

Full Length Research

Words, Damages and Stick: A Critique of Criminal Defamation Law in India

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Provision of Criminal Defamation criminalizes speech that is intended to harm the reputation of any person. The provision was crafted broadly, so chances of its misuse to frame critical reporting or independent comment were high since it was incorporated into IPC in 1860. Finally now its constitutional status was questioned. Recently, the Supreme Court of India came with its judgment upholding Colonial era Defamation laws in *Subramanian Swamy v. Union of India* in which the Court relied upon Constituent Assembly's assent to let Criminal defamation laws survive without considering further progress in constitutional jurisprudence and wider interpretation to personal liberty. However, mere existence of pre - constitutional defamation law does not make it pass muster of 'Reasonable'. Secondly, exceptionally wide protection was given to the 'Right to be offended' without considering the fact that additional protection was given in Art. 19(1)(a) of the Constitution of India, not taking into account precedents given by larger benches. . Also, the difference between private wrong and public wrong was blurred by the Court in this case, thereby raised a question as to 'how can defamation of individual become public wrong'.

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INTRODUCTION

Way back in 1890, humorist Mark Twain wrote 'Censorship is telling a man he can't have steak just because a baby can't chew it'.

Law of defamation is culmination of a conflict between society and individual. On one hand, lies the fundamental right to free speech enshrined under Art.19 (1) (a) of the Constitution, on the other is the right of the individual to have his reputation intact.

It was reckoned that the Supreme Court would give wider interpretation to Personal liberty and may tweak definition of defamation and exceptions instead of 'restriction' in this era of globalization but the Court left it on the 'Wisdom of legislature'. For instance, in 1962 in

*Kedarnath Singh v. State of Bihar*¹, the Supreme Court ruled that speech/ action constitutes sedition only if it incites or tends to incite disorder or violence. In this case, the Court leaving colonial interpretation of law behind, changed the test from subjective view like 'intention' to objective test 'either jeopardize the safety of the state or create such feeling' or 'disseminate such feeling of disloyalty as have the tendency to lead to the disruption of the state or public order'.

¹ *Kedarnath Singh v. State of Bihar*, AIR 955 (SC 1962)

Out of the many questions that this article tries to raise, one of the important question is whether consequences of words (which can be true) should be judged from 'strong, courageous individual' perspective or from the perspective of a 'vulnerable, weak and aggrieved individual'

Questions have been raised on process being the punishment under CrPC² and Sec.199 and IPC³ Sec.499 it has become easy to get summon in court. For example, in 2009, IIPM filed a criminal defamation suit against Maheshwer Peri, publisher of the *Outlook* and *Careers360* magazines, for an article on private educational institutions that were allegedly deceiving students. The article mentioned IIPM, questioning the authenticity of claims made by IIPM. The suits were mostly, filed in remote parts of the country such as Silchar, Assam, where neither IIPM nor the defendant were based nor had any presence⁴.

Constituent Assembly on Reasonable restriction

Although the rights to be included in the Constitution were considered to be fundamental and enforceable by the courts, they could not however, Assembly members realized, be absolute.

Before analyzing Constituent Assembly Members Debate on 'Limiting Fundamental Rights' or 'Reasonable Restriction', Granville Austin's words about the conditions in which those rights took that shape should be kept in mind, which he summarized by saying

"Fundamental Rights were to be framed among the carnage of fundamental wrongs". This was accepted by A.K. Ayyar, in a letter⁵, the relevant portion of which is as follows,

"The recent happenings in different parts of India have convinced me more than ever.....that all the Fundamental Rights guaranteed under the Constitution must be subject to public order, security and safety *though such a provision may to some extent neutralize the effect of the rights* guaranteed under the Constitution".

² Code of Criminal Procedure Act, 1973

³ Indian Penal Code, 1860

⁴ Maheshwer, P., (2016, March 23). Maheshwer Peri on how he won the legal battle against IIPM's Arindam Chaudhuri. Retrieved from <http://scroll.in/article/805493/maheshwer-peri-on-how-he-won-the-legal-battle-against-iipms-arindam-chaudhuri>

⁵ Letter dated 4 April 1947; Ayyar papers

There was no easy agreement. At issue was the explosive question of freedom versus state security and, to a lesser extent, of *liberty versus license in individual behavior*.

