

Right To Reputation an Insegregable Facet of Right to Live With Dignity – A Critical Study

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Abstract: A good reputation of an individual is an insegregable facet of his right to life with dignity. Reputation which is not only the salt of life, but also the purest treasure and the only salt of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the prosperity. According to William Hazlitt had to say: "A man's reputation is not in his own keeping, but lies at the mercy of the profligacy of others". Calumny requires no proof. The throwing out of malicious imputations against any character leaves a stain, which no after-refutation can wipe out. To create an unfavourable impression, it is not necessary that certain things should be true, but that they have been said. The imagination is of so delicate a texture that even words wound it Reputation is an important part of one life. It is one of the finer graces of human civilization which make life worth living. State of Maharashtra v. Public concern for Governance trust held that a good reputation was an element of personal security and was protected by the constitution. Equally with the right to enjoyment of life, liberty and property. The court affirmed that the right to enjoyment of private reputation was of ancient origin and was necessary to human society. The right to reputation to be an integral part of Article 21 and 19(2) of the constitution. When reputation is hurt, "a man is half- dead." Research Hypothesis: In the context of harmful content, more so in the context of the virtual world: Can it be said that defamation is only a private wrong and, therefore there cannot be any redressal, especially in the light of just exceptions put as a safeguard to weed out genuine loss of reputation as opposed to frivolous complaints? Can it be said that the state is under no obligation to protect the human dignity of an individual? Can it be said that the fundamental right to speech and expression includes speech laden with harmful intent made with reckless disregard? Does freedom of expression justify the violation of people right to their own good name? Objectives: The purpose of this research paper is to justify the need to strengthen the institution of protecting reputation, including business reputation, as a restriction on the right to freedom of expression in the information society to ensure the necessary balance in court cases regarding this competitive right. The other objects are as below. To find out the issues related to right of reputation. To evaluate the main features of the right to reputation. To conclude with Proper recommendations. This is research paper includes books, newspapers, Articles, various law journals, and internet sources. The material was collected and arranged in systematic order.

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INTRODUCTION

Right to Reputation

The right to reputation to be an integral part of article 21 and 19(2) of the constitution.¹ In the current millennium of wide-ranging media coverage journalist also have to be held accountable for making imputation/allegations sufficient to ruin the reputation of an individual. Every individual has a right to live dignified life. Reputation and honor are connected with dignity and thus constitutes an inalienable part of human life. Even the apex court has time and again reiterated the important role that reputation plays in an individual life and how the right to reputation is an inextricable part of the right to life under 21 of the constitution. Apart from the constitution of India, there are various international conventions as well which recognize right to reputation as an integral part of human existence.

In view of [Article 21](#) of the Constitution of India which protects the life and liberty of every person. When a person applies for regular bail then the court concerned ordinarily lists that application

after a few days so that it can look into the case diary which has to be obtained from the police authorities and in the meantime the applicant has to go to jail. Even if the applicant is released on bail thereafter, his reputation may be tarnished irreparably in society. The reputation of a person is his valuable asset, and is a facet of his right under [Article 21](#) of the Constitution.²

In the recent judgment of Subramanian swami v. Union of India³ the apex court held that the reputation of an individual is a basic element under article 21 of the constitution and balancing of fundamental rights is a constitutional necessity. Right of free speech does not give a right to an individual to defame others. It is the duty of every individual not to interfere with the liberty of others individual because everyone has a right to reputation and right to live with dignity.

In this research paper there is a brief discussion of the main purpose which is to address the question

¹ Mint 26 May 2016.

² Sukhwant singh v. state of Pujnab, (2009) 7 scc 559.

³ 2016, Scc vol.7 august 2014, 2016 part 2.

of whether the civil law of defamation, more particularly in its common law manifestation, achieves an optimum constitutional balance between the right to reputation and the right to freedom of expression. It then discusses the horizontality of constitutional provisions in the context of defamation and the broad approach adopted in England, South Africa, Australia, and the USA to the issue of balancing rights in the context of judges developing the common law of defamation.

