

## What is the Press and Registration of Books Act, 1867

Earlier today, the [Indian Express](#) reported that a political leader allegedly put up posters with photographs of former and current leaders of the Bhartiya Janta Party i.e. Mr. Chinmayanand, Mr. Kuldeep Singh Sengar etc. at various places across Lucknow. These individuals are/have been accused and/or convicted in some cases, for offences of sexual assault and rape. The posters read, “*When will the posters of those who are getting patronage from the government be put up?*”

The posters were put up in response to the Chief Minister’s directives issued earlier this week, calling for naming and shaming individuals accused of offences against women. Shortly thereafter, the political leader was booked by the Uttar Pradesh police under various provisions of the Indian Penal Code, along with the [Press and Registration of Books Act, 1867](#) (“Act”). According to the officials, the provisions of the Act were invoked because the posters and banners did not have names of the printer(s).

This interesting development in Uttar Pradesh has brought into focus the relevance of an archaic British era law i.e. the Press and Registration of Books Act. The Act although not discussed much in the news, holds significant relevance and is ordinarily invoked while prosecuting publishers of newspapers, books and other publishing material. In the present post, I shall provide an overview of the Act and discuss its provisions. Thereafter, I shall juxtapose the Act with Article 19 of the Constitution i.e. the Right to Freedom.

### **Content and Context:**

The Act was passed in the year 1867 when India was under the colonial rule. Therefore, it definitely had a dubious agenda. It was aimed at curbing free speech by introducing several procedural requirements if an individual wanted to start publication of any book, newspaper etc. In fact, violation of these trivial procedures rendered the entire publication unlawful. Despite attaining independence, the law continues to operate ([A Kamaraj v. Secretary Tamil Nadu Legislative Assembly](#), 2012 SCC Online Mad 1581).

According to its statement of object and reasons, the Act aims to (a) regulate printing press and newspapers in India, (b) preserve copies of books and newspapers printed in India, and (c) provide for registration of books and newspapers. 'Book' for the purposes of the Act, includes even a pamphlet and every sheet of music, map, chart etc. Interestingly, electronic media is outside the purview of this Act ([Sanjay Pinto v. A. Kamaraj](#), 2011 SCC Online Mad 1798).

The Act *inter alia* provides that:

- a. Every book shall carry a legibly printed name of printer and place of printing (Section 3). Similarly, every newspaper shall contain the names of the owner and editor, date of publication, which shall be printed clearly on every edition (Section 5).
- b. Every individual running a printing press, for the purposes of printing books or newspapers, shall duly make a declaration to that effect, before the Magistrate within whose territorial jurisdiction the press falls.

Violation of the above, carries a penalty of maximum two thousand rupees and/or simple imprisonment for a maximum term of six months. Such a violation can be brought forth by any person who has its knowledge and there is no requirement of she/he being personally interested or affected by the publication ([State of Mysore v. Yamanappa Sidappa](#), 1973 SCC Online Kar 442).

It should be noted that the Declaration mentioned above, is used as sufficient evidence against the signatory and it is assumed that she/he was the printer or publisher of the publication and hence, liable for any offence that the publication might have committed. For a newspaper, a similar presumption is applicable on the 'Editor' whose name is published in the newspaper.

For example, 'A' is a weekly newspaper published and sold in the state of Uttar Pradesh. The newspaper mentions the name of 'X' as the Editor. The newspaper publishes an article which is allegedly defamatory towards an individual and the aggrieved individual decides to file a complaint against it. In such a case, the complaint would be filed against 'X' as it shall be presumed that being the Editor, she/he knew of the alleged defamatory contents (unless proven otherwise).

It should be noted that the obligations and presumptions under the Act, are only applicable on the Editor of the newspaper and not its Chief Editor(s), Managing Editor(s), Resident Editor(s) etc., unless it can be shown that they had knowledge of the content published ([KM Mathew v. KA Abraham](#), AIR 2002 SC 2989).

### **The Act vis-à-vis Article 19:**

The Constitution of India guarantees to every citizen the [Right to Free Speech \[Article 19\(1\)\(a\)\]](#) and the [Right to Freedom of Trade, Business and Profession \[Article 19\(1\)\(g\)\]](#). When an individual decides to start a printing press or publish a newspaper or book, both these rights come into play. By writing the publication, she/he exercises the right to speech and by selling the publication, the right to trade and business.

The above-mentioned rights are not absolute and can be reasonably restricted. The Act is one such restriction. However, one must laud the Courts as they generally adopted a narrow interpretation to the provisions of the Act. In other words, they have tried to preserve the fundamental rights of the publishers, whenever the Act has been invoked. For instance, in *Gopal Das Sharma v. District Magistrate*, (1973) 1

SCC 159, the Court emphasised on the fundamental rights of the publishers and held that the officials need to mandatorily adhere to the principles of natural justice while assessing applications and declarations under the Act. Similarly, in *KA Mohammed v. Revenue Officer*, 2010 SCC Online Mad 3443, the High Court held that the government officials cannot place additional conditions on the publishers for publishing newspapers, over and above the ones in the Act. The Court came down heavily on the officials for imposing the requirements of a police no objection certificate and looking into the antecedents of the publisher, before accepting his declaration.

### **Concluding Remarks:**

The entire name and shame episode in Uttar Pradesh, has brought to focus an unnecessary law that should have been shelved once India attained independence. The Act was enacted with the sinister aim of regulating Indian publications and rendering the one's that didn't please the government, unlawful. In fact, time and again the Courts have called for its repeal, given its unnecessary provisions and their impact particularly on the freedom of speech [[Institute of CA of India v. Union of India](#), (2005) 35 AIC (Delhi HC)].

Last year, an effort in this direction was made by the central government when it proposed the draft [Registration of Process and Periodical Bill, 2019](#). The said Bill proposed some significant changes which *inter alia* includes repealing the Act, bringing digital media under its purview and dispensing with the requirement of declarations before local administrations. There is no doubt that some aspects of the Bill are open to [debate](#) but even in its current form, it shall be a better alternative to the current law.

As for the name and shame episode in Uttar Pradesh, the government may be displeased to know that the Madras High Court in a related case had ruled that pamphlets are not the same as books and newspaper and hence the Act is inapplicable on them. Every time a government, tries to use the law to curb any form

of publication (tasteful or distasteful), it attacks the notions of free speech which our Constitution very dearly guarantees to its citizens.

Unit 2

Vernacular Press Act, 1878:

A bitter legacy of the 1857 revolt was the racial bitterness between the ruler and the ruled. After 1858, the European press always rallied behind the Government in political controversies while the vernacular press was critical of the Government. There was a strong public opinion against the imperialistic policies of Lytton, compounded by terrible famine (1876-77), on the one hand, and lavish expenditure on the imperial Delhi Durbar, on the other.

The Vernacular Press Act (VPA) was designed to 'better control' the vernacular press and effectively punish and repress seditious writing.

**The provisions of the Act included the following:**

1. The district magistrate was empowered to call upon the printer and publisher of any vernacular newspaper to enter into a bond with the Government undertaking not to cause disaffection against the Government or antipathy between persons of different religions, caste, race through published material; the printer and publisher could also be required to deposit security which could be forfeited if the regulation were contravened, and press equipment could be seized if the offence re-occurred.
2. The magistrate's action was final and no appeal could be made in a court of law.
3. A vernacular newspaper could get exemption from the operation of the Act by submitting proofs to a government censor.

The Act came to be nicknamed "the gagging Act". The worst features of this Act were—(i) discriminator between English and vernacular press, (ii) no right of appeal.

Under VPA, proceedings were instituted against Som Prakash, Bharat Mihir, Dacca Prakash and Samachar.

(Incidentally, the Amrita Bazar Patrika turned overnight into an English newspaper to escape the VPA.)

Later, the pre-censorship clause was repealed, and a press commissioner was appointed to supply authentic and accurate news to the press.

There was strong opposition to the Act and finally Ripon repealed it in 1882.

In 1883, Surendranath Banerjea became the first Indian journalist to be imprisoned. In an angry editorial in *The Bengalee* Banerjea had criticised a judge of Calcutta High Court for being insensitive to the religious sentiments of Bengalis in one of his judgements.

Balgangadhar Tilak is most frequently associated with the nationalist fight for the freedom of press. Tilak had been building up anti-imperialist sentiments among the public through Ganapati festivals (started in 1893), Shivaji festivals (started in 1896) and through his newspapers *Kesari* and *Maharatta*.

He was among the first to advocate bringing the lower middle classes, the peasants, artisans and workers into the Congress fold. In 1896, he organised an all Maharashtra campaign for boycott of foreign cloth in opposition to imposition of excise duty on cotton. In 1896-97 he initiated a no-tax campaign in Maharashtra, urging farmers to withhold the payment of revenue if their crop had failed. In 1897, plague occurred in Poona. Although Tilak supported government measures to check plague, there was large-scale popular resentment against heartless and harsh methods such as segregation and house searches.

The popular unrest resulted 'in murder of the chairman of the Plague Committee in Poona by the Chapekar brothers. The government policies on tariff, currency and famine were also behind this popular resentment.

The Government had been looking for an opportunity to check this militant trend and hostility in the press. They decided to make Tilak a victim to set an example to the public. Tilak was arrested after the murder of Rand on the basis of the publication of a poem, 'Shivaji's Utterances', in *Kesari*, and of a speech which Tilak had delivered at the Shivaji festival, justifying Afzal Khan's murder by Shivaji.

