury to the reputation of a person. Hence the subject of defamation is fundamentally connected up with one’s reputation. In any case, the idea is no place characterized in books of laws. Despite the fact that numerous definitions have been endeavored to surround this word ‘defamation’, none has been discovered thorough. As per Black’s Law Dictionary, defamation means the offence of injuring a person’s character, fame, or reputation by false and malicious statements. The term is by all accounts exhaustive of both libel and slander.<sup>1</sup>

Defamation is civil as well as criminal wrong. Likewise the codified criminal law on the subject, the civil law of defamation is not codified. The criminal law on the subject is contained in separated 499 to 502 of Indian Penal Code, 1860. Be that as it may, defamation as a Civil Wrong is secured under Law of Torts. It is simply in view of precedential advancements, i.e. through choices articulated by Courts.

Defamation can be either: Libel - Representation in a permanent form, e.g., writing, printing, picture, effigy or Statute or Slander – Depiction in transient form. It is basically through words spoken or gestures.

## **LEGAL PROVISIONS REGARDING DEFAMATION**

English law: The Defamation Acts of 1952 and 1996 are the important statutes in England

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<sup>1</sup> Ratanlal and Dhirajlal, The Law of Torts 279 (LexisNexis, New Delhi, 26<sup>th</sup> Ed., 2013)

that lay down the law related to defamation. Under English law, there is a distinction between libel and slander. Two reasons have been accorded. Firstly, libel not slander is punishable under

Criminal law: In fact, slander is no offence. Thus, libel is always actionable per se. Secondly; in most cases of slander “special damage” must be shown.

As far as law of torts is concerned, slander is actionable, only in exceptional cases on proof of special damage. There are four exceptional instances in which proof of special damage has to be proved:

- I. Imputation of criminal offence to the plaintiff,
- II. Imputation of a contagious (disease) or an infectious disease to the plaintiff (which has the effect of preventing others from associating with the plaintiff),
- III. Imputation that a person is incompetent, dishonest or unfit in regard to the office, profession, calling or trade or business carried out by him,
- IV. Imputation of unchastity or adultery to any woman or girl is also actionable per se.

This exception was created by the Slander of Women Act, 1891. Thus, in England slander is only a civil wrong. However, it is to be noted that civil action is more onerous than criminal action.<sup>2</sup>

## **DEFAMATION LAWS IN INDIA**

In India, there is no such distinction between libel and slander. Both libel and slander are criminal offence. For better understanding, it can be divided into two categories: Criminal and Civil.

The IPC under chapter XXI sections 499-502 protects an individual's / person's reputation. Defamation against the state is contained in section 124A [Sedition], Section 153 of the Code provides for defamation of a class i.e., community [Riot], while section 295A deals with hate speech with regards to outraging religious sentiments. [Hate Speech]

An interesting aspect of defamation as a tort is that it is only a wrong if the defamation is of a nature which harms the reputation of a person who is alive. In most cases, this translates to saying that it is not a tort to defame a deceased person since, as a general rule, the plaintiff

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<sup>2</sup> id

needs to be able to prove that the defamatory words referred to him. However, this does not mean that there can be no cause of action if a dead person is defamed - if, for example, a defamatory statement negatively impacts the reputation of a deceased person's heir, an action for defamation would be maintainable. Further, if an action for defamation is instituted, and defamation is found to have been committed, damages will be payable to the plaintiff (usually, the person defamed). In addition to this, a person apprehensive of being defamed in a publication may seek the grant of an injunction to restrain such publication. However, pre-publication injunctions are rarely granted as Indian courts have tended to follow the principle laid down in the 1891 case of *Bonnard v. Perryman*<sup>3</sup> which is as follows:

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.

This principle has been followed by a division bench of the Delhi High Court in the 2002 case of *Khushwant Singh v. Maneka Gandhi*<sup>4</sup>.

As such, even if there is an apprehension that content may be of a defamatory nature, it is likely that publication would not be restrained except in exceptional cases - presumably, those cases where the later payment of damages would clearly not suffice to set right the wrong done to the person defamed. In non- exceptional circumstances, Indian courts have shown a tendency to support free speech, and have not displayed a tendency to grant injunctions which would have the effect of muzzling speech on the ground of possible defamation.<sup>5</sup> It is significant to mention that a defamation bill was proposed by the Rajiv Gandhi government to deal with the law pertaining to defamation. However, Defamation Bill, 1988 received widespread criticism from the media and opposition parties due to its draconian provisions; as a result it was withdrawn.

