

Sopore Law College

University of Kashmir

Moot court Memorial 2024

Enrolment No: - 20042128015

Semester BA. LLB 7th Semester



Word count

3159 words

Group A

BEFORE THE HONOURABLE SUPREME COURT OF INDIA

Shaila RasheedPetitioner

V.

Kanniammal & another Respondent

MEMORIAL ON BEHALF OF PETITIONER

Sopore Law College, Seer Road, Sopore, Baramulla

TABLE OF CONTENTS

LIST OF ABBRIEVATIONS4

INDEX OF AUTHORITIES5,6

STATEMENT OF JURISDICTION7

STATEMENT OF FACTS8

STATEMENT OF ISSUES8

SUMMARY OF ARGUMENTS.....10,11

ARGUMENTS ADVANCED12 to 16

PRAYER17

LIST OF ABBREVIATIONS

AIR	All India reporter
Cr.P.C	Criminal Procedure code
J.	Justice
Hon'ble	Honourable
IPC	Indian Penal Code, 1860
Ltd	Limited
HC	High Court
Art	Article
No.	Number

Index of Authorities

Case Laws

NAME OF THE CASE	CITATION
Badri Prasad vs. Dy. Director of Consolidation	1978 AIR SC 1557
Dhannulal and Others vs. Ganeshram and Another	AIR 2015 SCW 2839
Khushboo vs. Kanniammal & Anr.	AIR 2010 SC 3196
Vidyadhari & Ors. vs. Sukhrana Bai & Ors	2008 AIR SC 1420
D. Velusamy vs. D. Patchaiammal	2011 AIR SC 479
Bharatha Matha & Anr. vs. R. Vijaya Renganathan & Ors	AIR 2010 SC 2685
Indra Sarma vs. V. K. V. Sarma	2013 AIR SCW 6783
Lalita Toppo vs. State of Jharkhand & Anr.	30 OCT ,2018
Indian Express Newspapers v. Union of India	1986 AIR SC 515
Bennett Coleman & Co. v. Union of India	(1972) 2 SCC 788
Union of India v. Assn. for Democratic Reforms (2002)	AIR 2002 SC 2112
S. Rangarajan v. P. Jagjivan Ram	(1989) 2 SCC 574
Shreya Singhal v. Union of India	(2015) 5 SCC 1
Sakal Papers (P) Ltd. v. Union of India	AIR 1962 SC 305
K.A. Abbas v. Union of India	(1970) 2 SCC 780

R. Rajagopal v. State of Tamil Nadu	(1994) 6 SCC 632
Indibily Creative Pvt. Ltd. v. Govt. of West Bengal	(2020) 12 SCC 436
Subramanian Swamy v. Union of India	(2016) 7 SCC 221:
Kaushal Kishore vs. State of Uttar Pradesh & Ors	2023 4 SCC 1

Books referred

1. Constitution of India, M. P. Jain
2. Constitutional law of India, Dr.J.N. Pandey
3. Indian penal code, 1860 S. N. Mishra
4. Criminal Procedure code, Mulla
5. Principles of Criminal Law, Andrew Ashworth
6. The Code of Criminal Procedure, S.C Sarkas

Statutes Referred

1. Universal Law Publication
2. All India report

Online database

1. www.freelaw.in
2. www.indiankanoon.org
3. simplekanoon.com
4. www.iipleaders.com
5. centurylawfirm.in
6. aishwaryasandeep.in
7. lawandotherthings.com
8. jlrjs.com
9. frontline.thehindu.com
10. www.thehindubusinessline.com
11. lawtimesjournal.in

STATEMENT OF JURISDICTION

The jurisdiction of this court is invoked pursuant to the provisions of Article 32 of the Constitution of India, which confers upon the Hon'ble Supreme Court the power to issue writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, for the enforcement of fundamental rights conferred by Part III of the Constitution.

Furthermore, the appeal before this court arises from the judgment of the High Court of Madras, which exercised its jurisdiction under Section 482 of the Code of Criminal Procedure, 1973, thereby making the matter amenable to the jurisdiction of this Hon'ble Court under Article 136 of the Constitution of India.

