

This Explanation covers any collection of persons but such collection of persons must be identifiable in the sense that one could with certainty say that this group of particular people has been defamed as distinguished from the rest of the community. Public Prosecutors and Assistant Public Prosecutors at Aligarh in Uttar Pradesh were held to be an identifiable group and hence, could be the subject of defamation according to the Supreme Court.⁷¹ In this connection see para captioned "Concerning any Person" and the cases mentioned therein.

The offending article must carry an imputation against a definite and ascertainable body of people. A complaint was not allowed to be continued where the article published in a magazine carried imputations against a certain community in general and not against any particular group, nor the community was found to be a definite and identifiable body of people and the imputations also did not relate to the complainant.⁷² Where a news in a local daily about insufficiency of sandal wood pieces at the cremation of the President of a National Political Party was published, but no defamatory words or imputation against the said political party was used in the news item and it did not refer to any definite or determinate person or persons, it was held that offence of defamation was not constituted.⁷³

[s 500.17] Explanation 4.—

This Explanation would not apply when the words used and forming the subject-matter of the charge are *per se* defamatory.⁷⁴ Describing a woman that she has paramours wherever she goes is *per se* defamatory.⁷⁵ Wanton allegations by the accused against the complainant who was his wife that she was not virgin at the time of marriage, that she had a living husband at that time and had a child from him and that she had gone to the extent of committing theft, were held to be defamatory. The burden was upon him to show that the publication in question was necessary in good faith for the protection of his interest. He could not do this and, therefore, the Court showed no mercy and sentenced him to simple imprisonment for two months and a fine of Rs. 3,000.⁷⁶

[s 500.18] Exceptions.—

The defamatory statement does not fall within any of the Exceptions by reason merely of the fact that it is punishable as an offence under section 182 or any other section of the Code.⁷⁷

[s 500.19] Members of Legislature and Parliament.—

In the absence of legislation by the Indian Parliament on the subject, the privileges, powers and immunities of a House of State Legislature or Parliament or of its members are the same as those of the House of Commons in England. A member of the House of Commons has an absolute privilege in respect of what he has spoken within the four walls of the House but there is only a qualified privilege in his favour even in respect of what he has himself said in the House, if he causes the same to be published in the public press. Where a member of a State Legislature got published in the press a question which the member had sought to put in the House but which the Speaker had disallowed and the question contained defamatory imputations regarding

the character of a person, it was held that the publication was not accepted by any of the exceptions to section 499.⁷⁸

A minister was questioned about misappropriation of Government funds. He replied by saying that the preliminary enquiry made by the government showed that some misappropriation had taken place. He also disclosed the names of the persons involved including that of the complainant as indicated in the report. This part of the proceedings was published in the newspaper of the accused. Since the newspaper exercised its qualified privilege in good faith, it was held that there was no intention to cause harm to the reputation of the complainant.⁷⁹

[s 500.20] Exception 1.—

This Exception and Exception 4 require that the imputation should be true. The remaining Exceptions do not require it to be so. They only require that it should be made in good faith. When truth is set up as a defence, it must extend to the entire libel and it is not sufficient that only a part of the libel is proved to be true.⁸⁰

The truth of the imputation complained of shall amount to defence if it was for the public benefit that the imputation should be published, but not otherwise. A Court may find that an imputation is true, and made for the public good, but on considering the manner of the publication (e.g., in a newspaper) it may hold that the particular publication is not for the public good, and is, therefore, not privileged.⁸¹ To get the benefit of this exception the accused must prove that the statement made by him is true in its substance and effect and not in part. Whether or not the statement was made for public good, an enquiry must be directed to the benefit that the publication has rendered or sought to render to the public or to a section of the public and whether the matter did concern the public.⁸²