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<sup>3</sup> 14 (1891) 2 CH 269

<sup>4</sup> AIR 2002 Delhi 58

<sup>5</sup> Available at: <http://copyright.lawmatters.in/2012/02/defamation.html> (Accessed on 09/02/2016)

## WHAT CONSTITUTES DEFAMATION?

### 1) Words must be defamatory

The statement must be defamatory. According to Lord Atkin, the statement must tend to lower the claimant in the estimation of right-thinking members of society generally, and in particular cause him to be regarded with feelings of hatred, contempt, ridicule, fear and disesteem.

Mere abuse: Vulgar abuse is not defamatory. Mansfield CJ stated “For mere general abuse spoken no action lies.”<sup>6</sup> Winfield & Jolowicz states that spoken words which are prima facie defamatory are not actionable if it is clear that they were uttered merely as general vituperation and were so understood by those who heard them. Further, the same applies to words spoken in jest.<sup>7</sup>

Innuendo: Sometimes a statement may not be defamatory on the face of it but contain an innuendo, which has a defamatory meaning. Such a statement may be actionable. The hidden meaning must be one that could be understood from the words themselves by people who knew the claimant<sup>8</sup> and must be specifically pleaded by the claimant.

### 2) Reference to the claimant

The statement must refer to the claimant, ie, identify him or her, either directly or indirectly. If a class of people is defamed, there will only be an action available to individual members of that class if they are identifiable as individuals. “*If a man wrote that all lawyers were thieves, no particular lawyer could sue him unless there was something to point to the particular individual.*”<sup>9</sup>

If the defendant made a reference to a limited group of people, eg the tenants of a particular building, all will generally be able to sue.<sup>10</sup> This issue was considered by the House of Lords in *Knupffer v. London Express Newspaper Ltd.*<sup>11</sup>

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<sup>6</sup> *Thorley v. Kerry* (1812) 4 Taunt 355 at 365

<sup>7</sup> *Donoghue v. Hayes* (1831) Hayes R 265

<sup>8</sup> *Lewis v. Daily Telegraph* [1964] AC 234

<sup>9</sup> per Willes J in *Eastwood v. Holmes* (1858) 1 F&F 347 at 349

<sup>10</sup> *Browne v. DC Thomson* (1912) SC 359

<sup>11</sup> [1944] AC 116

At common law it was irrelevant that the defendant did not intend to refer to the claimant. Section 4 of the Defamation Act 1952 provided a special statutory defence in cases of ‘unintentional defamation’, by allowing the defamer to make an ‘offer of amends’ by way of a suitable correction and apology and may include an agreement to pay compensation and costs. The defence is now contained in sections 2-4 of the Defamation Act 1996, which was an attempt to modernise the law. The person accepting the offer may not bring or continue defamation proceedings. If the offer to make amends fails, the fact that the offer was made is a defence and may also be relied on in mitigation of damages. A publication made ‘maliciously’ (spitefully, or with ill-will or recklessness as to whether it was true or false) will destroy the defence of unintentional defamation.

### 3) Publication

The statement must be published, ie communicated, to a person other than the claimant. For example, dictating a defamatory letter to a typist is probably slander<sup>12</sup>, but when the letter is published to a third party it is libel. However, in *Bryanston Finance v. De Vries*<sup>13</sup> it was held that where a letter was written to protect the interests of the business there was a common interest between the employer and employee, and so a letter dictated to a secretary in the normal course of business was protected by qualified privilege.

A statement made to one’s own spouse will not be ‘published’ for the purposes of defamation.<sup>14</sup> Communication between husband and wife is protected as any other rule might lead to disastrous results to social life.

The defence sometimes known as ‘innocent dissemination’ is designed to protect booksellers and distributors of materials which may contain libellous statements. The law is now contained in s1 of the Defamation Act 1996.