Granville Austin noted,

"Ambedkar gave the classic defense of the provisions. According to him, in support of every exception to the Fundamental Rights set out in Draft Constitution, one can refer to at least one judgment of US Supreme Court. The purpose of Provisos, Ambedkar continued, was to prevent endless litigation and the Supreme Court having to rescue Parliament. The provisos permit the state directly to impose limitations on Fundamental Rights. There is really no difference in the result".

Ayyar wrote to Indian Express that, "The Draft Constitution, instead of leaving it to the Courts to read the necessary limitations and exception (to the rights) seeks to express in a compendious form the limitation and exceptions"⁶.

When these two explanations still did not suffice to majority of Constituent Assembly, *Thakur Das Bhargava* led the final assault, moving an amendment that would put a 'soul' back in Art.13 by inserting the word 'reasonable' before 'restriction' in various provisions⁷.

Thus the Constitution placed a major restriction on the scope of legislative competence, for the judges may review the reasonableness of restriction placed upon rights and thus, have 'MUTATIS MUTANDIS' the same power in relation to Art.19 (of the Constitution, Art.13 of the Draft) which American judges generally exercise, under the clause of 'Due process of law'⁸.

This shows that the Constituent Assembly, never intended to put 'wide limitations' which Courts may have put, had the Assembly not carved out 'specific limitations'. Perhaps, they intended to impose limitations only under these exceptions, which proves that they placed more faith in 'Freedom' and tried to shield this from court's 'unrestricted power', like the US Supreme Court does in case of absence of any exception.

Defamation means the act or result of defaming or being defamed. Therefore, arguing that this word encapsulates both civil and criminal defamation is conceptually wrong. Hence, it is proposed that the Parliament could make a law to address the problem of

⁶ CAD VII 2, 3 and 4, and especially VII, 17 and 18. In a letter to editor of the Indian Express (Madras), dated 28 July 1948.

⁷ CAD VII, 17, 735-40; Thakur Das Bhargava

⁸ Alexandrowicz, op. cit., p. 46

defamation under Art.19 (2). The law so made can be a civil or a criminal law. The law must relate to defamation, but the nature of the law including its civil/ criminal character should fall for consideration under the reasonableness requirement which, in B.R. Ambedkar's words, gave power to the Court to check its reasonableness. Therefore, any law made to address the complex issue of defamation, would need to be tested on the issue of reasonableness. Now just because there was a pre-existing statute when Art.19(2) was enacted and when it was later amended (Addition of 'Reasonable' with restriction), does not ipso facto imply that the pre-existing law gets saved by Art.19(2) without any need for further inquiry as to its reasonableness in Art.19(1)(a).

To put limitations on the court's unrestricted power and to curb 'endless litigations', the Assembly adopted 'Procedure established by law' and not 'Due process of law'. Latter gives wide power to court to consider 'law', while the former gives power to decide only in 'decided frame'. This is evident from Assembly's act of 'placing exceptions' unlike US, resultant of which, being placing 'Procedure established by Law' instead of 'Due Process of Law'. If they had adopted the latter position in Art.21, then there would have been no need to place the Exceptions.

The Constitution requires the legislature to maintain a balance between the eventual adverse effects and limitation according to true intention of Constituent Assembly without any affect to Personal liberty.

Individual Wrong or Public wrong - Analysis of the nature of wrong in Question

In the instant case, the Supreme Court blurred the line between crime against society and crime against individual. It can be countered by saying if it is so then why is not each and every defamatory statement prosecuted?

In '*The Path of the Law*'⁹ 1897, Justice Oliver Wendell Holmes observed that, 'It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from the blind imitation of the past.' Just because provision continued to remain on the statute book must not be sole criteria to judge constitutionality. This is especially true for defamation.

*In Shreya Singhal v. UOI*¹⁰, '...Insofar as abridgement and reasonable restrictions are concerned, both the U.S. Supreme Court and this court have held that a restriction in order to be reasonable must be narrowly tailored or narrowly interpreted or *restrict only what is absolutely necessary*.'

Firstly, Private wrong, i.e., wrongs to individuals at the hands of other individuals – are meant to be pursued through the civil courts with this compensation and damages result of it. It is only when there is a *public* element to the wrong, (e.g., murder endangering the peace of the society as a whole) states responsibility comes in.