[s 500.21] CASE.—

C was put out of caste by a committee of his caste-fellows on the ground that there was an improper intimacy between him and a woman of his caste. Certain persons, members of the committee, circulated a letter to the members of their caste stating that C and such woman had been put out of caste and requesting the members of the caste not to receive them into their houses or to eat with them and also made defamatory statements about them. It was held that, had such persons contented themselves with announcing the determination of the committee and the grounds upon which such determination was based, they would have been protected, but in as much as they went further and made false and uncalled for statements regarding C; they had not acted in good faith.⁸³ If a person really was outcasted, a statement to the members of the brotherhood that he was outcasted is the kind of statement contemplated by the expression "public good".⁸⁴ Where there exists a civil dispute between the parties as to the property where school is situated and run by complainant, which is admittedly pending in civil Court, mere alerting by accused to parents to take admission of their children at their own risk in school or in summer camp cannot be considered as defamatory or affecting the reputation or character of complainant. The above caution notice by no stretch of imagination can be considered as imputations actionable within the meaning of [section 499 of the IPC, 1860](#).⁸⁵

[s 500.22] Exception 2.—

Every citizen has a right to comment on those acts of public men which concern him as a citizen of the country, if he does not make his commentary a cloak for malice and slander. A writer in a public paper has the same right as any other person, and it is his privilege, if indeed it is not his duty, to comment on the act of public men which concern not himself only but which concern the public, and the discussion of which is for the public good. And where a person makes the public conduct of a public man the subject of comment and it is for the public good, he is not liable to an action if the comments are made honestly, and he honestly believes the facts to be as he states them, and there is no wilful misrepresentation of fact or any misstatement which he must have known to be a misstatement, if he had exercised ordinary care.⁸⁶ In order that a comment may be fair (a) it must be based on facts truly stated, (b) it must not impute corrupt or dishonourable motives to the person whose conduct or work is criticised except in so far as such imputations are warranted by the facts, (c) it must be the honest expression of the writer's real opinion made in good faith, and (d) it must be for the public good. The question to be considered in such cases is, would any fair man, however prejudiced he might be, or however exaggerated or obstinate his views may be, have made the criticism.⁸⁷

Any opinion expressed in good faith made by a public servant would not amount to offence of defamation when public servant was acting in discharge of public functions. According to [section 21 of the IPC, 1860](#), clause fifth, a member of Panchayat assisting a Court of justice is within the scope of definition of "public servant". Hence, opinion expressed by member of Panchayat in good faith to assist Court of Justice does not amount to defamation.⁸⁸

Those who fill a public position must not be too thin skinned in reference to comments made upon them. Whoever fills a public position renders himself open to attack. He must accept an attack as a necessary, though unpleasant, appendage to his office.⁸⁹

The law of defamation under the [IPC, 1860](#) cannot be equated with that of contempt of Court in general terms.⁹⁰ The Court did not accept the proposition that a reply submitted to a contempt notice can in no case amount to contempt of Court in the light of the second exception to section 499.⁹¹

[s 500.23] Exception 3.—

The conduct of publicists who take part in politics or other matters concerning the public can be commented on in good faith. M, a medical man and the editor of a medical journal, said in such journal of an advertisement published by H, another medical man, in which H solicited the public to subscribe to a hospital of which he was surgeon in charge stating the number of successful operations which had been performed, that it was unprofessional. It was held that in as much as such advertisement had the effect of making such hospital a "public question", M was within the third, sixth and ninth Exceptions.⁹² A newspaper carried a letter to the editor stating certain facts about a co-operative hospital to the effect that there were embezzlements; female nurses were harassed if they refused to attend night duty and that the President signed only convenient vouchers. It was held that this was an assertion of facts and not an expression of opinion. The mere fact that the letter demanded an inquiry would not convert the factual assertion into an opinion. The third Exception was not applicable.⁹³

Where the published statement was that the *Marwari* community had no faith and love towards India, their mother land, it was held that this was not sufficient to constitute the offence of defamation. The process issued by the magistrate was liable to be quashed.^{94.}

[s 500.24] Comparative Advertisement.—

A commercial advertisement is a form of speech and "Commercial speech" is a part of the freedom of speech and expression guarantee under [Article 19\(1\)\(a\) of the Constitution](#).^{95.} Comparative advertising is advertisement where a party advertises his goods or services by comparing them with goods and services of another party. This is generally done by either projecting that the advertiser's product is of same or superior quality to that of the compared product or by denigrating the quality of the compared product. The advertiser has right to boast of its technological superiority in comparison with product of the competitor. He can declare that his goods are better than that of his competitor. However, while doing so, he cannot disparage the goods of the competitor. Therefore, if the advertising is an insinuating campaign against the competitor's product such a negative campaigning is not permissible.^{96.} The allegation was that advertisement published by petitioner along with Associated Traders at instance of petitioner disparaging respondents business. The Associated Traders had admitted that alleged advertisement was taken out by them on their own and Petitioner Company had nothing to do with that. Offence under [section 500 IPC, 1860](#) is not made out against the petitioner.^{97.}