A person has a defence if he shows that he was not the author, editor or commercial publisher of the statement; he took reasonable care in relation to its publication; and he did not know, and had no reason to believe, that what he did caused or contributed to the publication of a defamatory statement. A person shall not be considered the author, editor or publisher of a statement if he is only the printer, producer, distributor, or seller of printed material

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<sup>12</sup> Salmond and Heuston, Law of Torts, 1996, p154

<sup>13</sup> [1975] QB 703

<sup>14</sup> *Wennhak v. Morgan* (1888) 20 QBD 635 at 639

containing the statement, or the broadcaster of a live programme.

An internet service provider was held not to be the publisher, within the meaning of s1, of defamatory statements posted on a newsgroup, and therefore was entitled to rely on. However, on the facts the claimant had notified the defendants that the posting was defamatory and requested that they remove it, but they had refused to do so.

Consent of the claimant to the publication of a statement, by showing other people defamatory material which the defendant meant for the claimant only, will create a situation in which technically there has been no publication.<sup>15</sup>

### TEST TO DETERMINE DEFAMATION

#### 1. *Does the statement refer to you?*

Regardless of the possibility that you are not particularly named, it must be evident the announcement is about you. A general articulation, which might possibly apply to you, won't be sufficient.

#### 2. *Is the statement substantially true?*

Truth isn't an outright defense; however it can be troublesome or even difficult to overcome. Why just substantially? Indeed, even an announcement with a few mistakes or, on the other hand distortions can in any case be considered by and large genuine. For illustration, somebody tells a partner you were captured over the end of the week for intoxicated driving in the wake of slamming your auto. In any case, there was no mishap; you were halted and captured at a checkpoint. This detail will probably have small bearing on any potential defamation claim.

#### 3. *Is the statement an opinion?*

An opinion may be brutal and it might be savage, yet it is hard to demonstrate as defamatory. If the statement started with something that could demonstrate it is an opinion ("In my conclusion", "it is my conviction", and so on.), it is considered as an opinion rather than as a statement of fact.

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<sup>15</sup> *Hinderer v. Cole* (1977) (unreported) - defamatory letter sent by the defendant to the claimant was shown by the claimant himself to third parties

4. *Have you suffered any substantial damages?*

Would you be able to point to a particular individual or individuals who have a lower conclusion of you as a result of the defamatory statement announcement? Are you in risk of losing your work or other wage on account of the statement? You may be humiliated, stunned or distraught about the statement, yet in the event that you can't demonstrate any genuine harm, you have no case.

## **DECRIMINALISATION OF DEFAMATION AND THE INDIAN JUDICIARY**

The decriminalization of defamation has been a burning issue in recent times. The provision of IPC which makes defamation a criminal offence raises a serious doubt on the fundamental freedom of speech and expression. In the presence of such penal provision this fundamental right loses its sanctity.

In the recent and landmark case of *Subramanian Swamy v. Union of India*<sup>16</sup> petitions filed by leading political figures unanimously demanded decriminalizing defamation on one hand and strengthening civil remedies and financial compensation for the loss of individual reputation.

According to the petitioner, these provisions cast an unreasonable restriction on free speech, one that falls beyond article 19(2) of the Constitution of India. Apart from that, other contentions submitted by the petitioner are as follows:

- i. In a democratic body polity, public opinion, public perception and public criticism, are the three fundamental pillars to guide and control the Executive action and, if they are scuttled or fettered or bound by launching criminal prosecution, it would affect the growth of a healthy and matured democracy.
- ii. Fundamental rights of liberty and free speech are controlled and not absolute as per the Constitution, but in the name of control the freedom of speech that pertains to criticism of certain governmental actions cannot be gagged.
- iii. The individual interest in the guise of reputation cannot have supremacy over the larger public interest, for the dominant interest in a democracy is the collective interest and not the perspective individualism.
- iv. The Executive does not permit expression of public opinion by instituting cases of

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<sup>16</sup> Writ Petition (Crl.) No. 184/2014), Available at: [http://supremecourtindia.nic.in/outtoday/wr18414p-2014\\_10\\_30.pdf](http://supremecourtindia.nic.in/outtoday/wr18414p-2014_10_30.pdf)



defamation through the public prosecutors by spending the sum from the State exchequer which is inconceivable.

- v. The concept of sanction, which is enshrined under Section 199(2) of the Code of Criminal Procedure, is a conferment of unfettered power by which the citizenry right to criticize, is gradually allowed to be comatose.