Tilak's defence of Shivaji's killing of Afzal Khan was portrayed by the prosecution as an incitement to kill British officials. Tilak was held guilty and awarded rigorous imprisonment of eighteen months. Simultaneously several other editors in Bombay presidency were tried and given similar harsh sentences. There were widespread protests against these measures. Overnight Tilak became a national hero and was given the title of "Lokmanya" (respected and honoured by the people)—a new leader who preached with his deeds.

In 1898, the Government amended Section 124A and added another Section 153A which made it a criminal offence for anyone to bring into contempt the Government of India or to create hatred among different classes, that is, vis-a-vis the English in India. This also led to nation-wide protests. During Swadeshi and Boycott Movements and due to rise of militant nationalist trends, several repressive laws were passed.

### Freedom of Press - Article 19(1)(a)

Freedom of press is not specifically mentioned in article 19(1) (a) of the Constitution and what is mentioned there is only freedom of speech and expression. In the Constituent Assembly Debates it was made clear by Dr. Ambedkar, Chairman of the Drafting Committee, that no special mention of the freedom of press was necessary at all as the press and an individual or a citizen were the same as far as their right of expression was concerned.

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### Freedom of Press - Article 19(1)(a)

To preserve the democratic way of life it is essential that people should have the freedom of express their feelings and to make their views known to the people at large. The press, a powerful medium of mass communication, should be free to play its role in building a strong viable society. Denial of freedom of the press to citizens would necessarily undermine the power to influence public opinion and be counter to democracy.

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The framers of the Indian constitution considered freedom of the press as an essential part of the freedom of speech and expression as guaranteed in Article 19 (1) (a) of the Constitution.

In **Romesh Thaper vs State of Madras** and **Brij Bhushan vs State of Delhi**, the Supreme Court took it for granted the fact that the freedom of the press was an essential part of the right to freedom of speech and expression. It was observed by Patanjali Sastri J. in Romesh Thaper that freedom of speech and expression included propagation of ideas, and that freedom was ensured by the freedom of circulation.

It is clear that the right to freedom of speech and expression carries with it the right to publish and circulate one's ideast, opinions and other views with complete freedom and by resorting to all available means of publication. The right to freedom of the press includes the right to propagate ideas and views and to publish and circulate them. However, the freedom of the press is not absolute, just as the freedom of expression is not. Public

Interest has to be safeguarded by article 19(1)(2) which lays down reasonable limitations to the freedom of expression in matters affecting:

- a. Sovereignty and integrity of the State
- b. Security of the State
- c. Friendly relations with foreign countries
- d. Public order
- e. Decency and morality
- f. Contempt of court
- g. Defamation
- h. Incitement to an offence

## Freedom of Press Defined

It is an absence of statutory and administrative control on dissemination of information, ideas, knowledge and thoughts.

The freedom of the press and of expression is guarded by the First Amendment to the US Constitution which specifically lays down that this freedom be in no way abridged by the laws. It is not Indian Leaders were not aware of the US First Amendment or of Jefferson's famous declaration when he said that "Were it left me to decide whether we should have a government without newspaper or newspapers without a government, I should not hesitate a moment to prefer the latter." Jawahar Lal Nehru echoed similar views "I would rather have a completely free press, with all the dangers involved in the wrong use of that freedom, than a suppressed or regulated press." Voltaire once said, "I do not agree with a word you say but I defend to death your right to say it."

Mrs. Gandhi has never had much faith in the press. Her misgivings about the press were first expressed in her address to the International Press Institute Assembly in New Delhi on November 15, 1966, when she blamed the press for giving wide publicity to student unrest in the country. She said, "How much liberty should the press have in a country like India which is engaged in fighting a war against poverty, backwardness, superstition and ignorance." Mrs. Gandhi would not suggest restrictions that might be imposed on the press but said that it was for the leading editors, and journalists of the country to decide. Nine years later when Mrs. Gandhi declared emergency action was taken against the press immediately and complete censorship was imposed.

Kuldip Nayar, a veteran journalist wrote to Mrs. Gandhi soon after she imposed the emergency, "if newspapers have criticized the government, it is largely because of its sluggish administration, slow progress in the economy field and the gap between promise and performance. My concept of a free press is to ferret out the truth and let the public know."

To preserve the democratic way of life, it is essential that people should have the freedom to express their feelings to make their views known to the people at large. The press, a powerful media of mass communication should be free to play its role in building a strong viable society. Denial of the freedom of press to citizens would necessarily undermine the power to influence public opinion.



Besides the restrictions imposed on the press by the Constitution, there exist various other laws which further curtail press freedom and the right of the citizen to information as well as the right to freedom of speech and expression. They are all in force in the interest of public order of the sovereignty and security of the state.

## Development of the Meaning of Freedom of Press

Historically, the origin of the concept of freedom of press took place in England. From the earliest times, in the West, persecution for the expression of opinion even in matters relating to science or philosophy was restored to by both the Church and the State, to suppress alleged heresy, corruption of the youth or sedition. Such restraints, through licensing and censorship, came to be accentuated after the invention of printing towards the latter part of the 15th Century, and the appearance of newspaper in the 17th Century, - which demonstrated how powerful the press was as a medium of expression.

Shortly after their emergence, newspaper came to take up the cause of the Opposition against monarchical absolutism, which in turn, led to different methods of suppression. It is in protest against such governmental interference that freedom of the Press was built up in England. Opposition to governmental interference, which had been brewing on for some time, was supported by logical arguments by Milton in his *Areopagitica* (1644), for instance, that free men must have the 'liberty to know, to utter, and to argue freely according to conscience, above all liberties'. Any form of censorship was intolerable, whether imposed by a royal decree or by legislation.

In fact, Milton's *Areopagitica* was a protest addressed to the Long Parliament which had taken up licensing, after the abolition of the Star Chamber. It was as a result of such agitation that the Licensing Act of 1662 was eventually refused to be renewed by the House of Commons, in 1694, though the reasons given were technical.

The history of Freedom of Press, in England, is thus a triumph of the people against the power of the licenser.

Since there is no written Constitution nor any guarantee of fundamental right in England, the concept of freedom of press, like the wider concept of freedom of expression, has been basically negative.

In other words, freedom of press, in England, means the right to print and publish anything which is not prohibited by law or made an offence, such as sedition, contempt of court, obscenity, defamation, blasphemy.

## Status of Freedom of Press in India

In **Romesh Thapar v/s State of Madras**, Patanjali Shastri, CJ, observed that "Freedom of speech & of the press lay at the foundation of all democratic organization, for without free political discussion no public education, so essential for the proper functioning of the process of popular government, is possible." In this case, entry and circulation of the English journal "Cross Road", printed and published in Bombay, was banned by the Government of Madras. The same was held to be violative of the freedom of speech and expression, as "without liberty of circulation, publication would be of little value".

The Hon'ble Supreme Court observed in **Union of India v/s Association for Democratic Reforms**, "One-sided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions". In **Indian Express Newspapers v/s Union of India**, it has been held that the press plays a very significant role in the democratic machinery. The courts have duty to uphold the freedom of press and invalidate all laws and administrative actions that abridge that freedom. Freedom of press has three essential elements. They are:

1. Freedom of access to all sources of information,
2. Freedom of publication, and
3. Freedom of circulation.

There are many instances when the freedom of press has been suppressed by the legislature. In **Sakal Papers v/s Union of India**, the Daily Newspapers (Price and Page) Order, 1960, which fixed the number of pages and size which a newspaper could publish at a price was held to be violative of freedom of press and not a reasonable restriction under the Article 19(2). Similarly, in **Bennett Coleman and Co. v/s Union of India**, the validity of the Newsprint Control Order, which fixed the maximum number of pages, was struck down by the Court holding it to be violative of provision of Article 19(1)(a) and not to be reasonable restriction under Article 19(2). The Court also rejected the plea of the Government that it would help small newspapers to grow.

## Freedom of Press in India: Constitutional Perspective

In India before Independence, there was no constitutional or statutory guarantee of freedom of an individual or media/press. At most, some common law freedom could be claimed by the press, as observed by the Privy Council in **Channing Arnold v. King Emperor**.

"The freedom of the journalist is an ordinary part of the freedom of the subject and to whatever length, the subject in general may go, so also may the journalist, but apart from statute law his privilege is no other and no higher. The range of his assertions, his criticisms or his comments is as wide as, and no wider than that of any other subject."

With object and views, the Preamble of the Indian Constitution ensures to all citizens inter alia, liberty of thought, expression, belief, faith and worship. The constitutional significance of the freedom of speech consists in the Preamble of Constitution and is transformed as fundamental and human right in Article 19(1)(a) as "freedom of speech and expression.

For achieving the main objects, freedom of the press has been included as part of freedom of speech and expression which is a universally recognized right adopted by the General Assembly of the United Nations Organization on 10th December, 1948. The heart of the declaration contained in Article 19 says as follows:

"Everyone has the right to freedom of opinion and expression, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas

through any media and regardless of frontiers.”

The same view of freedom of holding opinions without interference has been taken by the Supreme Court in *Union of India v. Assn. for Democratic Reforms* in which the Court has observed as follows: (SCC p. 317, para 38)

“One-sided information, disinformation, misinformation and non information, all equally create an uninformed citizenry which makes democracy a farce. ... Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions.”

In India, freedom of press is implied from the freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India. Article 19(1)(a) says that all citizens shall have the right to freedom of speech and expression. But this right is subject to reasonable restrictions imposed on the expression of this right for certain purposes under Article 19(2).

Keeping this view in mind Venkataramiah, J. of the Supreme Court of India in [Indian Express Newspapers \(Bombay\) \(P\) Ltd. v. Union of India](#) has stated:

“In today’s free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate [Government] cannot make responsible judgments. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to Governments and other authorities.”

