IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 62/2015

IN THE MATTER OF:

ARVIND KEJRIWAL

.....PETITIONER

VERSUS

UNION OF INDIA AND OTHERS .....RESPONDENTS

TYPED SET OF DOCUMENTS AND CASE LAWS

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Dated at New Delhi this the 14th day of July, 2015

Counsel for Petitioner

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WRITTEN SUBMISSIONS OF MR ARVIND DATAR, SENIOR ADVOCATE APPEARING ON BEHALF OF THE PETITIONER

I. THE OFFENCE OF CRIMINAL DEFAMATION UNDER S. 499 AND S. 500 OF THE INDIAN PENAL CODE, AND THE PROCEDURE FOR PROSECUTION UNDER SECTIONS 199 OF THE CODE OF CRIMINAL PROCEDURE (HEREINAFTER "IMPUGNED PROVISIONS") DO NOT CONSTITUTE A REASONABLE RESTRICTION ON THE FREEDOM OF SPEECH UNDER ARTICLE 19(2) OF THE CONSTITUTION

A. THE IMPUGNED PROVISIONS DO NOT COMPLY WITH THE STANDARD OF "REASONABLENESS" UNDER ARTICLE 19(2)

1. It is humbly submitted that Article 19(2) of the Constitution permits the State to impose, by law, "reasonable restrictions" upon the freedom of speech and expression, in the interests of, *inter alia*, defamation. The meaning of the phrase "reasonable restrictions" has been clarified by the Supreme Court in *State of Madras v. V.G. Row*, AIR 1952 SC 196, where Patanjali Sastri, J. has observed (at para 15):

> *The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.*

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2. In ***Dr. N.B. Khare v. the State of Delhi***, **AIR 1950 SC 211**, a majority of the Supreme Court led by Kania, C.J. held (at para 5) that:

> *the law providing reasonable restrictions on the exercise of the right conferred by article 19 may contain substantive provisions as well as procedural provisions. While the reasonableness of the restrictions has to be considered with regard to the exercise of the right, it does not necessarily exclude from the consideration of the Court the question of reasonableness of the procedural part of the law.*

3. This dictum was subsequently affirmed in ***V.G. Row*** (at para 16), which clarified that the question of reasonableness is context-specific, and must be decided on a case-to-case basis. Nonetheless, it is submitted that over the years, the Supreme Court has laid down markers to judge reasonableness in concrete cases. One important factor is whether the restrictive law has been drawn *narrowly*. In this context, while striking down a law prohibiting *beedi* manufacture during the agricultural season under Article 19(1)(g), Mahajan, J. observed in ***Chintaman Rao v. State of Madhya Pradesh***, **AIR 1951 SC 118** that (at para 6):

> *The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public... the law even to the extent that it could be said to authorize the imposition of restrictions in regard to agricultural labour cannot be held valid because the language employed is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the right.*

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4. More recently, in ***Shreya Singhal v. Union of India*, (2015) 5 SCC 1,** Rohinton Fali Nariman, J. also observed that (pages 132 & 168-169 respectively) :

> 17....*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 so as to abridge or restrict only what is absolutely necessary...*
>
> 90.....*it is thus clear that not only are the expressions used in Section 66A expressions of inexactitude but they are also over broad and would fall foul of the repeated injunctions of this Court that restrictions on the freedom of speech must be couched in the narrowest possible terms.*

5. It is humbly submitted that narrowly drawing offences has been treated as particularly important in the case of free speech because of what is known as the doctrine of "chilling effect". The chilling effect, it is submitted, occurs when a wide or vague speech-restricting provision "chills" speech because speakers undertake self-censorship even with regard to legitimate speech, because they are unsure of where the boundary between legality and illegality lies, or do not wish to take the risk of being caught on the wrong side of it. For example, in the case of ***New York Times v. Sullivan*, 376 U.S. 254 (1964),** which was relied upon by this Hon'ble Court in ***R. Rajagopal v. State of Tamil Nadu*, AIR 1995 SC 264,** Brennan, J. explained (at para 18, page 725):

> *... would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is, in fact, true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which "steer far wider of the unlawful zone." The rule thus dampens the vigor and limits the variety of public debate.*

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6. The doctrine of chilling effect, it is submitted, has often been invoked by the Supreme Court to strike down a speech-restricting provision in ***Shreya Singhal*** (at para 90, pages 168-169), invalidate executive action in ***Khushboo v. Kanniamal***, (2010) 5 SCC 600 (at para 47, page 620), and modify common law so as to bring it in conformity with Article 19(1)(a) in ***R. Rajagopal*** (at para 19, pages 646-647). Hence, it is submitted that this doctrine constitutes an essential part of Indian free speech jurisprudence as is evident from the judgments of this Hon'ble Court.

7. It is further submitted that while both ***Chintaman Rao*** and ***Shreya Singhal*** dealt with the substantive content of offences, it is also an established fact that unreasonableness can manifest in both substantive and procedural form. In fact, the logic of both the aforementioned cases applies squarely to the procedure established by a speech-restricting law. Hence it is most respectfully submitted that if it can be demonstrated that the legal procedure casts an excessive burden upon those who would exercise their right of free speech, or that there are less restrictive alternatives available, the impugned legal procedure, would be liable to be declared unreasonable and unconstitutional.

i. **The offence of criminal defamation is procedurally unreasonable because it imposes criminal liability for what is essentially a private wrong**

8. It is humbly submitted that defamation as a criminal offence originated in the English Star Chamber, in the 16th Century. The objective of criminalising defamation was two-fold: *first*, to prevent breaches of peace – in other words, to preserve public order. This was noted in the cases of *R v Holbrook*, (1878) 4 QBD 42 and *R v Labouchere*, (1884) 12 QBD 320.

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Professor Clive Walker of the University of Leeds also supported this view in his article titled *Reforming the Crime of Libel* in the **New York Law School Law Review 169 (2005-2006).**

9. It is humbly submitted that defamation was criminalised to prevent breach of peace that stemmed from the adverse response demonstrated by the persons defamed. On many occasions, the persons defamed responded to attacks on their honour or reputation by challenging the other party to a duel, which resulted in the disruption of public order.

10. In addition, it is submitted that the other rationale to criminalise defamation was to preserve state security. Imputations in the context of the latter, came to be known as the crime of "seditious libel" and will be discussed in the context of the impugned provisions in the next submission. The Law Commission of Ireland discussed these foundations of criminal defamation in its ***Consultation Paper on the Crime of Libel*** **(August 1991).**

11. In addition to criminal defamation, it is submitted, the common law courts also went on to develop the civil offence of libel. Here the focus was on compensation for harm caused to an individual's reputation. The difference in objectives between the two forms of libel can be evidenced by the fact that truth was not a valid defence in the case of criminal libel. In this regard, a note to Blackstone's *Commentaries* quotes former Chief Justice Lord Mansfield as having said that *the greater the truth, the greater the libel* in ***Familiar Short Sayings of Great Men: With Historical and Explanatory Notes*****, by Samuel Arthur Bent (2012).** It is also evidenced by the fact that while criminal defamation was initially restricted to the written word, oral defamation was purely tortious as noted in ***Rex v Penny*****, (1687) 1 Ld Rayn 153.**

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12.It is humbly submitted that during the drafting of the Indian Penal Code in 1837-1838, the Indian Law Commissioners briefly noted the distinction in objectives between criminal and civil defamation, before going on to state their disagreement with this position. The offence of defamation as defined by them in ***The Indian Penal Code Prepared by the Indian Law Commissioners*** **(1837-38)** at p. 119, published by the Command of the Governor-General in Council, stated that:

> *...tendency to cause that description of pain which is felt by a person who knows himself to be the object of unfavourable sentiments of his fellow creatures and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed.*

They then explicitly stated that

> *"defamation shall be made an offence without any reference to its tendency to cause acts of illegal violence."*

13.Hence, it is humbly submitted that history demonstrates that the intention of the drafters of the IPC was to *collapse* the distinction between civil and criminal libel, and criminalise what was essentially a private wrong. This view is further strengthened by drawing a comparison between the words of the drafters, and the words Lush, J. in ***R v Holbrook,*** where he observed (at page 46) that:

> *Libel on an individual...is ranked amongst criminal offences because of its supposed tendency to arouse angry passion, provoke rage, and thus endanger the public peace...In this respect libel stands on the same footing as assault or any other injury to the person.*

14.It is also submitted that libel, in other words, was a public wrong that was predicated upon its tendency to disturb public order. In this regard, just as assault (and other forms of bodily injury) was considered to be both a tort

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(arising out of the requirement to compensate someone for bodily harm) *and* a crime (because they endanger public peace), criminal defamation was also perceived to be both a tort (arising out of the requirement to compensate for reputational harm) *and* a crime (endangering the public peace for doing so). The Indian Law Commissioners made it clear, however, that they were retaining the criminal *offence* in order to serve a *private goal* (redressal for personal pain/inconvenience).

15. Further, as an aside, it may be noted that in the 1970s, the English courts began to hold that tendency towards public disorder was one factor, but not a necessary one, in judging whether libel was "serious" enough to warrant criminal prosecution This observations was made by Wien, J. in the case of ***Goldsmith v. Pressdram***, [1977] QB 83 (at pages 88-89) and by Lord Diplock in the case of *Gleaves v. Deakin*, [1980] AC 477 (at page 481). Importantly, in commenting upon this very fact, Lord Diplock noted that once the public order rationale for criminalising defamation had disappeared, it was doubtful whether the offence, as it stood, remained consistent with the freedom of speech guarantee under the European Convention for Protection of Human Rights and Fundamental Freedoms. In this regard he observed in ***Gleaves v. Deakin*** (at pages 482-483) that:

> *The original justification for the emergence of the common law offence of defamatory libel in a more primitive age was the prevention of disorder... The reason for creating the offence was to provide the victim with the means of securing the punishment of his defamer by peaceful process of the law instead of resorting to personal violence to obtain revenge. But risk of provoking breaches of the peace has ceased to be an essential element in the criminal offence of defamatory libel; and the civil action for damages for libel and an injunction provides protection for the reputation of the private citizen without the necessity for any interference by public authority with the alleged defamer's right to freedom of expression.*

16. However, criminal libel was ultimately repealed by the Parliament before it could be challenged on the touchstone of the European Convention, given that England does not have a written Constitution.

17. Nonetheless, it is submitted that Lord Diplock's observation still holds good because the European Convention – along the same lines of Article 19(2) – requires that restrictions upon the freedom of speech pass the test of *proportionality*, in order to be reasonable. In this regard, as demonstrated above, reasonableness is required to be both substantive and procedural, and as *per V.G. Row*, depends upon the extent of the restriction as well as the interest that is sought to be protected (at para 15). Hence, it is submitted that Section 499 is procedurally unreasonable because it imposes a disproportionate restriction (criminal liability) in order to meet a private goal (protecting from and compensating for attacks on reputation), which can be served by a more narrowly-drawn procedure through civil action.

18. It is well-accepted that criminal liability is more onerous than civil liability, for at least three reasons: *first*, it a criminal prosecution has the potential of directly depriving a person of their liberty. *Secondly*, unlike a civil suit, a criminal prosecution places upon the accused a mark of public disapproval and social stigma that sticks for life. *Thirdly*, a civil defamation suit will often be directed at newspapers, which have deeper pockets, and will often be able to settle a case without financial ruin. A criminal case, it is submitted, directly attacks the *writer*, and threatens *her* with imprisonment or a heavy fine. Hence, it is submitted that criminal defamation laws are far more likely to cast a chilling effect on speech, leading to self-censorship, than civil laws. National and international precedents that support this view will be discussed in detail in the next submission.

19. For these reasons, it is most respectfully submitted that criminal laws that are used to target speech that, at best, amount to a private wrong, are, by definition, not narrowly drawn. Therefore, following both ***V.G. Row*** and ***Shreya Singhal***, it is respectfully submitted that Section 499 and 500 of the Indian Penal Code are therefore unconstitutional.

ii. The offence of criminal defamation is procedurally unreasonable because of the burden it places upon speaker

20. It is humbly submitted that in addition to the procedural unreasonableness of imposing criminal liability upon a private wrong, a substantial portion of the burdens upon free speech is created by the criminal process itself. This includes:

a. <u>The requirement that the defendant be present at the place where the case has been filed against him.</u> With proliferation of various forms of media across the country, whether print, television or internet, a criminal case of defamation can be filed by any person irrespective of where the person who has allegedly caused the defamation resides. Information may be accessed and read, or seen anywhere (thereby creating to a cause of action), leading to a situation where cases are filed in various parts of the country purely in order to harass speakers and authors, who are required to travel at great personal cost. This position of law has been upheld by various High Courts, and is consequently, at present, the law of the land.

b. The burden on the speaker is compounded by the fact that under S. 199 of the Code of Civil Procedure, 1973, which lays down the procedure for prosecution, there is no limit upon the

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number of cases that can be filed against a person who has allegedly made a defamatory statement. This, it is submitted, is arbitrary, lends itself to abuse, and significantly chills speech. For instance, in the early 2000s, the Tamil Nadu government filed more 125 defamation cases against *The Hindu*, agreeing to withdraw them only when the newspaper approached this Hon'ble Court. This was noted by Subramanian Swamy in his article in **the Hindu** titled ***Defamation litigation: A survivor's kit*** (Sep 21, 2004).

c. Further, the defences under S. 499 are available only at trial, ensuring that a mere *prima facie* allegation is sufficient to kick-start the criminal process (as held by C.A. Vaidialingam, J. in ***Balraj Khanna vs Moti Ram***, **AIR 1971 SC 1389** at para 10, page 403), thereby casting a chilling effect upon speech.

d. The authorisation of the police to arrest, and the requirement of filing bail bonds is also an onerous burden upon speakers

e. The impossibility of recovering costs in case of a frivolous case creates an additional financial burden upon journalists or other individuals, who are defending themselves in a defamation case.

f. Lastly, the constant fear of possible imprisonment if found guilty perhaps constitutes the most serious chilling effect, especially upon journalists working to deadlines, and politicians caught up in the thick of political debate.

21. Hence, it is most respectfully submitted that all these burdens that go beyond the civil law clearly cast a chilling effect upon would-be speakers. Further, for the same reasons that were adduced in the previous section, the presence of a less burdensome procedure (the civil law) which is equally efficacious at dealing with a civil wrong such as defamation, makes it clear that S. 499 is not narrowly drawn, excessively restricts free speech, and is therefore disproportionate and unconstitutional.

iii. The offence of criminal defamation is substantively unreasonable because it imposes a standard of strict liability upon speaker

22. It is humbly submitted that Section 499 of the IPC punishes:

> *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.*

23. It is further submitted that the First Exception to Section 499 exempts imputations that are true, made in good faith, and for the public good. The Second Exception exempts "opinion" about public servants on matters touching their public functions. The Third Exception likewise exempts "opinion" about conduct relating to a public question. None of these exceptions, however, provide for exempting statements of *fact* that might be incorrect.

24. In *R. Rajagopal*, it was this precise aspect of the common law of defamation that the Supreme Court found inconsistent with the right to free speech. Drawing upon an extensive body of case law from the United States and Europe, B.P. Jeevan Reddy, J. observed (at para 21, page 648) that:

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> *Decency and defamation are two of the grounds mentioned in clause (2). Law of torts providing for damages for invasion of the right to privacy and defamation and Sections 499/500IPC are the existing laws saved under clause (2). But what is called for today in the present times is a proper balancing of the freedom of press and said laws consistent with the democratic way of life ordained by the Constitution... 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 conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a 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. Of course, where the publication is proved to be false and actuated by malice or personal animosity, the defendant would have no defence and would be liable for damages.*

25. Therefore it is submitted that the Supreme Court held in ***R. Rajagopal***, that the substantive standards under the common law of defamation, which placed the burden of establishing truth upon the defendant, and made no room for errors of fact, were inconsistent with the freedom of speech and expression under Article 19(1)(a), and not saved by Article 19(2). Consequently, the Court also established the "actual malice" test, drawn from ***New York Times v. Sullivan***, to bring defamation law in line with the Constitution. In fact, it is submitted that the rationale for this was explained in ***Sullivan*** itself, where the Brennan, J. observed (at para 10, page 721) that:

> *.... erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the "breathing space" that they "need . . . to survive*

26. The ***Rajagopal*** dictum has been followed by the Delhi High Court in ***Ram Jethmalani v. Subramaniam Swamy***, **(2006) 126 DLT 535** (at para 94, page 626) and ***Petronet Lng v. Indian Petro Group***, **(2009) 158 DLT 759**

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(at paras 32 & 73, pages 775-776 & 793-794 respectively). In both those cases, the High Court noted that ***Sullivan*** and ***Rajagopal*** were required because the law of defamation, as it stood, cast a chilling effect upon the freedom of speech.