In *The Superintendent, Central Prison Fatehgarh v. Ram Manohar Lohia*¹¹ the Court observed as follows, 'The limitation imposed in the interests of public order to be reasonable restriction, should be one which has proximate connection or nexus with public order, but not one farfetched.....of its relation with the public order.....We can't accept the argument of the learned Advocate General that instigation of a single individual not to pay tax or dues is a spark which may in the long run ignite a revolution movement destroying the Public Order.'

Secondly, *In Dr. Ram Manohar Lohia v. State of Bihar & Ors.*, the Court explained the meaning of Public Order - Comprehend disorders of less gravity than those affecting 'Security of state'.....it is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the state¹². Defamation is perfect example of it. Defamation law is not used exclusively by the disempowered against the powerful. It is also used by big companies to silence journalists who speak truth to power.

Before striking down Sec.66A in *Shreya Singhal v. Union of India*¹³, the Supreme Court dealt with the Question - Does a particular act lead to disturbance of the current life of the community or does it merely affect an individual leaving the tranquility of society undisturbed?

And it replied 'The Sec.66A makes no distinction between mass dissemination and dissemination to one person. Further, the Section does not require that such message should have a clear tendency to disrupt public order. Such messages need not have any potential which could disturb the community at large'.

¹⁰ *Shreya Singhal v. Union of India*, 5 SCC 1 India (SC 2015)

¹¹ *The Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia*, 2 S.C.R. 821 (SC 1960)

¹² *Dr. Ram Manohar Lohia v. State of Bihar & Ors.*, 1 S.C.R. 709 (SC 1966)

¹³ *Shreya Singhal v. Union of India*, 5 SCC 1 (SC 2015)

⁹ Holmes Jr., O.W., (1897), *The path of the law*, Harvard Law Review, 10, 457

In *Subramanian Swamy v. Union of India*¹⁴, the Court blurred the line between 'Mass dissemination and Dissemination to one person' and contracted the wider meaning of 'Public order' to individual person.

Sec.66A was struck down in *Shreya Singhal*¹⁵ case because it did not differentiate between Mass dissemination and Dissemination to one person. In *Subramanian Swamy v. UOI case*¹⁶, rather than speaking of 'Difference' between Public Wrong and Private wrong, Private wrong was given unreasonably wider interpretation and it was placed in the same position as that of 'Public wrong'. If *Shreya Singhal* case was discussed after *Subramanian Swamy* case, then we could have predicted apart from questioning 'absence of differentiation between public wrong and private wrong', court would have placed it on same platform and might have approved Sec.66A as valid law.

The Court in *Subramanian Swamy v. Union of India*¹⁷ noted that, '*Individuals constitute the collective. Law is enacted to protect the societal interest. The law relating to defamation protects the reputation of each individual in the perception of the public at large. It matters to an individual in the eyes of the society.....There is a link and connect between individual rights and the society; and this connection gives rise to community interest at large.*'

This, however, is tough to accept since it effectively dissolves the distinction between private and public wrongs altogether. If individuals make up the society, and if therefore, a wrong to an individual is *ipso facto* a wrong to society, then there's no such thing as an individual wrong in the first place.

Private wrongs or civil injuries are an infringement or privation of the civil rights which belong to individuals considered merely as individuals; public wrongs or crimes and misdemeanors are a breach and violation of the public rights and duties due to the whole community in its social aggregate capacity.

Thus, the primary question of criminalizing a private wrong is a *disproportionate* and *unreasonable* restriction upon free speech, still subsists.

In *London Artists v. Littler*¹⁸, Lord Denning emphasized that the test was not solely whether the public was legitimately concerned in the matter in question, but whether the public was legitimately interested. A subject which invites public attention or is open to public criticism or discussion is a matter of public interest, which is not

the same thing as matter of general interest. It is not correct to say that by giving wider interpretation, Supreme Court has brought down 'Public interest' to 'General Interest' which is not supported by precedents.

Balancing of Expression and Reputation

According to the Supreme Court, six decades of jurisprudence have constitutionalised 'Reputation' as part of Art.21, especially after seeing Emergency and disregard to independence. During that period, the Supreme Court in various judgments gave wider interpretation to Fundamental Rights, Reputation is one of the result of it, but in the words of the Constitution expert, Mr. Rajiv Dhawan "Since the judge relies so much on the intention of the constitution-makers, Art.21 as conceived by them did not include either reputation (the view of life and liberty was limited) or invocation of due process (by permitting any procedure established by law)"¹⁹. But *Subramanian Swamy* judgment indicates simultaneously with this enhancement of Art.21 that speaks of personal liberty and reputation of person has come crucifixion of Art.19 which is right to expression, which is total disregard for not only 'after emergency' judgments and debates but Constituent Assembly debates which wanted to read 'Reasonable Restriction' in narrow manner.