The above statement of the Supreme Court illustrates that the freedom of press is essential for the proper functioning of the democratic process. Democracy means Government of the people, by the people and for the people; it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential. This explains the constitutional viewpoint of the freedom of press in India.

The fundamental principle which was involved in freedom of press is the “people’s right to know”. It therefore received a generous support from all those who believe in the free flow of the information and participation of the people in the administration; it is the primary duty of all national courts to uphold this freedom and invalidate all laws or administrative actions which interfere with this freedom, are contrary to the constitutional mandate.

Therefore, in view of the observations made by the Hon’ble Supreme Court in various judgments and the views expressed by various jurists, it is crystal clear that the freedom of the press flows from the freedom of expression which is guaranteed to “all citizens” by

Article 19(1)(a). Press stands on no higher footing than any other citizen and cannot claim any privilege (unless conferred specifically by law), as such, as distinct from those of any other citizen. The press cannot be subjected to any special restrictions which could not be imposed on any citizen of the country.

### **Conclusion**

At last it can be concluded that, The Freedom of the Press is nowhere mentioned in the Indian constitution. The Right to Freedom of Speech and Expression is provided in Article 19 of the Indian Constitution. It is believed that Freedom of Speech and Expression in Article 19 of the Indian constitution include freedom of the press.

Freedom of expression enables one to express one's own voices as well as those of others. But freedom of the press must be subject to those restrictions which apply to the freedom of speech and expression. The restrictions mentioned in Art. 19 are defamation, contempt of court, decency or morality, security of the state, friendly relations with other states, incitement to an offence, public order and maintenance of the sovereignty and integrity of India.

The status of freedom of the press is the same as that of an ordinary citizen. The press cannot claim any immunity from taxation, is subject to the same laws regulating industrial relations, and press employees are subject to the same laws regulating industrial employment.

# Freedom of Speech and Expression under the Constitution of India

## Introduction

Freedom of Speech and Expression is defined under **Article 19(1)(a)** of the Constitution of India which states that all the citizens of India have a right to freedom of speech and expression. The philosophy behind this Article lies in the Preamble of the Constitution of India- 'where a solemn resolve is made to secure to all its citizen, their liberty of thought and expression'. The exercise of this right is, however, subjected to reasonable restrictions for some purposes being imposed under **Article 19(2)** of the Constitution of India.

# What are the main elements of freedom of Speech and Expression?

These are the following essential elements of the freedom of Speech and Expression:

1. This right is solely available to a citizen of India and not to persons belonging to other nations i.e. foreign nationals.
2. The freedom of speech under **Article 19(1)(a)** includes the right to express one's views and opinions about any kind of issue and it can be done through any kind of medium, such as by words of mouth, by writing, by printing, through picturisation or through a movie.
3. This right is not absolute as it allows the Government of India to frame laws which can impose reasonable restrictions in the cases which are involved with the sovereignty and integrity of India or the security of the state, or friendly relations with foreign nations, even public order, decency and morality and contempt of court, defamation and incitement to an offence.
4. Such a restriction on the freedom of speech of any citizen may be imposed as much by an action of the State as by its inaction. Thus, if failure is found on the part of the State to guarantee to all its citizens the fundamental right to freedom of speech and expression would also constitute a violation of **Article 19(1)(a)**.

## How is Freedom of Speech important?

In a democracy like India, the concept of freedom of speech & expression opens up channels of free discussion of issues. Freedom of speech plays a very important role in the formation and the showcasing of the public opinion on social, economic & political matters throughout the country. It ensures within its scope, the freedom related to propagation and interchangement of ideas, dissemination of information which would, later on, help the formation of one's opinion along with their viewpoint on certain issues and give rise to debates on matters which involve the public. So long as the expression is confined to nationalism, patriotism & love for our nation, the use of National flag by the way of expression of those sentiments would be a Fundamental Right.

The independent judiciary of India has held and stated it's an opinion that the right to receive any information is another part of the right to freedom of speech and expression and the right to communicate and receive any kind of information without any sort of interference is a crucial aspect of this right. This is because, a person cannot form an informed opinion or make an informed choice and effectively participate socially, politically or culturally without receipt of adequate information.

A print medium is a powerful tool for broadcasting any kind of information to any citizen of the nation. Thus, access to printed material is very crucial for the satisfaction of a person's right to freedom of speech and expression guaranteed to him under the Constitution. If any failure is found on the part of the State to make legislative provision for enabling access to people having print impairment of material in alternative accessible formats would constitute a deprivation of their right to freedom of speech and expression and such an inaction on the part of the State shall fall in the wrong place of the Constitution. It is an obligation on the part of the State to make sure that sufficient provisions are made in the law which enables people with a print impairment to access printed material in accessible formats.

Under the Freedom of Speech and Expression, there is no separate guarantee of freedom of the press as it is already included in the freedom of expression, which is given to all the citizens of the nation.

## What is meant by the Freedom of Press?

Freedom of the Press is not mentioned anywhere in the Constitution of India. However, it is present as a right under the meaning of freedom of speech and expression (not directly expressed though) as laid down under **Article 19** of the Constitution. If by democracy it is meant that the Government is of the people of the nation, it is by the people and it is for the people, then it is necessary that every citizen should be entitled to participate actively in the democratic process of the nation. Free debates and open discussions about certain matters are not possible unless there is a free and independent press.

The freedom of the press includes one of the pillars of democracy and indeed lies at the foundation of democratic organization. It has been held so by the Supreme Court of India in many decisions that the freedom of the press is a part of the Freedom of Speech and Expression and covered under Article 19(1)(a) of the Constitution of India, the reason for this is that the freedom of the press is nothing but an aspect of freedom of speech and expression. Therefore, it has been rightly explained that although the Press is considered to be a medium for reaching the people's views to the everyone and yet it has to stick to the limitations which are imposed upon them by the Constitution under Article 19(2).

**Case:** [\*Indian Express Newspapers \(Bombay\) Private Ltd. v. Union of India\*](#)

In this case it was established after observing that the term "**freedom of press**" is not used under Article 19 in its language but it is contained in the form of its essence within Article 19(1)(a) of the Constitution of India, and hence, there can not be any interference with the freedom of press which involves the public interest and security. Therefore, it was concluded that the imposition of censorship of a journal or prohibiting a newspaper from

publishing their own views about any issue which involves public interest would amount to a restriction on the press' liberty.

## What are the grounds on which this freedom can be restricted?

There are many grounds on which the freedom of speech and expression can be restricted up to some reasonable restrictions by the state. Such restrictions are defined under the **clause (2) of Article 19** of the Constitution of India which imposes certain restrictions on free speech under the following:

1. Security of the State
2. Friendly relations with foreign States
3. Public order
4. Decency and Morality
5. Contempt of court
6. Defamation
7. Incitement to an offence, and
8. Sovereignty and integrity of India.

### Security of the State

Some reasonable restrictions can be imposed on the freedom of speech and expression, in the sections which are involved with the security of the State. The term '**security of the State**' is required to be distinguished from the term '**public order**' because they are similar but different in terms of their intensity. Hence, the security of state refers to serious and aggravated forms of public disorder an example of this can be rebellion, waging war against the state even if it is against a part of the state, etc.

Public interest litigation (PIL) was filed under Article 32 of the Constitution of India by PUCL, against the frequent cases of telephone tapping happening throughout the nation. And thus the validity of Section 5(2) of The Indian Telegraph Act, 1885 was challenged. It was then observed that "occurrence of public emergency" and "in the interest of public safety" is the sine qua non for the application of the provisions laid down under the Section 5(2). If any of these two conditions are absent from the case, then the government of India has no right to exercise its power under this section. Telephone tapping, therefore, will be violative of Article 19(1) (a) unless it comes within the grounds of reasonable restrictions under Article 19(2).

## Friendly relations with foreign States:

This ground for the restriction was added by the **Constitution (First Amendment) Act of 1951**. The State has the authority to impose reasonable restrictions on the freedom of speech and expression if it is affecting negatively the friendly relations of India with other State or States.

## Public order

This ground for the restriction was also added by the Constitution (First Amendment) Act, 1951 this was done in order to meet the situation arising from the Supreme Court's decision in the case of [Romesh Thapar v. The State of Madras \(AIR 1950 SC 124\)](#). According to the Supreme court of India, public order is very much different from law and order and security of the state. The term 'public order' indicates the sense of public peace, public safety and tranquillity. Anything that disturbs public peace, in turn, disturbs the public. But mere criticism of the government does not disturb public order. A law which hurts the religious feelings of any class has been held to be valid and reasonable restriction aimed at maintaining the public order.

## Decency and morality

These are defined under the **Sections 292 to 294** of the Indian Penal Code 1860 provides for the instances of restrictions on the freedom of speech and expression on the grounds of decency and morality, it then prohibits the sale or distribution or exhibition of obscene words.

## Contempt of court:

The right to freedom of speech in no way allows a person to contempt the courts. The expression Contempt of Court has been defined under **Section 2** of the Contempt of Courts Act, 1971. The term 'contempt of court' relates to civil contempt or criminal contempt under the Act.

## Defamation

The **clause (2) of Article 19** of the Constitution of India prevents any individual from making any statement that injures the reputation of another in the eyes of society. Defamation is a serious crime in India and is defined under **Section 499 and 500** of the Indian Penal Code. Right to free speech is not necessarily absolute. It does not mean freedom to hurt any other person's



reputation (which is protected under Article 21 of the constitution). Although 'truth' is considered a defence against defamation, but the defence would only help if the statement was made 'for the good of the public' and that is a question of fact to be assessed by the independent judiciary.

