

TC 215

CASE COMMENTARY: Subramanian Swamy vs. Union of India, Ministry of Law and Others (2016)

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Citation:

MANU/SC/0621/2016

Bench:

Dipak Misra and Prafulla C. Pant, JJ.

Introduction-

In *Subramanian Swamy vs. Union of India, Ministry of Law and Others (2016)*, the Supreme Court of India examined whether a criminal defamation charge under Sections 499¹ and 500² of the Indian Penal Code (IPC) is constitutional. This case generated a heated discussion regarding how to find a balance between the freedom of speech and expression provided by Article

¹ 356. (1) Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes in any manner, any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

² 356 (2) Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both, or with community service.

19(1)(a)³ and the reasonable constraints needed by Article 19(2)⁴ of the Indian Constitution because of its unjust constraints and infringement of the fundamental right to free speech, the petitioners claimed that the restrictions were unconstitutional. However, the Supreme Court upheld the constitutionality of criminal defamation in accordance with constitutional duties. The background of the case, the arguments presented forth by each party, the result, and its greater implications for free speech and Indian constitutional law are all discussed thoroughly in this article.

Historical Background and Facts-

Defamation serves as both a criminal and a civil offense under Indian law. The definition and penalties for criminal defamation are provided in Sections 499 and 500 of the Indian Penal Code. As per Section 499 of the IPC, defamation is the act of generating or publishing any allegation (spoken, written, or expressed through signs or apparent means) regarding someone with the knowledge or intent that it will cause harm to their reputation. It extends to both living and deceased individuals if the imputation could harm the reputation of the deceased or their relatives. In addition, it applies to businesses and associations. The part continues by clarifying that if an imputation suggests a person's body is in a demeaning state, it affects that person's reputation or lowers their moral, or professional standing.

In compliance with Section 500, the penalty for defamation is simple imprisonment for a maximum duration of two years, a fine, or both possible punishments.

A court cannot issue notice of an offense under Chapter XXI of the Indian Penal Code (IPC) unless a complaint has been filed by the person who was directly affected by the offense, in

³ Protection of certain rights regarding freedom of speech, etc.— (1) All citizens shall have the right— (a) to freedom of speech and expression;

⁴ 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 4 [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.

accordance with Section 199 (1)⁵ of the Indian Code of Criminal Procedure, 1973, that defines punishment for defamation. However, with the approval of the court, another person may file the complaint on the complainant's behalf if the person making the complaint is below the age of eighteen, mentally ill, not able to file the complaint due to an injury or medical condition, or a woman who, based on local customs, ought not to have to appear in public.

The Indian Code of Criminal Procedure, 1973 asserts in 199(4)⁶ that a public prosecutor cannot file a complaint under subsection (2) without getting prior approval from the State Government (a) if the complaint concerns a current or former governor or minister of that State; (b) the State Government if the complaint refers to a public servant who works for state affairs; and (c) the Central Government in all other cases.

The facts of the case are as follows:

In 2014, Dr. Subramaniam Swamy accused Ms. Jayalathitha, the then-chief minister of Tamil Nadu, of corruption. In reply, the Tamil Nadu State Government accused Dr. Swamy of defamation. With prominent politicians such as Rahul Gandhi and Arvind Kejriwal, Dr. Swamy filed a writ suit challenging the constitutionality of India's Criminal Defamation law, especially Sections 499 and 500 of the Indian Penal Code (IPC) and Sections 199 (1) and 199 (4) of the Indian Code of Criminal Procedure, 1973. The case was ultimately decided by a two-judge Supreme Court bench consisting of Justices Dipak Misra and P.C. Pant.

⁵ 222. (1) No Court shall take cognizance of an offence punishable under section 356 of the Bharatiya Nyaya Sanhita, 2023 except upon a complaint made by some person aggrieved by the offence: Provided that where such person is a child, or is of unsound mind or is having intellectual disability or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.

⁶ 222(2) Notwithstanding anything contained in this Sanhita, when any offence falling under section 356 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor

On the basis that it limited the right to freedom of expression guaranteed through Article 19 (1) (a) of the Indian Constitution, the petitioners challenged the validity of the criminal defamation violation.