27. It is submitted that S. 499, however, reflects precisely the pre-***Rajagopal*** law, and does not protect "erroneous statements". In this regard, while examining civil defamation, B.P. Jeevan Reddy, J. noted in ***R. Rajagopal*** (at para 28, page 651) that:

> *In all this discussion, we may clarify, we have not gone into the impact of Article 19(1)(a) read with clause (2) thereof on Sections 499 and 500 of the Indian Penal Code. That may have to await a proper case.*

28. It is submitted however that the aforementioned rationale, raises an anomalous situation whereby the *civil* law of defamation has been modified to bring it into conformity with Article 19(1)(a) through the adoption of the ***Sullivan*** test, but the very same substantive standards, as discussed above, that the Court found unconstitutional in ***Rajagopal*** continue to live on in the form of criminal defamation, which is an even harsher law in terms of penalties and remedies. In both ***Sullivan*** and ***Rajagopal*** (at para 22, pages 648-649), the Courts reasoned that putting the burden of proving truth upon the defendant will lead to an inevitable chilling effect. In ***Sullivan***, for instance, Brennan, J. has observed (at para 18, page 725) that:

> *A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions -- and to do so on pain of libel judgments virtually unlimited in amount -- leads to a comparable "self-censorship." Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. Even courts accepting this defense as an adequate safeguard have recognized the difficulties of adducing legal proofs that the alleged libel was true in all its factual particulars... under such a rule, would-be critics of official conduct may be deterred from*

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> *voicing their criticism, even though it is believed to be true and even though it is, in fact, true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which "steer far wider of the unlawful zone.*

29. It may be noted at this stage that Exception One is even harsher than the pre-***Rajagopal*** common law of defamation, because it not only requires truth, but also that the statement be made *for the public good,* which is an inherently vague and subjective term. This, it is submitted, would undoubtedly lead to an even greater chilling effect. The Law Commission of Ireland specifically noted this in its ***Consultation Paper on the Crime of Libel*** by stating that:

> *In civil proceedings, proof of truth is a complete defence. In criminal proceedings, proof of truth is a complete defence only if it is additionally shown that the matter is for the public benefit, by virtue of section 6 of the Defamation Act 1961. It is objectionable on principle that a person would be punished under the law of defamation for the publication of a true statement. Furthermore, the criterion of public benefit is too vague to be defensible as a test in criminal proceedings.*

30. Consequently, it is most respectfully submitted that following the judgment and reasoning in ***Rajagopal***, S. 499 of the IPC is unconstitutional because in failing to incorporate an actual malice test for false statements, it places a substantively unreasonable restriction upon the freedom of speech and expression.

31. Admittedly, Exceptions Two and Three exempt opinions about public servants, and about public questions, when made in good faith. "Good faith", it is submitted, has been interpreted by the Supreme Court in ***Sewakram Sobhani v. R.K. Karanjia,*** 1981 SCR (3) 627 (at para 15, page 218) as establishing a "standard of care test". There are three reasons, however, why this does not meet ***Rajagopal***'s standards. *First* – and most importantly – it restricts itself to "opinions", while ***Rajagopal*** made it clear

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that it also applied to facts (including erroneous facts). The distinction, it is submitted, is crucial because as the American Supreme Court noted in ***Sullivan***, it is the burden of proving the truth of "facts" that exercises a significant chilling effect upon core journalistic activity, since the difficulty and expense of proving truth to the satisfaction of a court induces journalists to self-censor. To repeat the pertinent observation of Brennan, J. (at para 10, page 721) :

> *... erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the "breathing space" that they "need . . . to survive"*

32. *Secondly*, it is submitted that the meaning of "good faith" as interpreted by the Hon'ble Supreme Court does not equate to the ***Sullivan*** standard adopted by the Court in ***Rajagopal***. "Actual malice" requires either knowledge of the falsity of the statement, or reckless disregard of its truth.

33. *Thirdly*, it is submitted that the Court in ***Rajagopal*** made it clear that the preliminary evidentiary burden of establishing recklessness lay upon the *plaintiff*. This can be gauged from the reasoning of B.P. Jeevan Reddy, J., where he states that (at para 26, pages 649-650) :

> *... 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 conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth. In such a 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.*

34. Nonetheless, it is submitted that under S. 499, the onus is upon the *accused* to prove that he acted in good faith. This shift in burden makes the test significantly more onerous than the one laid down in ***Rajagopal.***

35. Lastly, it is also submitted that the few cases which have *upheld* a criminal defamation statute have done so on the ground that the law in question conformed to a standard such as the one laid down in ***Rajagopal.*** For instance, in ***S v. Hoho*, (2009) 1 SACR 276**, the South African Supreme Court of Appeal found criminal defamation to be constitutional for two reasons: *first*, that following South African precedent, which, like ***Rajagopal***, had changed defamation law in light of free speech concerns, the onus lay upon the prosecution to prove not just that the statement was defamatory, but that it had been made *unreasonably*; and *secondly*, on the ground that the criminal offence required a much higher burden and standard of proof than the civil offence. Neither of these conditions hold good for S. 499: in requiring not just "truth" as a defence, but also "public interest", criminal defamation goes even *beyond* the civil law. And as argued above, the text of S. 499 is inconsistent with ***Rajagopal's*** modification of defamation law to cohere with free speech.

36. Similarly, in the Privy Council case of ***Worme v. Grenada*, [2004] UKPC 8**, the statute in question only referred to *intentional* libel (and did not, like S. 499, have a "knowledge" sub-component). More importantly, the House of Lords held that the "Reynold's defence" – i.e., the defence of reasonable communication on matters of public interest – would be applicable.

37. In ***R v. Lucas*, [1998] 1 SCR 439**, the Canadian Supreme Court upheld criminal defamation, where the accused having *knowledge* that his statement was false was an ingredient of the offence. This is an even higher

threshold than the South African position. Hence, it is submitted that in all three cases, the criminal defamation statutes in question were much more narrowly drawn than S. 499, and were upheld precisely for that reason. These cases along with few others are discussed in greater detail in the submission below.

38. Therefore in light of the above, it is most respectfully submitted that since S. 499 is not narrowly drawn, and the Court cannot read it so without doing the language undue strain, it ought to be struck down.

THE IMPUGNED PROVISIONS NO LONGER SERVE THE PURPOSE FOR WHICH THEY WERE ENACTED AND ARE THEREFORE UNCONSTITUTIONAL FOR VIOLATING ARTICLE 19 OF THE CONSTITUTION

A. THE OBJECT AND PURPOSE OF THE IMPUGNED PROVISIONS HAS BEEN RENDERED OBSOLETE DUE TO THE EVOLVING NATURE OF THE RIGHT TO FREE SPEECH

39. It is humbly submitted that the evil that was sought to be remedied through the enactment of the impugned provisions has ceased to be a matter of concern on account of the contemporary understanding of the freedom of speech and expression.

i. Historical background behind the inclusion of the impugned provisions in the IPC

40. It is submitted that, as discussed above, the offence of criminal defamation was first codified as a crime of libel in the English Statute of Westminster,

1275 AD, under the reign of the King Edward I. Formulated to prevent the loss of faith in the government or the monarch, the crime of libel or *scandalum magnatum* penalised slander of the nobility through imprisonment. Thereafter in the 16th and 17th Century, the jurisprudence of the Star Chamber led to in the creation of the offence of criminal defamation, which aimed to prevent the provocation of violence that was a result of the criticism directed at the Church and State through the printed word.

41. In India, criminal defamation was introduced by Lord Macaulay into the Indian Penal Code, 1860 as an offence that was distinct from other offences that penalised the breach of public peace. This view is supported by the book on ***The Making of the Indian Penal Code, 1860: With Notes*** **by W. Morgan and A.G. Macpherson, Esqrs.**, where, as noted above, the offence of criminal defamation under the IPC was envisaged to be confined to an injury caused to the reputation of an individual from an action or omission by another individual. Further, as noted in the previous submission, one of the key functional justification for the inclusion of the offence of criminal defamation in the IPC pertained to preservation of the security of the state, unlike the English law on criminal libel that only endeavoured to ensure the maintenance of peace and order.

42. As regards the former functional justification, the previous submission has demonstrated the disproportionality of criminal defamation in addressing, what is essentially, a private wrong. In the respect of the latter, it is humbly submitted that all conceivable offences concerning the breach of peace are covered already under numerous provisions in the IPC (discussed below)

thereby negating the functional utility of the impugned provisions on that count.

43. In this regard, it is also submitted that although the drafting notes on the IPC are silent on the latter functionality of the impugned provisions, a review of the background that led to the legislation of the IPC offers a clear indication of the purpose for which the impugned provisions were introduced into the IPC. In fact, although ***The Indian Penal Code Prepared by the Indian Law Commissioners*** & ***The Making of the Indian Penal Code, 1860: With Notes*** state that the original objective of the impugned provisions was to criminalise a private wrong, the offence of criminal defamation came to be primarily used to curb political speech in the reign of the British Raj. This purpose appears to have been brought out clearly by the Calcutta High Court in the case of ***The Englishman Ltd. v. Lala Lajpat Rai*****, (1910) ILR 37 (Cal)**, where Harington, J. observed (at page 728) that:

> *In my view, the damage done to the reputation of a person who has taken a prominent part in inflaming the minds of the people against the Government by a libel imputing an offence against the State must be estimated on a far lower basis than that done to the reputation of a person who has not taken up such a position.*

44. Therefore, in light of the above, it is most respectfully submitted that the one of the fundamental objectives for including the impugned provisions into the IPC related to the protection of the political interests of the British Raj in India. This was accomplished by criminalising conduct that questioned the actions of the government under the vires of the impugned provisions. However, it is submitted that with India's independence in 1947, this aspect of the utility of the impugned provisions has now ended.

ii. The right to free speech now includes the right to political dissent within its scope

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45.It is humbly submitted that the intent to curb political dissent against the Church and State, which was one of the main reasons behind criminal defamation, no longer constitutes a valid ground for restricting the right to free speech in light of the social, economic and political changes that have occurred the world over. On the contrary, the right to political dissent forms an intrinsic part of the freedom of speech and expression under Article 19(1)(a) of the Constitution. This view finds support in a variety of decisions post-independence. For example, in ***Secretary, Ministry of Information and Broadcasting, Govt. of India and others v. Union of India and others***, (1995) 2 SCC 161, P.B. Sawant, J. (at para 43, page 213) observed that:

> *...The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self expression which is an important means of free conscience and self fulfilment. It enables people to contribute to debates of social and moral issues. It is the best way to find a truest model of anything, since it is only through it, that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy....*

46.This Hon'ble Court, in the case of ***Dr. D.C. Saxena v. Hon'ble the Chief Justice of India***, (1996) 5 SCC 216, K. Ramaswamy, J. observed (at para 29-30, pages 241-242) that:

> *Freedom of expression is a prized privilege to speak one's open mind although not always in prefect good taste of all institutions. Since it opens up channels of open discussion, the opportunity of speech and expression should be afforded for vigorous advocacy, no less than abstract discussion.... Freedom of expression equally generates and disseminates ideas and opinions, information of political and social importance in a free market place for peaceful social transformation under rule of law.... Public discussion is political liberty. The purpose of freedom of speech is to understand political issues so as to protect the citizens and to enable them to participate effectively in the working of the democracy in a representative form of Government. Freedom of*

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expression would play crucial role in the formation of public opinion on social, political and economic questions. Therefore, political speeches are greater degree of protection and special and higher status than other types of speeches and expressions.

Equally, debate on public issues would be uninhibited, robust and wide open. It may well include vehement, sarcastic and sometimes unpleasant sharp criticism of Government and public officials. Absence of restraint in this area encourages a well informed and politically sophisticated electoral debate to conform the Government in tune with the constitutional mandates to return a political party to power. Prohibition of freedom of speech and expression on public issues prevents and stifles the debate on social, political and economic questions which in long term endangers the stability of the community and maximizes the source and breeds for more likely revolution. (Emphasis supplied)

47. In the context of freedom of speech and assembly, this Court in ***Ramlila Maidan Incident v. Home Secretary, Union of India (UOI)*** **(2012) 5 SCC** 1, Swatanter Kumar, J. observed (at para 11, page 31) that:

> *It is significant to note that the freedom of speech is the bulwark of democratic Government. This freedom is essential for proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties, giving succour and protection to all other liberties. It has been truly said that it is the mother of all other liberties. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. It has been described as a "basic human right", "a natural right" and the like. With the development of law in India, the right to freedom of speech and expression has taken within its ambit the right to receive information as well as the right of press.*

48. As the observations of this Hon'ble Court make it clear, political speech, as part of the right to freedom of speech and expression in India is entitled to the highest possible protection. Any law, whether enacted prior to or after the coming in to force of the Constitution, that aims to penalise or punish such speech in whatsoever manner must therefore be subject to greater scrutiny to see if it violates Article 19(1)(a) of the Constitution.

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49. In light of the above, it is humbly submitted that right to criticise and debate upon public issues of political significance constitutes an indispensable facet of the freedom of speech and expression under Article 19(1)(a) of the Constitution.

50. The exercise of the right to political dissent is, however, subject to reasonable restrictions under Article 19(2), in limited circumstances in (i) the interests of the sovereignty and integrity of India, (ii) the security of the State, (iii) friendly relations with foreign States, (iv) public order, (v) decency or morality, or (vi) in the context of contempt of court, (vii) defamation or (viii) incitement to an offence.

51. In this regard, the restrictions under (i), (ii), (iv), (v) and (viii) are covered by the following offences under the IPC

i. Sedition (Sections 124A of the IPC) that is punishable with an imprisonment that may extend to three years or for life or with fine or both,

ii. Provocation with the intent to cause riot (Section 153 of the IPC) that is punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both, or in the instance the offence of rioting is not committed, is punishable with imprisonment of either description for a term which may extend to six months, or with fine, or with both,

iii. Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony (Section 153A of the IPC) that is punishable with imprisonment which may extend to three

years (153A(1)), with or without fine or to five years (153A(2)) with fine,

iv. Imputations, assertions prejudicial to national integration (Section 153B of the IPC) that is punishable with imprisonment which may extend to three years (153B(1)), with or without fine or to five years (153B(2)) with fine,

v. Statements conducing to public mischief (Section 505 of the IPC) that is punishable with imprisonment which may extend to three years (504(1) & (2)), with or without fine or to five years (505 (3)) with fine and

vi. All offences under Chapter XIV that are punishable with imprisonment that may be for a minimum of three months or a maximum of seven years, or with fine that maybe for a minimum of two hundred rupees or a maximum of five thousand rupees.

52. The restriction relating to "friendly relations with foreign states" is codified in a variety of statutes that have international implications, while the restriction under "contempt of courts" is covered under the Contempt of Courts Act, 1971, which penalises both civil and criminal contempt with either simple imprisonment for a term which may extend to six months (used sparingly for civil contempt), or with fine which may extend to two thousand rupees.

53. The restriction for defamation under Article 19(2) is also covered as a criminal offence under the impugned provisions, which is punishable with simple imprisonment for a term which may extend to two years, or with fine, or with both, and as a civil wrong under general tort law.

54. However, it is respectfully re-iterated that criminal defamation casts a "chilling effect" on free speech and goes beyond the permissible limits of Article 19(2) by imposing a restriction that is procedurally and substantively unreasonable.