[s 500.25] Exception 4.—

Where there are judicial proceedings before a properly constituted judicial tribunal exercising its jurisdiction in open Court, then the publication, without malice, of a fair and accurate report of what takes place before that tribunal is privileged.^{98.} Though the publication of such proceedings may be to the disadvantage of the particular individual concerned, yet it is of vast importance to the public that the proceedings of Courts of Justice should be universally known. The general advantage to the country in having these proceedings made public more than counterbalances the inconvenience to the private persons whose conduct may be the subject of such proceedings.^{99.} It is immaterial whether the proceedings were *ex parte* or not,^{100.} or whether the Court had jurisdiction or not.^{101.} But a report of judicial proceedings cannot be published if the Court has prohibited the publication of any such proceedings,^{102.} or where the subject-matter of the trial is obscene^{103.} or blasphemous.^{104.}

[s 500.26] CASE.—

A trustee of a temple was charged with defamation, the alleged defamatory statement being that the complainant, who performed the worship in the temple, had been convicted and sent to jail for the theft of idols belonging to the temple. At the time when the statement was made, an appointment in connection with the temple was in question. It was held that the trustee was justified in making the statement either in the interest of the temple or because the statement was no more than a publication of the result of proceedings in a Court of Justice.^{105.}

[s 500.27] Exception 5.—

The administration of justice is a matter of universal interest to the whole public. The judgment of the Court, the verdict of jury, the conduct of parties and of witnesses, may all be made subjects of free comment. But the criticism should be made in good faith and should be fair. It must not wantonly assail the character of others or impute criminality to them. But in commenting on such matters, a public writer, as much as a private writer, is bound to attend to the truth, and to put forward the truth honestly and in good faith and to the best of his knowledge and ability. It is not to be expected that in discharging his duty of a public journalist he will always be infallible. His judgment may be biased, one way or the other, without the slightest reflection upon his good faith; and, therefore, if his comments are fair, no one has a right to complain.^{106.}

[s 500.28] Exception 6.—

The object of this Exception is that the public should be aided by comment in its judgment of the public performance submitted to its judgment. All kinds of performances in public may be truly criticised provided the comments are made in good faith and are fair. Liberty of criticism is allowed; otherwise we should neither have purity of taste nor of morals. Good faith under this Exception requires not logical infallibility but due care and attention.^{107.}

[s 500.29] Exception 7.—

This Exception allows a person under whose authority others have been placed, either by their own consent or by the law, to censure, in good faith, those who are so placed under his authority, so far as regards the matter to which that authority relates.^{108.} But if this privilege is exceeded in any way the offence will be established. A man may in good faith complain of the conduct of a servant to the master of the servant even though the complaint amounts to defamation, but he is not protected if he publishes the complaint in a newspaper. A spiritual superior, in pronouncing and publishing a sentence of excommunication, may be protected by privilege so long as the publication is not more extensive than is required to effectuate the purpose for which the privilege is conceded to him for the censure of a member of the sect in matters appertaining to religion or the communication of a sentence he is authorized to pronounce to those who are to guide themselves by it.^{109.} Where the complainant was dismissed from service on the allegation of theft of his master's property after a full domestic enquiry in which the complainant was given an opportunity to defend himself, the finding of such a domestic enquiry saying that the allegation was true could not form the basis of defamation case as it is fully protected by Exceptions 7 and 8 of [section 499, IPC](#), [1860](#). To hold otherwise would amount to paralysing the administration of justice.^{110.}