Issues-

The issues in the said case were-

- Whether criminalizing defamation is an excessive restriction on freedom of speech?
- Whether the criminal defamation law under Sections 499 and 500 is vaguely phrased and hence arbitrary.
- How should the right to reputation under Article 21 be balanced against the right to free speech under Article 19(1)(a)?

Rules-

- Article 19(1)(a) of the Constitution of India:
Guarantees the fundamental right to freedom of speech and expression, allowing individuals to express their views freely.
- Article 19(2) of the Constitution of India:
Provides for reasonable restrictions on the right to freedom of speech and expression in specific cases, such as: Sovereignty and integrity of India, Security of the state, Public order, Decency or morality, Contempt of court, Defamation, Incitement to an offence.
- Article 21 of the Constitution of India:
Ensures the right to life and personal liberty, which includes the protection of dignity and reputation as integral aspects of life.
- Section 499: Defines defamation as making or publishing any imputation intending to harm a person's reputation. Exceptions include fair comment on public conduct, truth for the public good, or critique of literary works.
- Section 500: Prescribes the punishment for defamation, which can include imprisonment for up to two years, a fine, or both.

- Sections 199(1) to 199(4) of the Code of Criminal Procedure (CrPC):
Outlines the procedural framework for filing criminal defamation complaints.

Arguments of the Petitioner-

The lawyer representing the petitioner claimed that the concept put forward in Article 19(2) of the Indian Constitution is highly wide and is bound by restrictions.

However, such constraints must be cautiously and precisely created. The exception must be recognized by applying the principle of *noscitur a sociis*, which implies that the terms that are associated with an ambiguous or hidden term included under the statute must be taken into account in order to determine its meaning.

The lawyer representing the petitioner argued *in personam* that defamation is a civil infringement. As such, it isn't protected by the Fundamental Rights that are granted for the benefit of people in general. According to Article 21 of the Indian Constitution, the right of an individual to reputation is a private one. As a result, a private individual's derogatory comments cannot be considered a crime since they serve no public interest. Because of this, it would be unconstitutional to deem defamation a crime that safeguards the rights *in rem*. Therefore, Section 499 of the Indian Penal Code, 1860 would not be covered by Article 19(2) of the Indian Constitution.

The lawyer who represented the petitioner additionally pointed out that Section 499 of the Indian Penal Code, 1860 isn't bound by Article 19(2) of the Indian Constitution's reasonable limitations because it goes beyond the interests of the general public. Therefore, it claimed that a law should be declared unconstitutional if it restricts someone's right to express the truth. Beyond the limits of reasonableness comes the need to demonstrate that a defamatory statement was made for the public interest.

Arguments of the Respondent:

The Attorney General, who defended the Respondents, claimed that the restrictions provided for in Article 19(2) of the Indian Constitution were to be interpreted contextually instead of in the absence of context. Constraints may be placed on Article 19(1)(a) of the Indian Constitution because it is not an absolute and stand-alone right.

By connecting the public wrongdoing with the damage that was done to the public overall, the Respondents' counsel overlooked the Petitioner's counsel's inadequate distinction between private and public wrong. The lawyer for the respondent claimed that reputational loss is not always restitutionable in terms of money. In context with this, the lawyer further claimed that the right to dignity, which is safeguarded by Article 21, and the right to reputation are inseparably linked. Furthermore, the Right to Reputation distinguishes the Right to Offense from the Right to Freedom of Speech and Expression.

During the Constituent Assembly's debates, the Attorney General claimed that because there was no additional legal provision, Article 19(2) of the Indian Constitution was drafted specifically to guarantee constitutional defense for Section 499 of the Indian Penal Code, 1860. Consequently, the whole purpose of establishing reasonable restrictions would be nullified if these restrictions under Article 19(2) were to be considered in isolation rather than combined with Section 499⁷ of the Indian Penal Code, 1860.

It could be inaccurate to establish a line between the rights of society as a whole and the rights provided for individuals under Articles 14⁸, 19, and 21 of the Indian Constitution. The contentions put forward by the petitioner are thus unsustainable because even the Court has established that Articles 14, 19, and 21 are one and identical in its various precedents.