As *Justice Krishna Iyer* had put it, that by giving undue weight age to Art.21 over equally revered Art.19 should we say Court has created Island of one Fundamental Right (Art.21) against other Fundamental Rights? Should we assume in harmonization of Art.21 (Right to reputation) and Art.19, the court has created 'a different Island of right' in Art. 21?

If 'reputation' is a right, it can't be more than a negative right resulting from the inclusion of defamation in the table of restrictions.

If argument of Union of India is to be believed that 'the right to reputation is not just embodied in Art.21 but also built in as a restriction placed in Art.19 (2) on the freedom of speech in Art.19 (1) (a)', then aren't we ignoring interpretation of Supreme Court given in *Maneka Gandhi* judgment²⁰ and more than this haven't we ignored weight age of 'Reasonable' written before 'Restriction'?

The Court in *Maneka Gandhi case*²¹ observed that, 'The expression 'personal liberty' in Art.21 was given an

¹⁴ Writ Petition(Criminal)No. 184 Of 2014

¹⁵ *Shreya Singhal v. Union of India*, 5 SCC 1 (SC 2015)

¹⁶ Writ Petition(Criminal)No. 184 Of 2014

¹⁷ Ibid.

¹⁸ CA 10 Dec 1968

¹⁹ Dhawan, R., (2016, June 2). On Defamation, Macaulay Has the Last Laugh on India. Retrieved from <http://thewire.in/40001/on-defamation-macaulay-has-the-last-laugh-on-india/>

²⁰ *Maneka Gandhi v. Union of India*, AIR 597 (SC 1978)

²¹ Ibid.

expansive interpretation. The court emphasized that the expression 'personal liberty' is of the 'widest amplitude' covering variety of rights 'which go to constitute the personal liberty of man'. Some of these attributes have been raised to the status of distinct fundamental rights and given additional protection under Art.19'.

Explicitly, these judgments and Constituent Assembly debates show more importance has been given to 'personal liberty' with additional protection in Art.19 and if 'Reputation' in Art.21 is further supported by Art.19 (2), we must not forget it is added with one limitation, that of 'Reasonable', which automatically places it below one pedestal against 'Personal liberty' so the argument that the 'Right to reputation' is above or equal to other one's Right to express is not sustainable.

In other countries of the world, diligent journalism in good faith has been protected by courts and mere threat of looming sword of defamation can stifle further growth of journalism and independence to Question mighty and powerful special when 'Truth' is no defense to a person using his Fundamental Right 'Right to express'.

The question is not to scrap Art.19 (2) but whether the present form of Defamation law is compatible with 'Reasonable Restriction' of Art.19 considering jurisprudence development of last 60 years? Invalidating criminal defamation *per se* does not amount to a constitutional infraction but the legislature can draft proper laws.

The Court in the entire judgment tried to balance Fundamental Rights pitting them against each other. This can be summarized as follows, 'The reputation of one, cannot be allowed to be crucified at the altar of the other's right to free speech'. This expression signifies both Art.21 and Art.19 (1) on the same footing. Overzealous protection to Right to reputation has been given, at cost of Right to express, despite knowing the fact that Right to express is additionally protected under Art.19 and very well protected under Art.21 as well.

The Supreme Court in *The New York Times v. Sullivan*²², explained in Auto Shankar case²³ on civil defamation, said,

'The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Art.19 (2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community

interest is endangered.'

It can be argued that in *R.Rajgopal v. State of T.N.*, which was a case of Civil defamation, the Court had left Criminal defamation question open but no fault liability regime of defamation causes equal chilling effect irrespective of Civil or Criminal defamation.

By giving narrow interpretation to Art.19(1) and limiting 'personal liberty' aspect in Art.21 for 'reputation' only has created some peculiar situation and ignored minority view of Subba Rao, J. given in Kharak Singh case which was later adopted as correct approach.