[s 500.30] CASE.—Imputation made by person in authority.—

The allegation was that accused, principal of a medical college made complaint against complainant, doctor that she was not taking interest in teaching or attending hospital, etc., and that she was more worried about her income from nursing home. It was held that words mentioned in complaint were not with intention to defame the complaint or harm her reputation. Complaint was made within idea to bring about

betterment in college. Proceedings under [section 500 IPC, 1860](#) is liable to be set aside.^{111.}

[s 500.31] Exception 8.—

Eighth Exception to section 499 provides that it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation. In the present case, the accused No. 1 and other members of Society approached the police because admittedly, the letter received by them contained some obscene material and defamatory statement against the daughter of the accused No. 1 and they expected guidance, which could include appropriate action against the culprit. It is clear that the case is clearly covered by Exception 8 and no case under [section 500 IPC, 1860](#) could be made out.^{112.} In order to establish a defence under this exception the accused would have to prove that the person to whom the complaint was made had lawful authority over the person complained against, in respect of the subject-matter of the accusation.^{113.} To obtain the protection given by this Exception (1) the accusation must be made to a person in authority over the party accused, and (2) the accusation must be preferred in good faith.^{114.} Defamatory averments made in a plaint are not absolutely protected in a criminal proceeding for defamation.^{115.}

[s 500.32] CASES.—

The accused had lodged a report with the police contending that the complainant had poured acid on the coconut trees and had damaged the same and he had asked the police to take action against the said complaint. According to the complainant the said complaint damaged his reputation. It was contended that the case would be covered by Exceptions 8 and 9 of section 499 and the accused sought to quash the proceedings under [section 500 IPC, 1860](#). The High Court found the petition meritless and had dismissed it. The Supreme Court held that:

for the purpose of bringing his case within the purview of the Exceptions 8 and 9 appended to [section 499 of the Penal Code](#), it would be necessary for the appellant to prove good faith for the protection of the interests of the person making it or of any other person or for the public good. It is now a well-settled principle of law that those who plead exception must prove it. The burden of proof that his action was bona fide would, thus, be on the appellant alone. At this stage, in our opinion, it would have been premature for the High Court to consider the materials placed by the, appellant before it so as to arrive at a definite conclusion that there was no element of bad faith on the part of the appellant in making the said complaint before the police authorities.^{116.}

[s 500.33] Exception 9.—Good faith, individual interest or public good.—

This Exception posits that the person to whom the communication is made has an interest in protecting the person making the accusation. Besides the *bona fides* of the person making the imputation, the person to whom the imputation is conveyed must have a common interest with the person making it which is served by the communication.^{117.} The interest of the person referred to in this Exception has to be real and legitimate when communication is made in protection of the interest of the person making it. The privilege extends only to a communication upon the subject with respect to which the privilege extends and the privilege can be claimed in exercise of the right or safeguarding of the interest which creates the privilege.^{118.} The regional

manager of a bank issued confidential circular to branch managers of his region advising them to be vigilant while dealing with persons included in the list including the complainant. The circular was issued in his official capacity in public interest and under instructions of the Central office. The Court said that the circular was covered by Exception 9. Therefore, even if the allegations made in the complaint were true, no offence would be made out under section 500.^{119.}

This exception relates to private communication which a person makes in good faith for the protection of his own interest. This exception covers not only such allegations of facts as can be proved true but also expression of opinions and personal inferences. It has been incorporated to protect the interests of the parties in their business transaction which are generally done *bona fide* and, therefore, the rule of public good on which this principle is based is, that honest transaction of business and social intercourse would otherwise be deprived of the protection which they should enjoy. Whether any imputation made is with a motive or *mala fide* intention to lower the reputation or is made in good faith is to be determined from the facts and circumstances of the case. Undisputedly, the requirement of good faith and public good, both, are to be satisfied and the failure to prove good faith would exclude the application of Exception 9 in favour of the accused even if the requirement of public good is satisfied. The words 'good faith' as appearing in exception 9th not only require logical infallibility but also due care and attention.^{120.}

This Exception refers to any imputation made in good faith, whereas the first Exception applies only to true imputation made for the public good. That he acted in good faith must be proved by the accused.^{121.} Question of good faith is a question of fact and has to be decided in course of the trial and at the initial stage. The journalists do not enjoy any special privilege.^{122.}

