

Explanation.—A performance may be substituted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

ILLUSTRATIONS

- (a) A person who publishes a book, submits that book to the judgment of the public.
- (b) A person who makes a speech in public, submits that speech to the judgment of the public.
- (c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.
- (d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within the exception, if he says this in good faith, in as much as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.
- (e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine". A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Censure passed in good faith by person having lawful authority over another.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

ILLUSTRATION

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Accusation preferred in good faith to authorised person.

Eighth Exception.—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.

ILLUSTRATION

If A in good faith accuse Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Imputation made in good faith by person for protection of his or other's interests.

Ninth Exception.—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.

ILLUSTRATIONS

- (a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.
- (b) A, a Magistrate, in making a report of his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Caution intended for good of person to whom conveyed or for public good.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

COMMENT.—

[Section 499 Indian Penal Code \(IPC, 1860\)](#) brings under the criminal law, the person who publishes as well as the person who makes the defamatory imputation. [Section 499, IPC, 1860](#) emphasises the words "makes or publishes". The gist of the offence of defamation lies in the dissemination of the harmful imputation. When a defamatory statement is published, it is not only the publisher, but also the maker who becomes responsible and it is in that context that the word "makes" is used in [section 499 IPC, 1860](#). It is of essence that in order to constitute the offence of defamation, it must be communicated to a third person because what is intended by the imputation is to arouse hostility of others. Therefore, in brief, the essentials of defamation are, first, the words must be defamatory; second, they must refer to the aggrieved party; third, they must be maliciously published.¹

[s 499.1] Reputation.—

Right to reputation is a facet of right to life of a citizen under [Article 21 of the Constitution](#).² The right to enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the [Constitution](#) equally with the right to the enjoyment of life, liberty and property.³ The term 'person' includes not only the physical body and members but also every bodily sense and personal attribute among which is the reputation a man has acquired. Reputation can also be defined to be good name, the credit, honour or character which is derived from a favourable public opinion or esteem, and character by report. The right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society. 'Reputation' is an element of personal security and is protected by [Constitution](#) equally with the right to enjoyment of life, liberty and property. Although, 'character' and 'reputation' are often used synonymously, these terms are distinguishable. 'Character' is what a man is and

'reputation' is what he is supposed to be in what people say he is. 'Character' depends on attributes possessed and 'reputation' on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present.⁴

[s 499.2] Constitutional validity.—

The Constitutional validity of [sections 499 and 500 of IPC, 1860](#) and [section 199 of Code of Criminal Procedure, \(Cr PC, 1973\)](#) was assailed in *Subramanian Swamy v UOI, Ministry of Law*,⁵ and the Supreme Court upheld it. The Court observed thus:

One cannot be unmindful that right to freedom of speech and expression is a highly valued and cherished right but the [Constitution](#) conceives of reasonable restriction. In that context criminal defamation which is in existence in the form of [ss. 499 and 500 Indian Penal Code](#) is not a restriction on free speech that can be characterized as disproportionate. Right to free speech cannot mean that a citizen can defame the other. Protection of reputation is a fundamental right. It is also a human right. Cumulatively it serves the social interest.

The Apex Court did not accept that the provisions relating to criminal defamation are not saved by the doctrine of proportionality, because it determines a limit which is not impermissible within the criterion of reasonable restriction. The Court also held that the criminal prosecution on defamation will not negate and violate the right to speech and expression of opinion.

1. *BRK Murthy v State*, [2013 Cr LJ 1602](#) (AP).

2. *Mehmood Azam v State*, [AIR 2012 SC 2573](#) [[LNIND 2012 SC 456](#)] : (2012) 8 SCC 1 [[LNIND 2012 SC 456](#)] ; *Vishwanath S/o Sitaram Agrawal v Sarla Vishwanath Agrawal*, [AIR 2010 SC 1974](#) [[LNINDORD 2010 SC 207](#)] : 2010 (7) SCC 263 [[LNIND 2010 SC 438](#)] .

3. *Smt. Kiran Bedi v Committee of Inquiry*, [AIR 1995 SC 117](#) [[LNIND 1994 SC 929](#)] : 1994 (6) SCC 565 [[LNIND 1994 SC 952](#)] : 1995 SCC (Cr) 29, **quoted** from *D F Marion v Davis*, [1989 \(1\) SCC 494](#) [[LNIND 1989 SC 10](#)] : [AIR 1989 SC 714](#) [[LNIND 1989 SC 833](#)] .