Moreover, the freedom of speech and expression is protected by Section 199(1) of the Criminal Procedure Code, 1973. The Petitioner is obligated by this Section to prosecute the criminal complaint independently of the state prosecution mechanism. As a consequence, this provision

⁷ Chaman Lal vs. The State of Punjab (06.03.1970 - SC) : MANU/SC/0107/1970

⁸ 14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

prohibits people from presenting meaningless petitions that would ordinarily swamp the Magistrate's courts.

Judgement-

After Justice Dipak Misra declared the court's ruling, Justice Prafulla C. Pant concurred. At the start of the decision, the legal meanings of "defamation" and "reputation," in addition to their connection to the right to free speech and expression, are reviewed. After reviewing numerous precedents, the Court decided that the meaning of the phrase was clear and unequivocal. The Court furthermore concluded that the meaning of "reputation" had been integrated into the protection of "dignity," which was an integral part of the constitutionally given right to life. The Court pointed to the fact that there are adequate constraints on the right to free speech and expression in a democracy, whilst acknowledging its significance and integrity.

These constraints must be feasible and helpful for the public in general. No one's rights shall be infringed or constraints placed unjustly. The goal is to find a balance among the significance of free speech to society and the requirement to safeguard the public interest. The Court reminded in the direction that the criminal law represents one of the tools the State selected for safeguarding its reputation. Given the fact that credibility is safeguarded under Article 21⁹ of the Indian Constitution, which guarantees life and liberty, the Court ultimately reached the opinion that it was challenging to agree with the concept that criminal defamation had an overly limiting influence on the right to freedom of speech and expression.

By reversing prior rulings in cases like *Singhal v. Union of India* and *Rangarajan*, that concluded that laws were unconstitutional for encroaching on the right to free speech, the Court underlined the clarity of the criminal defamation legislation. The Court continued further to point out its significance of the notions of constitutional fraternity and fundamental accountability, which maintain that all citizens possess a duty to protect the dignity of others. The Court pointed out

that this is an essential necessity and ruled that it was difficult to reach the conclusion that the existence of criminal defamation interferes with freedom of speech and expression.

In order to assess whether the criminal defamation laws defy the concept of "reasonableness" either significantly or legally, the Court additionally looked at if they are arbitrary, disproportionate, or unclear. The Court ruled that the four grounds offered in the defamation provision of the Penal Code were neither vague or ambiguous. The Court underlines that an allegation can only be declared defamatory if it directly or indirectly undermines a person's reputation or integrity in the opinion of others. Pursuant to the Court, a factual comment cannot be safeguarded by the constitution if it is made merely to criticize an individual and not for any other reason, although it agreed that truthfulness is only a defense when it contributes to the greater good.

Pursuant to the Court, the penal code provision is appropriate. The public interest is used to evaluate the reasonableness and appropriateness of a restriction instead of considering into thought the standpoint of the individual subject to the limits. Using that standard, the Court concluded that the criminal defamation regulations were appropriate. The Court disregarded the contention that it is just a majority view aimed at harming the right to free speech and expression since defamation is too large a notion to be utilized as a guide when determining whether restriction is suitable.

Analysis-

Justice Dipak Misra delivered the ruling in the suit, and Justice Prafulla C. Pant sided with him. It was a detailed ruling that delves deeply into the interpretation of the terms "defamation" and "reputation," in addition to their connection to the Indian Constitution's Right to Freedom of Speech and Expression.

Following a review of several precedents, the Court concluded that each of these phrases was explicit and unequivocal. Furthermore, the Court said that 'reputation' as a term is an element of

the protection of 'dignity,' which is dealt with in Article 21, the Right to Life and Personal Liberty.¹⁰

The court cited this case to emphasize the sacredness and significance of the right to free speech and expression in a democracy. The Court decided that rights are bound by acceptable limitations, but these constraints should not be unreasonable and should benefit society. The regulation that executes such limits should never be arbitrary and not infringe on people's rights. As a result, an equilibrium must be established between the right to free speech and expression and the constraints that are enforced on it. The Court pointed out that attribution is only defamatory if it explicitly or tacitly affects a person's reputation or credibility in the view of others. In this ruling, the Court held that truth could potentially be used as a defense in defamation cases if the derogatory remark had been made in the public interest. As a result, the Court ruled that a defamatory comment made merely for demeaning a person, even if honest, should not be shielded.