In determining the question of good faith, regard should be to the intellectual capacity of the accused, his predilections and the surrounding facts.^{123.}

Where a rustic villager objected to the appointment of the complainant as a village *munsiff* in the *bona fide* belief that he was a rowdy and as such undesirable for a public post like this, it was held that he acted in good faith and was protected by this Exception.^{124.}

In order to establish good faith and *bona fides* it has to be seen first the circumstances under which the defamatory matter was written or uttered; secondly, whether there was any malice; thirdly, whether the accused made any inquiry before he made the allegations; fourthly, whether there are reasons to accept the version that he acted with care and caution and finally whether there is preponderance of probability that the accused acted in good faith.^{125.}

The burden lies on the person accused to prove the *bona fide* aspect of his publication. Cross-examination of the complainant can be used as a device for establishing good-faith. An imputation was made in a newspaper item that the complainant lady doctor had duped the Government by presenting false transfer allowance bills. The lady doctor's sole testimony that the publication harmed her reputation was held to be not sufficient to sustain her complaint. The accused showed that the publication was in good faith and in public interest.^{126.}

Where the agreement for selling their properties for settling their dues was signed by the accused persons and registered before the Sub-Registrar in the presence of the accused but subsequently a publication in the newspaper was made by the accused after about two and a half months that the agreement was executed under compulsion, it was held that the publication was not made in 'good faith' and could not be brought under Exception 9 of section 499.^{127.}

The ninth Exception to section 499 provides that it is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good. Even if it is assumed that the accused No. 1 and other accused made the imputation against the respondent No. 1 that he had written the letters and thus, that imputation was made against his character, still that was made in good faith because they wanted protection of the interest of the members of the family of accused No. 1 and particularly his daughter. They did not approach any unconnected person, but police who could protect the interest of the accused No. 1 and his family members. In view of the legal position and the facts, which are clear from the complaint and the documents submitted with the complaint, it is clear that the case is clearly covered by Exceptions 8 and 9 and no case under [section 500 IPC, 1860](#) could be made out.^{128.}

[s 500.34] Club committee.—

The committee members of a social club, even if wrong, are given protection under this Exception, without which it would be impossible for such a body to function. Where the respondent, who was the wife of a member of a social club and was privileged to use the club, preferred a complaint against the members of the committee for defaming her in a letter addressed by them to her husband, it was held that as the committee had acted in good faith, even if they were mistaken they were protected by this Exception.^{129.}

[s 500.35] Communication by member of caste.—

There is a dividing line between the passing of a resolution at a caste meeting and its communication by the authorities of the caste to its members in the discharge of their social duty. If any member of a caste publishes to all its members a caste resolution in such discharge of duty the law will hold the occasion of the publication to be privileged. But there must be good faith on the part of the member who publishes, that is, it must be proved that the publication was made with due care and attention.^{130.} There must not be excessive publication, e.g., publication in a newspaper.^{131.} Where a libellous communication is made regarding a member of a caste, the mere fact that the person making such communication is a member of a caste will not of itself suffice to make the communication privileged.^{132.} A person making defamatory expressions for the protection of his son's interest is not privileged, unless the imputation is made in good faith.^{133.}

[s 500.36] Privileges of Judges, etc.—

The privileges of parties, counsel, attorney, pleader and witnesses come under this Exception. So also, statements made in pleadings and reports to superior officers are protected by it. (As to civil actions, see the author's *Law of Torts*, 19th Edn; Chapter XIII).

In India the law regarding defamatory statements, made in the course of judicial proceeding, by judges, counsel or pleaders, witnesses and parties is lacking in uniformity. The High Court of Madras in earlier cases adopted the English rule of absolute immunity in all cases. The Bombay High Court has not followed the English

rule in cases of criminal prosecution on the ground that English law could not be resorted to where it went beyond the terms of section 499: but in civil actions it has followed the dictum of the Privy Council in *Baboo Gunnesh Dutt Singh v Mugneeram Chowdhry*.¹³⁴ The Allahabad High Court has gone a step further and held that cases of defamation under the Code as well as civil suits for damages must be decided in accordance with the provisions embodied in the [IPC, 1860](#) and the [Indian Evidence Act](#). The Calcutta High Court has held that the liability of a person prosecuted for defamation must be determined by the application of the provisions of the [IPC, 1860](#) and not otherwise.¹³⁵ The Patna High Court has adopted the view of the Calcutta High Court.¹³⁶