## Incitement to an offence

This is another ground which was also added by the **Constitution (First Amendment) Act of 1951**. The Constitution also prohibits an individual from making any statement which incites or encourages other people to commit an offence.

## Sovereignty and integrity of India:

This ground was added subsequently by the **Constitution (Sixteenth Amendment) Act of 1963**. This is only aimed to prohibit or restrict anyone from making statements that directly challenge the integrity and sovereignty of the country.

## Conclusion

Expressing one's opinions through speech is one of the basic rights guaranteed by the Constitution of India and in the modern context, the right to freedom of speech and expression is not just limited to expressing one's own views through words but it also includes the circulation of those views in terms of writing, or through audiovisuals, or through any other way of communication. This right also comprises of the right to freedom of the press, the right to information, etc. Hence it can be concluded with this article that the concept of freedom is very much essential for the proper functioning of a Democratic State.

The words "in the interest of public order" and "reasonable restrictions" mentioned under Article 19 of the Constitution of India are used to indicate that the rights provided under this section are not absolute and they can be restricted for the safety of the other people of the nation and to maintain the public order and decency.

Unit 4

# Contempt of the Parliament

## Introduction

Parliamentary privilege can be defined as the rights and immunities that are provided to the members of Parliament and the Parliament itself. The objective behind granting these privileges is to allow the members of the Parliament to perform their functions free from any external barriers/constraints. The Parliament has the authority to determine the extent of these rights and immunities and legislate in this regard. However, [no legislation](#) has been passed by the Parliament wherein the extent of these privileges has been provided.

A breach of privilege occurs when any person commits an act that is in violation of the privileges granted to the members of parliament or the Parliament itself. This includes acts of publishing news items/speeches without the consent of the house, obstruction of the proceedings of the house etc. When such a breach of privilege occurs, it is called contempt of the Parliament House and the person who is charged with the contempt of the Parliament House can be punished with imprisonment or fine or can be given a warning against future contempt.

Before we delve into the recent cases of contempt, let us try and understand the law revolving around contempt of the Parliament House in India.

## Contempt of the Parliament House

A contempt of the Parliament House can be defined as any act that:

1. Causes an obstruction in the conduct of proceedings of the House.
2. Causes an obstruction in the performance of functions by any officer or member of the House.
3. Any other act that directly or indirectly has such an effect.

Proceedings against contempt are very important because the nation cannot function properly if the Parliament or its members/officers are unable to perform their duties in an efficient manner.

## Constitutional provisions

The [Constitution of India](#) has several provisions that deal with the privileges granted to the Parliament and its members. Some of the provisions have been enumerated below:

## Powers and privileges of the Parliament and its members

[Article 105](#) of the Constitution enlists multiple powers/privileges that are vested in the Parliament and its members. These powers/privileges include:

1. Freedom of speech in Parliament.
2. Immunity from any proceedings in any court w.r.t anything said or any vote given by the member in the Parliament.
3. Immunity from any proceedings in any court against the publication of any report, votes, paper etc. by or under the authority of the Parliament.

In *Tej Kiran Jain vs. N. Sanjiva Reddy (1970)*, the Supreme Court observed that anything and everything said by a member of the Parliament during the course of the business of the Parliament is protected and the member is immune from any action regarding the same by any court in the country. In *Surendra Mohanty v. Nabakrishna Choudhury (1958)*, the Orissa High Court had held that even if the statement made by the member of Parliament amounts to contempt of court, no action can be initiated against the same.

## Inquiry into proceedings of the Parliament

Under [Article 122](#) of the Constitution, a restriction is placed on the powers of the judiciary to inquire into the proceedings of the Parliament. The restrictions are as follows:

1. Inquiry into the validity of the proceedings of the Parliament on the ground of irregularity in the conduct of the proceedings, i.e., the procedure of the Parliamentary proceedings.
2. Inquiry into the person or officer authorised to regulate the conduct of business and procedure of the Parliamentary proceedings can.

## Publication of the Parliamentary proceedings

[Article 361A](#) of the Constitution states that any person can publish the proceedings of the Parliament subject to such publication being a true report of the proceedings made without any malice. However, publication of any secret proceedings of the Parliament or any State Legislature is prohibited.

# Code of Civil Procedure, 1908

[Section 135A](#) of the [CPC](#) provides protection to the members of the Parliament and State Legislatures against arrest and detention in the following circumstances:

1. During the continuance of proceedings in the Parliament or State Legislature.
2. During the continuance of proceedings of any Committee of the Parliament or State Legislature.
3. 40 days before or after a joint sitting of both the Houses of Parliament or the State Legislative Assembly and the State Legislative Council.

In *K. Anandan Nambiar vs. Chief Secretary, Government of Madras (1966)*, the Supreme Court held that if a member of the Parliament was arrested under the provisions of the [Preventive Detention Act 1950](#), the right to attend the proceedings and cast a vote cannot be claimed by the member.

## Breach of privilege

A breach of privilege can be defined as any act that is in violation of the privileges vested in the member of the Parliament or the Parliament itself. Some of the examples of breach of privilege have been discussed below:

## Withholding communications from a member in custody

In the case of *In re. K. Anandan Nambiar vs. Unknown (1951)*, the Madras High Court observed that an act of withholding communication from any member of Parliament who is under arrest or detention to the Secretary-General, Speaker or Chairman of a legislative body would constitute a breach of privilege and therefore would amount to be a contempt of the Parliament house.

## Inputting motives to members

In *Ram Gopal Gupta's case*, the Committee of Privileges observed that there was an attempt to input motives in the minds of the members of the Parliament through a letter issued to that effect. Due to the points raised in this letter, multiple issues and questions were raised in Parliament. In light of the same, the Committee of Privileges held that the actions of Mr. Ram Gopal

constituted a breach of privilege and therefore would amount to a contempt of the Parliament House.

## Libel and slander

In [Hindustan Times Case](#), several statements were made in the editorial segment of the [Hindustan Times](#). These statements cast reflections on the character of the members of Parliament and the procedure of the Parliament. The Committee of Privileges observed that if any person by way of speech or print media issues defamatory marks against any member of the Parliament or the Parliament itself, it would constitute a breach of privilege and therefore would amount to contempt of the Parliament house. The Committee herein held that the statements published by Hindustan Times constituted contempt of the Parliament house but did not take any action because of an apology tendered by the Editor of the newspaper.

In another case, Jadeed Markaz, a weekly newspaper, had published derogatory statements regarding the Deputy Chairman of the Rajya Sabha. The Committee of Privileges observed that the statements used by the editor of the newspaper crossed the limits of decency and were solely aimed at gaining cheap publicity. In light of the same, the Committee held that the actions of the editor constituted a breach of privilege and therefore would amount to a contempt of the Parliament House.

## Assault on members of the Parliament

If any person obstructs, molests or assaults any member of the Parliament during the conduct of business in the Parliament, the same constitutes a breach of privilege and therefore would amount to contempt of the Parliament House.

In a [complaint](#) of breach of privilege, a member of the Rajya Sabha alleged that he was assaulted by some policemen. The Committee of Privileges while examining the said complaint held that there was no breach of privilege on two grounds, firstly, that the assault occurred in a private space and not inside the Parliament during the conduct of the business of the House, and secondly, the assault did not happen when the member was performing his duties as a representative of the people in the Upper House of the Parliament.

## Disturbances from visitor's gallery

If any person who is attending the session of the House as a visitor performs any act by which the proceedings of the House are disrupted, the same constitutes a breach of privilege and therefore would amount to contempt of the Parliament House.

In an [incident](#) that occurred on 18<sup>th</sup> March 1982, 14 people from the visitor's gallery were taken into custody for shouting slogans and disrupting the proceedings of the House. This act was deemed as contempt of the Parliament House and all the 14 people were punished with simple imprisonment. In another [incident](#), a visitor from the visitor's gallery was punished with simple imprisonment for shouting slogans and throwing chappals on the floor of the House.

## Making a misleading statement in the House

If a member of the House makes a misleading statement deliberately then the same constitutes a breach of privilege and therefore would amount to a contempt of the Parliament House.

However, if a particular statement, irrespective of whether it is misleading or not, was made by the member based on the information available to the member at that time, then the same would not constitute a breach of privilege or contempt of the Parliament House.

## Who can punish for breach of privilege or contempt

In [Harendra Nath Barua v. Dev Kanta Barua & Others \(1958\)](#), the High Court of Assam held that only the concerned House can issue punishment regarding breach of privilege or contempt of that House or its members. This power was called the 'keystone of parliamentary privilege.' In [Sushanta Kumar Chand v. Speaker, Orissa Legislative Assembly \(1973\)](#), the Orissa High Court held that the House can impose a punishment of imprisonment for contempt or breach of privilege. It further held that the duration of such imprisonment cannot extend the duration of the session of the House.

In [A.M. Paulraj vs. The Speaker, Tamil Nadu \(1985\)](#), the editor of a Tamil magazine, had published several comments criticising the members of the State Legislative Assembly. The Privileges Committee passed an order for simple imprisonment against the offender for one week. This order was challenged by the offender on the ground of violation of [Article 21](#) of the

Constitution. The Madras High Court, while affirming the decision of the Privileges Committee, held that the offender cannot claim a violation of Article 21 because the punishment had been issued in accordance with the procedure established by law.