4. *Kishore Samrite v State of UP*, (2013) 2 SCC 398 [[LNIND 2012 SC 657](#)] .

5. *Subramanian Swamy v UOI, Ministry of Law*, [2016 Cr LJ 3214](#) : 2016 (5) SCJ 643 .

THE INDIAN PENAL CODE

CHAPTER XXI OF DEFAMATION

[s 500] Punishment for defamation.

Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

COMMENT.—

The essence of the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed.⁶

[s 500.1] Ingredients.—

The section requires three essentials:—

1. Making or publishing any imputation concerning any person.
2. Such imputation must have been made by
 - (a) words, either spoken or intended to be read; or
 - (b) signs; or
 - (c) visible representations.
3. Such imputation must have been made with the intention of harming or with knowledge or reason to believe that it will harm the reputation of the person concerning whom it is made.⁷ It is clear that intention to cause harm is the most essential sine qua non for an offence under [section 499, IPC, 1860](#). An offence punishable under [section 500, IPC, 1860](#) requires blameworthy mind and is not a statutory offence requiring any *mens rea*.⁸

1. 'Makes or publishes any imputation concerning any person'.—Everyone who composes, dictates, writes or in any way contributes to the making of a libel, is the maker of the libel. If one dictates, and another writes, both are guilty of making it, for he shows his approbation of what he writes. So, if one repeats, another writes a libel, and a third approved what is written they are all makers of it, as all who concur and assent to the doing of an unlawful act are guilty; and murdering a man's reputation by a libel may be compared to murdering a man's person, in which all who are present and encourage the act are guilty, though the wound was given by one only.⁹ The mechanic or the compositor of the Press does neither 'make nor publish' the matter that may be impugned as defamatory.¹⁰ Intention on the part of the accused to harm the reputation or the knowledge or reasonable belief that an imputation will harm the reputation of the person concerned being an essential ingredient of the offence of defamation, the Chairman of a Company owning the newspaper in which the offending news item is published cannot be held liable unless it is shown that he was somehow

concerned with the publication of the defamatory news item. Under [section 7 of the Press and Registration of Books Act, 1867](#) a presumption regarding awareness of the contents of a newspaper can be raised only against the Editor whose name appears on the copy of the newspaper and no other Editors like the News Editor or Resident Editor whose names do not appear in the declaration printed on the copy of the newspaper.^{11.}

[s 500.2] 'Publishes'.—

The defamatory matter must be published, that is, communicated to some person other than the person about whom it is addressed, e.g., dictating a letter to a clerk is publication.^{12.} Imputations in a charge sheet which is sent to the employee himself does not amount to a publication.^{13.} But where there is a duty which forms the ground of privileged occasion, the person exercising the privilege may communicate matters to a third person in the ordinary course of business. A solicitor who dictates to his clerk a letter containing defamatory statements regarding a person is not liable for defamation.^{14.} Where the complainant's Advocate sent a notice to a party whose Advocate dictated a reply to his steno containing defamatory remarks and the same was sent to the complainant's Advocate, the Kerala High Court held that this did not amount to any publication.^{15.}

Communicating defamatory matter only to the person defamed is not publication.^{16.} The action of a person who sent to a public officer by post, in a closed cover, a notice containing imputations on the character of the recipient but which was not communicated by the accused to any third person was held to be not such a 'making' or 'publishing' of the matter complained of as to constitute this offence.^{17.} A notice under a Municipal Act was issued by the President of the Municipal Committee to a certain person, who sent a reply containing defamatory allegations against the President. This reply was put on the official file by the President and it was read by the members of the Committee. It was held that there was publication of the defamation. The placing of the reply on the official file was not a gratuitous or voluntary act on the part of the President but it was his duty to do so, and the accused knew or must have known that the contents of his reply would be necessarily communicated to the members of the Committee.^{18.}

Where the alleged defamatory words were sent to the complainant by registered post, it was held that there was no publication. There was absence of one of the necessary ingredients of the offence, namely publication. The complaint was liable to be quashed.^{19.}

Defamatory matter written on a postcard^{20.} or printed on papers distributed or broadcast,^{21.} constitutes publication. So is the filing in a Court of a petition containing defamatory matter concerning a person with the intention that it should be read by other persons.^{22.} When a person presents a defamatory petition to a superior public officer, who, in the ordinary course of official routine, sends it to some subordinate officer for inquiry, there is a publication of the letter at the place where he may receive it, and publication for which the original writer may *prima facie* be held responsible, whether or not he expressly asks for an inquiry.^{23.} Communication to a husband or wife of a charge against the wife or husband is publication,^{24.} but uttering of a libel by a husband to his wife is not, as in England they are one in the eye of the law.^{25.}

Where a libel is printed, the sale of each copy is a distinct publication and a fresh offence; and conviction or acquittal on an indictment for publishing one copy will be no bar to an indictment for publishing another copy.^{26.}

The person who publishes the imputation need not necessarily be the author of the imputation. The person who publishes and the person who makes an imputation are alike guilty.²⁷.