The counsel appearing for the State of Tamil Nadu submitted that sections 499 and 500 could not be said to travel beyond reasonable limits on free speech, because article 19(2) itself imposes such a restriction.<sup>17</sup> Also, 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>18</sup> The bench while going through the petition raised a question that whether abolition of criminal action in other countries<sup>19</sup> could really have effect when the court decides on the constitutional validity of a provision regard being given to India’s own written and organic constitution.

However, the Court held 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.

## DEFAMATION AND THE PRESS

Freedom of Expression and the press is the backbone of all democratic set up and the press has an exceptional part to play in giving a gathering to free political dialogs for the best possible working of a popular government. In order to preserve the democratic nature of life which is provided under the Indian Constitution, it is necessary that people should have the freedom to express their feelings and have the opportunity to make their views known and disseminated to the people at large. The right to express free and honest opinion on the matters of public policy strengthens the spirit of democracy and the Press has an integral role

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<sup>17</sup> *Vijay Kant v. Union of India* [T.P. (CrI) No. 94-101/2015].

<sup>18</sup> *Arvind Kejriwal v. Union of India* [W.P. (CrI) No. 56/2015]

<sup>19</sup> Cyprus, Estonia, Ireland, Romania, Sri Lanka and the United Kingdom (UK) have repealed criminal defamation as an offence against private individuals.

to play in it. This role can be effectively played only in the absence of any restrictions.

Right to freedom of the press is not specifically mentioned in article 19(1)(f) of the Constitution,<sup>20</sup> and what is mentioned there is only freedom of speech and expression. Since the enactment of the Constitution the question has arisen whether the freedom of speech and expression includes within its ambit freedom of the press, which is essentially freedom of publication and freedom of circulation of the matter so published. The reference to the debate of the Constituent Assembly is relevant for the point.<sup>21</sup>

It was made clear by Ambedkar, Chairman of the Drafting Committee, that no special mention of the freedom of the press was necessary at all as the press and an individual or a citizen were the same so far as their right of expression was concerned. The Constitution of the United States provides specifically for the guarantee of freedom of the press and gives recognition of the subject-matters of the press as an organ of publicity and media of mass communication. But the framers of the Indian Constitution were content to treat the freedom of the press as an essential part of the freedom of speech and expression as guaranteed in Article 19 (1)(a) of the Constitution.

In *Romesh Thappar v. State of Madras*<sup>22</sup> and *Brij Bhushan v. State of Delhi*<sup>23</sup>, the Supreme Court took it for granted that the freedom of the press was an essential part of the right to freedom of speech and expression. It was observed by Justice Patanjali Sastri in *Romesh Thappar* that the freedom of speech and expression included propagation of ideas, and that freedom was ensured by the freedom of circulation<sup>24</sup>. It is thus clear that the right to freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and other views with complete freedom and by resorting to all available means of publication. This view was reiterated in *Sakal Papers (P) Ltd. v. Union of India*<sup>25</sup> and

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<sup>20</sup> Article 19: (1) All citizens shall have the right— (a) to freedom of speech and expression; (2) Nothing in sub-clause (a) of clause (1) shall affect 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 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.

<sup>21</sup> 7 Constituent Assembly Debates 712-716, 780

<sup>22</sup> AIR 1950 SC 124

<sup>23</sup> AIR 1950 SC 129

<sup>24</sup> AIR 1950 SC 124, 127

<sup>25</sup> AIR 1962 SC 305

regarded as settled in *Bennett Coleman & Co. v. Union of India*<sup>26</sup>. Moreover, freedom of the press in India stands on no higher footing than the freedom of speech and expression of a citizen and no privilege attaches to the press as such as distinct from the freedom of the citizen.<sup>27</sup> As the right to freedom of speech and expression is guaranteed to a citizen, and not to a person, a non-citizen running a daily paper, is not qualified for the advantage of flexibility of the press.

The right to freedom of speech and expression is not absolute and its exercise is subject to the limits permissible under clause 2 of article 19 of the Constitution; these limits apply equally to freedom of the press. Parliament or state legislatures may validly pass a law which places restrictions on the right to freedom of speech and expression provided such restrictions are related to one or more of the purposes mentioned in clause (2) of article 19. These restrictions have to be reasonable, and the 'reasonableness' is justiciable.