The inconvenient truth: Exceptions and Procedure

The principle governing the defense of justification is that 'the law will not permit a man to recover damages in respect of an injury to a character which he either does not or ought not to possess'.²⁴

Unlike the general approach where the person initiating the proceedings has to bear the burden of establishing his case, all defamatory statements are presumed to be false and burden of proving that it is true lies on the defendant in this already favorable situation for plaintiff addition of proving 'good faith', 'public good' is nothing but unjustifiable and roadblock to realize right to expression.

Position in Indian law is bit peculiar; civil defamation law is *more* speech protective than criminal defamation law.

The Court pays no attention to the fact that the language of Section 499 sets up tough standard than was found to be unconstitutional in *Rajgopal*, in the context of civil defamation.

In *Rajgopal v. State of TN*²⁵, the Supreme Court held,

'...the reason public figures like public officials often play an influential role in ordering society. It has been held that as a class the public figures have access to mass media communications both to influence the policy and to counter criticism of their views and activities. On this basis, it has been held that the citizen has a legitimate and substantial interest in the conduct of such persons and that the freedom of press extends to engaging in uninhibited debate about the involvement of public figures in public issues and events'.

In *New York Times v. Sullivan*²⁶ case, US Supreme Court observed,

²² *New York Times v. Sullivan*, 376 U.S. 254 (US 1964)

²³ *R.Rajgopal v. State of T.N.*, AIR 264 (SC 1995)

²⁴ *M'pierson v. Daniels*, IO B & C 263 (1829)

²⁵ *R.Rajgopal v. State of T.N.*, AIR 264 (SC 1995)

²⁶ *New York Times v. Sullivan*, 376 U.S. 254 (US 1964)

'Allowance of the defense of truth, with the burden of it proving it on the defendant, does not mean that only false speech will be deterred. Even courts accepting this defense as adequate safeguard have recognized the difficulties of adducing legal proofs that the alleged libel was true in all its factual particulars.'²⁷

The provision relating to defamation under Sec.499 IPC does not recognize truth as an absolute defense but qualifies that if anything is imputed which is even true concerning any person; it has to be for the 'public good'. If a truthful statement is made and truth being the first basic character of justice, to restrict the principle of truth only to public good is nothing but an irrational restriction on the free speech. The concept of 'good faith' has been made intrinsic to certain Exceptions and that really scuttles the freedom of speech and freedom of thought and expression and thereby it invites the discomfort to Art.19 (1) (a).

Requirement to prove 'Public good' and 'Good faith' on part of the defendant to get relief under exception is exceeding 'Reasonable' test and not in conformity with several U.S. and Indian judgment.

The Court in *Subramanian Swamy v. Union of India*²⁸ took the view while holding truth as not complete defense that imputations of alcoholism, consensual incest, impotence or illegitimacy are prone to be affected if Truth will remain solid defense but the Court didn't consider application of 'Privacy law' that would cover all this more effectively.

US Supreme Court held in *Time, Inc v. Hill*²⁹,

'We create grave risk of serious impairment of the indispensable service of a free press in a free society we saddle the press with the impossible burden of verifying to a certainty the facts associated in press news article with a person's name, picture or portrait, particularly as related to non-defamatory matter'.

Even in *Derbyshire County Council v. Times Newspaper Ltd.* court held even threat of action can stifle progress of journalism and held,

'What has been described as 'the chilling effect' induced by the threat of civil action for libel is very important. Quite often the facts which would justify defamatory publications are known to be

true, but admissible evidence capable of proving those facts is not available'.³⁰

On Procedure part, defamation complaints are to be filed by 'some person aggrieved' of the offence (and not the 'person defamed'). The text of Sec.199, Code of Criminal Procedure (CrPC) and Sec.499, IPC, makes it relatively easy for a person to file a criminal defamation complaint and get the accused summoned to Court.

The constitutional validity of a statute would have to be determined on the basis of its provisions and on the ambit of its operation as reasonably construed as has been held in *Shreya Singhal v. Union of India*³¹.

Criminal cases restrict speech to a far greater extent than civil cases, by placing onerous burdens upon the accused. In even the most frivolous of cases, the accused must face the legal process throughout the long pre-trial stage, which itself has the potential to drag on for months, if not years.