55. Procedural unreasonableness of criminal defamation, stems from *first*, the potential of criminal prosecution to directly deprive a person of their liberty; *second*, from the life-ling public disapproval and social stigma that stems from criminal prosecution, unlike a civil suit; and *third*, from the fact that a suit for civil defamation suit involves incurring expenses, and is therefore not as easy to put in motion as criminal prosecution, thereby ensuring its sparing usage. Hence, it is submitted that criminal defamation directly attacks the *writer*, and threatens *her* with imprisonment or a heavy fine. This results in "chilling effect" on free speech that eventually leads to self-censorship.

56. While substantive unreasonableness of criminal defamation, it is submitted, can be gauged from the decision of this Hon'ble Court in ***R. Rajagopal***, where it was noted (at paras 16, 21 & 26, pages 645-646, 648 & 649-650 respectively) that the substantive standards under the common law of criminal defamation placed a burden upon the defendant for establishing truth, and made no room for errors of fact, thereby being inconsistent with the freedom of speech and expression under Article 19(1)(a), and not saved by Article 19(2). In doing this, B.P. Jeevan Reddy, J. cited ***New York Times Co. v. Sullivan***, and also observed (at paras 26 & 28, pages 650-651 respectively) that:

> *....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*

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and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the official establishes that the publication was made (by the defendant) with reckless disregard for truth....

In all this discussion, we may clarify, we have not gone into the impact of Article 19(1)(a) read with Clause (2) thereof on Sections 499 and 500 of Indian Penal Code. That may have to await a proper case.

57. Though Section 499 and 500 of the IPC were not in challenge before the Hon'ble Court in ***Rajagopal***, the observations made in the context of freedom of speech, specifically the right to criticize public officials makes it clear that Sections 499 and 500 of the IPC may not withstand the scrutiny of the test of placing the preliminary evidentiary burden on the prosecution to establish defamation. This test, as discussed in the previous submission, was laid down in ***Sullivan*** and was recognised in ***Rajagopal.***

58. In addition to discussion in, ***Rajagopal***, decisions of international courts also highlight the adverse impact of the offence of criminal defamation on the freedom of speech and expression, especially in relation to political dissent. In this regard, the judgment of the Supreme Court of the United States in the landmark case of ***Sullivan***, accounts for one of the first instances where a defendant accused of libelling a public official was protected from paying damages due to the lack of evidence that demonstrated malice or recklessness on the part of the defendant. According to the ruling of the Court in this case, the First Amendment of the United States Constitution not only protects the freedom of speech but also protects the freedom to participate in a free and general discussion on public matters. In this regard, Brennan, J. observed (at pages 721, 725 & 726 respectively) that:

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> *9..... we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.*
>
> *10..... The constitutional protection does not turn upon "the truth, popularity, or social utility of the ideas and beliefs which are offered."....As Madison said, "Some degree of abuse is inseparable from the proper use of every thing, and in no instance is this more true than in that of the press."*
>
> *18.....Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. Even courts accepting this defense as an adequate safeguard have recognized the difficulties of adducing legal proofs that the alleged libel was true in all its factual particulars.... Under such a rule, would-be critics of official conduct may be deterred form voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which "steer far wider of the unlawful zone." ...The rule thus dampens the vigor and limits the variety of public debate. It is inconsistent with the, First and Fourteenth Amendments.*
>
> *19-20.....The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice" - that is, with knowledge that it was false or with reckless disregard of whether it was false or not....*

59. In another case of ***Garrison v. Louisiana*, 379 U.S. 64 (1964)**, where a District Attorney in Louisiana was charged with defamation for imputing allegations of laziness and inefficiency on certain state court judges of his parish at a press conference. While ruling that the provision on criminal defamation in the Louisiana Statute is excessive and unconstitutional, Brennan, J. of the United States Supreme Court observed (at para 14, page 217) that:

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> *Applying the principles of the New York Times case, we hold that the Louisiana statute, as authoritatively interpreted by the Supreme Court of Louisiana, incorporates constitutionally invalid standards in the context of criticism of the official conduct of public officials...For, contrary to the New York Times rule, which absolutely prohibits punishment of truthful criticism, the statute directs punishment for true statements made with 'actual malice,'.....handed down after the New York Times decision;....And 'actual malice' is defined in the decisions below to mean 'hatred, ill will or enmity or a wanton desire to injure...The statute is also unconstitutional as interpreted to cover false statements against public officials.*

60. It is respectfully submitted that the position of law in the USA, therefore is that criminal libel statutes are constitutional *only if* they meet the "actual malice" standard for criminalising a defamatory statement. Only those laws which seek to punish a defamatory statement made with hatred, ill will or a wanton desire to injure withstand constitutional scrutiny.

61. In ***Derbyshire County Council v. Times Newspapers Ltd.*, [1993] 2 W.L.R. 449**, the House of Lords in the United Kingdom was asked to determine whether a local authority could institute an action of libel against a newspaper. While referring to the judgment in ***Sullivan***, the Court observed (at page 548-549) that:

> *...there are rights available to private citizens which institutions of central government are not in a position to exercise unless they can show that it is in the public interest to do so...*
>
> *...While these decisions were related most directly to the provisions of the American Constitution concerned with securing freedom of speech, the public interest considerations which under laid them are no less valid in this country.*

62. In the case of ***Lingens v. Austria*, Application No.9815/82, 8 EHRR 407, 8 July 1986** before the European Court of Human Rights (ECHR), the

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applicant journalist was fined for criminal defamation by the Chancellor of Austria for publishing an article criticising his regime. While holding that the institution of an action of criminal libel violated the freedom of expression, the ECHR also observed (at para 44) that:

> *the penalty imposed on the author ... amounted to a kind of censure, which would be likely to discourage him from making criticisms of that kind again in future ... In the context of political debate such a sentence would be likely to deter journalists from contributing to public discussion of issues affecting the life of the community. By the same token, a sanction such as this is liable to hamper the press in performing its task as purveyor of information and public watchdog.*

63. In a similar vein, in another ECHR decision of ***Castells v. Spain*, Application No. 11798/85, 24 April 1992,** the applicant, an elected representative of an opposition party in Spain, published an article criticizing the government in a weekly magazine. He was convicted of insulting the government, and was disqualified from public office. While ruling that the applicant's right to free speech had been violated, the ECHR held (at para 46) that:

> *...the dominant position which the Government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media.*

64. In its decision in ***Lohé Issa Konaté v. The Republic of Burkina Faso*, Application No. 004/2013**, the African Court on Human and Peoples' Rights also went into the impact of criminal defamation on the right to free speech. The case was in response to the harsh criminal penalties imposed by Bukina Faso, on a journalist who had published articles alleging corruption

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by a state prosecutor. While directing Burkina Faso to repeal its provisions on criminal defamation, the Court observed (at paras 145 & 155, pages 38 & 42 respectively) that:

> *In order to consider the need for a restriction on freedom of expression, the Court notes that such a need must be assessed within the context of a democratic society; it also notes that this assessment must ascertain whether that restriction is a proportionate measure to achieve the set objective, namely, the protection of the rights of others.*
>
> *.....The Court is of the view that freedom of expression in a democratic society must be the subject of a lesser degree of interference when it occurs in the context of public debate relating to public figures. Consequently, as stated by the Commission, "people who assume highly visible public roles must necessarily face a higher degree of criticism than private citizens; otherwise public debate may be stifled altogether".*

65. Further, the Constitutional Court of Zimbabwe also struck down the provision on criminal defamation under its Criminal Law (Codification and Reform) Act, 2004, in its recent ground-breaking ruling in ***Nevanji Madanhire and Nqaba Matshazi v. Attorney-General*, [2015] ZWCC 02.** The case challenged the constitutionality of the law on criminal defamation in response to a charge of defamation levied on two journalists for publishing a story on the abduction of opposition leaders and human rights activists by state security agents. Patel, J. observed in this case (at pages 8 & 11) that:

> *...It certainly cannot be gainsaid that the offence of criminal defamation operates to encumber and restrict the freedom of expression enshrined in s 20(1) of the former Constitution. On the other hand, it is also not in doubt that the offence of criminal defamation falls into the category of permissible derogations contemplated in s 20(2)(b)(i), as being a provision designed to protect the reputations, rights and freedoms of other persons.*

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> *...The overhanging effect of the offence of criminal defamation is to stifle and silence the free flow of information in the public domain. This, in turn, may result in the citizenry remaining uninformed about matters of public significance and the unquestioned and unchecked continuation of unconscionable malpractices.*

66. Therefore in light of aforementioned case, it is submitted that the offence of criminal defamation is recognised worldwide as a violation of the freedom of speech, and in the context of India, falls foul of the vires under Article 19(1)(a) of the Constitution on account of its restrictive effect on free speech that is unjustifiable under Article 19(2).

67. Conversely, it is also respectfully admitted that there do exist several international pronouncements that endorse the charge of criminal defamation by public figures. However, the principle underlying the endorsement is absent from the scope of application of the impugned provisions. For instance, in ***S v. Holo*** the appellant was charged with defamation for distributing leaflets that contained defamatory material against various people associated with the Legislature of the Eastern Cape as well as against national ministers. While dismissing the contention challenging the constitutionality of criminal defamation, Streicher, J. of the South African Supreme Court of Appeal observed (at paras 23 & 26, pages 12 & 14 respectively) that:

> *... the crime of defamation consists of the unlawful and intentional publication of matter concerning another which tends to injure his reputation.*

> *... the state must prove the unlawful and intentional publication of defamatory matter. Intentional publication also requires proof that the accused knew that he was acting unlawfully or that he knew that he might possibly be acting unlawfully. As in any other criminal case the*

degree of proof required is proof beyond reasonable doubt.

68. Hence as discussed in ***Hoho***, the elements required to establish a charge of criminal defamation placed the preliminary burden on the prosecution to adduce to proof of unlawfulness and intention behind the alleged defamatory conduct, similar to the one discussed in ***Sullivan*** and ***Rajagopal***. These elements, as noted in the prior submission, are missing from the scope of the impugned provisions on account of its standard of strict liability..

69. In another case of ***R v. Lucas***, [1998] 1 SCR 439, the appellants who were prisoner's rights activists, were charged with defaming a police officer by relying on the statements of four convicted prisoners. While ruling against the appellants and dismissing their stance on the violation of their right to free speech, Hrabinsky, J. of the Supreme Court of Canada observed (at para 16, page 452) that:

> *The mens rea elements of the s. 300 offence are the intention to publish, knowledge of falsity and the intention to defame. The fact that the Crown must prove the mens rea elements of the offence, including knowledge of falsity, reaffirms my conclusion that the objective of s. 300 of the Criminal Code impairs freedom of expression as little as possible.*

70. Therefore as noted in the aforementioned case, the high threshold to prove *mens rea* under S. 300 of the Canadian Criminal Code, 1985 that demands proof of *knowledge* by the complainant, guarantees the protection of free speech through its process. However as discussed in the prior contention, the standard of strict liability under the impugned provisions, which places

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an onerous burden on the defendant to prove his innocence, fails to afford this protection.

71. In yet another case of ***Worme v. Commissioner of Police of Grenada*, [2004] UKPC 8**, the appellant, an editor of the weekly newspaper "Grenada Today", was charged with publishing defamatory material on Dr Keith Mitchell, who was the Prime Minister of Grenada. While ruling against the appellant, Lord Rodger of Earlsferry of the Court of Appeal of Grenada observed (at para 16) that:

> *A crime which requires the prosecution to prove that the accused published false matter imputing to another person crime or misconduct in public office with the intention of damaging that other person's reputation is consistent with section 10 of the Constitution. While it hinders the accused's freedom of expression, it is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons; it cannot not be said that such a crime is not reasonably justifiable in a democratic society when it is to be found in the legal systems of other democratic countries.*

72. In the case of ***Motsepe v. S*, [2014] ZAGPPHC 1016**, which was similar to ***Worme***, the appellant, a senior journalist at the Sowetan newspaper, was charged with defamation for posting an article that accused a Magistrate of racism for imposing a heavier sentence on a black male in a particular case. While ruling that the provision on criminal defamation was constitutional, Janse Van Nieuwenhuizen, J. of The North Gauteng High Court, Pretoria, South Africa, observed (at paras 22 & 46, pages 6 & 18 respectively) that:

> *The State failed to proof intentional publication beyond a reasonable doubt and the conviction cannot stand.*
>
> *...I do agree that a criminal sanction is indeed a more drastic remedy than the civil remedy but that disparity is counterbalanced by the fact that the requirements for succeeding in a criminal defamation matter are much more onerous than in a civil matter. Thus the essential*

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> *elements of the crime of defamation flowing from the definition are the (i) unlawful (ii) intentional (iii) publication (iv) of matter defamatory of another*

73. Hence, as noted in both the aforementioned decisions in ***Worme & Motsepe*** the Courts ruled that the *intent* to cause defamation constituted a reasonable restraint on the freedom of expression for the purpose of protecting the rights and freedoms of other persons. However in the context of the impugned provisions, this requirement is absent thereby raising questions regarding its "reasonability".

74. It is further admitted that in spite of the decision in ***Sullivan***, thirteen American States continue to have criminal defamation on their statute books. However, it is respectfully submitted that as noted in the judgement of ***Curtis Pub. Co. v. Butts***, 388 U.S. 130 (1967), which involved a charge of civil defamation and discussed ***Sullivan*** elaborately, State laws do not address all the issues surrounding defamation adequately. The case in ***Curtis*** arose from an appeal from the ruling of the Texas Court of Civil Appeals, where a publishing house was charged with civil defamation for posting allegations of match-fixing against a football coach. While ruling that defamation had been established, Harlan, J. of the United States Supreme Court observed (at pages 1990-1993) that:

> 31-32....*In the cases we decide today none of the particular considerations involved in New York Times is present. These actions cannot be analogized to prosecutions for seditious libel. Neither plaintiff has any position in government which would permit a recovery by him to be viewed as a vindication of governmental policy. Neither was entitled to a special privilege protecting his utterances against accountability in libel. We are prompted, therefore, to seek guidance from the rules of liability which prevail in our society with respect to compensation of persons injured by the improper performance of a legitimate activity by another.... We*

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note that the public interest in the circulation of the materials here involved, and the publisher's interest in circulating them, is not less than that involved in New York Times

33.... libel actions.....cannot be left entirely to state libel laws, unlimited by any overriding constitutional safeguard, but that the rigorous federal requirements of New York Times are not the only appropriate accommodation of the conflicting interests at stake...We consider and would hold that a "public figure" who is not a public official may also recover damages for a defamatory falsehood whose substance makes substantial danger to reputation apparent, on a showing of highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers... Nothing in this opinion is meant to affect the holdings in New York Times and its progeny....

75. Although the decision in ***Curtis*** related to civil defamation, the Court made a pertinent observation by stating that the State libel laws are not adequate in assessing fault in instances that involve conflicting interests. Hence, it is humbly submitted that although some US States continue to criminalise defamation, such laws, as admitted by the US Supreme Court, lack the ability to address complex issues and should therefore not be applied in their entirety to any given situation.

76. In light of the above, it is most respectfully submitted that numerous national and international pronouncements recognise the adverse impact of criminal defamation on the free speech. Some decisions that uphold the validity of the law on criminal defamation, do so through a high threshold of proof that is absent from the purview of the impugned provisions thereby negating their applicability to the instant contention.