[s 500.3] General Statement.—

In order to constitute offence of defamation the words, signs, imputation made by accused must either be intended to harm the reputation of a particular person or the accused must reasonably know that his/her conduct could cause such harm. Where the appellant's statement published in news magazine was a rather general endorsement of pre-marital sex and her remarks were not directed at any individual or even at a 'company or an association or collection of persons', it was held that it cannot be construed as an attack on the reputation of anyone in particular.²⁸ Where a complaint was filed with regard to a statement made by the Gujarat Chief Minister published in media or newspaper or over television or through internet that ex-Prime Minister late Hon'ble Shri Jawahar Lal Nehru did nothing for children. The High Court upheld the rejection of complaint holding that it was only a general statement and cannot be construed as an attack on reputation of anyone in particular.²⁹.

[s 500.4] Repetition.—

The Code makes no exception in favour of a second or third publication as compared with the first. If a complaint is properly laid in respect of a publication which is *prima facie* defamatory, the Magistrate is bound to take cognizance of the complaint, and deal with it according to law.³⁰ The publisher of a libel is strictly responsible, irrespective of the fact whether he is the originator of the libel or is merely repeating it.³¹.

[s 500.5] Publication of defamatory matter in newspaper.—

In a case of defamation, only the source of information on which the person accused has acted and the justification for his so acting, are to be considered. If he has not taken proper care and acted on gossip against the complainant hereby defamed, he ought not to escape the consequence on the ground that he has contracted the incorrect report. The culpability in such cases does not depend upon the circumstances where he has tried to undo the wrong which he has committed or not put up on fact he has acted with care or attention or has done so rashly or negligently, it is no defence in the matter of defamation for the accused to say that he has acted on the information given to him by another. It is for him to establish that the source on which he acted is a proper source on which he is entitled and he did with care and circumspection. Therefore, the editor and publisher are liable for the baseless and false matter which was published in the journal. Such an irresponsible conduct and attitude on the part of the editor and publisher cannot be said to be done in good faith.³² In the matter of defamation the position of newspaper is not in any way different from that of member of the public in general. The responsibility in either case is the same.³³ The publisher of a newspaper is responsible for defamatory matter published in such paper whether he knows the contents of such paper or not.³⁴ But it would be a sufficient answer to a charge of defamation against the editor of a newspaper if he proved that the libel was published in his absence and without his knowledge and he had in good faith entrusted the temporary management of the newspaper during his absence to a

competent person.³⁵ The owner of a journal in order to be liable under section 499 has to have direct responsibility for the publication of the defamatory statement and he must also have the intention to harm, or knowledge or reason to believe that the imputation will harm the reputation of person concerned. The owner of a journal *qua* has no responsibility under the section.³⁶ The prosecution of the chairman and managing director of a company owning the newspaper for the publication of defamatory article in the newspaper by reason of their holding those posts would be invalid unless their personal involvement in the publication of the article is established.³⁷

Where a newspaper carried extracts from a book written on one of the former Prime Ministers of India containing imputations of corruption, the editor of the newspaper was liable to be prosecuted. His plea that he was only a publisher and not the author of the extracts was held to be not tenable. It was alleged that there was a criminal conspiracy in the matter between the managing editor, resident editor and executing editor. All of them were liable to be prosecuted.³⁸ A chief editor of a newspaper cannot say that he is not responsible for selection and publication of matters in the newspaper. A complaint against the chief editor is maintainable.³⁹

The sending of a newspaper, containing defamatory matter by post from Calcutta, where it is published, addressed to a subscriber at Allahabad, is publication of such defamatory matter at Allahabad.⁴⁰

[s 500.6] Liability of Editor.—

From the scheme of the Press and Registration of Books (PRB) Act, it is evident that it is the Editor who controls the selection of matter that is published. A news item has the potentiality of bringing doom's day for an individual. The Editor controls the selection of the matter that is published. Therefore, he has to keep a careful eye on the selection. Blue-penciling of news articles by anyone other than the Editor is not welcome in a democratic polity. Editors have to take responsibility of everything they publish and to maintain the integrity of published record.⁴¹