An overview of right to reputation has explores the meaning and legal significance of reputation, and the values underpinning the right. The right to reputation is a constituent of article 21 of the Indian constitution. It is an individual fundamental right. In a recent verdict the Supreme Court upheld the validity of criminal defamation law saying that it is to be safeguard for the right to reputation. At the same time Supreme Court made right to reputation to be a fundamental right under article 21 of the Indian constitution. Right to reputation as fundamental right. This research paper explains as follows.

- Article 21 provides for right to life. Which is more than mere existence it is about dignified life.
- Reputation is crucial component of the dignified life.
- It lays the course of behaviour towards someone, respect he/she draws from society. Influence that one has on society.
- While one with good reputation appreciated one with bad is prowled upon.
- It discusses the nature and legal protection of reputation in the principal jurisdictions considered.
- Examines the underlying values that reputation appears designed to serve.
- Concludes the discussion and argues that ventilating the values underlying reputation will assist in deciding the proper approach to be adopted when reputation must be balanced against freedom of expression.

Thus, reputation in totality have significant influences on an individual life and given the effort required to build it and ease with which it is maligned. Conferment of fundamental right is logical. Though equating it to criminal defamation law might not be the best idea. Every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without

denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct. Though equating it to criminal defamation law might not be the best idea. The apex court in *Om Prakash chautala v. Kanwar Bhan*⁴ held that disparaging remarks made against the appellant, then chief minister of the state of Haryana, in proceeding for quashing the disciplinary proceeding against the respondent employee, working as assistant registrar of co-operative societies, had caused prejudice to the appellant, who was not impleaded as party and had no opportunity of defending himself. While ordering expunction of the disparaging remarks against the appellant, made by the learned single judge of the P. & H. High court, the Supreme Court observed, a judge is not to be guided by any kind of notion. The decision making process expects a judge to apply restraint, ostracise perceptual subjectivity, make one ambitions subservient to one reasoning and think dispassionately. He expected to be guided by the established norms of judicial process and decorum.⁵

- A criminal defamation leads to voice of dissent.
- Dissent is the Crux of democracy, which keeps it moving.
- At the same time keep it updated to the modern phenomenon.

Issues Related to Right to Reputation

Based on fundamental values of freedom and equality, Human rights represent a constructive element of any democratic society and in their original conception, are granted to every individual.

- Currently the existence of a conflict between the two inalienable values as the right to protection of the reputation and the right to freedom of expression is recognized wider.
- In balancing the right to expression and reputation the second one is the most vulnerable from the point of view of practical protection.
- Due to the fact that the protection of the right to expression has a longer history and its capabilities, due to globalization as result of technological development. At the same time the right to protect reputation is relatively new

⁴ AIR 2014 SC 1220.

⁵ State of Bihar v. Lal Krishna advani, AIR 2003 SC 3357.

and moreover attacked by protection of the right of expression.

- Lack of legislative explanation of the concept of “reputational harm” does not provide the clarity and predictability in courts.

International Convention on Right to Reputation

Various international conventions have stressed upon the significance of reputation is an individual life. Article 21 of the universal declaration on human right, 1948 explicit states about the importance of reputation and honour. Further article 19 of the international covenant on civil and political rights mentions the right to reputation. Furthermore article 8 and article 10 of the European convention for the protection of human rights and fundamental freedom provides for the right to respect for private and family life and freedom of expression. All the aforementioned conventions recognize the right to reputation as an inseparable right of an individual. ECHR (European convention on Human Right) article 152 of the civil code⁶ additionally provides possibilities in protection of the reputation when in the disseminated information there is no criteria of defamation. It is a big step on the path to protecting reputation, since dissemination of “simple” disinformation also can lead to losses in reputation.

The Right to Reputation in Cyber World

The internet revolution has led to the introduction of various social media platforms where people can freely express their views and expressions. However, when such wide powers are being allocated to the citizens, it becomes indispensable on the part of the government to make such regulations which can balance the freedom of speech and expression and right to reputation. The information technology act 2000 and the information technology rules 2011 are the steps which have been taken by the government for regulation of free speech and reputation on social media platforms. The information technology rules 2011 recognizes defamation as a non-permissible activity. The government has placed a statutory duty on the social media platform providers to formulate rules and policies for the regulation of their users.