Kinds of Punishment that can be imposed by the Houses:

1. Simple imprisonment for the duration of the session of the House.
2. Imposition of fine.
3. Initiation of legal proceedings for prosecution of the offenders.

# Contempt of Court in India | Types & Punishment

## What is Contempt of Court?

The Courts are the ultimate pedestal in the Country upon which justice is delivered through the beacon of due process. The Judiciary is the third pillar of democracy. In simple terms, contempt of Court is the act of disrespecting or being defiant towards the Court of law, including the judges. It refers to any actions which defy a court's authority, cast disrespect on a court, or impede the ability of the court to perform its function.

In India, the offense of contempt of court is committed when an individual either disobeys a court order to a certain degree (known as civil contempt), or when a person says or does any act which scandalizes or prejudices, or interferes with judicial proceedings and the administration of justice (also known as criminal contempt). Contempt in India can be punished with a fine or imprisonment, or both.

## India's contempt of court is of two types:

### *1. Civil Contempt*

Under Section 2(b) of the Contempt of Courts Act of 1971, civil contempt has been defined as wilful disobedience to any judgment, decree, direction, order, writ, or other processes of a court or wilful breach of an undertaking given to a court.

Certain elements are required to establish different types of contempt of court.

For Civil contempt, the following essentials are

- the making of a valid court order
- knowledge of the order by respondent
- ability of the respondent to render compliance
- wilful disobedience of the order

### *2. Criminal Contempt*

Under Section 2(c) of the Contempt of Courts Act of 1971, criminal contempt has been defined as the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:

- Scandalises or tends to scandalize, or lowers or tends to lower the authority of, any court, or
- Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or
- Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

## Third-Party Contempt

A third party to the proceeding may also be guilty of contempt of court if they have a part to play in the offense.



## Limitation

According to Section 20 of the Contempt of Courts Act of 1971, the limitation period for initiating contempt proceedings is of one year from the date on which the contempt is alleged to have been committed.

## Punishment for Contempt of Court

High Court and Supreme Court are bestowed with the power to punish for contempt of the court.

Under Section 12 of the [Contempt of Court](#) Act, 1971, contempt of court can be punished with simple imprisonment for a term which may extend to six months, with a fine which may extend to two thousand rupees, or both.

In civil cases, if the court considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in civil prison for such period not exceeding six months as it may think fit.

An accused may also be discharged or the punishment awarded may be remitted on an apology being made by the accused to the satisfaction of the court. An apology is not supposed to be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

## Defenses allowed in a Contempt proceeding

Clause (b) of Section 13 of the Contempt of Court Act, 1971 was introduced recently by the 2006 amendment, allows the accused to raise the defense of justification by the truth of such contempt, if the court is satisfied that it is in the public interest and the request for invoking the said defense is bona fide.

However, no court shall impose a sentence under this Act for contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice.

## Purpose of Contempt of Court

The purpose of contempt jurisdiction is to uphold the majesty and dignity of law. If by contentious words or writings the common man is led to losing his respect for the judiciary, then the confidence reposed in the courts is rudely shaken and the offender needs to be punished. In the essence of law of contempt is the protector of the seat of justice more than the person sitting the judge sitting in that seat.

## Why do you need a Lawyer?

Sometimes the law and the legal framework can get confusing and difficult to understand, especially when the issue is regarding Court procedures, including an offense of contempt. In such a scenario, one may not realize how to determine the legal issue, the area to which the issue relates, whether the issue requires going to court, and, how the court procedure works. Seeing a lawyer and getting some legal advice can enable you to comprehend your choices and can give you the certainty to enable you to determine your legal recourse.

An experienced attorney can give you expert advice on how to handle the legal issue owing to his/her years of experience in handling such cases. A [criminal lawyer](#) is an expert on the laws and can help you avoid significant mistakes that may cause financial or legal harm (or harm to reputation and jail time) or will require future legal proceedings to correct. Thus, by hiring an attorney you can

ensure avoid delay and get on the right track. You can also [ask a lawyer online](#) a free legal question using LawRato's Ask a Free Question service.

# Defamation law in India

## Introduction

A simple net surfing on defamation makes it clear that it involves any kind of activity that aims to damage or cause harm to the good reputation of an individual. But the term 'defamation' has both explanations and exceptions attached to its definition when seen through the lenses of Indian laws. The prime reason for knowing the laws governing the statutorily recognised offence of defamation is to protect one's dignity, as has been guaranteed by [Article 21](#) of the [Indian Constitution](#). With changing times, defamation has been a misused offence in the hands of many, thereby causing a rise in debate on it with respect to the limitation on free speech. What calls for in this regard is the need for progressive thinking with the changing needs of Indian society. This article aims to explore the legal side attached to defamation in India, judicial upbringing on the same, and the road ahead for it.

## What is defamation

An accused individual must have created or disseminated defamatory content for an offence to be proven. While 'creating' typically refers to authorship, someone who intentionally or knowingly duplicates or copies defamatory content (with intent, for example) may also be held accountable. A person who is not the author or publisher can claim that the defamatory text was distributed accidentally if intent cannot be shown. The purpose of defamation law is to safeguard a person's interest in their reputation. However, it has been significantly changed to ensure that public figures cannot use defamatory activities to avoid being held accountable for their actions and public responsibilities.

'Making' and 'publishing' have been considered additional terms by courts. As per the case of [Rohini Singh v. State of Gujarat](#) (2018), the offence of defamation may not be committed if someone only types defamatory material without publishing it or disseminating it to others. Therefore, the individual making the defamation claim must prove that the defamatory material was intended for an audience.

According to the case of [Mrs. Pat Sharpe v. Dwijendra Nath Bose](#) (1963), the author of the article (and not the source of the information) becomes liable if the recipient of defamatory material from an anonymous source creates and publishes an article based on that information.

Normally, there must be a connection between the allegedly defamatory content and the person who created or published it. If the owner of a newspaper, for example, is held vicariously liable, it must be determined in each instance whether the owner had the necessary power, knowledge, or approval to publish the defamatory material.

## Essentials of defamation

**The statement must be defamatory, and the validity of the statement is determined by how the general public as a whole will perceive the subject of the statement:**

In the case of [Ram Jethmalani v. Subramanian Swamy](#) (2006), the Delhi High Court ruled that Swamy's claims as to the fact that Ram Jethmalani had received funding from a prohibited organisation to support Tamil Nadu's Chief Minister in the [Rajiv Gandhi assassination case](#) were defamatory.

**The statement must be about the plaintiff, and it must demonstrate that it is falsely disparaging them:**

For instance, in the case of [T.V. Rama Subba Iyer v. A.M.A. Mohindeen](#) (1971), the Madras High Court determined that although the defendants were held responsible, they had no intention of doing so because it was stated that a specific individual transporting goods from Agarbathis to Ceylon had been detained for the offence of smuggling. The plaintiff was one of those operating a similar business, and his reputation was seriously damaged as a result of this comment.

**That assertion must be made public:**

In the case of [Mahendra Ram v. Harnandan Prasad](#) (1958), the defendant was found responsible for the letter that he sent to the plaintiff in Urdu while being aware that the plaintiff was not versed in Urdu. The notice was therefore read by one individual named Kurban Ali in presence of several other persons. The notice contained defamatory and false allegations against the plaintiff which had resulted in causing pain thereby leading to a substantial case of defamation as the assertions were made public.

# Defamation under the Indian Penal Code, 1860

Defamation is both a criminal (which carries a prison sentence) and a civil offence (punishable through the award of damages) in India. The [Indian Penal Code, 1860](#) (IPC) codifies the criminal law on defamation, whereas defamation is penalised as a civil offence under the law of torts.

Defamation is defined in [Section 499](#), and the punishment is outlined in [Section 500](#). The offence of defamation is defined as any spoken, written, or visual statement about another person designed to damage that person's reputation. The conduct of any person addressing any public issue or expressing comments on a public performance an example of exceptions to this rule, as well as any imputation of truth required for the public benefit.

## Section 499 of the Indian Penal Code, 1860

Section 499 of the Indian Penal Code, 1860 reads as follows, "*Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes 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 expected, to defame that person.*"

Consequently, the fundamental components of defamation are:

1. The dissemination of spoken, written, sign, or other visible material.
2. With the goal that such an imputation would reduce the person's opinion.
3. Such slander is committed in front of society's upstanding citizens.

## Libel and slander

The major form of communication and publication becomes one of the most crucial elements in a defamation case. A third party learns or becomes aware of the alleged defamatory imputations through publishing. Defamation is the publication of a remark that tends to diminish a person's reputation among other people in society. Libel occurs when a statement is made permanently, whereas slander occurs when only a few inconsequential words or gestures are used.

1. **Libel:** Defamation caused by means of words written.

2. **Slander:** Defamation caused by means of words spoken thus temporary in nature.

The distinction between libel and slander was drawn by the Andhra Pradesh High Court in the case of *S.T.S. Raghavendra Chary v. Cheguri VenkatLaxma Reddy* (2018). The tort of 'slander' (a hurtful statement in a temporary form, notably speech), which gives rise to a common law right of action, is where defamation originated in the common law. Libel is the broad term for defamation in the international context. Slander and libel both demand publishing. Libel and slander are fundamentally different from one another only in how the defamatory material is published.

Therefore, publishing false information about a person with the intent to hurt that person's reputation is defamation. The prosecution must categorically show that the accused published the libel, and the defamatory statements must have been published within the territorial jurisdiction.

