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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

## **CASE COMMENT: SUBRAMANIAN SWAMY V. UNION OF INDIA (2016)**

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### **INTRODUCTION:**

In democracies, the dispute between the right to reputation and the free speech has long been a contentious issue. The Constitution of India, 1950<sup>1</sup>, protects several rights of Indian citizens. One such right which the Indian Constitution guarantees its people is Article 19(1)(a)<sup>2</sup>, which guarantees all the citizens of India the right to freedom of speech and expression. However, this right is subject to reasonable restriction under Article 19(2)<sup>3</sup>, which states that the Constitution of India permits the government to enable reasonable restrictions on freedom of speech and expression. These restrictions can be imposed in the interest of public order, security of the state, and other matters. "Can the right to free speech include the right to offend?" A case which answers this question and stands as a crucial legal confrontation which tested the boundaries of these rights in India is *Subramanian Swamy v. Union of India (2016)*<sup>4</sup>. It is a landmark judgement passed by the Supreme Court of India which challenged the legal validity of criminal defamation laws under section 499<sup>5</sup> and 500<sup>6</sup> of the Indian Penal Code, 1860<sup>7</sup> and 199(1)<sup>8</sup> to 199(4)<sup>9</sup> of the Code of Criminal Procedure, 1973<sup>10</sup>. The case arose when Dr Subramanian Swamy, who is also a politician and a scholar, challenged the provisions of criminal defamation laws. He argued that it violated the fundamental right of freedom of speech and expression under Article 19(1)(a)<sup>11</sup> of Indian citizens. He stated that criminal defamation imposes an unreasonable restriction and rather suppresses dissent and criticism of the individuals. He argued that it should not be considered a criminal offence but rather should solely be treated as a civil wrong, since the risk and fear of imprisonment may discourage free expression in the society. However, the Union of India responded that the criminal defamation somehow creates a legitimate state interest which helps to balance freedom of speech along with an individual's reputation. It argued that the right to reputation is a significant aspect of Article 21 (Right to Life and Personal Liberty)<sup>12</sup>. The verdict of this case upheld the idea that though the right to freedom of speech and expression is a fundamental right, it should ensure that it does not infringe upon another individual's right to reputation.

## **BACKGROUND AND FACTS OF THE CASE:**

The laws of criminal defamation (Sec 499<sup>13</sup> and 500<sup>14</sup>) under the Indian Penal Code, 1860<sup>15</sup>, were introduced by Lord Macaulay during the British colonial rule in India. This was primarily done in order to suppress dissent and criticism against the colonial administration. These laws were used as a tool to silence the Indian journalists, political activists and freedom fighters who spoke against British rule. However, by the 21st century, many countries, including the United Kingdom, had decriminalised defamation except India. It continued to exist under Sec 499<sup>16</sup> and 500<sup>17</sup> of the IPC. Dr Subramanian Swamy, a politician and economist, challenged the constitutionality of these sections, claiming that it breached Article 19 (1)(a)<sup>18</sup> of the Indian Constitution, which safeguards freedom of speech and expression. Various petitions were filed under Article 32<sup>19</sup> of the Constitution of India<sup>20</sup>, which challenged the defamation provisions.<sup>21</sup> Key petitioners included famous politicians such as Dr Subramanian Swamy, Rahul Gandhi, and Arvind Kejriwal, who had been charged with criminal defamation in several cases. They argued that criminalising defamation infringed the basic right to freedom of expression. They also asserted that the provision was being misused to suppress dissent and political criticism. According to the petitioners, Defamation should be considered a civil offence rather than a criminal one. However, the counsel of respondents argued that the harm to reputation cannot always be compensated in monetary terms; keeping in mind, it further contended that the right to reputation cannot be separated from the right to dignity, which falls under the ambit of Article 21 of the Indian Constitution<sup>22</sup>. They also argued that Article 19(1)(a)<sup>23</sup> is not a standalone and an absolute right. Therefore, restrictions can be imposed upon this right. Criminal defamation protects individuals from false and malicious statements that can damage their reputation. Hence, this law ensures to create a balance between free speech and protecting reputation.

## **ISSUES RAISED:**

The case Subramanian Swamy v. Union of India (2016)<sup>24</sup> raised three questions before the Supreme Court:

1. Whether Criminal Defamation laws violate Article 19 (1)(a)<sup>25</sup> – Right to freedom of speech and expression?
2. Whether Sections 499<sup>26</sup> and 500<sup>27</sup> of IPC and Sections 199(1)<sup>28</sup> to 199(4)<sup>29</sup> of CrPC are arbitrary, vague, or disproportionate?
3. Whether Right to Reputation is a Fundamental Right under Article 21<sup>30</sup>?