The recent trends highlight the growing charges leveled against the journalist for the defamation. In one of the recent case *The Second JM First Class (JMFC)* court convicted senior journalist Gauri Lankesh and sentenced her to simple imprisonment for six months and imposed Rs 10,000 as a fine in a defamation case. Further, Chief minister Oommen Chandy has filed criminal defamation complaint against Saritha S Nair and four media personalities for allegedly conspiring and creating a fake document for alleging sexual harassment charges against Chandy. These trends manifestly highlight the sad reality of misuse of defamation laws.

Present day media has upgraded the nature of democratic process by giving a stage to open support on issues of national or social worry in a way that can impact the Government. Media fulfills a two overlay need. It not just conveys information to the general population, additionally conveys back open reactions to the administration, convincing the later to be more open to public opinion. But, however, the media can perform its function effectively only in the absence of any fear of being prosecuted. As long as this fear exists there cannot be justification of democratic set up which is provided by the Constitution. Thus, there is a dire need for decriminalization of and to accord higher protection to Media in the matters of defamation.

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<sup>26</sup> AIR 1973 SC 106

<sup>27</sup> *M.S.M. Sharma v. Sri Krishna Sinha*, AIR 1959 SC 395, 402

## DEFAMATION AND THE INTERNET

The development of the Internet has enabled people worldwide to look for and share information. In any case, while the Internet presents remarkable open doors for communication and debate, it likewise intensifies the pressure as of now observed disconnected between flexibility of articulation and different interests. Among those contending interests are the rights to reputation and privacy, generally ensured by criticism law.

Since, India's civil law of defamation is not codified and owes its origins to English common law that has subsequently evolved through judicial activism. Under such law, the offence of defamation is *prima facie* made out by the publication of a statement which refers to the plaintiff and tends to lower the reputation in the minds of reasonable people. The burden then falls on the defendant to escape from the liability. In this form, defamation acts as a strict liability offence. This means that an author cannot save herself even if she has taken due care in publishing her content.

In 2001, the Delhi High Court assumed jurisdiction over cyber defamation for the first time in the case of *SMC Pneumatics v. Jogesh Kwatra*<sup>28</sup>. The defendant was restrained from sending obscene, vulgar, abusive, intimidating, humiliating and defamatory emails to the plaintiffs and its subsidiaries. This has paved the way for the application of traditional civil and criminal defamation laws to the Internet. While the Internet doesn't foreclose the application of pre-existing laws, we must note that such laws were not drafted keeping the Internet in mind and Shreya Singhal's case<sup>29</sup> 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 Article 19(a). Section 66A of the Information Technology Act which was widely criticized 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.

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<sup>28</sup> CS(OS) No. 1279/2001, Delhi High Court

<sup>29</sup> *Shreya Singhal v. Union of India*, AIR 2015 SC 1523

The term ‘chilling effect’ in lawful setting essentially depicts a circumstance where a speech or conduct is stifled by dread of penalisation at the interests of an individual or gathering. It is the hindrance of the lawful exercise of legal rights by the danger of lawful sanction. With respect to expansiveness, the apex court opined that the net thrown by section 66A was wide to the point that basically it secured any opinion on any subject.<sup>30</sup>

Thus, striking down Sec 66A of the Information Act as unconstitutional is a positive move in regard to give meaning to the fundamental freedom guaranteed under Article 19(1)(a) of the Constitution but there is a long journey to travel in order to give effective meaning to the fundamental freedom of speech and expression.