## Explanation 1 of Section 499 of the Indian Penal Code, 1860

Explanation 1 of Section 499, which talks about defamation of the deceased, reads as follows, "*Explanation 1.- It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.*"

Therefore, blaming something on a deceased person may likewise be considered slander. Two postulates are established in the explanation, namely:

1. The imputation must be designed to hurt the feelings of the family or other close relations, and
2. Must be of a character that would have damaged the reputation of the deceased individual if he or she were still alive.

Both requirements must be met under the circumstances (Explanation 1) in order for the defamation claim to be upheld. Additionally, there should be actual injury done rather than harm that was planned to be done. This is due to the fact that the latter criteria do not apply in cases involving deceased individuals.

### ***Defamation of a deceased person and the 'Gangubai Kathiawadi' fiasco***

Defamation of a deceased person comes within the ambit of Section 499 of the Indian Penal Code, 1860. According to the law, "*an imputation would amount to defamation of a deceased person if it would damage the person's reputation if he/she were still alive and is done with the intent to inflict grievance onto his family or relations.*"

The Supreme Court [recently](#) rejected a request for a stay on the release of the film "[Gangubai Kathiawadi](#)" made by an individual who claimed to be Gangubai's adopted son in a defamation lawsuit involving a deceased person who is Gangubai herself. The man claimed that the portrayal of his adopted mother as a prostitute, brothel owner, and mafia queen in the film damaged the reputation of his mother. The authors of '[Mafia Queens of Mumbai](#),' the novel on which the movie is based, served as respondents in this lawsuit.

The Supreme Court noted that in order to maintain a defamation action, the applicant for interim relief would need to demonstrate to the Court that:

1. They were close relatives or members of the family of the person who was being slandered.
2. The statements made about the deceased family member or relatives were false, and
3. The statements would damage the deceased's reputation and character.

If the individual who is being accused of being defamed is not hurt in terms of his reputation or worth in the eyes of others, then it is not defamation. However, the petitioner was unable to establish his relationship with Gangubai through family or close relatives.

Additionally, the Supreme Court ruled that the movie is, at least on the surface, an artistic expression within the bounds of the law. To recognise remarks and content that can be interpreted as defamatory, it is important to grasp the elements that make up a defamation offence.

## **Explanation 2 of Section 499 of the Indian Penal Code, 1860**

Explanation 2 of Section 499, which deals with defamation of a company or collection of persons, reads as follows;

*"Explanation 2.- It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such."*

Consequently, a company has a reputation of its own. Defamation would result from making claims about how the firm or association conducts its business, accusing them of fraud or managerial errors, or criticising their financial situation. In order to be able to claim certainty that a specific group of people, as opposed to the rest of the community, stood defamed, it is also crucial that the group of people be an identifiable body.

*Illustration:* A business that has been in operation for the past 20 years is now being charged with producing unfit products for human consumption. The declaration is founded on false claims. Even though the company was

cleared of the charges, the report about the accusations was published in a newspaper, giving the impression that the product was still unsafe for eating. Any such articles would be defamatory in character since they were false and damaged the company's reputation because the company's product was labelled safe for ingestion.

### **Explanation 3 of Section 499 of the Indian Penal Code, 1860**

Explanation 3 of Section 499 deals with defamation by innuendo and reads as follows:

*"Explanation 3.- An imputation in the form of an alternative or expressed ironically, may amount to defamation."*

The passage or content, in this case, is *prima facie* not defamatory, and the injured party must establish that the words that initially seem innocent are in reality defamatory in light of the relevant facts and the nature of the publication.

### **Explanation 4 of Section 499 of the Indian Penal Code, 1860**

Explanation 4 of Section 499 answers what harms the reputation. The explanations state that:

*"Explanation 4.- No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of the person, or lowers the character of that person in respect of his caste or his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered disgraceful."*

This explanation's length and breadth are overly broad and also cover remarks made on caste, community, or indecent behaviour. Defamation would result from the indiscriminate distribution of a flyer accusing the plaintiff of being a sinner. In the case of [Shatrughan Prasad Sinha v. Rajbhai Surajmal Rathi](#) (1996), the Marwari Community was the target of injurious and defamatory allegations made in an interview. Along with disparaging the community, the incident also inflamed their religious sentiments. However, the case was dismissed since no such specific allegations were made in it regarding the imputations that damaged the complainant's reputation in the eyes of others. Therefore, it follows that in order to proceed with the lawsuit, there must be a precise allegation in the complaint about how the imputation has affected the complainant's reputation.



# Forms of publication under Section 499 IPC

As publication is the notable ingredient of the offence of defamation under the Indian Penal Code, 1860, it is necessary to know the forms of publication that can contribute to defamation. There are majorly two kinds of publication, namely,

1. Direct communication to the defamed.
2. Repetitive publication.

## Direct communication to the defamed

1. Back in 1884, the Allahabad High Court, while hearing the case of *Queen-Empress vs. Taki Husain* observed that direct communication to the defamed should not be considered a publication under the Indian Penal Code, 1860.
2. Further, the Bombay High Court, in the case of *Sukdeo Vithal Pansare v. Prabhakar Sukdeo Pansare* (1974), decided that publication is the act of making a defamatory remark and transmitting it to a person other than the target of the statement. It is only when the accused is versed with the fact that his communication will be made known to others, in usual business courses, that he will be held liable for the same.
3. A letter containing defamatory imputations is considered to be published when it is sent to a business rather than an individual and is intended for all of the business partners to read. Similar defamatory material printed on postcards or delivered via broadcast is considered publishing. Defamatory material transmitted via postal mail but not published, however, does not necessitate the conviction of the accused for defamation. Such an observation was made by a Delhi court in the 1987 case of *S.Mohinder Singh Saluja v. Vansan Shoes Delhi*.

## Repetitive publication

1. Repetition or republication of a previously published libel falls under the definition of publishing. Therefore, a newspaper is responsible for all consequences associated with publishing a libellous story that it has copied from another source and made its own. The penalty or damages levied would, at most, be reduced or mitigated by the fact that the piece was only a reprint.
2. The Bombay High Court, while deciding the case of *In Re: Howard v. Unknown* (1887), which involved republishing an extract from an article classed as defamatory by the accused, observed that the fact

that the same information was published in another journal could not serve as a defence to avoid responsibility. Hence in this regard, the accused was held guilty of republication.

3. It is necessary to note that the Indian Penal Code, 1860 does not provide any exception in relation to second and third publications, when compared with the first publication. The sole ground for convicting a person on grounds of defamation is the publication of defamatory matters. The fact that it is republished is irrelevant to charge an individual under Section 499 of the Indian Penal Code, 1860.

## Sections 501 and 502 of the Indian Penal Code, 1860

While [Section 501](#) of the Indian Penal Code, 1860 deals with the printing or engraving of matter known to be defamatory, [Section 502](#) of the Code talks about the sale of printed or engraved substances containing defamatory matter.

A recent case that appeared before the Supreme Court of India, recognised by the name of *Mohammed Abdulla Khan v. Prakash K* (2017), involved the Apex Court setting aside the Karnataka High Court's order that quashed the defamation case against the owner of Kannada Daily Newspaper. A bench comprising of Justices J. Chelameswar and S. Abdul Nazeer stated that it is necessary to critically examine whether the owner of the printed defamatory content can be heard to claim that he cannot be held vicariously accountable for the defamatory material conveyed by his newspaper, book, etc. when such printed defamatory material is sold or offered for sale.

Furthermore, it stated that the existence of the circumstances necessary to establish an offence under [Sections 500](#), 501, or 502 of the IPC will determine whether an accused person who is the subject of a complaint will be found guilty of such an offence. The bench elaborated, saying that first, it must be proven that the printed and offered for sale matter is defamatory within the sense of the expression under Section 499 of the IPC. If this is established, the next step is to determine whether the accused committed the acts that make up the offence for which he is accused with the necessary intention, knowledge, etc. to make those acts guilty.

The respondent would be subject to punishment under Section 500 of the IPC if he is the one who made or published the defamatory imputation. If he was the one who 'printed' the document in the sense that the term is used in Section 501 of the IPC, then the person would come within the ambit of the provision. It must also be proven that the respondent is not just the

newspaper's owner but also sold or offered it for sale in order for there to be a violation of Section 502 of the IPC.

Setting aside the ruling of the High Court, the Apex Court noted that the High Court had not considered whether the complaint's content constituted an offence punishable under any one of the aforementioned sections, or all of them, or some of them, in order to dismiss the case against the respondent. The bench noted that "*whether there is adequate evidence to prove the respondent's guilt for any one of the three offences listed above is an issue that can only be reviewed after evidence has been recorded at the time of trial. The subject of a proceeding under [Section 482 of the Code of Criminal Procedure, 1973](#) cannot ever be such.*" The Court further stated that it is important to carefully consider whether the owner of the printed defamatory content can be considered to claim that he cannot be held vicariously accountable for the defamatory material contained in his newspaper, book, etc. Thus, by means of this 2017 case, the Apex Court clarified Section 500-502 of the Indian Penal Code, 1860 as far as their ambit and application are concerned.

## **Punishment for defamation under the Indian Penal Code, 1860**

Anyone who defames another person is subject to punishment under Section 500 of the IPC, which includes fine, simple imprisonment for a time that may not exceed two years or both.

## **Defamation under the Code of Criminal Procedure, 1973**

The Code of Criminal Procedure, 1973 being a procedural law, comes into play after the offence of defamation has been proved and the accused has been prosecuted for the same. A list of related sections has been discussed hereunder:

### **Section 199 CrPC (Prosecution for defamation):**

[Section 199](#) relates to prosecution for defamation in general terms. This provision comes into play only after an aggrieved party files a complaint on grounds of defamation as recognised by Chapter XXI of the Indian Penal Code, 1860. A Court of Session can take cognizance in situations involving high dignitaries when the defamation relates to behaviour while performing public duties after receiving a written complaint from the public prosecutor.