The platform providers regulate the content which can be posted by the user under the user

agreements framed by them. They have the power to take the content which is defamatory and violate of the right to reputation of an individual.

Protecting one reputation has arguably become harder in this time of you tube, blogs and mobile phone cameras. The simple truth is that it is easier to get caught doing something inappropriate and it is easier for people to publish defamatory materials. It is somewhat eclectic.

Legislative Provision Related to Right to Reputation

Court Ruling

1. As per the Supreme Court the right to reputation is an integral part of article 21 of the constitution.
2. Further existence of section 499 (criminal defamation) of the Indian penal code 1860 is not a restriction on the freedom of speech and expression because it ensures that the social interest is served by holding a reputation as shared value of the public at large.

Right of Life Article 21

1. No person shall be deprived of his life or personal liberty except according to procedure established by law.
2. It confers on every person the fundamental right to life and personal liberty.⁷

Right to Live with Dignity

In Maneka Gandhi case (Maneka Gandhi v. union of India 1978) the Supreme Court gave a new dimension to article 21 and held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity.⁸ Women has right to put her grievances at any platform of her choice and even after decades. Every person who is born has a reputation of his/her own. You have a reputation of your own than why another not? Every human being in this world has a reputation of his or her own. Supreme Court under article 21 right to life and right to personal liberty also encompasses the right to reputation. Right to reputation has been define by Supreme Court as an integral part of article 21 of the Indian constitution. Article 21 does not include only right to life but it also includes right to live with dignity. We all are human being we are not animal like cat and dog. We required human rights. We should live like a human being. Not just breathing and having some food is not what is contemplated right to life. Right to life is a much longer concept.

⁶ Eassy written by Sergey Blagoveshchenskiy in the field of constitutional law and Human Rights.

⁷ Constitution of India by J.N Pandey.

⁸ Maneka Gandhi v. Union of India, A.I.R 1978 SC 597.

Court's Ruling

The right to reputation cannot be protected at the cost of the right to life and dignity of women. As per the Supreme Court the right to reputation is an integral part of article 21 of the constitution. Further existence of section 499 (criminal defamation) of the Indian penal code, 1860 is not a restriction on the freedom of speech and expression because it ensures that the social interest is served by holding a reputation as shared value of the public at large. In Maneka Gandhi case the Supreme Court gave a new dimension to article 21 and held that the right to live is not merely a physical right but includes within its ambit the right to live with human dignity. Women has a right to put her grievance at any platform of her choice and even after decades.

Concept of Defamation

Defamation in law is concerned about attacking another reputation by a false publication (communication to a third party) tending to bring the person into disrepute. Defamation is a statement that injures a third-party reputation. False publication (written/oral) intending to lower the reputation of a person in the eyes of third party.

Civil

- Libel- representation in a permanent form. e.g., writing, printing, picture, effigy
- Slander- Depiction in transient form. It is basically through words spoken or gestures.

Criminal

In India defamation can both be civil wrong and a criminal offence.

1. The difference between the two lies in the object they seek to achieve.
2. A civil wrong tends to provide for a redress of wrongs by awarding compensation and a criminal law seek to punish a wrongdoer and send a message to others not to commit such acts.

Criminal Defamation

In Indian penal code section 499 explain the criminal defamation according to it "whoever, by words either spoken or intended to be read, or by signs or by visible representation, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation of such person, is said, except in the cases hereinafter expected, to defame that person."⁹

Law for Defamation

1. In Indian laws criminal defamation has been specifically defined as an offence under the section 499 of the Indian penal code (I.P.C). Whereas the civil defamation is based on tort law (An area of law which does not rely on statutes to define wrongs but takes from ever-increasing body of case laws to define what would constitute a wrong).