## **JUDGMENT:**

On May 13, 2016, a two-judge Supreme Court bench consisting of Justice Dipak Misra and Justice Prafulla C. Pant confirmed the legality of criminal defamation laws in India. The judgement emphasised that a person's reputation is an important aspect of their dignity and social status, and that criminal law is legitimate in safeguarding it. The court also ruled that criminal defamation laws help to protect the dignity of individuals, which is necessary in a democratic society. The court claimed that Article 19(1)(a)<sup>31</sup> is not an absolute right and therefore, the restrictions by Article 19(2)<sup>32</sup> on Right to Freedom of Speech and Expression by criminalising the offence of defamation are just and reasonable in nature.<sup>33</sup> The Supreme Court upheld the constitutionality of Sections 199(1)<sup>34</sup> to 199(4)<sup>35</sup> CrPC, ruling that they are reasonable, fair, and do not violate the right to free speech under Article 19(1)(a)<sup>36</sup>. The Court determined that defamation laws are not ambiguous nor excessive, and do not place an unjustified restriction on free expression. The court also highlighted that the right to reputation is an essential aspect of Article 21 (Right to Life and Personal Liberty)<sup>37</sup> and must be balanced with the right to free speech. The court rejected the argument that criminal defamation had a severe effect on free speech, stating that the restrictions on defamatory speech were reasonable. The Supreme Court also relied on judgements of other countries in similar cases and ruled that the right to reputation falls under the right to life given under Article 21 of the Indian Constitution<sup>38</sup>. The Supreme Court, while deciding the case, looked upon a number of precedents such as *Gian Kaur v. State of Punjab* (1996)<sup>39</sup> and *Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendra Nath Nadkarni and others* (1983)<sup>40</sup> before concluding that Right to reputation falls under Article 21 of the Indian Constitution<sup>41</sup>. The court also held that there exists a constitutional duty to protect the dignity of the individuals. Therefore, the constitutional validity of criminal defamation laws was upheld by the Supreme Court.

## **RULES:**

In *Subramanian Swamy v. Union of India* (2016)<sup>42</sup>, Supreme Court relied on the following rules and provisions of the Constitution:

- The Supreme Court determined that criminal defamation laws (Sections 499 & 500 IPC) are a justifiable limitation under Article 19(2) because it preserves an individual's reputation, which is important for social peace.
- Reputation is a significant component of human dignity, and any damage to reputation undermines an individual's fundamental right to life.

- The Court dismissed the claim that Sections 499 & 500 IPC are unclear or overbroad. It concluded that the clauses include adequate protections (e.g., exclusions for public behaviour, fair criticism, etc.).
- The Court ruled that defamation is not a private wrong but rather a public wrong, which means it has an impact on society as a whole. That is why criminal culpability is acceptable, as simple civil remedies (such as compensation) may not be sufficient in all circumstances.
- The petitioners asserted that criminal defamation unfairly targets free expression, which violates Article 14. The Court dismissed this, holding that Sections 499 and 500 of the IPC are equally applicable to everyone and include protections against abuse.
- The Court maintained Section 199 CrPC, which permits public prosecutors to bring defamation actions against public employees. However, it stated that such prosecution should not be utilised for political vendetta.

### **CRITICAL ANALYSIS:**

The Supreme Court's verdict in *Subramanian Swamy v. Union of India* (2016)<sup>43</sup> upheld the legal validity of criminalising defamation laws in India. This decision aimed to create a balance between free speech and the right to reputation (Article 21)<sup>44</sup>. Although the decision was legally sound, it did create a debate on freedom of speech, democratic discourse and misuse of defamation laws. The Supreme Court emphasised that freedom of speech is not a standalone right. While Article 19(1)(a)<sup>45</sup> guarantees the right to freedom of speech and expression, Article 19(2)<sup>46</sup> allows reasonable restrictions which ensure to protect an individual's reputation in the society. The court also highlighted that the right to reputation is a significant aspect of Article 21<sup>47</sup>, which needs to be balanced with free speech. However, the biggest criticism is that criminal defamation laws discourage free expression in the society. There will be limited public discourse due to the fear of prosecution among journalists, critics of the government and the activists. Many influential individuals misuse the defamation laws to suppress dissent. If we look globally, many democratic countries, such as the United States of America, New Zealand, Australia, etc., consider defamation as a civil wrong. Moreover, the United Kingdom has completely abolished criminal defamation. Many other European countries have repealed defamation laws, citing concerns about press freedom. If India needs to find alternative approaches or reforms, like other democracies, India can also follow the global trend and

abolish the defamation laws, thus making it a complete civil offence. This would help to protect a person's reputation without stifling free speech.

### **AFTERMATH OF THE JUDGMENT:**

Following the judgement, which upheld the criminal defamation laws as legally valid, the ruling led to widespread criticism, reforms and debates. The following is an outline of the significant developments that occurred following the judgement:

- There was an increase in the criminal defamation cases by the politicians and government officials against journalists, activists and opposition leaders. The judgement encouraged the use of defamation laws as a political tool.
- Many defamation lawsuits were filed against those who criticised the government. One such example includes the opposition leader (Congress leader), Rahul Gandhi, who faced criminal defamation suits for remarks against RSS.
- The judgement had a chilling effect on press freedom and journalism. Many media houses and journalists expressed their concerns regarding criminal defamation, which could curb press freedom. Furthermore, many reports on corruption and public figures faced legal consequences, discouraging bold journalism. In 2017, the BJP leader Amit Shah had filed a defamation case against 'The Wire' for a report on his company's financial dealings.
- Due to all this, fresh petitions were filed by several lawyers, activists and media groups who appealed for a review of the ruling, stating that there is a misuse of defamation laws by politicians and corporations. However, the Supreme Court did not overturn or modify its judgement.
- Till now, no progress has been made by any government to either amend or repeal the defamation law despite public outcry and strong opposition from activists and media organisations.