[s 500.7] Prosecution against CEO of TV Channel.—

In order to constitute offence of defamation under criminal law, [section 499, IPC, 1860](#) contemplates "intending to harm, or knowing or having reason to believe that such imputation will harm reputation of such person" on the part of the accused. In the entire complaint, the complainant/1st respondent did not allege that the accused, who is Chief Executive Officer of TV-9 channel, telecast the news item or permitted to re-telecast the news item with such state of mind (*Mens rea*). Except as Chief Executive Officer of the TV news channel, the complainant did not allege any other connection for the accused with telecasting of the news item. In the absence of any such connection for the accused with this news item and in the absence of any such *mens rea* or state of mind for the accused in relation to this news item, simply because the accused happened to be Chief Executive Officer or proprietor or partner or managing director of the TV news channel, no criminal case can lie against him for offence punishable under [section 500, IPC, 1860](#).⁴²

[s 500.8] Jurisdiction.—

Where a newspaper containing a defamatory article is printed and published at one place and is circulated or sold at other places by or on behalf of the accused responsible for printing and publishing the newspaper, then there would be publication of the defamatory article in all such places and jurisdictional Magistrate can entertain the complaint for defamation. It cannot be said that the act of publication comes to an end as soon as the issue of the newspaper is released at one place. If that newspaper is despatched by the printer and publisher to other places for being sold or circulated, the defamatory article gets published at each such place. The mere fact that the headquarter of a newspaper is based at a particular place or that it is printed and published at one place, does not necessarily mean that there cannot be publication of the defamatory article contained in the newspaper at another place. If the defamatory imputation is made available to public at several places, then the offence is committed at each such place. Though the first offence may be committed at the place where it is printed and first published, it gets repeated wherever the newspaper is circulated at other places.^{43.}

[s 500.9] Apology.—

Where the incriminating news was not published in the newspaper by the editor knowing or having good reason to believe that such matter was defamatory of the complainant, the editor had no ill will against him and had expressed regret for such publication, it was held that the editor could not be held responsible in connection with the defamation.^{44.}

[s 500.10] 'Imputation'.—

It is immaterial whether the imputation is conveyed obliquely or indirectly, or by way of question, conjecture, or exclamation, or by irony.^{45.}

The words "coward, dishonest man, and something worse than either"^{46.} and words to the effect that the complainant and others were preparing to bring a false charge against the accused,^{47.} were held to be defamatory. Calling a counsel "badmash" in the open Court was held to be not an offence within the meaning of section 499. The Court said that it might come under section 504. The acquittal of the accused under section 500 was held to be proper.^{48.} The accused married the complainant by exchange of garlands in a temple. He lived with her for a few days and then started demanding money and described her as unchaste woman and not decent looking. The Court said that the ingredients of section 500 were *prima facie* made out and, therefore, the accused was liable to be prosecuted.^{49.}

[s 500.11] 'Concerning any person'.—

The words must contain an imputation concerning some particular person or persons whose identity can be established. That person need not necessarily be a single individual. Where the accused published in a paper an account of an outrage on a woman alleged to have been perpetrated by two constables out of four constables stationed at a police station, it was held that, in the absence of proof that it was intended to charge any particular and identifiable constables with the alleged offence, the accused could not be convicted.^{50.} Where a film which was alleged to be defamatory of lawyers as a class formed the basis of a defamation case against the

producers including artists and Chairman of the Central Board of Censors, it was held that though the offence of defamation can be committed in regard to a company or collection of persons in view of Explanation 2 to [section 499, IPC, 1860](#), yet it is necessary to show that this collection of persons is a small determinate body whose identity can be fixed. Advocates as a class are incapable of being defamed.⁵¹ In this connection see comments under head "Explanation-2" *infra*.