Vrinda Bhandari, Practicing Criminal Lawyer in Delhi wrote in Caravan Magazine, 'The problem is exacerbated by the extension of the territoriality principle (under which a state can prosecute criminal offences that are committed within its borders) due to the internet, which makes it easy for various persons to claim to be aggrieved by the same article, press conference or tweet. This can lead to the institution of multiple cases in different jurisdictions as SLAPP (Strategic Lawsuit against Public Participation) suits. These are lawsuits intended to censor or intimidate critics by burdening them with the cost of a legal defense. The accused is then forced to travel across the country defending them'.³²

In a case, well known actress Khushboo faced 23 criminal cases in Tamil Nadu and Madhya Pradesh for her remark on Pre - Marital sex and had to go up till Supreme Court to quash these complaints.

While dealing with this case, Supreme Court recognized 'chilling effect' of Free speech and said,

'In present case, the real issue of concern is the disproportionate response to appellant's remarks. If the complainants vehemently disagreed with the appellant's views, then they should have contested her views through the new media or any other public information. The

²⁷ *New York Times v. Sullivan*, 376 U.S. 254 (US 1964)

²⁸ Writ Petition(Criminal)No. 184 Of 2014

²⁹ *Time, Inc. v. Hill*, 385 U.S. 374 (US 1967)

³⁰ *Derbyshire County Council v. Times Newspaper Ltd.*, 1 QB 770 (UKHL 1992)

³¹ *Shreya Singhal v. Union of India*, 5 SCC 1 (SC 2015)

³² *Bhandari, V.*, (2016, May 22). Defamation: Where The Supreme Court Got It Wrong. Retrieved from <http://www.caravanmagazine.in/vantage/defamation-supreme-court-got-wrong/>

law should not be used in a manner that has chilling effect on the 'freedom of speech and expression'.³³

The question here is aren't we implying or can we treat the defamation of person who has medium and strength to carry suits and appeal in court for long time exactly the same way as we treat the defamation of and by individual journalists, activists or young students.

In November 2015, while staying a criminal defamation case by the Tamil Nadu state government against a politician from an opposition party, the Supreme Court questioned the large number of such cases coming from the state. The judges said,

'These criticisms are with reference to the conceptual governance of the state and not individualistic. Why should the state file a case for individuals? Defamation case is not meant for this.'

In *R.Rajgopal v. State of Tamil Nadu*³⁴, the Supreme Court modified the common law of civil defamation and said,

'In the case of public officials, it is obvious, right to privacy, or for that matter, the remedy of action for damages is simply not available with respect to their acts and is based upon facts and statements which are not true, unless the officials establishes that the publication was made (by the defendant)with reckless disregard for truth. In such case, it would be enough for the defendant (member of the press or media) to prove that he acted after a reasonable verification of the facts; it is not necessary for him to prove that what he has written is true.'

Following the established jurisprudence from the United States and Europe, which had modified civil defamation law in order to bring it in line with the guarantee of freedom of speech, the Supreme Court adopted the '*Sullivan test*': in making statements about public officials, speakers were liable only if it could be shown that they had acted with '*actual malice*' – that is, having knowingly spoken falsely, or acted with reckless disregard for the truth.

It is nothing but its failure to consider the *ratio* of *R. Rajgopal v. State of Tamil Nadu*, that is, the finding that a regime of no-fault liability in defamation causes a chilling effect upon free speech.

CONCLUSION

Free speech is the best defense against ill administered government. Politicians who err should be subjected to unfettered criticism. Those who hear it may respond to it; those who silence it may never find how their policies misfired. As *Amartya Sen*, a Nobel laureate pointed out that no democracy with a free press endured famine. Science can not develop unless old certainties are queried. Taboos are the enemy of understanding. The law should recognize the right to free speech as nearly absolute. Exception should be rare as envisaged in Constituent Assembly by adding 'Reasonable' before restriction. In volatile countries words that incite violence will differ from those that would do so in a stable democracy. But the principles remain the same. The policy should deal with serious and imminent threats and every other person having a view supported by truth should not be arrested. The chilling effect refers to the manner in which over-broad and severe laws 'chill' speech it is clearly available from these facts that Substance and procedure of defamation law both are tyranny for a common man but court found existence of law (which was questioned) enough indication that there can never be chilling effect.

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³³ *S. Khushboo v. Kannianmal*, 5 SCC 600 (SC 2010)

³⁴ *R.Rajgopal v. State of T.N.*, 1995 AIR 264 (SC 1994)

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- Letter dated 4 April 1947; Ayyar papers