### **CONCLUSION:**

To conclude, the verdict given by the Supreme Court in this case, reaffirmed that the right to freedom of speech and expression (Article 19(1)(a))<sup>48</sup> is not an absolute right but holds a responsibility intertwined with the reputation of others. The Supreme Court, by upholding the legal validity of criminalising defamation laws, struck a balance between free speech and the right to reputation. This emphasised that words have power, but they also carry consequences

along with them. This is to keep in mind, while you exercise the liberty to voice out your opinion, it must coexist with the duty to respect another's honour too. This case stands as a reminder that a person's reputation is equally important and should not be overlooked in the name of free speech.

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<sup>1</sup> India Const. (1950).

<sup>2</sup> India Const. art. 19, cl. 1(a).

<sup>3</sup> India Const. art. 19, cl. 2.

<sup>4</sup> Subramanian Swamy v. Union of India (2016) 7 SCC 221.

<sup>5</sup> Indian Penal Code, s499 (1860).

<sup>6</sup> Indian Penal Code, s500 (1860).

<sup>7</sup> Indian Penal Code (1860).

<sup>8</sup> Code of Criminal Procedure, s199(1) (1973).

<sup>9</sup> Code of Criminal Procedure, s199(4) (1973).

<sup>10</sup> Code of Criminal Procedure (1973).

<sup>11</sup> India Const. art. 19, cl. 1(a).

<sup>12</sup> India Const. art. 21.

<sup>13</sup> Indian Penal Code, s499 (1860).

<sup>14</sup> Indian Penal Code, s500 (1860).

<sup>15</sup> Indian Penal Code (1860).

<sup>16</sup> Indian Penal Code, s499 (1860).

<sup>17</sup> Indian Penal Code, s500 (1860).

<sup>18</sup> India Const. art. 19, cl. 1(a).

<sup>19</sup> India Const. art. 32.

<sup>20</sup> India Const. (1950).

<sup>21</sup> LawBhoomi, Subramanian Swamy v Union of India, (Jan.17,2025), <https://lawbhoomi.com/subramanian-swamy-v-union-of-india/>

<sup>22</sup> India Const. art. 21.

<sup>23</sup> India Const. art. 19, cl. 1(a).

<sup>24</sup> Subramanian Swamy v. Union of India (2016) 7 SCC 221.

<sup>25</sup> India Const. art. 19, cl. 1(a).

<sup>26</sup> Indian Penal Code, s499 (1860).

<sup>27</sup> Indian Penal Code, s500 (1860).

<sup>28</sup> Code of Criminal Procedure, s199 (1) (1973).

<sup>29</sup> Code of Criminal Procedure, s199(4) (1973).

<sup>30</sup> India Const. art. 21.

<sup>31</sup> India Const. art. 19, cl. 1(a).

<sup>32</sup> India Const. art. 19, cl. 2.

<sup>33</sup> Nishtha Garhwal, aspects of defamation in India with respect to Subramanian Swamy v. Union of India, (Nov. 20, 2021), [https://blog.ipleaders.in/aspects-of-defamation-in-india-with-respect-to-subramanian-swamy-v-union-of-india/#Case\\_outcome\\_and\\_judgment](https://blog.ipleaders.in/aspects-of-defamation-in-india-with-respect-to-subramanian-swamy-v-union-of-india/#Case_outcome_and_judgment)

<sup>34</sup> Code of Criminal Procedure, s199 (1) (1973).

<sup>35</sup> Code of Criminal Procedure, s199(4) (1973).

<sup>36</sup> India Const. art. 19, cl. 1(a).

<sup>37</sup> India Const. art. 21.

<sup>38</sup> India Const. art. 21.

<sup>39</sup> Gian Kaur v. State of Punjab (1996) 2 SCC 648.

<sup>40</sup> Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendra Nath Nadkarni, (1983) 1 SCC 124.

<sup>41</sup> India Const. art. 21.

<sup>42</sup> Subramanian Swamy v. Union of India (2016) 7 SCC 221.

<sup>43</sup> Subramanian Swamy v. Union of India (2016) 7 SCC 221.

<sup>44</sup> India Const. art. 21.

<sup>45</sup> India Const. art. 19, cl. 1(a).

<sup>46</sup> India Const. art. 19, cl. 2.

<sup>47</sup> India Const. art. 21.

<sup>48</sup> India Const. art. 19, cl. 1(a).