Additionally, the issues presented in this appeal involve questions of constitutional significance, particularly pertaining to the fundamental right to freedom of speech and expression under Article 19(1)(a), and the right to a fair trial under Article 21 of the Constitution. Therefore, this Hon'ble Court's jurisdiction is invoked to adjudicate upon these constitutional questions and to ensure the proper administration of justice in accordance with the principles enshrined in the Constitution of India.

In light of the foregoing, it is respectfully submitted that this Hon'ble Court possesses the requisite jurisdiction to entertain the present appeal and to grant appropriate relief in furtherance of justice.

STATEMENT OF FACTS

1. Shaila Rasheed, who is a well-known actress, has approached the Hon'ble Supreme Court to seek quashing of criminal proceedings pending against her.
2. As many as 23 criminal complaints were filed by Kanniammal & Anr against the Appellant, mostly in the State of Tamil Nadu, for the offences contemplated under Section 499, 500, and 505 of the Indian Penal Code, 1860, and Section 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986.
3. The trigger of these offences was some remark made by the Appellant regarding the topic, which was the increasing incidence of premarital sex, especially in the context of live-in relationships, to a leading news magazine, i.e., India Today.
4. Later, the same issue was reported in a distorted manner in another periodical, i.e., Dhina Thanthi.
5. Faced with the predicament of contesting the criminal proceedings instituted against her in several locations, the Appellant had approached the High Court of Madras, praying for the quashing of these proceedings through the exercise of its inherent power under Section 482 of the Code of Criminal Procedure, 1973.
6. The High Court rejected her plea.
7. At the same time, in order to prevent the inconvenience of litigating the same subject matter in multiple locations, the High Court directed that all the cases instituted against the Appellant be consolidated and tried together by the Chief Metropolitan Magistrate, Egmore (Chennai).
8. Aggrieved by the aforesaid judgment, the Appellant approached the Supreme Court by way of a batch of special leave petitions.

STATEMENT OF ISSUES

1. Whether individuals engaging in live-in relationships are entitled to legal recognition and protection of their rights in India?
2. Whether the appellant's fundamental right to freedom of speech and expression under Article 19(1)(a), and the right to a fair trial under Article 21, have been infringed upon, necessitating intervention by the Supreme Court to uphold constitutional principles?

SUMMARY OF PLEADINGS

Issue no. 1

Whether individuals engaging in live-in relationships are entitled to legal recognition and protection of their rights in India?

Summary of arguments: The counsel most humbly submits that in modern society, the status of live in relationship is very liberal as to the older times. If seen in earlier times, live in relationship was given narrow scope and considered immoral, but never illegal. Legislation and judicial precedents over the time have given validity to the live in relationship. Although live in relationships have not been granted legal status or recognition, this concept is slowly emerging and is visible in recent legal developments. In 2003, the Supreme Court set up the Malimath Commission for reforms in the Criminal Justice System. The report submitted by this Commission mentioned that-

“The definition of the word ‘wife ‘in Section 125 CRPC should be amended so as to include a woman who was living with the man as his wife for a reasonably long period, during the subsistence of the first marriage.”

The legislature has acknowledged live-in relationships by giving rights and protection to those females who are not legally married, but rather are living with a male individual in a relationship, which is in the idea of marriage, additionally akin to wife, however not equivalent to wife. Section 2(f) of the Domestic Violence Act, 2005 defines: Domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

Issue no. 2:

Whether the appellant's fundamental right to freedom of speech and expression under Article 19(1)(a), and the right to a fair trial under Article 21, have been infringed upon, necessitating intervention by the Supreme Court to uphold constitutional principles?

1. Freedom of Speech and Expression Article 19(1)(a):

Shaila Rasheed's remarks are protected under Article 19(1)(a) of the Constitution as they pertain to a public issue regarding premarital sex and live-in relationships. The statements were made in a public interest context and do not constitute defamation or public mischief.

2. Absence of Malice and Intent:

There was no malicious intent to defame or incite public mischief. The distortion of her remarks by periodicals misrepresented her original statements, negating the basis for the criminal complaints.

3. Misuse of Legal Process:

The 23 criminal complaints filed against her are vexatious and aimed at harassment. These complaints constitute an abuse of the judicial process, as they are based on misrepresented facts.