B. THE IMPUGNED PROVISIONS MUST BE STRUCK DOWN BY THIS HON'BLE COURT IN ORDER TO KEEP PACE WITH THE SOCIO-POLITICAL CHANGES THE WORLD OVER

77. It is humbly submitted that the freedom of speech and expression under Article 19(1)(a) now includes the right to dissent against the government and thereby negates the utility of the offence of criminal defamation. Hence, the impugned provision are liable to be struck down by this Hon'ble Court as they fail to reflect the changes that have occurred in society in relation to the right to free speech, as protected under the Constitution, and therefore unconstitutional.

i. National precedents confirm the need for striking down laws that do not reflect societal developments

78. It is submitted that various judicial pronouncements have held that the dynamics of social, political and economic development must inform the context and the content of legislation. To this end, V. R. Krishna Iyer, J. observed in ***State of Karnataka and Anr. v. Shri Ranganatha Reddy and Anr.***, (1977) 4 SCC 471, (at para 85, pages 516-517) that:

> *....an all-too-large gap between the law and public needs, arising out of narrow notions, must be bridged by broadening the constitutional concepts to suit the changing social consciousness of the emerging Welfare State...The law, in the words of Justice Holmes, is a magic mirror in which we see reflected not only our own lives but also the lives of those who went before us-and may we add, of those who come after us.*

79. This was explained further by means of an example in ***Deen Dayal and Ors. v. Union of India (UOI) and Ors.***, **(1983) 4 SCC 645**, where Y.V. Chandrachud, C.J. observed (at para 35, pages 670-671) that:

> *....'Cruelty' and 'torture' are not static concepts. That is why, the chopping off of limbs which was not considered cruel centuries ago or is not considered cruel in some other parts of the world to-day, is impossible to conceive as a punishment by applying the contemporary standards of the Indian society. What might not have been regarded as degrading or inhuman in days by gone may be revolting to the new sensitivities which emerge as civilization advances. The impact and influence of the awareness of such sensitivities on the decision of the law's validity is an inseparable constituent of the judicial function.*

80. In yet another case of ***Baradakanta Mishra v. Registrar of Orissa High Court***, **(1974) 1 SCC 374**, V.R. Krishna Iyer, J. made a similar observation in the context of the offence of contempt, while observing (para 63, page 402) that:

> *According to the basic teachings of the Legal Realist and policy schools of law, society itself is in continuing state of flux at the present day; and the positive law, therefore, if it is to continue to be useful in the resolution of contemporary major social conflicts and social problems, must change in measure with the society. What we have, therefore, concomitantly with our conception of society in revolution is a conception of law itself, as being in a condition of flux, of movement. On this view, law is not a frozen, static body of rules but rules in a continuous process of change and adaptation...*

81. Hence in light of the above, it is most respectfully submitted that since the concepts of "free speech" and "reasonable restrictions" have undergone considerable change with the transforming perceptions of society, the impugned provisions serve no utility in addressing the contemporary issues surrounding free speech. While being a violation of the fundamental right to

freedom of speech and expression, they clearly fall outside the scope of a "reasonable restriction" when present-day standards of the scope of freedom of speech are applied.

ii. International precedents also support decriminalisation of defamation on its obsolescence

82. It is submitted that numerous countries around the world have completely or partially removed the offence of criminal defamation from their statute books on account its restrictive effect on free speech. These include Argentina, Bosnia and Herzegovina, Cyprus, El Salvador, England and Wales, Estonia, Georgia, Ghana, Grenada, Ireland, Jamaica, Kyrgyzstan, Latvia, Macedonia, Maldives, Mexico, Montenegro, Romania, Serbia, Sri Lanka and the United States of America.

83. It is also submitted that while announcing the repeal of the offences of seditious libel, defamatory libel, obscene libel and sedition, the UK Secretary of State at the Ministry of Justice, **Ms. Claire Ward** was quoted in the *UK Press Gazzette*, **13th January, 2010**, as having said that:

> *Sedition and seditious and defamatory libel are arcane offences – from a bygone era when freedom of expression wasn't seen as the right it is today... The existence of these obsolete offences in this country had been used by other countries as justification for the retention of similar laws which have been actively used to suppress political dissent and restrict press freedom... Abolishing these offences will allow the UK to take a lead in challenging similar laws in other countries, where they are used to suppress free speech.*

84. In addition, United Nations Special Rapporteur Mr. Abid Hussain while discussing incidents involving criminal defamation, in his ***Report on the Promotion and Protection of the Right to Freedom of Opinion and***

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Expression, submitted to the United Nations Commission on Human Rights, **18th January, 2000, Doc No. E/CN.4/2000/63,** also observed (at para 47-48, page 17) that:

> *These and other cases and incidents have had a direct and negative impact on freedom of expression, access to information and the free exchange of ideas. The climate created by such suits causes writers, editors and publishers to be reluctant to report on and publish matters of public interest not only because of the large awards granted in these cases but also because of the high costs of defending such actions.*
>
> *Criminal defamation laws represent a potentially serious threat to freedom of expression because of the very sanctions that often accompany conviction. It will be recalled that a number of international bodies have condemned the threat of custodial sanctions, both specifically for defamatory statements and more generally for the peaceful expression of views. For example, since 1994, the Human Rights Committee has expressed concern about the possibility of custodial sanctions for defamation in a number of countries. Similarly, the Declaration of Sana'a, adopted on 11 January 1996 by the United Nations/UNESCO Seminar on Promoting Independent and Pluralistic Arab Media states that "disputes involving the media and/or the media professionals in the exercise of their profession ... should be tried under civil and not criminal codes and procedures."*

85. Zimbabwe: In 2014, a nine judge bench of the Zimbabwe Supreme Court in *Nevanji Madanhire v. Attorney General, CCZ 2/14* unanimously held that the offence of defamation was not reasonably justifiable in a democratic society within the contemplation of s 20(2) of the former Zimbabwe Constitution. It was held-

> *"the harmful and undesirable consequences of criminalising defamation, viz. the chilling possibilities of arrest, detention and two years imprisonment, are manifestly excessive in their effect. Moreover, there is an appropriate and satisfactory alternative civil remedy that is available to combat the mischief of defamation. Put differently, the offence of criminal defamation constitutes a disproportionate instrument for achieving the intended objective of protecting the reputations, rights and*

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freedoms of other persons. In short, it is not necessary to criminalise defamatory statements."

The Constitutional Court in its very well-written judgment delved into the history and rationale of criminal defamation in English and Roman-Dutch law, the importance of freedom of expression (both under the Zimbabwean Constitution and international instruments) to answer whether the limitation on free speech was "reasonably justifiable in a democratic society." The Court focussed on the proportionality of the means (of criminal law) deployed in the instant case to determine whether they were "necessary" in order to ascertain the unquestionably legitimate state objective. It looked at the following issues:

a. The consequences of criminal defamation – in terms of the practical rigours and ordeal of a criminal trial, regardless of the eventual acquittal; litigation costs; chilling effect of the law, the two year imprisonment, and the fact that in many cases *investigative journalism* would involve the publication of erroneous or inaccurate information.

b. The availability of alternative civil remedy – which even if not as expeditious as criminal prosecution, affords ample compensatory redress for injury to one's reputation.

c. The court also discusses the public-private distinction in criminal law between cases of defamation and assault and the purpose of civil and criminal law.

d. The court finally examined the comparative aspect in terms of international and regional human rights instruments, resolutions and case law.

86. Argentina and the Inter American Court of Human Rights:

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In the case of *Kimel v. Argentina, judgment of the IACHR of May 2, 2008* the Inter American Court examined whether criminal proceedings of defamation against an Argentinian accused violated Article 13 of the Convention on freedom of thought and expression. It focused on the principles of proportionality to resolve conflicts between freedom of though and expression and the right of public officials to have their honour respected; the requirement of strict formulation of criminal law (and the lack of sufficient accuracy in Argentina's law punishing defamation) and the available alternatives to conclude that the violation of the applicant's freedom of thought and expression had been overtly disproportionate **[see paras 40, 51-54, 63, 66, 74-78, 84-86, 88 and 93-94]**

87. Therefore in light of the above, it is most respectfully submitted that Sections 499 and 500 of the IPC which punish the offence of criminal defamation should be declared void as they constitute a restriction on the freedom of speech and expression that is obsolete and serves no legitimate purpose in the present constitutional set up.

88. Various national and international judicial pronouncements support the nullification of archaic laws that hamper the effective operation of an individual's rights under the Constitution. In this regard it is most respectfully submitted that as noted in various jurisdictions the world over, including England, from where the IPC derives its provisions, the criminalisation of defamation acts as fetter on the freedom of speech and expression under Article 19(1)(a) and should therefore be declared null and void by the order of this Hon'ble Court.

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III. CESSANTE RATIONE LEGIS, CESSAT ET IPSA LEX

89. This Latin maxim means, "Reason is the soul of the law and when the reason of any particular law ceases so does the law itself". It is humbly submitted that when the grounds or reasons that gave rise to a law cease to exist, the law itself ceases to exist. Some of the cases wherein this proposition has been discussed and approved are as follows:

a) *Satyawati Sharma v Union of India* (2008) 5 SCC 287, p. 320 para 32

b) *Narottam Kishore Deb Verman v Union of India* AIR 1964 SC 1590, para 11

c) *H.H. Shri Swamiji of Shri Amar Mutt v. Commissioner, Hindu Religious & Charitable Endowments Dept.* (1979) 4 SCC 642, p.658 para 29

d) *Motor General Traders v. State of Andhra Pradesh* (1984) 1 SCC 222, p.232 para 16 and p.239 para 24

e) *Malpe Vishwanath Acharya v State of Maharashtra* (1998) 2 SCC 1, p.12 para 15

f) *State of Punjab v. Devans Modern Breweries* (2004) 11 SCC 26, p.156 para 335 and 336

90. The Supreme Court of United States has also applied this maxim liberally [see *Funk v. United States* 1933 SCC Online US SC 166 : 290 US 371 (1933), para 24-26]

91. Justice Holmes in his speech "The path of the law" recorded in **10 Harvard Law Review 457 (1897)** said 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*

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vanished long since, and the rule simply persists from blind imitation of the past."

92. The King's Bench in *Rees v. Hughes [1947] K.B. 517* held that the legislation about married women has thus caused the law requiring the husband to bury his dead wife to cease - at any rate, where she leaves assets, as in the present case. While holding so the court relied on the maxim of Cessante ratione legis, cessat ipsa lex.

93. For the above reasons, it is humbly prayed that criminalisation of defamation acts as handcuff on the freedom of speech and expression under Article 19(1)(a) and should therefore be declared null and void by the order of this Hon'ble Court.

Dated at Delhi on this the 14th day of July, 2015

COUNSEL FOR PETITIONER

Wednesday, the 1st December 1948

Shri H. V. Kamath: In the draft article the antecedentsof the words 'other' matter were libel, slander, defamationand sedition, all of them.

Shri K. M. Munshi: I cannot agree with my honourablefriend.

Mr. Vice-President: Do you press amendment 449?

Mr. Naziruddin Ahmad: Yes.

Mr. Vice-President: It will be put to vote. We nextcome to 450, 451, 452, 453, 465 and 478--all are of similarimport and should be considered together. Amendment 450 isallowed.

Sardar Hukum Singh (East Punjab: Sikh): Mr. Vice-President, Sir, I beg to move:

"That clause (2), (3), (4), (5) and (6) of article 13be deleted."

Sir, in article 13(1), sub-clauses (a), (b) and (c),they give constitutional protection to the individualagainst the coercive power of the State, if they stood bythemselves. But sub-clause (2) to (6) of article 13 wouldappear to take away the very soul out of these protectiveclauses. These lay down that nothing in sub-clauses (a),(b), (c) of article 13 shall effect the operation of any of the existing laws, that is, the various laws that abrogatethe rights envisaged in sub-clause (1) which were enactedfor the suppression of human liberties, for instance, theCriminal Law Amendment Act, the Press Act, and other varioussecurity Acts. If they are to continue in the same way asbefore, then where is the change ushered in and so loudlytalked of? The main purpose of declaring the rights asfundamental is to safeguard the freedom of the citizenagainst any interference by the ordinary legislature and theexecutive of the day. The rights detailed in article 13(1)are such that they cannot be alienated by any individual,even voluntarily. The Government of the day is particularlyprecluded from infringing them, except under very specialcircumstances. But here the freedom of assembling, freedomof the press and other freedoms have been made so precariousand entirely left at the mercy of the legislature that thewhole beauty and the charm has been taken away. It is not only the existing laws that have been subjected to thisclause, but the State has been further armed withextraordinary powers to make any law relating to libel,slander etc. It may be said that every State should have thepower and jurisdiction to make laws with regard to suchmatters as sedition, slander and libel. But in othercountries like America it is for the Supreme Court to judgethe matter, keeping in view all the circumstances and theenvironments, and to say whether in dividual liberty hasbeen sufficiently safeguarded or whether the legislature hastransgressed into the freedom of the citizen. The balance iskept in the hands of the judiciary which in the case of allcivilized countries has always weighed honestly andconsequently protected the citizen from unfair encroachmentby legislatures. But a curious method is being adopted underour Constitution by adding these sub-clauses (2) to (6). TheHonourable Mover defended these sub-clauses by remarkingthat he could quote at least one precedent for each of theserestrictions. But it is here that the difference hes, thatwhereas in those countries it is the judiciary whichregulates the spheres of these freedoms and the extent of the restrictions to be imposed, under article 13, it is the legislature that is being empowered with these powers bysub-clauses (2) to (6). The right to freedom of speech isgiven in article 13(1)(a), but it has been restricted byallowing the legislature to enact any measure under 13(2),relating to matters which undermine the author ity orfoundation of the State; the right to assembly seemsguaranteed under 13(1)(b), but it has been made subject to the qualification that legislation may be adopted in theinterest of public order--13(3). Further under 13(4) to13(6), any legislation restricting these liberties can beenacted "in the interest of the general public". Now who isto judge whether any measure adopted or legislation enactedis "in the interest of the general public" or "in theinterest of public order", or whether it

relates to "anymatter which undermines the author ity or foundation of theState"? The sphere of the Supreme Court will be verylimited. The only question before it would be whether thelegislation concerned is "in the interest of the publicorder". Only the bona-fides of the legislature will be themain point for decision by the Court and when once it

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is found by the court that the Government honestly believedthat the legislation was needed "in the interest of thepublic order", there would be nothing left for itsinterference. The proviso in article 13(3) has been soworded as to remove from the Supreme Court its competence to consider and determine whether in fact there werecircumstances justifying such legislation. The actualprovisions and the extent of the restrictions imposed wouldbe out of the scope of judicial determination.

For further illustration we may take the law ofsedition enacted under 13(2). All that the Supreme Courtshall have to adjudicate upon would be whether the lawenacted relates to "sedition" and if it does, the judiciarywould be bound to come to a finding that it is valid. itwould not be for the Judge to probe into the matter whetherthe actual provisions are oppressive and unjust. If therestriction is allowed to remain as it is contemplated in13(2), then the citizens will have no chance of getting anylaw relating to sedition declared invalid, howsoeveroppressive it might be in restricting and negativing thefreedom promised in 13(1)(a). The "court" would be bound tolimit its enquiry within this field that the Parliament ispermitted under the Constitution to make any laws pertainingto sedition and so it has done that. The constitution is notinfringed anywhere, and rather, the draft is declaring validin advance any law that might be enacted by the Parliament--only if it related to sedition. Similar is the case of otherfreedom posed in article 13(1) but eclipsed and negatived inclauses (2) to (6).

It may be argued that under a national government, the legislature, representative of the people and elected onadult franchise, can and should be trusted for the safecustody of citizens' rights. But as has been aptly remarked,"If the danger of executive aggression has disappeared, thatfrom legislative interference has greatly increased, and it is largely against this danger that the modern declarations of fundamental rights are directed, asformerly they were directed against the tyranny ofautocratic kings."

The very object of a Bill of Rights is to place theserights out of the influence of the ordinary legislature, andif, as under clauses (2) to (6) of article 13, we leave itto this very body, which in a democracy, is nothing beyondone political party, to finally judge when these rights, sosacred on paper and glorified as Fundamentals, are to beextinguished, we are certainly making these freedomsillusory.

If the other countries like the U.S.A. have placed fullconfidence in their Judiciary and by their long experienceit has been found that the confidence was not misplaced, whyshould we not depend upon similar guardians to protect theindividual liberties and the State interests, instead ofhedging round freedom by so many exceptions under these sub-clauses?

Sir, I commend this amendment to the House.

Mr. Vice-President: The next amendment on the list isthe alternative amendment No. 451, in the same of Mr.Mahboob Ali Baig.

Mahboob Ali Baig Sahib Bahadur: Sir, I move:

"That the following words be inserted at the beginningof clauses (2), (3), (4), (5) and (6) of article 13:--

'Without prejudice and subject to the provisions ofarticle 8."