The appropriateness and proportionality of limitations on free speech and expression ought not to be regarded from the perspective of the individual who is subjected to such constraints. However, this has been viewed from the viewpoint of the larger public interest. Courts were left to decide what constituted an appropriate limitation, therefore terms like "defamation" and "public order" weren't defined precisely. The Supreme Court's decision in Subramaniam Swamy emphasizes the issue of permitting two judges to hear matters of grave constitutional importance, like that of Naz¹¹ and Shreya Singhal¹². The Constitution requires a minimum of five judges to hear significant constitutional interpretation questions. More concerning, however, are the consequences for the Supreme Court as an institution. Providing reasons for granting or denying every argument presented in the challenge is essential for the concept of judicial consistency and the rule of law. A justified order is needed to ensure transparency, re-establish faith in the legal system, and allow parties to exercise their right to review. In the case of the Supreme Court, this is particularly crucial given the court's broad powers in administering justice and the limited

¹⁰ <https://www.scobserver.in/reports/defamation-judgment-of-the-supreme-court-in-plain-english/>

¹¹ Naz Foundation v. Government of NCT of Delhi and Ors. MANU/DE/0869/2009

¹² Shreya Singhal vs. Union of India (UOI) (24.03.2015 - SC) : MANU/SC/0329/2015

redress available to petitioners afterward. Unfortunately, despite its outstanding length, the court's decision in this case lacked sufficient reasons to support its conclusions.

Aftermath of the judgement-

The legal framework in India with respect to defamation and free expression has been greatly influenced by this decision. Surprisingly in July 2024, social activist Medha Patkar¹³ was given a five-month jail sentence in a criminal defamation case initiated by Delhi Lieutenant Governor Vinai Kumar Saxena over twenty years prior. This case illustrates the Supreme Court's decision's enduring impact and the continuing application of India's criminal defamation laws.

Additionally, there has been ample debate about the judgment. Critics argue that rendering defamation a crime may hinder free expression and discourage reasonable criticism, which would paralyze open discussion. They advocate decriminalizing defamation, claiming that damage to reputation could be properly compensated via civil remedies. Nevertheless, proponents claim that criminal defamation laws must exist to maintain social harmony and safeguard people's reputations from unwarranted attacks.

In summary, the decision rendered in *Subramanian Swamy v. Union of India* through the Supreme Court has solidified the constitutional basis for criminal defamation in India by striking a balance between the safeguarding of one's reputation and the right to free speech. In India, criminal defamation laws continue to be in force after the ruling, often being handed down to political opponents, journalists, and activists. Critics argue that these regulations foster self-censorship by functioning as a tool for harassment. The significance of modifying or prohibiting criminal defamation continues to be up for debate in an assortment of legal and policy settings. Whilst the legislation is still in force, courts have made an effort to avoid pointless defamation cases from imposing an excessive strain on free speech.

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<https://www.ndtv.com/india-news/activist-medha-patkar-gets-5-months-jail-in-defamation-case-filed-by-delhi-lt-governor-vk-saxena-6010032>

The outcome additionally affected additional problems concerning freedom of expression by confirming the judiciary's larger approach to achieving an appropriate equilibrium between individual rights and constitutional freedom. However, proponents of free speech keep on strongly calling for legislative action to review and possibly change defamation rules.

Conclusion-

The Subramanian Swamy case remains an essential decision in Indian constitutional law, confirming the judiciary's position on free speech restrictions. While the decision recognizes the right to reputation as a fundamental right, it also raises concerns about the potential misuse of criminal defamation laws to silence dissent. Moving forward, modifications to legislation or judicial review may be necessary to bring together India's defamation laws with international standards while upholding the integrity of free speech and democratic discourse.