### REMEDIAL MEASURES AT THE DISCRETION OF THE COURT

The case of *Parshuram Babaram Sawant v. Times Global Broadcasting Co. Ltd.*<sup>31</sup> is an apt example of the fact that the remedies available in the matters of defamation is highly at the discretion of the court and sometimes so disproportionate that it shakes the very existence of fundamental freedom of speech and expression. In the abovementioned case, the Plaintiff, Mr. Parshuram Babaram Sawant, a former judge of the Supreme Court, the former chairman of the Press Council of India and the former president of the World Association of Press Councils sued Defendants No. 1 and No. 2 i.e., the Times Now Channel and the Editor in Chief, for damages of Rs. 100 Crores. According to the facts of the case, as the scandalous Provident Fund Scam (June/July 2008) of Gaziabad District Court involving a number of judges comprising the higher judiciary began to surface, the Times Now Channel began reporting all the developments related to it. The public at large and the legal fraternity across the world watched as it unfolded. Amongst the judges, Justice P. K. Samantha of the Calcutta High Court was allegedly involved. On 10.9.2008, as the channel was telecasting news relating to this scam, a photograph of the Plaintiff i.e., Mr. P.B. Sawant was flashed as that of Justice P.K. Samantha. The flashing of photograph created a false impression amongst all viewers in India and abroad that Mr. P.B. Sawant was involved in the PF Scam, which is per se highly defamatory considering his stature in the society. Though the said channel stopped publishing the photograph of the plaintiff when the mistake was brought to their notice, no corrective or remedial steps to undo the damage caused to the reputation of the Plaintiff were taken by the defendants on their own. Mr. P.B. Sawant vide a strongly worded letter called

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<sup>30</sup> *Supra* note 1

<sup>31</sup> Special Suit No. 1984/2008

upon the Times Now Channel to apologize publicly and asked for damages of Rs. 50 crores for the harm caused to his reputation. The channel then tendered an apology informing that it had published a corrigendum on 23.9.2008. It also conveyed that the showing of the photograph of the plaintiff as an accused in PF scam was an unintentional error. But the reply was completely silent about the damages demanded by the Plaintiff. Considering this to be a belated action taken by the defendant that caused him mental anguish and damaged his reputation, the Plaintiff made it known to the defendants that their apology or corrective action was neither earliest nor sincere. Hence, the Plaintiff demanded an enhanced compensation of Rs. 100 crores. The learned judge held that the amount of damages awarded in respect of vindication and inquiry to reputation and feelings depends on a number of factors, which are not exhaustive and are based on facts of different cases. These factors have been elaborated as follows:

- i. The gravity of the allegation
  - ii. The size and influence of the circulation
  - iii. The effect of the publication
  - iv. The extent and nature of the claimant's reputation
  - v. The behavior of the defendant
- An examination of these factors was done in the context of the case in the following corresponding manner:
- I. The gravity of the allegation was observed to be extremely serious in view of the former positions Mr. P.B.Sawant had held.
  - II. The size and influence of the Times Now channel is undeniably large as a 24X7 hour current affairs news channel with a viewership in India and abroad.
  - III. With regard to this size and influence of the circulation, the effect of the publication was considered to be extremely damaging to the reputation of the plaintiff.
  - IV. The extent and nature of the claimant's reputation is undisputed.
  - V. The behavior of the defendant was decidedly "extremely casual, callous and cavalier" as they had allowed the defamatory news to go uncorrected for about 13 days.
  - VI. And as for the behavior of the plaintiff, the learned judge took note of how his PA had called the news channel the same day of the incident, although denied by the claimants, and how the Plaintiff patiently waited for remedial steps to be taken. Since these steps were not taken, the Plaintiff wrote a letter

demanding a public apology and compensatory damages of Rs. 50 Crores from the defendants. But on observing their callous attitude to this, he enhanced the sum to Rs.100 Crores. Taking into consideration these circumstances, the evidence and citations put forth before the learned judge, she held that the plaintiff is entitled to damages amounting to Rs 100 Crores.

Case of such type throws light upon the fact that existence of freedom of speech is now somehow limited in words as there is a great fear in the exercise of such right due to punitive attitude of judiciary in case of defamation. Thus, there stands a dire need to make provisions to guide the judiciary regarding grant of compensation in the matters of defamation in order to give effective meaning to the fundamental right of freedom of speech and expression. Moreover, such an attitude of the judiciary also highlights its discriminatory nature in regard to granting of compensation as the poor person is not entitled to claim same damages as compared to an elite person. Thus, there is violation of Art 14 of the Constitution in that regard.

## **CONCLUSION**

Thus, the Right to Reputation and Right to Free Speech and expression are both integral part of the Constitution of India. Where Free speech is basic tool for a democratic government to work, a man's reputation is his most prized possession. This puts a heavy burden on the judiciary to strike a balance between the two essential rights. The judiciary should not impose unreasonable restrictions on the exercise of fundamental right of freedom to speech and expression and neither should it adopt a lenient approach to allow people to injure the reputation of others.