4. Lack of Prima Facie Case:

The complaints do not establish a prima facie case under Sections 499, 500, and 505 of the IPC, or Sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act. The legal provisions cited do not apply to the context of her remarks.

6. Constitutional Rights:

The appellant's fundamental rights to freedom of speech and expression under Article 19(1)(a) and to a fair trial under Article 21 have been infringed. The Supreme Court's intervention is necessary to uphold these constitutional principles and ensure justice.

ARGUMENT ADVANCED

Issue no 1

The counsel to the Hon'ble Supreme court respectfully submits that both the legislature and judiciary has acknowledged live in relationship and has given validity to this as par with the marriage. Your lordships for the first time, the validity of live-in relationships was upheld in the Supreme Court, Badri Prasad vs. Dy. Director of Consolidation on August 01, 1978. In this case, the bench observed that if a man and a woman lived together for a long time, such a relationship is presumed to be a marriage.

In the landmark judgment, S. Khushboo vs. Kanniammal & Anr. (April 28, 2010), the Supreme Court held that live-in relationships were not illegal as well as there's no such law that prohibits live-in relationships or pre-marital sex. It also highlighted that living together is a right to life as per Article 21 of the Constitution of India.

In the Dhannulal and Others vs. Ganeshram and Another case (April 08, 2015), the top court stated that after the death of a woman's live-in partner, she has the right to inherit property. In this case, the family members of the deceased contended that the woman should not be entitled to inherit property although she was living with the deceased for 20 years because she was not married to the deceased. The bench delivered the judgment considering its earlier decisions that if a man and a woman have been cohabiting for a long time, such a relationship is presumed to be a marriage by the court. Also, the SC in the January 22, 2008, judgment, Vidyadhari & Ors. vs. Sukhrana Bai & Ors., had held that the woman living with a man in a live-in relationship has the right to inherit her partner's property.

In the D. Velusamy vs. D. Patchaiammal case (October 21, 2010), the Supreme Court laid down certain criteria to define whether a relationship between two unmarried adults qualifies as a 'relationship in the nature of marriage' and is within the provisions of Section 2(f) of the Protection of Woman from Domestic Violence Act, 2005. This provision of the Act states that "domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;" The criteria illustrated by the SC bench in the afore-mentioned judgment is as follows: "In our opinion, a 'relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married:

- The couple must hold themselves out to society as being akin to spouses.
- They must be of legal age to marry.

- They must be otherwise qualified to enter into a legal marriage, including being unmarried.
- They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.”

In the landmark verdict of the top court in Bharatha Matha & Anr. vs. R. Vijaya Renganathan & Ors. case (May 17, 2010), the children born from live-in relationships were given the right to inherit a portion of their parent’s property. The bench said, “a child born of void or voidable marriage is not entitled to claim inheritance in ancestral coparcenary property but is entitled only to claim share in self-acquired properties, if any.” The live-in relationships also have a right to maintenance under Section 125 of the Criminal Procedure Code, 1973. Section 125 of the CrPC deals with ‘order for maintenance of wives, children and parents.

The Apex court in the Indra Sarma vs. V. K. V. Sarma (November 26, 2013) and Lalita Toppo vs. State of Jharkhand & Anr. (October 30, 2018) also played an important role in defining live-in relationships in India. In the recent judgment of the Lalita Toppo case, a woman in a live-in relationship for a significant period is entitled to claim maintenance under the provisions of the Protection of Women from Domestic Violence Act, 2005. This decision acknowledged the rights of women in live-in relationships and provided them with legal protection and financial support. Apart from this, there are certain judgments delivered by the High Courts that recognize the right to inherit properties in case of live-in relationships. These judgments have extended the scope of property rights for partners in live-in relationships, ensuring some level of financial security and stability. Therefore, the criminal proceedings against the Appellant, stemming from her remarks on live-in relationships, should be scrutinized in light of the legal recognition afforded to such relationships by the judiciary.

ARGUMENTS ADVANCED

ISSUE NO 2

Freedom of speech and expression is contained in **Art 19(1)(a)** of the Constitution of India, 1950 (COI). The **essence of free speech** is the ability to think and speak freely and to obtain information from others through publications and public discourse without fear of retribution, restrictions or repression by the Government. This Art states that **all** citizens shall have **the** right to freedom of speech and expression. The philosophy behind this Article lies in the Preamble of the Constitution, where a solemn resolve is made to secure to all its citizen, liberty of thought and expression.