A newspaper is not a person and therefore, it is not an offence to defame a newspaper. Defamation of a newspaper may, in certain cases, involve defamation of those responsible for its publication.⁵²

[s 500.12] *Innuendo*.—

Where the statement does not refer to the complainant directly, the doctrine of *innuendo* may be pressed into service for the purpose of showing that the complainant was the real target of the attack. He must bring forward additional facts showing how the words are related to him in a manner which is defamatory. "A true *innuendo* is an *innuendo* by which the plaintiff alleges a special defamatory meaning of the words distinct from their ordinary meaning and arising by virtue of extrinsic facts or matters known to the recipients."⁵³ Applying this principle to the facts of a case before it, the Supreme Court laid down that an *innuendo* cannot be established by an evidence showing inferences of two kinds. The evidence of additional facts must be capable of showing that the words were applicable to the complainant and the complainant alone.⁵⁴

2. 'Such imputation should have been made by words either spoken or intended to be read, or by signs or by visible representation'.—[IPC, 1860](#) makes no distinction between written and spoken defamation.⁵⁵

[s 500.13] 'By signs or by visible representations'.—

The words 'visible representation' will include every possible form of defamation which ingenuity can devise. For instance, a statue, a caricature, and effigy, chalk marks on a wall, signs, or pictures may constitute a libel.⁵⁶ The publication of a group photograph with a false caption depicting the persons in the photograph as soldiers of a "goonda war" was held to be defamatory.⁵⁷ In another case, Complainant alleged that four photographs of an incident were published in a newspaper, in which, one photograph showed the complainant more or less nude and that has caused defamation and harm to him. The photographs during a protest demonstration a protest demonstration and depicted the sequence of events when the complainant was being pulled out of a police jeep. It can never be stated that the publication of the photographs in the newspaper was with the intention or with knowledge or having reason to believe that it will harm the reputation of the complainant. Proceedings are liable to be quashed.⁵⁸

3. 'Intending to harm, or knowing or having reason to believe that such imputation will harm'.—In this section the expression "harm" means harm to the reputation of the aggrieved party.⁵⁹ It is not necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation alleged; it is sufficient to show that the accused intended to harm, or knew, or had reason to believe that the imputation made by him would harm the reputation of the complainant.⁶⁰ A statement made primarily with the object that the person making it should escape from a difficulty

cannot be made the subject of a criminal charge merely because it contains matter which may be harmful to the reputation of other people or hurtful to their feelings.^{61.}

The meaning to be attached to the word 'harm' is not the ordinary sense in which it is used. By 'harm' is meant imputation on a man's character made and expressed to *others* so as to lower him in their estimation. Anything which lowers him merely in *his own* estimation does not constitute defamation.^{62.} Accusing a person in front of the public, of having illicit relations with accuser's sister cannot be considered to have been uttered merely as scurrilous abuse in the situation in which they were used against the accused. The accusation took place in an open gathering when not only the members of the Gram Panchayat were present but also the members of the general public. Conviction of the accused under [section 500 IPC, 1860](#) was upheld.^{63.}

[s 500.14] 'Reputation'.—

A man's opinion of himself cannot be called his reputation.^{64.} A man has no 'reputation' to himself and therefore, communication of defamatory matter to the person defamed is no publication.

[s 500.15] *Explanation 1.*—

A prosecution may be maintained for defamation of a deceased person, but it has been ruled that no suit for damages will lie in such a case. Where, therefore, a suit was brought by the heir and nearest relation of a deceased person for defamatory words spoken of such deceased person, but alleged to have caused damage to the plaintiff as a member of the same family, it was held that the suit was not maintainable.^{65.}

[s 500.16] *Explanation 2.*—

Imputation concerning company, association or collection of persons.—An action for libel will lie at the suit of an incorporated trading company in respect of a libel calculated to injure its reputation in the way of its business.^{66.} The words complained of must attack the corporation or company in the method of conducting its affairs, must accuse it of fraud or mismanagement or must attack its financial position.^{67.} A corporation has no reputation apart from its property or trade. It cannot maintain an action for a libel merely affecting personal reputation. The words complained of, to support a prosecution, must reflect on the management of its business and must injuriously affect the corporation, as distinct from the individuals who compose it. They must attack the corporation in its method of conducting its affairs, must accuse it of fraud or mismanagement or must attack its financial position. A corporation cannot bring a prosecution for words which merely affect its honour or dignity.^{68.}

A prosecution lies for libelling Hindu widows as a class.^{69.} Where the defamatory articles, published in a newspaper, related to the habitual immoral conduct of the girls of a particular college, but no particular girl or girls were named in or identifiable from the articles, and the complaint was filed by a number of girls of the college, it was held that the author of the articles was guilty of defamation, in as much as the inevitable effect of the articles on the mind of the reader must be to make him believe that it was habitual with the girls of the college to misbehave in the ways mentioned so that all the girls in the college collectively and each girl individually must suffer in reputation.^{70.}