My purpose in moving this amendment is twofold.Firstly, I want to know the mind of Dr. Ambedkar and theDrafting Committee how article 8 stands in relation to theseprovisos. It may be asked whether these clauses (2) to (6)are governed by article 8 or not. If these clauses aregoverned by article 8, may I refer to article 8 itself. Itsays:

"All laws in force immediately before the commencementof this Constitution in the territory of India, in so far asthey

are inconsistent with the provisions of this Part."

The words "inconsistent with the provisions of this part" donot affect the existing laws relating to libel, the existinglaws relating to restrictions on the exercise of the rightswith regard to association or assembly. That means that theexisting laws mentioned in clauses (2) to (6) are not allrendered void under Article 8. The intention is clear fromthe footnote that is appended to article 15, where thereason for the inclusion of the word "personal" is givenThere it is said:

"The Committee is of opinion that the word 'liberty' should be qualified by the insertion of the word 'personal' before it, for otherwise it might be construed very widelyso as to include even the freedom already dealt with inarticle 13."

Thus it is very clear that if the existing law relates tolibel, if it relates to meetings or associations, or freedomof speech or expression, then that existing law stands inspite of the fact that article 8 says that any law in forcewhich is inconsistent with the fundamental rights is void.So we come to this position. In the past the existing laws,for instance, the Criminal Law Amendment Acts, the PressActs or the Security Acts laid down restrictions which areinconsistent with the liberties mentioned in clause (1).They shall be in operation and they are not rendered void.That seems to be the meaning that can naturally be attachedto this.

The second point which I wish to submit is this. By the Constitution certain powers are given to the legislature orthe executive. Whether a court can question the validity orotherwise of such action, order or law is another question.My opinion is that where there is a provision in the Constitution itself giving power to the legislature or in this case the State covering the legislature, executive, local bodies and such other institutions, thejurisdiction of the court is ousted, for the court would saythat in the constitution itself power is granted to the legislature to deprive, restrict or limit the rights of thecitizen and so they cannot go into the validity or otherwiseof the law or order, unless as it is said there is malafides. It is for the author ities to judge whether certaincircumstances have arisen for which an order or law can bepassed. Anyhow I pose this question to the Chairman of theDrafting Committee whether in these circumstances, viz.,where there is in existence a provision in the constitutionitself empowering the legislature or the executive to passan order or law abridging the rights mentioned in clause(1), the court can go into the merits or demerits of theorder or law and declare a certain law invalid or a certainAct as not justified. In my view the court's jurisdiction isousted by clearly mentioning in the constitution itself thatthe State shall have the power to make laws relating tolibel, association or assembly in the interest of publicorder, restrictions on the exercise of...

The Honourable Dr. B.R. Ambedkar (Bombay: General):Sir, if I might interrupt my honourable friend, I haveunderstood his point and I appreciate it and I undertake toreply and satisfy him as to what it means. It is thereforeunnecessary for him to dilate further on the point.

Mahboob Ali Baig Sahib Bahadur: The third point which I would submit is this. The new set up would be what is calledparliamentary democracy or rule by a certain politicalparty, by the party executive or party government and we canwell imagine what would be the measure of fundamental rightsthat the people would enjoy under parliamentary democracy orrule by a party. In these circumstances is it not wise ornecessary in the interest of the general public that thefuture legislatures ruled by a party or the executive ruledby a party are not given powers by this very constitutionitself? For as has been said 'power corrupteth' and ifabsolute power is placed in the hands of party government byvirtue of the terms of this constitution itself, suchlegislature or executive will become absolutely corrupt.Therefore, I move that if at all these provisos

arenecessary, they must be subject to the provision that no lawcan be passed, no law would be applicable which is inconsistent with the freedoms mentioned in sub-clause (1).Sir, I move.

Mr. Vice-President: The next group consists of amendments Nos. 454, 455, 469, 475, 481, and the first part of 485. They are of similar import and I allow amendment No.454 to be moved. There are certain amendments to the amendment also.

Pandit Thakur Dass Bhargava: Sir, I move:

"That in clauses (2), (3), (4), (5) and (6) of article13 the words "affect the operation of any existing law, or"be deleted."

To this clause an amendment has been given by theHonourable Dr. Ambedkar.

Mr. Vice-President: May I suggest that when you moveamendment No. 454 you move it along with your new amendment?

Pandit Thakur Dass Bhargava: I have moved No. 454, towhich an amendment, stands in the name of the Honourable Dr.Ambedkar. To this latter I have given an amendment which isNo. 3 in today's list. I have also given two

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otheramendments to amendment No. 454. So I shall, with yourpermission, move them in one bloc.

Sir, I move:

"That with reference to amendment No. 49 of list I of the Amendment to Amendments--

(i) in clause (2) of article 13 for the word 'any' where it occurs for the second time the word 'reasonable' be substituted and the word 'sedition' in the said clause be omitted.

(ii) that in clauses (3), (4), (5) and (6) of article 13 before the word 'restrictions' the word 'reasonable' be inserted."

The net result of these amendments is the following: I want that the words 'affect the operation of any existinglaw or" be deleted and also that before the word"restrictions" in clauses (3), (4), (5) and (6) the word"reasonable" be placed. I also want that in clause (2) for the word 'any' where it occurs for the second time, the word'reasonable' be substituted.

If my suggestion is accepted by the House then clause(3) would read:

"Nothing in sub-clause (b) of the said clause shallprevent the State from making anything, imposing in theinterests of public order reasonable restrictions on theexercise of the right conferred by the said sub-clause."

As regards the effect of amendment No. 454, if thefollowing words are taken away--

"Affect the operation of any existing law, or"

the result will be that, not that all the present laws which are in force today will be taken away, but only such laws orportions of such laws as are inconsistent with thefundamental rights according to article 13, will be takenaway, and article 8 will be in force.

Now I will deal with these amendments separately. I want to deal with 454 first.

You will be pleased to observe that so far as article 8is concerned, it really keeps alive all the laws which arein force today, except such portions of them as areinconsistent with the fundamental rights conferred by PartIII. These words--"affect the operation of any existing law,or".....

Mr. Vice-President: How can you deal with a thingunless it is moved by Dr. Ambedkar?

Pandit Thakur Dass Bhargava: In the first instance, aresolution has been passed by this House that all amendmentsshall be taken as moved without being formally moved.Secondly, if you allow me another chance to speak on the amendment when moved by Dr. Ambedkar, I will be content to move my amendment then. Only with a view to save time, Ihave taken this course and, I had asked for your permission,though it was unnecessary to do so.

Mr. Vice-President: All right.

Pandit Thakur Dass Bhargava: Thank you. I was speakingof the effect of the words--"affect the operation of anyexisting law, or" and I submitted to the House that so faras the words of article 8 go, even if these words are notthere, all the present laws shall be alive. They shall notbe dead by the fact that article 8 exists in Part III. Thearticle reads thus:

"All laws in force immediately before the commencementof this Constitution in the territory of India, in so far asthey are inconsistent with the provisions of this Part,shall, to the extent of such inconsistency, be

void."

So that the real effect which this Constitution wants togive is that so far as those laws are inconsistent, theyshould be made inoperative, The rest will continue. So If these words are not there--"affect the operation of anyexisting law, or"--that would make no difference. If youexamine the amendment to be moved by Dr. Ambedkar, theresult is the same because in his amendment the words "in sofar as it imposes" appear. Thus article 8 governs article 13according to my amendment as well as his. The amendment ofDr. Ambedkar is unnecessary if the House accepts myamendment No.

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Mr. Vice-President: It seems to me that if Dr. Ambedkarmoves his amendment, then your amendment will not benecessary at all.

Pandit Thakur Dass Bhargava: My amendment will still benecessary as it deals with other matters also.

Mr. Vice-President: I do not wish to discuss the matterwith you.

Pandit Thakur Dass Bhargava: There are several clausesin this Constitution in which an attempt has been made tokeep the present laws alive as much as possible. Article 8is the first attempt. According to article 8 only to theextent of inconsistency such laws will become inoperative.Therefore, any further attempt was unnecessary.

In article 27 an attempt has again been made to keepalive certain of the laws that come within the purview ofarticle 27 in the proviso. Then again not being content withthis, another section is there in the Constitution, namely,article 307, which reads:

"Subject to the other provisions of this Constitution,all the laws in force in the territory of India immediatelybefore the commencement of this Constitution shall continuein force therein until altered or repealed or amended by acompetent Legislature or other competent author ity."

The laws in force are defined in Explanation No. 1 and there is clause (2) which deals with certain aspects of thequestion. Even if these sections were not there, even thenthe general principle is that the law would continue inforce unless repealed by any enactment or declared illegalby any Court. Therefore, so far as the continuance of thepresent law is concerned, the words "affect the operation of any existing law, or" are surplus, unnecessary and futile.But I would not have submitted this amendment before theHouse if these words were only surplus. They have anothertendency and that has been emphasized by the previousspeaker. There are good many amendments in the list of amendments to the same effect. I have receivedrepresentations from various bodies and persons who havesaid in their telegrams and letters that these words shouldbe removed, because the apprehension is that as article 8 ispart of the Constitution, so is article 13 part of the Constitution. In sequence article 13 comes later andnumerically it is of greater import. If article 8 is goodlaw, so is article 13. As a matter of fact article 13 issufficient by itself, and all the present laws, it may andcan be argued, must be continued in spite of article 8. Thisis the general apprehension in the public mind and it istherefore that Dr. Ambedkar has also been forced to table anamendment No. 49 to my amendment No. 454.

This interpretation and argument may be wrong, this maybe unjustifiable; but such an argument is possible. In myopinion the law must be simple and not vague andununderstandable. Therefore these mischievous and misleadingwords should be taken away. As they have further the effectof misleading the public I hold that these words, unlesstaken away, shall not allay public fear.

When I read these different sections from 9 to 13 andup to 26, and when I read of these Fundamental Rights, to befrank I missed the most fundamental right which any nationalin any country must have viz., the right to vote.

Mr. Vice-President: That is not the subject matter of the present discussion. The honourable Member should confinehis remarks to his amendment.

Pandit Thakur Dass Bhargava: In considering article 15also the House will come to the conclusion that the mostimportant of the Fundamental Right of personal liberty

andlife has not been made justiciable nor mentioned in article13. If the House has in its mind the present position in thecountry, it will come to the conclusion that the presentstate of things is anything but satisfactory. Freedom ofspeech and expression have been restricted by sub-clause(2). Fortunately the honourable Member Mr. Munshi has spoken

before you about deletion of the word sedition. If thesewords 'affect the operation of existing laws' are notremoved the effect would be that sedition would continue tomean what it has been meaning in spite of the contraryruling of the Privy Council given in 1945. If the presentlaws are allowed to operate without being controlled orgoverned by article 8 the position will be irretrievablyintolerable. Thus my submission is that in regard to freedomof speech and expression if you

allow the present law to becontinued without testing it in a court of law, a situationwould arise which would not be regarded as satisfactory bythe citizens of India.

Similarly, at present you have the right to assemblepeaceably and without arms and you have in 1947 passed a lawunder which even peaceable assemblage could be bombedwithout warning from the sky. We have today many provisionswhich are against this peaceable assembling. Similarly inregard to ban on association or unions.

The Honourable Dr. B. R. Ambedkar: Is it open to myhonourable Friend to speak generally on the clauses?

Mr. Vice-President: That is what I am trying to drawhis attention to

The Honourable Dr. B. R. Ambedkar: This is an abuse of the procedure of the House. I cannot help saying that. Whena member speaks on an amendment, he must confine himself tothat amendment. He cannot avail himself of this opportunityof rambling over the entire field.

Pandit Thakur Dass Bhargava: I am speaking on the amendment; but the manner in which Dr. Ambedkar speaks andexpresses himself is extremely objectionable. Why should heget up and speak in a threatening mood or domineering tone?

Mr. Vice-President: Everybody seems to have lost histemper except the Chair. (Laughter). I had given a warningto Mr. Bhargava and, just now, was about to repeat it whenDr. Ambedkar stood up. I am perfectly certain that he wascarried away by his feeling. I do not see any reason whythere should be so much feeling aroused. He has been under astrain for days together. I can well understand his positionand I hope that the House will allow the matter to restthere.

Now, I hope Mr. Bhargava realises the position.

Pandit Thakur Dass Bhargava: I will speak only on the amendment. But when a Member speaks on an amendment, it is not for other members to decide what is relevant and what is not.

Mr. Vice-President: I was about to say so, but I wasinterrupted.

Pandit Thakur Dass Bhargava: Sir, I repeat that unlessand until these offending words are removed and if thepresent law is allowed to continue without the validity of the present laws being tested in any court, the situation in the country will be most unsatisfactory. I am adverting to the present law in order to point out that it isobjectionable and if it continues to have the force of law,there will be no use in granting Fundamental Rights.Therefore I am entitled to speak of the Fundamental Rights.I will certainly not speak if you do not allow me, but Imaintain that whatever I was and am saying is perfectlyrelevant. (Hon. Members: 'Go on'). Sir, if I do not refer to the situation in the country and to the fact that this lawdoes not allow the present state of tension in the countryto be moved, what is the use of the Fundamental Rights. Iask.

Mr. Vice-President: Kindly remember one thing which isthat you may refer to it in a general manner and not makethat the principal point of your speech on this occasion.You may refer to all that in such a way as to adopt a viamedia where your purpose will be served without taking upmore time than is actually necessary.

Pandit Thakur Dass Bhargava: I am alive to the factthat it is a sin to take up the time of the Houseunnecessarily. I have been exercis ing as

much restraint aspossible. I thank you for the advice given by you. I willnot refer to the present situation also if you do not likeit.

But a few days ago the Honourable Sardar Patel, in aConvocation Address delivered by him, told the whole countrythat the labourer in the field and the ordinary man in thestreet has not felt the glow of India's freedom. Nobodyfeels that glow today, though India is free. Why? If theFundamental Rights are there and if they are enjoyed by thepeople, why is there not this glow of freedom? The reason isthat these offending words seem to nullify what article 8seems to grant in respect of the present laws and people donot take us seriously. That is the cause of the generalspathy of the people. If I referred in connection with thismatter to the present situation , my object was only toemphasise that the present situation is very

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unsatisfactory.I will leave the matter at that.

As regards the amendment for the addition of the word'reasonable' I will beg the House kindly to consider itcalmly and dispassionately. We have heard the speeches ofSardar Hukam Singh and Mr. Mahboob Ali Baig. Both of themasked what would happen to the Fundamental Rights if the legislature has the right to substantially restrict theFundamental Rights? That is quite true. Are the destinies of the people of this country and the nationals of this countryand their rights to be regulated by the executive and by the legislature or by the courts? This is the question ofquestions. The question has been asked, if the Legislatureenacts a particular Act, is that the final word? If youconsider clauses (3) to (6) you will come to the conclusionthat, as soon as you find that in the Statement of Objectsand Reasons an enactment says that its object is to servethe interests of the public or to protect public order, thenthe courts would be helpless to come to the rescue of thenationals of this country in respect of the restrictions.Similarly, if in the operative part of any of the sectionsof any law it is so stated in the Act, I beg to ask whatcourt will be able to say that, as matter of fact the legislature was not authorised to enact a particular law. Mysubmission is that the Supreme Court should ultimately bethe arbiter and should have the final say in regard to thedestinies of our nationals. Therefore, if you put the word'reasonable' here, the question will be solved and all thedoubts will be resolved.