[s 500.37] Counsel, pleader, etc.—

Where the accused, father of the complainant, denied through a lawyer's notice that the complainant was his son imputing unchastity to his mother and as such was not entitled to any family property, it was held that the communication was protected under the 9th Exception to [section 499, IPC, 1860](#), and the typing of that notice by the lawyer's clerk also did not constitute publicity.¹³⁷

The Kerala High Court has held that counsel who has signed the pleading of his client can rely on this Exception.¹³⁸

[s 500.38] Witness.—

The Bombay High Court has in a Full Bench case laid down that relevant statements made by a witness on oath or solemn affirmation in a judicial proceeding are not absolutely privileged on a prosecution for defamation, but are governed by the provisions of section 499.¹³⁹

The Allahabad High Court in a Full Bench case held that a witness could be prosecuted for defamatory statements concerning a person unless he showed that the statements fell under one of the Exceptions to this section.¹⁴⁰

The Nagpur High Court had followed the Bombay, the Calcutta and the Allahabad High Courts and held that a person giving evidence in a Court of law is not entitled to an absolute privilege in respect of statements which he makes and is consequently not immune from a complaint of defamation by reason of words uttered on oath in the witness-box.¹⁴¹

The Madhya Pradesh High Court followed the Bombay, the Calcutta and the Nagpur High Courts.¹⁴²

[s 500.39] Pleadings.—

Authority is strongly against the absolute immunity from prosecution for defamatory statements contained in applications, pleadings and affidavits. The Bombay High Court has held that statements made in a written statement filed by the accused are not absolutely privileged but are governed by the provisions of this section.¹⁴³ The allegation was that the averments contained in the pleadings and oral evidence in a suit filed by the accused constituted defamatory statements. The Court held that on

reading of Exception 9 to [section 499 of the IPC, 1860](#) the alleged imputations contained in pleadings and evidence in civil suit OS No. 966 of 1998 and AS No. 155 of 2004 are covered by Exception 9 of [section 499 of the IPC, 1860](#), even assuming that the imputations are *prima facie* defamatory in nature.^{144.}

The Madras High Court has held in a Full Bench case that a defamatory statement in a complaint to a Magistrate is not absolutely privileged.^{145.}

The Patna High Court had held, that a defamatory statement, whether on oath or otherwise, falls within section 499 and is not absolutely privileged. Where in a plaint the accused described the complainant (defendant No. 3) as the "kept woman" of defendant No. 1 without any foundation, it was held that he was guilty of defamation.^{146.}

[s 500.40] Vicarious liability.—

A defamatory letter was issued on the pad of a partnership firm. The letter was signed by one of the partners. The complainant in his examination before the Court did not say on oath anything against the rest of the partners who had not signed the letter. The Court said that such other partners who had not signed could not be vicariously held liable with the signing partner.^{147.}

[s 500.41] Communications with counsel.—

Communication with one's counsel for legal advice is not a publication. The Court distinguished the case from the Supreme Court decision in *MC Verghese v TJ Poonan*.^{148.} In this case, a husband's letters to his wife contained defamatory remarks about her father. The father's proceedings against the husband were allowed because those letters amounted to a publication. But a communication between a client and his counsel is not a publication because of the intimate relationship between them. The counsel has no separate existence from the client in matters relating to legal duties. Communication to the council is communication to the client.^{149.}

[s 500.42] Reports.—

The report of an officer, in the execution of his duty, under his superior's orders, which contains defamatory imputations against others, but which does not appear to have been made recklessly or unjustifiably is covered by this Exception. But a totally false report will not be protected.^{150.}

[s 500.43] Complaint through power of attorney.—

The aggrieved person was employed in a foreign country. A complaint filed through a power of attorney was held as not offending the provisions of [section 199\(1\), Cr PC, 1973](#) as the complainant suffered from the infirmity of being away in a foreign country.^{151.}