Free Speech Takes Precedence over Reputation

freedom of speech is always put on a higher pedestal than reputation as it directed social media influencer Abhijeet Bhansali and Marico Ltd to resolve issues related to a video critical of the latter's coconut oil brand 'Parachute'.¹⁰

A division bench of Chief Justice Pradeep Nandra jog and Justice Bharati Dangre made the observation while hearing Bhansali's appeal against an order passed by a single bench of the HC, directing him to pull down the controversial YouTube video, in which he recommends people not to buy 'Parachute. The single bench, in its order, had noted that the fundamental right of speech so guaranteed in the Constitution cannot be abused by any individual by maligning or disparaging the product of others. The single bench had also made various observations on the responsibility that social media influencers needed to show while making comments. The division bench, however, noted that while social media influencers do have an obligation, freedom of speech gets primacy over reputation.

"The existing law on defamation says no one can make a false statement of a fact. An opinion cannot be held as a fact irrespective of how bad it (opinion) is.

"Freedom of speech is always put on a higher pedestal than reputation even though both are fundamental rights. We will have to go into this issue while hearing this appeal," Chief Justice Nandra jog said. While admitting the appeal made by Bhansali, who goes by online moniker 'Bearded Chokra', the division bench directed the parties involved and their lawyers to discuss and resolve issues related to the video.

"All the parties can put forth what they feel is objectionable in the video and maybe he (Bhansali) can remove certain portions from the video," the court maintained. The court said it

⁹ Indian penal code by S.N Mishra 22 Edition.

¹⁰ Press trust of India, Mumbai last updated at January 28, 2020.

would hear the matter further on February 5, until which time the FMCG Company (Marico) must not take any action against Bhansali to take the video offline. The division bench noted that social media influencers are a reality in the modern society and survey shows their followers get influenced by their reviews. "If the society is reposing trust in what they (influencers) say then that trust comes with an obligation." The problem with the Internet and social media nowadays is that there is so much information that people mistake it for knowledge".

Balance as A Sole Solution Between Right to Reputation and the Right to Freedom of Speech and Expression

There is a strong need to maintain a sensitive balance in the process of protecting the right to freedom of expression and the right to protection of reputation. An important principle that the court follows in its decision is a balance of interest of the conflicting parties.¹¹ The question of balance between the right to reputation and the right to freedom of speech and expression has grown with the increased number of platforms to express one's opinions and ideologies. One has multiple ways to express his or her opinion on varied platforms. The clash surfaces when there is a comparison between freedom of speech and expression and right to reputation. Often, when the right to freedom of speech and expression is exercised beyond the prescribed limits, it becomes an infringement of the right to reputation. The right to reputation includes the protection of dignity and preservation of individual respect in society. Commercially, the right to reputation has a different connotation. A product creates its own goodwill in the market through various management methods and such products are generally trademark protected. However, the question remains, are these products immune from dangers such as the harm to reputation? This danger is known as Product Disparagement in legal terms. Matters relating to such issues have frequently come up in courts and different guidelines have been given effect to in pursuance. The Bombay High Court was faced with a similar issue related to the extent of freedom of speech and expression through online platforms. Social media content on platforms like Facebook, Instagram and YouTube involve 'Social Media Influencer's' review on various products. In

the case of *Marico Ltd. v Abhijeet Bhansali*,¹² this question has been addressed in meticulous detail. In this article will analyse the right which will take the higher pedestal and the reason behind it.

Recommendations in Order to Establish the Balance between the Right to Freedom of Expression

- How well known is the person concerned and what is the subject of the report should observe when this kind of matter come into existence.
- Prior conduct of the person concerned should also be taken into consideration
- Content, form and consequences of the publications
- Severity of the sanction imposed.
- Method of obtaining the information and its veracity.

CONCLUSION

When considering cases on the protection of honour, dignity and reputation. It is important that the courts make pertinent investigation of information, sources of the content, its importance for society and factual grounds based on subjective and objective circumstances of each single case. Then a fair balance between the right to freedom of expression and the right to protection of reputation can be met. The right to free speech and the right to reputation are two fundamental rights which often conflict with each other due to their overlapping nature. Both the rights have been recognised as an integral part not only by the constitution of India but by various international conventions as well. While a person has right to live a dignified life, people have right to freely express their views and opinions at the same time. The court has time and again emphasized the need for balancing both the rights as has been discussed above. However, when the right to free speech has been reasonably restricted for the protection of the right to reputation, the members of the parliament get unfettered right to free speech within the four walls of parliament.

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