Sir, one speaker was asking where the soul in thelifeless article 13 was? I am putting the soul there. If youput the word 'reasonable' there, the court will have to seewhether a particular Act is in the interests of the publicand secondly whether the restrictions imposed by the legislatures are reasonable, proper and necessary in thecircumstances of the case. The courts shall have to go into the question and it will not be the legislature and theexecutive who could play with the fundamental rights of thepeople. It is the courts which will have the final say.Therefore my submission is that we must put in these words"reasonable" or "proper" or "necessary" or whatever goodword the House likes. I understand that Dr. Ambedkar isagreeable to the word "reasonable". I have therefore put in the word "reasonable" to become reasonable. Otherwise ifwords like "necessary" or "proper" had been accepted, I donot think they would have taken away from but would havematerially added to the liberties of the country. Therefore I respectfully request that the amendment I have tabled maybe accepted so that article 13 may be made justiciable.Otherwise article 13 is a nullity. It is not fullyjusticiable now and the courts will not be able to say whether therestrictions are necessary or reasonable. If any cases arereferred to the courts, they will have to decide whetherrestriction is in the interests of the public or not butthat must already have been decided by the words of theenactment. Therefore the courts will not be able to saywhether a fundamental right has been infringed or not.Therefore my submission is that, if you put in the word"reasonable", you

will be giving the courts the finalauthor ity to say whether the restrictions put are reasonableor reasonably necessary or not. With the words, I commendthis amendment to the House.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"that with reference to amendment No. 454....."

Shri H. V. Kamath: On a point of order, Sir, hasamendment No. 454 been moved?

Mr. Vice-President: Please continue.

The Honourable Dr. B. R. Ambedkar:

"with reference to amendment No. 454 of the List of amendments--

(i) in clauses (3), (4), (5) and (6) of article 13, after the words 'any existing law' the words 'in so far as it imposes' be inserted, and

(ii) in clause (6) of article 13, after the words 'in particular' the words 'nothing in the said clause shall affect the operation of any existing law in so far as it prescribes or empowers any author ity to prescribe, or prevent the State from making any law' be inserted."

Syed Abdur Rouf (Assam: Muslim): On a point of order,Sir, I think that Dr. Ambedkar's amendment cannot be anamendment to amendment No. 454. Amendment No. 454 seeks todelete clauses (2), (3), (4), (5) and (6), whereas

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Dr.Ambedkar's amendment seeks to insert some words in thoseclauses and cannot therefore be moved as an amendment to anamendment.

Mr. Vice-President: It seems to me that what Dr.Ambedkar really seeks to do is to retain the originalclauses with certain qualifications. Therefore I rule thathe is in order.

Shri H. V. Kamath: This will have the effect ofnegativing the original amendment.

Mr. Vice-President: Kindly take your seat.

The Honourable Dr. B. R. Ambedkar: From the speecheswhich have been made on article 13 and article 8 and the words "existing law" which occur in some of the provisos toarticle 13, it seems to me that there is a good deal ofmisunderstanding about what is exactly intended to be donewith regard to existing law. Now the fundamental article isarticle 8 which specifically, without any kind ofreservation, says that any existing law which is inconsistent with the Fundamental Rights as enacted in thispart of the Constitution is void. That is a fundamentalproposition and I have no doubt about it that any trainedlawyer, if he was asked to interpret the words "existinglaw" occurring in the sub-clauses to article 13, would read"existing law" in so far as it is not inconsistent with thefundamental rights. There is no doubt that is the way inwhich the pharse "existing law" in the sub-clauses would beinterpreted. It is unnecessary to repeat the propositionstated in article 8 every time the phrase "existing law"occurs, because it is a rule of interpretation that forinterpreting any law, all relevant sections shall be takeninto account and read in such a way that one section isreconciled with another. Therefore the Drafting Committeefelt that they have laid down in article 8 the full andcomplete proposition that any existing law, in so far as it is inconsistent with the Fundamental Rights,will stand abrogated. The Drafting Committee did not feel itnecessary to incorporate some such qualification in usingthe phrase "existing law" in the various clauses where thesewords occur. As I see, many people have not been able toread the clause in that way. In reading "existing law", theyseem to forget what has already been stated in article 8. Inorder to remove the misunderstanding that is likely to becaused in a layman's mind, I have brought forward this amendment to sub-clauses (3), (4), (5) and (6). I will readfor illustration sub-clause (3) with my amendment.

"Nothing in sub-clause (b) of the said clause shallaffect the operation of any existing law in so far as itimposes, or prevent the State from making any law, imposingin the interests of public order."

I am accepting Mr. Bhargava's amendment and so I willadd the word "reasonable" also.

"imposing in the interests of public order reasonablerestrictions on the exercise of the right conferred by thesaid sub-clause."

Now, the words "in so far as it imposes" to my mindmake the idea complete and free from any doubt that

theexisting law is saved only in so far as it imposesreasonable restrictions. I think with that amendment thereought to be no difficulty in understanding that the existinglaw is saved only to a limited extent, it is saved only ifit is not in conflict with the Fundamental Rights.

Sub-clause (6) has been differently worded, because theword there is different from what occurs in sub-clauses (3),(4) and (5). Honourable Members will be able to read for themselves in order to make out what it exactly means.

Now, my friend, Pandit Thakur Dass Bhargava enteredinto a great tirade against the Drafting Committee, accusingthem of having gone out of their way to preserve existinglaws. I do not know what he wants the Drafting Committee todo. Does he want us to say straightaway that all existinglaws shall stand abrogated on the day on which the Constitution comes into existence?

Pandit Thakur Dass Bhargava: Not exactly.

The Honourable Dr. B. R. Ambedkar: What we have said isthat the existing law shall stand abrogated in so far asthey are inconsistent with the provisions of thisConstitution. Surely the administration of this country isdependent upon the continued existence of the laws which arein force today. It would bring down the whole administrationto pieces if the existing laws were completely and wholly abrogated.

Now, take article 307. He said that we have madeprovisions that the existing laws should be continued unlessamended. Now, I should have thought that a man whounderstands law ought to be able to realize this fact thatafter the Constitution comes into existence, the exclusivepower of making law in this country belongs to Parliament orto the several local legislatures in their respectivespheres. Obviously, if you enunciate the proposition thathereafter no law shall be in operation or shall have anyforce or sanction, unless it has been enacted by Parliament,what would be the position? The position would be that allthe laws which have been made by the earlier legislature, bythe Central Legislative Assembly or the ProvincialLegislative Assembly would absolutely fall to pieces,because they would cease to have any sanction, not havingbeen made by the Parliament or by the local legislatures,which under this Constitution are the only body which areentitled to make law. It is, therefore, necessary that aprovision should exist in the Constitution that any lawswhich have been already made shall not stand abrogated for the mere reason that they have not been madeby Parliament. That is the reason why article 307 has beenintroduced into this Constitution. I, therefore, submit,Sir, that my amendment which particularises the portion of the existing law which shall continue in operation so far asthe Fundamental Rights are concerned, meets the difficulty,which several honourable Members have felt by reason of thefact that they find it difficult to read article 13 inconjunction with article 8. I therefore, think that this amendment of mine clarifies the position and hope the Housewill not find it difficult to accept it.

(Amendment No. 50 to amendment No. 454 was not moved.)

(Amendments Nos. 455, 469, 475 and 481 were not moved.)

Mr. Vice-President: Then we shall take up amendment No.485, first part. The House can well realize that I am goingthrough a painful process in order to shorten the time spenton putting the different amendments to the vote.

Syed Abdur Rouf: I want the first part of the amendmentto be put to the vote.

Mr. Vice-President: Then we come to another group, 456,472, 484 and 495.

(Amendments Nos. 456, 472, 484 and 495 were not moved.)

Mr. Vice-President: The next group consists of amendments Nos. 457, 466, 473 and 494.

(Amendments Nos. 457, 466, 473 and 494 were not moved.)

Mr. Vice-President: Then amendment No. 458 standing in the name of Mr Mohd. Tahir and Saiyid Jafar Imam.

Shri M. Ananthasayanam Ayyangar: That has already beencovered by Mr. Mahboob Ali Baig's amendment.

Mr. Vice-President: Still, it would depend upon theMover.

Mr. Mohd. Tahir (Bihar: Muslim): Sir, I beg to

move:

"That in clause (2) of article 13, after the word'sedition' the words 'communal passion' be inserted."

Now, Sir, we find that under this clause we are givingpowers to the State to make laws as against certain offencessuch as libel, slander, defamation, sedition and similaroffences against the State. Now I want that these words"communal passion" be also added after the word "sedition"--which means, agitating or exciting the minds of onecommunity as against the other.

These words, Sir, libel, slander, defamation, sedition,are the common words found in the Indian Penal Code andfortunately or unfortunately, we find that this word doesnot find a place in the Indian Penal Code. The reason isvery simple, because, the Indian Penal Code and the old lawswere framed by a Government which was foreign to us. Now,this is the time when we must realise our merits anddemerits. We know that the agitation and the excitement ofcommunities against communities have done a great loss anddisservice to our country as a whole. Therefore, Sir, I think that the addition of this word is necessary. To tellthe truth, I would say that if in our country which is nowan

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independent country, we are really sincere to ourselves,this word also must find a place in the Constitution. I would request and appeal to Dr. Ambedkar and the House as awhole to give sound reasoning and due consideration for theaddition of this word.

At the end, Sir, I may submit that an amendment hasbeen moved by Mr. Munshi and I do not know whether it isgoing to be accepted or not. In case that amendment is goingto be accepted by the House. I would appeal that this wordmay be given a place in that amendment or wherever it isfound suitable. With these words. Sir, I move.

Mr. Vice-President: We come next to amendment No. 459.It is in the name of Mr. Thomas. It is verbal and thereforedisallowed.

Next we take up amendments nos. 460, 461 and the secondpart of 462. I would allow amendment No. 461 to be movedbecause that I regard as most comprehensive of the three.That is covered by Mr. Munshi's amendment. Is amendment No.460 moved?

Pandit Thakur Dass Bhargava: I do not want to move it.

Mr. Vice-President: Amendment No. 462; Mr. Kamath.

Shri H. V. Kamath: It is covered by amendment No. 461.

Mr. Vice-President: Amendment No. 462, first part. Iwas dealing with the second part just now. The first part ismore or less a verbal amendment and is disallowed.

Then, amendments Nos. 463 and 464 coming from twodifferent quarters are of similar import. Amendment No. 464,standing in the name of Shri Vishwambhar Dayal Tripathi maybe moved.

(Amendment No. 464 was not moved.)

Mr. Vice-President: What about amendment No. 463, in the name of Giani Gurmukh Singh Musafir?

Giani Gurmukh Singh Musafir: Not moving, Sir.

Mr. Vice-President: Then, we take up amendments nos.467 and 474. Amendment no. 467 may be moved. It stands in the name of Mr. Syamanandan Sahaya.

Shri Syamanandan Sahaya (Bihar: General): Sir, I beg to move:

"That in clause (3) of article 13, the word 'restrictions' the words 'for a defined period' be added."

Sir, in moving this amendment before the House, whatwas uppermost in my mind was to see whether actually even in the matter of the three freedoms so much spoken of, namely,the freedom of speech, freedom of association and freedom ofmovement, we had really gone to the extent that every onedesired we should. I must admit that I did not feel happyover the phraseology of the clauses so far as this generaldesire in the mind of every body, not only in this House,but outside, obtained. I will, Sir, refer to the wording ofsub-cause (b) of clause (1) of article 13. This sub-clauselays down that all citizens shall have the right to assemblepeaceably and without arms. This is the Fundamental Rightwhich we are granting to the people under the Constitution.Let us see how this fits in with clause (3) of article 13which is the restricting clause. Clause (3) lays down thatnothing in sub-clause (b) of the said clause (1) shallaffect the operation of any

existing law, or prevent theState from making any law, imposing in the interests ofpublic order restrictions on the exercise of the rightconferred by the said sub-clause, Sir, the only right which we are giving by sub-clause (b) is the right to assemblepeaceably and without arms. This right to assemble is not ageneral right of assembly under all conditions. To assemblepeaceably is the first condition precedent and there is alsoa second condition. That condition is that the assemblyshould be without arms. On the top of these conditions weare laying down in sub-clause (3) that there shall be afurther restricting power in the hands of the State. I wouldmuch rather that clauses (3) and (4) did not form part of our

Constitution. But, if the Drafting Committee and theother people who have considered the matter carefully thinkthat it is necessary to lay down restrictions even in thematter of assembling peaceably and without arms, I might respectfully submit that it would be necessaryto further restrict this restricting power by saying thatany law restricting this power must be for a specifiedperiod only. I do not think the House will agree that anyState should place on the statute book a permanent lawrestricting this Fundamental Right of peaceful assembly.

The most that the Constitution could accommodate aparticular Government at a particular time under aparticular circumstance was to give it the power to restrictthis right under these conditions but for a specified anddefined period only and that I submit, Sir, is the purposeof my amendment. The best interpretation that one could puton this clause is that the Drafting Committee has erred toomuch on the cautions side in this matter and they laveprobably kept the Government too much and the citizens toolittle, in view. I will submit that both in sub-clauses (3)and (4) the words 'for a defined period' should be added inorder that if a State at any time has to pass legislation torestrict these rights, they may do so only for a period. Itdoes not mean that once a State has passed such alegislation it is debarred from following it up by a secondlegislation in time if necessary but we must lay down in the Constitution that we shall permit of no such restrictive lawto be a permanent feature of the law of the land. A Stateshould not be empowered to pass a legislation restrictingpermanently peaceful assembly and assembly without arms. I think such a general power in the armoury of any State,however popular or democratic, would not be desirable. In the larger interests of the country, and particularly at theformative stage of the country, to give such wide powers in the hands of the State and with regard to such Fundamental rights as, freedom of speech, freedom of assembly andfreedom of movement would, I believe, be harmful and resultin the creation of a suffocating and stuffy atmosphere asopposed to the free air of a truly free country. Sir, I movethe amendment and commend it to the acceptance of the House.

(Amendment No. 470 was not moved.)

Mr. Vice-President: 471 is disallowed as verbal. Nos.476 and 477 are of similar import. I allow 476.

The Honourable Dr. B. R. Ambedkar: Sir I move--

"That in clause (4) of article 13, for the words 'thegeneral public' the words 'public order or morality' be substituted."

These words are inappropriate in that clause.

Mr. Vice-President: 477 is identical, 479, 480 and 486are of similar import

(Amendments Nos. 479, 480, and 486 were not moved.)

Mr. Vice-President: 482 and 483.

(Amendment No. 482 was not moved.)

Mr. Vice-President: 483--Sardar Hukam Singh.

Sardar Hukam Singh: Sir, I beg to move:

"That in clause (5) of article 13, after the words'existing law' the word 'which is not repugnant to thespirit of the provisions of article 8' be inserted."

The Honourable Dr. Ambedkar has rightly appreciated ourfears and we feel that is the object of most of the amendments that have been moved Certainly there are fears inour minds that if these articles stand independently--articles 8 and 13,--then there is a danger of

differentconstructions being put on them. Dr. Ambedkar has emphasisedthat if relevant articles of the Constitution are inquestion, all those articles that relate to one subjectshall be taken into consideration when some construction isgoing to be put by any Court and then article 8 would governbecause it says that "All laws in force immediately beforethe commencement of this Constitution in the territory ofIndia, in so far as they are inconsistent with theprovisions of this Part, shall to the extent of suchinconsistency, be void". That we have adopted, and this is what we feel that it should be

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made clear that certainlythose parts which are inconsistent would be void to thatextent. If that is the object as Dr. Ambedkar has explained,then why not make it clear in this section as well. Where isthe harm? I do not see that we would lose anything or thatit would change the beauty of the phraseology even if wemake it clear that these provisions are subject to article8. This is to be admitted that there are certain laws inforce just at present that restrict the liberty of thepeople. For instance I can quote the Land Alienation Act inPunjab. That allows only certain castes to purchase land of their own caste and precludes other castes to purchase thatland. If this distinction were based on some economicground, if it were to be enacted that all small tillers'rights would be safeguarded and their small lands would notbe alienable, we could understand that alright and such aprovision would be welcome. But when the discrimination isthere, we too feel that such a law should stand abrogated sofar as it is inconsistent with the provision in clause (5)or article 13. Because that gives freedom to acquire holdand dispose of property and if that law remains--LandAlienation Act, as it is and definition is not changed of the "agriculturist", there would be a conflict and theremight be certain constructions by Court which would beunfair. So if that is the object as Dr. Ambedkar hasexplained that article 8 would govern, then we should makeit clear and that is why I have suggested that after the words 'existing law' the words 'which is not repugnant to the spirit of the provisions of article 8' be inserted. That is my object and it should be made clear beyond any doubt.