Within six months of the alleged crime's commission, the complaint must be filed.

## **Section 203 CrPC (Dismissal of complaint):**

A magistrate may dismiss a complaint summarily in accordance with [Section 203](#) of the Code if, in his judgement, there is insufficient justification for proceeding after reviewing the affidavits of the complainant and witnesses as well as the outcome of the investigation conducted in accordance with [Section 202](#).

## **Section 204 CrPC (Issue of the process):**

[Section 204](#) of the 1973 Code provides that the magistrate will be issuing process under the provision if sufficient ground for proceeding in the same holds substance. If there is a lack of sufficient grounds, then in such a case, the complaint can be dismissed under Section 203 of the Code.

## **Section 205 CrPC (Magistrate may dispense with personal attendance of accused):**

A magistrate issuing a summons may forego the accused's personal appearance under this [Section](#). Every situation in which a summon is issued has been covered in this section. It is not limited to cases involving summonses. At any point throughout the proceedings, the magistrate may order the accused to appear in person. However, if a warrant is issued for an accused person, it is necessary for him to appear in person.

## **Section 207 CrPC (Supply to the accused of copy of the police report and other documents):**

Under [Section 207](#) of the 1973 Code, it is the duty of the magistrate to furnish the accused with necessary documents in relation to the offence he is charged with, namely, the police report, the confessional statements, etc., so as to let the accused know the charges that have been brought against him and the suitable grounds for bringing the same.

## Section 357 CrPC (Order to pay compensation):

According to this [Section](#), a trial court, appellate court, high court, or the Court of Session in revision may issue an order of compensation out of the fine imposed at the time of passing judgement in the following four cases:

- To the complaint for correctly covering expenditures.
- To anybody who experienced loss or harm.
- To a person who is qualified to get compensation for damages.
- To a genuine buyer of real estate.

## Section 357 A CrPC (Victim compensation scheme):

According to [Section 357A](#), each state government must develop a plan for allocating funds to compensate victims or their dependents who have experienced loss or injury and need rehabilitation, in conjunction with the Central Government.

## Section 358 CrPC (Compensation to persons groundlessly arrested):

As per [Section 358](#), if it appears to the magistrate hearing the case that there was insufficient justification for the arrest, the magistrate may award the person who caused the arrest compensation, not to exceed one thousand rupees, to be paid by the person who caused the arrest to the person who was arrested, for his loss of time and expenses in the matter, as the magistrate thinks fit.

## Section 359 CrPC (Order to pay costs in non-cognizable cases):

According to [Section 359](#), whenever a complaint of a non-cognizable offence is brought before a court, the court may, if it finds the accused guilty, order him to pay the complainant's costs associated with the prosecution, either in full or in part, and may further order that, if he fails to do so, the accused shall be sentenced to simple imprisonment for a period not to exceed thirty days. These costs may include any fees associated with the legal process.

# Civil defamation under civil and tort law

Defamation is mostly used in the context of libel in civil law. The person's reputation in the eyes of society is damaged as a result of the comment being published against him. If the following criteria are met, a person may be sued for paying damages to the aggrieved party:

1. It must be a derogatory comment.
2. The plaintiff alone must be the subject of the statement.
3. Such a statement needs to be made public.

In the case of [Bonnard v. Perryman](#) (1891), it was decided that the court has jurisdiction to restrain by injunction, and even by an interlocutory injunction, the publication of a libel. An interlocutory injunction should only be given in the most obvious circumstances, preferably situations in which, if a jury did not find the matter complained of to be libellous, the court would set aside the decision as unreasonable. However, the use of the jurisdiction is discretionary. When the defendant testifies that he will be able to defend the libel and the court is not convinced that he may not be able to do so, an interlocutory injunction shouldn't be issued.

Further, it is necessary to note that the legality of civil defamation was at issue in [R. Rajagopal v. State of Tamil Nadu](#) (1994). The US Supreme Court's landmark decision in [New York Times v. Sullivan](#) (1964), which stated that a government official performing his or her official duties can only be entitled to damages when the truth claim is false and made with reckless disregard for the truth, was cited by the Supreme Court of India in this case. The bench looked for the connection between free expression and civil defamation in this case. According to the Court, common law defamation was unjustly constrained by [Article 19\(1\)\(a\)](#) of the Indian Constitution since it unfairly pushed no-fault liability.

## Defamation and freedom of speech and expression under the Indian Constitution

All citizens have the Right to Freedom of Speech and Expression under [Article 19\(1\)](#) of the Constitution. According to [Article 19\(2\)](#), the State must restrict the right in a way that serves the interests of eight different categories, including public order, morality, and decency. Defamation is one of these categories. The Constitution states that the State must censor expression in a '*reasonable manner*,' not necessarily in the best interests of one of the eight classifications listed in Article 19(2). The Supreme Court's legal precedent on the topic of what qualifies as a fair restriction has grown over the years. The Court has time and again ruled in various judgments that the requirement of the restriction be 'narrowly drawn', is one of the essential elements of reasonableness.

Through [judicial interpretations](#), this Article has been broadly interpreted to include "*freedom of the press*." However, Article 19(2) permits the State to pass laws that place 'reasonable constraints' on such liberties; therefore, this right is not unrestricted. The limits cover a wide range of situations, such as those involving defamation or contempt of court, as well as situations involving national interests and maintaining public order.

Due to the latitude provided by Article 19(2) and the criminal provisions (under Sections 499 and 500 of the Indian Penal Code, 1860), defamation cases can be contested in India on both a civil and a criminal level. Defamation occurs when someone "makes or publishes" a statement about another person with the intent, knowledge, or reasonable belief that doing so will damage the other person's reputation.

Due to the media frenzy that has developed over Article 19(1) (a)'s guarantee of Freedom of Speech and Expression, defamation has recently become a contentious and notorious subject. The fundamental right to Freedom of Expression guaranteed by Article 19(1)(a) of the Indian Constitution is restricted by defamation laws in India. People worry about saying something that might cause upset or get them into trouble, whether they are speaking in private or in public. Therefore, the State must design its laws so that they impose speech restrictions only to the amount necessary to further legitimate goals. If the law is more expensive than that, it must be declared unconstitutional because it is too wide. This will guarantee that the State is held severely accountable if it chooses to curtail individual liberties and guard against the 'chilling effect' of broad and ambiguous laws that enable people to practice self-censorship in order to maintain their moral integrity.

## Case laws in relation to defamation and Article 19(1) of the Indian Constitution

### Shreya Singhal v. Union of India (2015)

The major question was whether the Right to Freedom of Expression protected by Article 19(1)(a) of the Indian Constitution was breached by [Section 66A](#) of the [Information Technology Act, 2000](#) (IT Act) was raised before the Supreme Court of India in the landmark case of [Shreya Singhal v. Union of India](#) (2015). The Court had to also take into consideration that the Union Government is allowed to impose 'reasonable restrictions in the interests of 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 as an exception (Article 19(2)) to the right guaranteed in Article 19(1).

## ***Supreme Court's decision***

1. The Court stated that 'damage to reputation is the primary component of defamation when considering whether Section 66A of the IT Act was a legitimate endeavour to shield people from defamatory claims made through online communications. It was decided that the law does not apply to this objective because it also forbids insulting remarks that may irritate or inconvenience a person without harming his reputation.
2. Because "*the mere causing of annoyance, inconvenience, danger, etc., or being grossly offensive or having a menacing character are not offences under the Penal Code at all,*" the Court further held that the government had failed to demonstrate that the law intends to prevent communications that incite the commission of an offence.
3. The bench further stated that the restriction's reasonableness and proportionality must be evaluated from the standpoint of the public interest rather than the perspective of the person subject to the restriction. The Court concluded that the criminal defamation statutes were just and reasonable after applying this criterion. The majority's assertion that defamation is simply a concept that restricts free speech and expression was rejected by the Court as being too nebulous to serve as a standard for judging whether the limitation is reasonable.

Based on the foregoing reasons, the Court invalidated Section 66A of the IT Act in its entirety as it violated the Right to Freedom of Expression guaranteed under Article 19(1)(a) of the Constitution of India.

## **Subramanian Swamy v. Union of India (2016)**

Dr. Subramanian Swamy accused Ms. Jayalathitha of [corruption](#) in 2014. The Tamil Nadu State Government responded by accusing Dr. Swamy of defamation. Following that, Dr. Swamy and other well-known politicians contested the legitimacy of Sections 499 and 500 of the Indian Penal Code, 1860, which constitute India's criminal defamation laws. The case was determined by a two-judge Supreme Court panel made up of Justices Dipak Misra and P. C. Pant. The Court was asked to decide whether criminalising defamation is an unreasonable restriction on free speech, as well as whether Sections 499 and 500's criminal defamation laws are arbitrarily worded and therefore unclear and ambiguous.

### ***Decision of the Supreme Court***

1. The Court on May 13, 2016, [ruled](#) that Section 499 is not an undue restriction under Article 19(2). According to this ruling, society is made up of different people, and whatever affects one person also impacts society as a whole. As a result, it was decided that treating



defamation as a public wrong is acceptable. As reputation preservation is both a fundamental and a human right, it was decided that criminal defamation does not disproportionately restrict free speech.