The following aspects are included in Article 19(1)(a):

- Freedom of Press
- Freedom of Commercial Speech
- Right to Broadcast
- Right to Information
- Right to Criticize
- Right to expression beyond national boundaries
- Right not to speak or right to silence

Essential Elements of Article 19(1)(a), COI

- This right is available only to a citizen of India and not to foreign nationals.
- It includes the right to express one's views and opinions at any issue through any medium, e.g. by words of mouth, writing, printing, picture, film, movie etc.
- This right is, however, **not absolute** and it allows Government to frame laws to impose reasonable restrictions.

Indian Express Newspapers v. Union of India

The Court, in this case, observed that, Art 19 of the Indian Constitution does not use the phrase “freedom of press” in its language, but it is contained within Article 19(1) (a). There cannot be any interference with the freedom of press in the name of public interest. The purpose of the press is to enhance public interest by publishing facts and opinions, without which a democratic electorate cannot take responsible decisions. It is, therefore, the primary duty of courts to uphold the freedom of press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate.

Bennett Coleman & Co. v. Union of India, (1972) 2 SCC 788: This case established that freedom of speech and expression includes the right to express

one's opinions freely by word of mouth, writing, printing, picture, or any other manner. The restrictions on this right must be reasonable.

In Union of India v. Assn. for Democratic Reforms (2002), The SC held that one-sided information, disinformation, misinformation and noninformation, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and to impart and receive information which includes **freedom** expression includes the right to hold opinions.

In S. Rangarajan v. P. Jagjivan Ram, (1989) 2 SCC 574: SC held that everyone has a fundamental right to form his opinion on any issues of general concern. The Court held that freedom of expression cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered.

Shreya Singhal v. Union of India, (2015) 5 SCC 1: Section 66A of the IT Act was struck down for being violative of Article 19(1)(a). This case underscored the importance of protecting speech that may be unpopular or offensive to some.

Sakal Papers (P) Ltd. v. Union of India, AIR 1962 SC 305: The Court held that freedom of speech and expression includes the right to circulate one's views to a wider audience without interference.

K.A. Abbas v. Union of India, (1970) 2 SCC 780: The case recognized the necessity to balance freedom of speech with reasonable restrictions, noting that prior restraint must be exercised cautiously.

R. Rajagopal v. State of Tamil Nadu, (1994) 6 SCC 632: The Court held that the right to privacy can be violated only under exceptional circumstances. The case reinforced the right to free speech as paramount, subject to reasonable restrictions.

Indibly Creative Pvt. Ltd. v. Govt. of West Bengal, (2020) 12 SCC 436: The Supreme Court emphasized that state authorities should not curb the freedom of speech and expression unless there is a real threat to public order.

Subramanian Swamy v. Union of India, (2016) 7 SCC 221: The Court upheld the criminal defamation law but emphasized that it must not be used as a tool to harass individuals and stifle freedom of speech.

Kaushal Kishore vs. State of Uttar Pradesh & Ors: In this case, the Supreme Court of India held that the right to freedom of speech of a public functionary could not be restricted in order to safeguard fundamental rights of another

individual. The Court also held that the State has a duty to protect the right to life and personal liberty even against non-state actors. Therefore, Shaila Rasheed's remarks are protected under Article 19(1)(a) of the Constitution as they pertain to a public issue regarding premarital sex and live-in relationships. The statements were made in a public interest context and do not constitute defamation or public mischief.

PRAYER

WHEREFORE IN THE LIGHT OF THE ISSUES RAISED, ARGUMENTS ADVANCED, AUTHORITIES CITED IT'S HUMBLY SUBMITTED THAT THIS COURT MAY BE PLEASED;

1. Quashing of criminal proceedings against the Appellant.
2. Affirmation of the legal recognition and protection of individuals in live-in relationships.
3. Upholding of the Appellant's fundamental rights to freedom of speech and expression and to a fair trial.
4. And pass any other order, direction or relief that it may deem fit in the best interest of justice, fairness, equity and good conscience

For this act of kindness, the petitioner shall forever pray

Counsel for Petitioner
Maheena Anayat