Mr. Vice-President: Then we come to amendment No. 485,second part, standing in the name of Syed Abdur Rouf, and the first part of amendment No. 488 standing in the jointnames of Dr. Pattabhi Sitaramayya and others. The latterseems to be the more comprehensive of the two and may be moved.

(Amendment No. 488 was not moved.)

Mr. Vice-President: Then in that case, the second part of amendment No. 485, standing in the name of Syed AbdurRouf may be moved.

Syed Abdur Rouf: Sir, I beg to move:

"That in clause (5) of article 13, for the word'State', the word 'Parliament' be substituted."

Sir, in sub-clauses (d), (e) and (f), we have got themost valuable of our Fundamental Rights. But clause (5)seems to take away most of our rights, because States havebeen given power to restrict, to abridge and even to takeaway the rights if and when they like. We remember the word'State' has been defined as to include even localauthor ities etc, within the territory of India or under thecontrol of the Government of India. Even village panchayats,small town committees, municipalities, local boards allthese, to a certain extent become States, and it has beenleft to these States to deal with these valuable Fundamental rights. Sir, I will bring one instance before you. Suppose,due to political views, a particular village or panchayatarea is divided between the major ity and the minor ity. Now,if the major ity of the Panchayat by a resolution asks the minor ity not to move freely in the area or to reside there,or to dispose of their property, which law will prevent the major ity from doing so, and which law is there to safeguardthe interests of the minor ity? As these; are most valuablerights, the State should not be trusted with making lawsregarding these rights. In my opinion, Sir, it is only theParliament which can to the satisfaction of the people, dealwith these questions. As it is very dangerous to leave thispower in the hands of the small States, which will compriseeven village panchayats, we must be very careful and,therefore, I suggest that in place of 'State', the word'Parliament' should be substituted.

Mr. Vice-President: Then amendments Nos. 487, 489 and490 are of similar import. No. 487 may be moved.

(Amendment No. 487 was not moved.)

Mr. Vice-President: Amendment No. 489 standing in thejoint names of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir: Sir, I beg to move:

"That in clause (5) of article 13, the word 'either'and the words 'or for the protection of the interests of anyaboriginal tribe' be omitted."

Sir, I am not going to make any speech in thisconnection, but want only to submit that the removal of these words would

make the clause of a general character, which certainly includes the safeguards of the interests of the aboriginal tribes as well. I understand the Drafting Committee was also of this opinion, but I do not know why this clause was worded in this manner. Anyhow, I think it better to delete the words in the manner I have suggested.

Mr. Vice-President: Amendment No. 490 is the same as the one now moved, and it need not be moved.

Amendment No. 488, second part, and No. 491 are of similar import. Amendment No. 491, standing in the name of Dr. Ambedkar may be moved.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I move:

"That in clause (5) of article 13, for the word 'aboriginal', the word 'cheduled' be substituted."

When the Drafting Committee was dealing with the question of Fundamental Rights, the Committee appointed for the Tribal Areas had not made its Report, and consequently we had to use the word 'aboriginal', at the time when the Draft was made. Subsequently, we found that the Committee on Tribal Areas had used the phrase "Scheduled Tribes" and we have used the words "scheduled tribes" in the schedules which accompany this Constitution. In order to keep the language uniform, it is necessary to substitute the word "Scheduled" for the word "aboriginal".

Mr. Vice-President: There is, I understand, an amendment to this amendment, and that is amendment No. 56 of List I, standing in the name of Shri Phool Singh.

(Amendment No. 56 of list I was not moved.)

Mr. Vice-President: That means this amendment No. 491 stands as it is.

Then we come to amendment No. 488.

(Amendment No. 488 was not moved.)

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That in clause (6) of article 13, for the words 'public order, morality or health', the words 'the general public' be substituted."

The words 'public order, morality or health' are quite inappropriate in the particular clause.

Mr. Mohd. Tahir: *[Mr. President, my amendment No. 500 is as follows.

"That after clause (6) of article 13, the following new clause be added.

'(7) The occupation of beggary in any form or shape of person having sound physique and perfect health whether major or minor is totally banned and any such practice shall be punishable in accordance with law.'"

Sir, I have moved this amendment for this reason that, if the House agrees with this amendment surely it will result in solving to a great extent the difficulties of labour which exist in our country. Our industries, which are very vital and in many places have failed due to lack of labour, can flourish to a great extent. Besides, I would like to state that in our country thousands, lakhs pay crores of human beings will imbibe the spirit of self-reliance and self-respect. We see that in our country many able-bodied persons who

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* [ ]Traslation of Hindustani speech.

can work and can earn their livelihood, are to be found begging on road sides. If you tell them that they can work, that they can maintain themselves by earning their livelihood and can do good to their country by their labour, they would say in reply "Sir, this is our ancestral profession and we are forced to do it". I would

like to saythat there are so many countries on this earth but if youlook around, you will find this ugly spot only on the faceof our country. Therefore, I want that there should be somesuch provision in our Constitution as would be beneficial toour country. Obviously, those that are helpless, forinstance many of our unfortunate countrymen, who are blindlame and cannot use their hands and feet, really deservesome consideration. In such cases begging on these and othersimilar grounds may be justified. But even in this matter, I would submit that the State should be responsible and somesuch institution or home be founded in some places wherethey might be brought up, while those that are able-bodiedand healthy should be forced to work. By doing so, ourlabour problem will be solved to a great extent and croresofhuman beings, who have taken to begging as profession,would be prevented from doing so. This will create in themthe spirit of self-respect and self-reliance. Therefore, Ihope that Dr. Ambedkar will accept this amendment of mineand the House will also help me by accepting it. With thesewords, I submit this amendment for the consideration oftheHouse.]

The Assembly then adjourned till Half Past Nine of theClock on Thursday, the 2nd December 1948.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 17th October, 1949

The Constituent Assembly of India meet in the Constitution Hall, New Delhi, at Nine of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Article 13

Mr. President : There is a previous amendment of which notice has been given – amendment No. 415.

Shri T. T. Krishnamachari : I do not propose to move it.

Sir, I move.

"That in clause (2) of article 13, after the word 'defamation' the word 'contempt of court' be inserted."

Sir, the House will recognise that amendment No. 415 was originally tabled, as we had been advised by our legal advisers that there will be certain difficulties in regard to the exception in sub-clause (2) of article 13 in so far as the operation of sub-clause (a) of clause (1) of article 13 is concerned. But, Sir, a number of honourable Members of this House spoke about this amendment to Members of the Drafting Committee and they felt that it is not an amendment merely seeking to remedy a lacuna but altering the character of the clause in its entirety. They objected to two words public order being included. The idea, at any rate, of a part of that amendment was to cover one category of what might be called lapses in the exercise of freedom of speech and expression, namely, a person might be speaking on a matter which is *sub judice* and thereby interfere with the administration of justice. That is a category of offences which is not covered by the exceptions mentioned in clause (2) or article 13, so far as the right of freedom of speech and expression is concerned. Honourable Members of this house will realize that it was not our intention to allow contempt of court to take place without any let or hindrance, and it is not our idea that sub-clause (a) of clause (1) of article 13 should be used for this purpose.

We, therefore, felt, Sir, that we would restrict ourselves to merely remedying a lacuna rather than extending the scope of the exceptions mentioned in clause (2) and that is why we have decided to drop the original amendment 415 and we have tabled amendment No. 449 in which contempt of court will figure on a par with libels, slander, defamation or any mater which offends against decency

or morality, or which undermines the security of, or tends to overthrow, the State. Actually, contempt of court will figure with the first three and it is a very necessary protection so far as our law courts are concerned, and I hope the House will have no objection to accepting this amendment.

Mr. President : There is an amendment by Prof. Saksena. I do not understand it. Will he explain it ?

Prof. Shibban Lal Saksena : (United Provinces : General) For contempt of court read or contempt of court. That has been omitted by inadvertence.

Shri T.T. Krishnamachari : `Contempt of court or any matter' : That comes later. Technically, Sir, there ought to be a comma after "defamation."

Pandit Thakur Das Bhagava (East Punjab : General) Mr. President, with your permission I propose to move my amendment No. 435 which was intended to amend No. 415 but this amendment has not been moved. My amendment seeks to substitute for the words any law the words any reasonable law. That was the old amendment in respect of amendment No. 415. Now instead of 415 Mr. T.T. Krishnamachari has moved an amendment adding the words contempt of court after the word defamation instead of the words morality, public order or the administration of justice and when I gave the amendment it was in view of the words public order or the administration of justice. All the same my amendment does not lose it value in so far as I wanted that the article 13 should be amended. The change in the amendment of Mr. Krishnamachari makes no difference to me. So with your permission I beg to move :

"That for the words any law the words any reasonable law be substituted."

An Honourable Member : Law is always reasonable.

Pandit Thakur Das Bhargava. The law has been defined only a measure which is passed by the legislature. The law can be both reasonable as well as unreasonable. The law that all blue eyed persons be killed will be a good law though an unreasonable one. We are competent to pass any law which is reasonable or otherwise. We certainly pass laws through ignorance, passion, panic and prejudice which look reasonable to some and unreasonable to others. Therefore, the courts have been given the power to see whether the laws are reasonable or otherwise. You have already passed under article 13 certain amendments to the original article 13 which when amended said that the courts are empowered to see whether any restrictions are reasonable or not. The legislature is competent to pass any kind of law and the courts are therefore

empowered in certain matters to see that the powers exercised by the legislature are reasonable. So far as the fundamental aspect is concerned. I do not think any person shall doubt that the courts can be armed with a power like this because we have already armed the courts with these powers.

Now coming to the amendment of Mr. T.T. Krishnamachari he wants that the words contempt of court be added after the word defamation in article 13(2) and the clause would read thus :

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, contempt of court, or any other matter which offends against decency or morality or tends to overthrow the State."

In regard to this contempt of court, my contention is this, that these words need not be added to article 13, because as a matter of fact contempt of law as we understand it consists of a certain piece of conduct not necessarily with freedom of speech, because when you read the law relating to contempt of court, you will find in section 480 of the Criminal Procedure Code that usually the contempt of the ordinary courts of law consists in the infringement of sections 175, 178 and 179 and sections 180 and 288 of the Indian Penal Code. All these sections relate to certain pieces of conduct of the individual. For instance section 175 relates to non-taking of the summons from a court peon, omission to produce document; se3ctions 178, 179 and 180 relate to the refusal to reply to question put by the Court or refusal to take any oath; and similarly section 288 applies when there is an interruption of any judicial proceedings or when there is any insult offered to the court; insult can be offered in many ways and not necessarily by way of speech.

Therefore my submission is that the essence of any of these sections is that a wrong motion or wrong conduct or attitude is penalized and not speech by itself. The courts are empowered to take cognizance of the act of contempt and there and then deal with these offences. My first contention, therefore, is that these sections 175, 178, 180 and 288 which are the subject-matter of contempt as envisaged in section 480 do not relate to the freedom of speech at all and therefore, this amendment is not germane to the subject of the freedom of speech and expression

Moreover, Sir, we have already passed article 118 in this Constitution. It relates to the powers of the Supreme Court and in so far as the contempt of the Supreme Court is concerned it is already covered by law and the Supreme Court is perfectly entitle to deal with cases of contempt. In regard to other courts, Sir, the law is generally contained either in the law of defamation or in Act 12 of 1926. Apart from visible contempt committed in the view of the

courts as envisaged in section 480. Criminal Procedure Code. Comments of judicial acts of courts and magistrates are in the nature of technical contempt, and if you want to change the law, relating to such contempt, if you want to take away the powers of freedom of speech, you must enact that f the legislature passes and such law, it must be subject to the scrutiny of the courts.

As far defamation under which such contempt usually comes it is covered by the provisions in the Penal Code. This question of defamation is a very intricate one. In so far as civil defamation is concerned truth is absolute defence but so far as the criminal defamation is concerned the greater the truth the greater the defamation. When you arm the legislature with such plenary powers to make any law and that law is not subject to the scrutiny by the courts, it means that the legislature is given a very free hand and the freedom of speech will be reduced to a mere farce. We had lately an Act which was enacted by the previous Government in so far as they armed the courts to punish persons who made comments in respect of certain judgments. It was called the Judicial Officers' Protection Act and the provisions of that Act were very wide and sweeping. It may be that the contempt of courts may include cases of such contempt also. In regard to such contempt cases, which are technically contempt cases and which are not committed in the view of the court, there and then, they may come within the purview of the contempt law and as such should be controlled and their interpretation should be made amendable to the jurisdiction of the court. If we do not do that, my fear is that the liberty of freedom of speech and expression will practically become a nullity.

If you kindly see the six clauses of article 13, you will find the words reasonable restrictions. But in clause (2) there are no such words reasonable restrictions, which means that a legislature has been given full powers to place any kind of restriction, reasonable or unreasonable. When the subject matter of clause (2) was only confined to certain matters, I could understand that the word reasonable might have been omitted. Even then so far as the question of sedition was concerned when the original article was before us we amended this law and we saw that the word sedition did not cover cases which it ought not to have dealt with. Therefore we changed the words thus : which undermines the security of or tends to overthrow the State, and because these words were changed, the word, "reasonable" was not put in clause (2). Now clause (2) will not only deal with ordinary matters but the question of freedom of speech in regard to the executive authority of the courts is being introduced in it.

Therefore, since we are enlarging the scope of clause (2) it stands to reason that we may also enlarge the scope of the restriction upon the power of the

legislature in so far as, if we introduce the word "reasonable" before the word law, then we will attain our object and we will also attain this object of restricting the scope of the legislature in defining defamation, libel, slander, etc. or any other matter which offends again decency or morality. All these matter will be rationalized to a certain extent and instead of reducing the rights and privileges of the citizens of the Republic it would be better if we enlarge their liberties and I therefore suggest that instead of the words any law the words any reasonable law may be substituted. In case we do not agree to amend it further by the addition of these words, my fear is that again we will be going forward in the process which we are unfortunately after, viz. whatever has been given in article 13 may be taken away in some form or other. We have already done this by enacting article 24, articles 244, 278, 307 and other articles.

Therefore, my humble submission is that in regard to this most important matter relating to freedom of speech and expression we should so arrange matters that what has been given is not taken away and whatever powers we have given to the legislatures, they may be curtailed to this extent that they may be subject to the scrutiny of the courts. After all, the courts are as much the creatures of the Government as the legislature. Therefore, there is no point in having suspicion against the authority of the courts when you yourself are giving the legislature the power of arming the courts to hold persons guilty of contempt or proceeding against them in regard to contempt of court, in executive manner. You are by the amendment giving the power to the courts to see whether the law enacted in respect of contempt of court is good or not. As a matter of fact, you are helping the courts in one way and enlarging the authority of the courts in another way. Therefore, I submit that this amendment of mine should be accepted by the House.

Shri R.K. Sidhva : Mr. President, Sir, this amendment relates to article 13 clause (1) (a). Clause (1) (a) says, All citizens shall have the right to freedom of speech and expression. Clause (2) imposes a restriction on making speeches and using any words which may be libel, slander or defamation. My honourable Friend Mr.T.T. Krishnamachari wants that the words contempt of court should be inserted after the word defamation.

First of all, let me state that this is not a consequential amendment. This is a fundamental proposition that is being brought before this House. We know, Sir, about this contempt of court, how the Judges have been exercising their powers in the past, as if they are infallible, as if they do not commit any mistakes. Even third class magistrates, first class magistrates and sub-judges have been passing such strictures which even High Court Judges themselves sit as the prosecutors. They themselves want the judiciary and executive functions to be separated. In

cases of contempt of court, the High Court Judges is the prosecutor and he himself sits and decides cases in which he himself has felt that contempt of court has been committed. We have many cases before us. I will quote the illustration of two cases, Mr. B.G. Horniman, the Editor of "Sentinel" and Mr. Devadas Gandhi, Editor of the Hindustan Times. the Allahabad High Court passed strictures against the very reasonable comments made by these two persons. They preferred to go to the jail and went to jail rather than submit to the *ex parte* decision of the High Court. I cannot understand why my lawyer friends there are very lenient to the judges. After all, Judges have not got two horns; they are also human beings. They are, liable to commit mistakes. Why should we show so much leniency to them? We must safeguard the interest of the public. If a citizen by way of making a speech condemns the action of a third class magistrate or a fourth class magistrate who has passed strictures upon the public, is he not entitled to make a speech and comment upon it ?