2. The Court reiterated that the right to reputation is a component of the Right to Life under [Article 21](#) based on the rulings of other nations. The Court, while using the principle of 'balance of fundamental rights, opined that the Right to Freedom of Speech and Expression cannot be *'given so much latitude that even the reputation of an individual, which is a constituent of Article 21, would have no entry into that region''*.
3. Furthermore, the Court determined that Sections 499 and 500 of the IPC are not ambiguously or vaguely stated. The Court found that the word 'defamation' constitutes its own separate identity, using the Constituent Assembly Debates to understand what the Constitution's drafters meant by the word in Article 19(2). Defamation laws must be understood as they were when the Constitution entered into force since it stands alone.

## Cyber defamation in India

Cyber defamation is the publication of false information about another individual using computers or the internet in general. Cyber-defamation occurs when someone makes false statements about another person and posts them online or sends emails to other individuals that contain false information with the intent to harm the aggrieved party. The damage done to a person by posting a defamatory comment about them on a website is extensive and irreparable because the material is public and accessible to everyone.

Users of the internet are far less restrained than they once were, especially when it comes to the content of their messages, thanks to accessibility, anonymity, privacy, and the isolation of one's own place. [Soniya Gandhi-Manmohan Singh jokes and drawings](#) are regularly posted as [Facebook](#) updates. The internet has made it far simpler than ever before to spread false information to a global audience without repercussions. Now, anyone can publish anything online, thereby targeting individuals with libellous material.

For publication to be proven, a defamatory accusation needs to be disclosed to one person. Every time an email is forwarded to a different person or offensive content is shared on Facebook, it gets published once more and spreads farther due to the internet's ability to reach an essentially infinite number of people, giving rise to further causes of action. This has made the internet a very vulnerable place for libel. There is no doubt that a [John Doe order](#) (injunction) is always present in cyberspace. The difficulty in locating the offender and the extent to which [Internet Service Providers](#) (ISPs) should

be held accountable for supporting defamatory acts makes the problem worse.

## Cyber defamation laws in India

A person in India may be held accountable for defamation both civilly and criminally. When enlarged, Section 499 of the Indian Penal Code, 1860, which addresses defamation, also addresses instances of cyber defamation. However, India now has an explicit prohibition on cyber-defamation thanks to a recent revision to the [Information Technology Act, 2000](#).

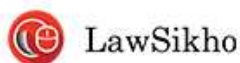
1. [Section 66A](#) of the Information Technology Act, 2000 states that anyone who sends something using a computer resource or a communication device is prohibited if:
  - Any content that is egregiously insulting or threatening.
  - Any false information that he repeatedly disseminates through a computer resource or a communication tool with the intent to irritate, inconvenience, danger, obstruction, insult, cause harm, criminally intimidate, sow enmity, hatred, or ill will.
  - Any electronic mail or electronic mail message sent with the intent to irritate or inconvenience the addressee or recipient, to deceive the addressee or recipient, or to mislead the addressee or recipient about the origin of such messages is punishable by up to three years in prison and a fine.
2. [Section 79](#) of the Information Technology Act, 2000 provides that ISPs are exempted from liability for any information, data, or communication link made available or maintained by them that belongs to a third party as long as:
  - Their role is restricted to merely granting access to the communications infrastructure;
  - They do not:
    1. Start the transmission;
    2. Choose the transmission's receiver, and
    3. Choose or alter the information contained in the message.
  - They exert due diligence in their tasks and follow any rules that may be specified.
3. However, the following circumstances give rise to ISP liability:

- If they were complicit in the criminal act or helped to make it happen,
- If they are aware or are alerted by the appropriate government agency that certain information, data, or communication links are being used to perform illegal acts without tampering with the evidence, they must promptly remove or disable access to those information, data, or communication links.

The IT Act, 2000 differs curiously from the commonwealth countries' legal framework in that it shares some legal principles with American laws regarding cyber defamation. Although the new amendment does not change the burden of proof from the plaintiff to that of the defendant, it does make it simpler for defendants to establish their innocence if they acted honestly and adhered to their obligations under Section 79 of the Act and [Rule 3 of the IT Rules, 2011](#), provided that they did so. However, despite the fact that ISPs are not legally responsible for posting and distributing defamatory information, they are routinely added as defendants in defamation lawsuits due to their greater financial resources.

The new cybersecurity legislation in industrialised nations like China and the USA is overly severe and imposes limitations on international businesses operating there, which protects the nations and lowers the incidence of cybercrime. However, India is also working hard to improve its efficiency so that it can offer better services and protection in the cyber domain. The Indian government unveiled a [National Cyber Security Policy in 2013](#) with the goal of securing the nation's information infrastructure, lowering its vulnerability, boosting its capabilities, and defending it against cyberattacks. India is now working to improve the IT Act, which still needs some changes but could be made soon. Additionally, our nation will compete with other developed nations in the field of cyber and IT protection.

## Case laws in relation to cyber defamation in India



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## SMC Pneumatics India Pvt. Ltd. v. Jogesh Kwatra (2014)

In India, the first cyber defamation lawsuit in Asia was initiated in 2001. *The case was [SMC Pneumatics India Pvt. Ltd. v. Jogesh Kwatra](#) (2014)*. In this case, the defendant, Jogesh Kwatra, a worker for the plaintiff's company, began sending slanderous emails to his employers and the company's several international branches. Following that, the plaintiff filed a lawsuit seeking a permanent injunction barring the defendant from making such defamatory statements.

### *Observation by the Delhi High Court*

The Hon'ble Delhi High Court, in this case, permitted an ex-parte ad interim injunction, finding that the plaintiff had established their case beyond a reasonable doubt, and forbade the defendant from publishing similar comments.

## Avnish Bajaj vs. State (2008)

*Avnish Bajaj v. State* (2008), also known as the DPS MMS Scandal case, was another noteworthy case in the context of cyber defamation. Ravi Raj, a student at IIT Kharagpur, posted a listing on the website [baazee.com](#) with the identity "aliceelec" offering an offensive MMS video clip for sale. The listing appeared with the description "Item 27877408 – DPS Girls having fun!!! full movie + Baazee points," despite the fact that baazee.com has a filter for publishing undesirable content. The item was removed at about 10 am on November 29, 2004, after being listed online around 8.30 pm on November 27, 2004. The [Delhi Police's Crime Branch](#) took notice of the situation and filed an FIR. Following an inquiry, a charge sheet was submitted, listing Ravi Raj, Avnish Bajaj, the website's owner, and Sharat Digumarti, the person in charge of processing the content, as the accused individuals (the defendants in this case). Avnish Bajaj filed the appeal after Ravi Raj fled, asking for the criminal proceedings to be stopped.

### *Observation of the Delhi High Court*

1. In this case, the Court noted that a *prima facie* case for the offence under [Section 292](#) (2) (a) and (d) of the Indian Penal Code, 1860 is made out against the website in relation to the listing and the video clip, respectively. The Court held that under Section 292's strict liability requirements, knowledge of the listing can be imputed to the company because the website "*ran a risk of having knowledge that such an object was in fact obscene imputed to it by not having appropriate filters that could have detected the words in the listing or the pornographic content of what was being offered for sale.*"

2. The author respectfully asserted that there was no good basis in this case to exonerate the director, Avnish Bajaj. The idea of corporate criminal culpability may have been used to assess the director with the proper punishment. The argument also finds support in Article 12 of the [European Convention on Cyber Crime](#), which imposes criminal liability on any legal entity with the capacity to act as a representative, make decisions, or exert control. According to Clause 2 of Article 12 of the Convention, a legal person can be held accountable where a criminal offence was made possible because a natural person working under his authority lacked supervision or control.
3. Surprisingly, the Court determined that Avnish Bajaj might be exonerated under Sections 292 and [294](#) of the Indian Penal Code, 1860 since the legislation does not recognise the idea of an automatic criminal obligation attaching to the director when the corporation is an accused. Avnish Bajaj was ultimately found not guilty in this case.
4. Although India has not yet joined this Convention, the aforementioned provision may have served as a guide to hold Avnish Bajaj accountable. Furthermore, because the Court did not particularly go into these questions and establish the law on this, the position it took in this case does not even help determine the amount of culpability of ISPs and their directors.

## **Vyakti Vikas Kendra, India Public Charitable Trust Through Trustee Mahesh Gupta & Ors vs. Jitender Bagga & Anr (2012)**

In this [case](#), the Delhi High Court first determined that [Google](#) qualified as an 'intermediary' under [Section 2\(1\)\(w\)](#) and Section 79 of the Information Technology Act, 2000. The Court subsequently emphasised that, in accordance with [Section 79\(3\)\(b\)](#) of the IT Act, 2000, Google was required to remove illegal content if it received real notification from the person who was being harmed of any illegal content being circulated or published through its service. The [Information Technology \(Intermediaries Guidelines\) Rules of 2011](#) must also be followed by Google.

### ***Observation of the Delhi High Court***

1. The Court noted that Rule 3(3) of the IT Rules, read in conjunction with Rule 3(2), requires an intermediary to exercise due diligence or refrain from publishing any information that is gravely damaging, defamatory, libellous, derogatory, or otherwise illegal. An intermediary is required by Rule 3(4) of the Rules to delete such defamatory content within 36 hours of receiving actual knowledge.

2. As a result, in the current case, Google was instructed to take down any defamatory information about the plaintiffs posted by the defendant from its website [www.blogger.com](http://www.blogger.com) as well as all links to such information within 36 hours of learning of the order issued by this Court. The defendant was also forbidden from sending any emails of this nature or from putting anything online that made reference to the plaintiffs, the [Art of Living Foundation](#), a member of the Art of Living Foundation, or His Holiness Sri Sri Ravi Shankar, directly or indirectly.