It is unfair that in the matter of contempt of court, this clause is to be added. I strongly resent it. It is very unfair that the citizen after having been given some rights, and having been restricted by so many clauses, you want to further restrict it by inserting contempt of court. In contempt of court, we know when certain extraordinary things happen, High Court judges have some sort of power. Here, you have the power right down from the magistrate up to the High Court judges. Even there, I say the High Court judges are not infallible ; they have also committed so many mistakes. They do not want any comment to be made against a High Court judge when comment was necessary in the interest of the public life.

With these words, Sir, I feel that at this juncture the Drafting Committee may drop these words contempt of court which has always been a bone of contention both on the part of the newspapers and the public. I want to know in what constitution contempt of court is being inserted. My honourable Friend Mr. Alladi Krishnaswami Ayyar will guide whether in any constitution in the world contempt of court is included. That power already exists with the judges. Why do you want to put that in the Constitution and make the Judge above everybody? You want to make him a Super God.

Mr. President : This has nothing to do with courts. If you read the article you will see that it says that nothing in sub-clause (a) shall effect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to contempt.

Shri R.K. Sidhva :It relates to the citizens. The citizens shall have the right to freedom of speech and expression provided they do not make a speech which

ma be libel, slander, defamation or contempt of court. A judgment may have been passed by a court.....

Mr. President : A law may be passed which will prevent defamation of a private individual; but a law may not be passed which will prevent defamation or libel of a court; that is what your argument comes to.

Shri R.K. Sidhva : I do not want any law to be made in respect of contempt of court. I am very clear on this point because in my past experience about contempt of court, from the lowest to the highest court judges have not been impartial. Therefore I am opposed to this amendment.

Mr. Naziruddin Ahmad : (West Bengal : Muslim) : Mr. President, Sir, a warm controversy hangs round Contempt of Court. I submit that the High Court should have the power to punish for contempt in a summary manner. The reason is that the trial in a case must be conducted in an atmosphere of calm without any prejudice, on the evidence alone. If there is no power to proceed for Contempt of Court, any one may start a newspaper trial of a case pending in a Court or it may be that he indulges in public harangues about the merits of a case and thereby seriously prejudice the fair and impartial trial of a case. It is for this reason that contempt of Court has found a place in our statute book. There is an act of 1926 namely the Contempt of Courts Act. There are some contempts which can be punished by event he smallest magistrates. Mr. Sidhva described him as the Fourth Class Magistrate; there is no such thing at all. If there is a man who interrupts the proceedings of a Court, he should be punished summarily by any Court. There are may other serious kinds of contempt which could be punished only the High Court.

It is said that the High Court becomes the complainant or the prosecutor. I do not think so. Really, the dignity of the Court is impaired or its impartiality is challenged and the High Court alone should have the power to punish for contempt. To quote an example, if we show contempt to the President, the President alone should have the summarily power to deal with it. It is by way of analogy that Contempt of Court should be a part of the law. It is already a part of the law, Pandit Thakur Das Bhargava pointed out that we have already provided for Contempt of Court to be dealt with by the Courts in another place and his only objection to this amendment is whether it should find a place in clause (2) of article 13. It is very difficult on the spur of the moment to find out what is the effect of the provision we have already made. We are changing our mind so often and introducing new amendments of a scrappy character so often that it is often impossible to find out what an amendment means. It would, at the most, be overlapping. If there is overlapping that would not be very much

of a fault in this Constitution as there is plenty of overlapping in other places. I submit, therefore, that the amendment should rather be accepted.

With regard to Pandit Thakur Das Bhargava's amendment that the words any law should be substituted by the words any reasonable law, it would be useless in practice. If any law is to be passed, it is to be passed by the Legislature. It has always to be assumed that the Legislature passes a law which is, or at least it considers to be reasonable and not unreasonable. After all, a Legislature is absolutely free. The Legislature cannot contravene any constitutional limitation. But the word reasonable cannot be a condition. that condition must be assumed in their very power, and the fact that elected men will make laws necessarily implies that the laws made are reasonable. But supposing we introduce this expression and make it reasonable law it will have no binding force on the Legislature. The word reasonable would not in the least curtail their power or in the least fetter their discretion. In these circumstances, the word reasonable would be absolutely unnecessary and quite meaningless in practice, and so the amendment should not be accepted; and so far as the Contempt of Court amendment is concerned, for the time being it should be accepted, subject of course to further consideration by the Drafting Committee that there is no overlapping in two places.

Shri B. Dass : (Orissa : Genral) : Sir, I seek your protection from the tyranny of the Drafting Committee. The Fundamental Rights were passed by us with great solemnity – I am not a lawyer, but being a common man I understand the Fundamental Rights given to us after great consideration in so many Committees and after serious consideration by this House. What has happened for the last two or three days that we are suffering from the tyranny of the Drafting Committee ? On the 15th we received amendments to article 13 by the same two gentlemen – the Honourable Dr. Ambedkar and Mr. T.T. Krishnamachari – and today Mr. Krishnamachari has moved another amendment. Last night we got the present amendment which the House is concerned. Fundamental Rights cannot suddenly be changed. If today was not the last day of this house to consider further amendments, article 304 would have applied to any changes in the Constitution; for any changes to the Constitution. it says :

"An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting etc."

When Dr. Ambedkar himself as Chairman had provided in Part XVI – Amendment of the Constitution – with such solemnity, how does the change taken place overnight ?

I am not one who thinks very high of the judges particularly as they are trained under the British tradition and they have misapplied justice and kept us down. I have not read in any place of public utterances that the High Court Judges or other court Judges or Magistrates in India have changed since August 1947 and have a better realization of their function and duties. If Dr.Ambedkar, ten years hence on his retirement, writes a book on the vagaries of Courts, about contempt of court, he will see his particular partially overnight to give certain more powers to these magistrates and judges were not called for. It will be a very wonderful book where many penniless lawyers became judges and regulated and controlled the affairs and rule of the allien Raj by the world contempt of court and the chicken-hearted lawyers got frightened at them.

Mr. President : So far as High Courts are concerned, all parties and all people in this country have always held them in high esteem and it is no use casting as persons on them generally. There may have been individual Judges who may have erred, but we should not cast aspersions on the judiciary as a whole.

Shri B. Das : Sir, I bow to your ruling. I wish my heart becomes pure and I respect the Judges in India for their eminent position and for their due discharge of their duties. However, I seek your protection. If I have my personal view, I will oppose any tempering with any articles in the Fundamental Rights to the Third Reading of this Constitution. We must have some sanctity over change of Fundamental Rights. If it were such a mistake, how is it that it was not spotted on the 15th of this month? It is spotted only yesterday. Dr. Ambedkar has been described as the Manu of this century. Do Manus change overnight ? In that case everyone of us will be Manu and not Dr. Ambedkar alone. I think no harm will be done if this amendment to article 13 does not take place. Let Parliament meet, let Dr. Ambedkar himself bring out a Bill and we will examine it on its merits. But why tamper with Fundamental Rights? That is my submission and I do hope, Sir, as our President, you will be pleased to give a ruling over such matters as amendments to Fundamental Rights.

Shri Krishna Chandra Sharma : (United Provinces : General) : Mr. President, I am jealous for the dignity and respect of the Judges. I hold that in democracy judges should be respected by all classes of people and there should be dignity attached to the person and their functions. But one thing I object to is that this contempt of court addition is unnecessary because the article has the

words existing law and there is a provision in Cr. P.C. Section 480, which deals with contempt of Court during the proceedings when the Court itself has the power to punish the man committing the contempt. There is another contempt of court Act which empowers the High Court to take cognizance of any contempt of court anywhere. Therefore in view of the existing provisions – and I think they are sufficient to deal with the situation – no more protection is necessary. This addition is therefore unnecessary and undesirable.

The Honourable Shri K. Santhanam : Sir, I do not think the argument of the last speaker is correct because article 13 will modify the existing law. Therefore provision for contempt of court is necessary but my difficulty is that under article 13(2) every State Legislature is given the power to enact a law relating to contempt of court. If dozen legislatures enact dozen different laws relating to contempt of court. I think the position, especially of newspapers will become very difficult.

For instance, if the Madras Legislature makes a law relating to contempt of court, it will apply, of course, according to its jurisdiction, only to the papers published in Madras. But it will not apply to all papers coming from anywhere in India and circulating in Madras, and that will happen in every province. So far as defamation, slander, etc. are concerned, they are actionable wrongs which are put in the Concurrent List. When there is any confusion, Parliament can step in and bring about uniformity. But in the case of contempt of court, I do not think it is open to Parliament to bring about uniformity. Therefore, if they want to put it in article 13 there must be a separate item in the Concurrent List so that at any time Parliament can step in and bring about some uniformity of law. Otherwise, the insertion of the words contempt of court here, I suggest under clause (2) of article 13 will result in different laws of contempt of court and cause confusion throughout the country. I suggest that steps may be taken to at least reserve powers to Parliament either to make laws for contempt of court, or to see that laws relating to contempt of court are brought into some kind of uniformity. It may be put in the Concurrent List, if the words "contempt of court" are inserted in clause (2) of article 13.

Mr. President : Would you like to reply, Dr. Ambedkar ?

The Honourable Dr. B.R. Ambedkar : Si, this article is to be read along with article 8.

Article 8 says –

"All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provision of this Part, shall, to the extent of such inconsistency be void."

And all that this article says is this, that all laws, which relate to libels, slander, defamation or any other matter which offends against decency or morality or undermines the security of the State shall not be affected by article 8. That is to say, they shall continue to operate. If the words "contempt of court" were not there, then to any law relating to contempt of court article 8 would apply, and it would stand abrogated. It is prevent that kind of situation that the words "contempt of court" are introduced, and there is, therefore, no difficulty in this amendment being accepted.

Now with regard to the point made by my Friend Mr. Santhanam, it is quite true that so far as fundamental rights are concerned, the word "State" is used in a double sense, including the Centre as well as the Provinces. But I think he will bear in mind that notwithstanding this fact, a State may make a law as well as the Centre may make a law, some of the heads mentioned here such as libel, slander, defamation, security of Sate, etc., are matters placed in the Concurrent list so that if there was any very great variation among the laws made, relating to these subjects, it will be open to the Centre to enter upon the field and introduce such uniformity as the Centre thinks it necessary for this purpose.

The Honourable Shri K. Santhanam : But contempt of court is not included in the Concurrent List or any other list.

The Honourable Dr. B.R. Ambedkar : Well, that may be brought in.

Mr. President : Then I will put these two amendments to vote. As a matter of fact, Pandit Thakur Das Bhargava's amendment is not an amendment to Mr. Krishnamachari's amendment, it is independent altogether. I will up them separately. First I put Mr. Krishnamachari's amendment to vote.

The question is :

"That in clause (2) of article 13, after the word defamation the words contempt of court be inserted."

The amendment was adopted

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P RAMANATHA AIYAR

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object'. *Gwalior Sugar Co.* v. *State of Madhya Bharat*, AIR 1954 MB 196.

The word '*cess*' has a definite legal connotation, indicating tax allocated to a particular thing, not forming part of the general fund. The word '*cess*' is only tax and not a mere fee. It is not necessary for the purpose of levy of cess, there should be *quid pro quo* between the service actually rendered and the amount of tax levied, as it is not a fee but a tax. *Shanmugha Oil Mill* v. *Coimbatore Market Committee*, AIR 1960 Mad 160, 164. [Constitution of India, Art. 277]

The remuneration that is payable to the *patwari* or a *lambardar* does not fall under the head of cesses. AIR 1937 Nag 211.

An assessment, tax or levy. [S. 14(1), Cardamom Act (42 of 1965)]

§§ SEE ALSO (1) 'LAND CESS'; (2) 'RATE AND CESS'.

Cess and licence fee. A 'cess' is a tax levied for a specific purpose often with a prefixed word defining the object. A 'licence' on the other hand involves a permission to trade subject co-compliance with certain conditions. *Gwaliar Sugar Co. Ltd.* v. *State of Madh. Bharat*, AIR 1954 Madh Bharat 196.

Cess on houses. *See* Bur. Act II of 1880, S. 6.

Cess year. Defined. Beng. Act III of 1885, S. 5.

Cessa regnare si non vis judicare. Cease to reign, if you wish not to adjudicate.

Cessante causa, cessat effectus. A maxim meaning "The cause ceasing the effect ceases also." (*Broom;* 1 Exch. 430)

When the cause ceases, the effect ceases. (*Latin for Lawyers*)

Cessante primitivo, cessat derivatives. (WHART 145).—The primitive ceasing, the derivative also ceases.

Cessante ratione legis cessat et ipsa lex. (*Lat.*) A maxim meaning "Reason is the soul of the law and when the reason of any particular law ceases so does the law itself." (*Broom;* 4 Coke. 38; 7 Coke 67; *Co. Litt.*70*b*)

The reason of the law ceasing, the law itself ceases.

This finds familiar illustration in the protection in the exercise of the duties to a foreign Ambassador whilst in the exercise of the duties of his office; to Members of Parliament during the sitting of Parliament; to judges exercising their judicial functions; to barristers attending the Courts of law and equity, and others; the reason being that such protection is necessary for the performance by them of their respective duties; but the moment they cease to be so acting the protecting so afforded them also ceases. This maxim is also applicable to property, and finds illustration in the case of a proprietor who is responsible for the due performance of rights and duties respecting his property so long as he is owner thereof; but so soon as the property passes from him the incidents connected there with which the law attaches thereto also pass. But the maxim is not of universal application. For instance, in *Edwards* v. *Porter*, [1925] AC 1 a majority of the House of Lords held that though a wife could, after the Married Woman's Property Act, 1882, be sued for her post-nuptial torts, her husband should still be joined in the action. See the maxim used in the dissenting judgment of Viscount Cave p.10 and see for the present law Law Reform (Married Women and Tortfeasors) Act, 1935, S. 3. (*Latin for Lawyers*)

When the reason for a law ceases, the law itself ceases; or when the grounds or reasons which gave rise to a law cease to exist, the law itself ceases to exist. (*Trayner*)

On the applying this maxim, it was held that the decision to withdraw the application of unequal laws to equals cannot be delayed unreasonably because the relevance of historical reasons which justify the application of unequal laws is bound to wear out with the passage of time. [*Shri Swamiji of Shri Amar Mutt* v. *Commissioner, HRE*, (1979) 4 SCC 642, 658, para 29]

On the basis of the principle '*cessante ratione cessat ipsa lex*' it was observed that although a decision has neither been reversed nor overruled, it may cease to be 'law'. [*State of Punjab* v. *Devans Modern Breweries Ltd.*, (2004) 11 SC 26, 156, para 335]

Cessante statu primitivo, cessat derivatus. (8 COKE, 34).—The original estate ceasing, the derivative ceases.

Cessante statu primitivo, cessat derivativus. A maxim meaning "The derived estate ceases on the determination of the original estate." (*Broom;* 4 Kent Comm, 32 : 8 Rep. 34)

The original estate ceasing, that which is derived from it ceases. (*Latin for Lawyers*)

Cessat ratis cessat lex. Maxim does not apply to custom; so where a custom has originated in a family for certain reasons, it cannot be said that those reasons being non-existent and custom itself should cease to exist. 50 CLJ 267 : 118 IC 342 : 1929 C 577.

Cessate grant. A grant renewing a previous grant that has lapsed.

Cessation. "Temporary cessations of work" do not mean the closing down of the business, but mean the cessation of the job of the employee who was dismissed. *Hunter* v. *Smith's Dock Co.*, (1968) 2 All ER 81 (QB). [Contracts of Employment Act, 1963 (c. 49), Sched. 1. para. 5 (1) (*b*)]